

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**IN RE: FAIRLIFE MILK
PRODUCTS MARKETING AND
SALES PRACTICES LITIGATION**

)
) **MDL No. 2909**
)
) **Master Case No. 1:19-cv-03924**
)
) **Hon. Robert M. Dow, Jr.**
)
) **This Document Relates to All Cases**
)

STIPULATED INJUNCTION

This matter, having come before the Court on Plaintiffs’ Motion for Final Approval, Defendants fairlife, LLC (“fairlife”), Select Milk Producers, Inc. (“Select”), The Coca-Cola Company (“TCCC”), Fair Oaks Farms, LLC (“FOF”), and Mike McCloskey and Sue McCloskey (“the McCloskeys”) (collectively, “Defendants”) having agreed in the Settlement Agreement to the entry of this Stipulated Injunction, and the Court, after conducting a fairness hearing, considering all arguments in support of and/or in opposition to the Settlement Agreement including the Stipulated Injunction, hereby orders as follows:¹

1. Term. The term of the Stipulated Injunction shall be three (3) years, which shall commence on the date on which the Final Order and Judgment becomes Final.

2. Third-Party Audit of Select Farms. Validus Verification Services (“Validus”), an independent third-party auditor mutually agreed upon by the Parties, shall conduct annual audits during the term of the Stipulated Injunction of each Select Member Farm Supplier to fairlife that supplies milk to fairlife during the one-year period covered by the annual audit, except as

¹ Unless defined otherwise herein, terms and phrases used in this Stipulated Injunction shall have the same meanings ascribed to them in the Settlement Agreement.

provided in Sections 4(h) and (i) below relating to transition periods and supply disruptions. The audits shall determine whether each such Select Member Farm Supplier to fairlife substantially complies with the following obligations:

a. Subject to its obligations under local, state, and federal law (and in the case of existing employees, subject to the consent of such employee), each such Select Member Farm Supplier to fairlife shall conduct preliminary criminal background screenings on all Employees with Direct and Regular Animal Contact. Each such Select Member Farm Supplier to fairlife shall also institute a policy barring the hiring of individuals with criminal records for animal abuse or animal cruelty into positions that would involve Direct and Regular Animal Contact.

b. Each such Select Member Farm Supplier to fairlife shall provide animal welfare training to all Employees with Direct and Regular Animal Contact. Such training will consist of instructions and guidance regarding proper and safe animal handling in accordance with the training standards established by Farmers Assuring Responsible Management (“FARM”). Such training will be available in English and Spanish. Each such Select Member Farm Supplier to fairlife shall also provide each such employee with annual animal welfare refresher training in accordance with FARM standards. Such training shall focus on topics such as animal handling (all such Employees with Direct and Regular Animal Contact), as well as down cattle care, euthanasia, calf care, and/or fitness for transport as applicable for those employees who have such responsibilities.

c. Each such Select Member Farm Supplier to fairlife shall provide cooperation to law enforcement relating to the prosecution of any farm employee charged with acts of animal cruelty or criminal neglect.

d. Each such Select Member Farm Supplier to fairlife shall have a written Veterinarian-Client-Patient Relationship (“VCPR”) that is signed by the farm owner/manager and Veterinarian of Record annually.

e. Each such Select Member Farm Supplier to fairlife shall maintain a written herd health plan, as approved no less frequently than annually by each such farm’s Veterinarian of Record.

f. Each Veterinarian of Record or such licensed veterinarian designated by the Veterinarian of Record for each such Select Member Farm Supplier to fairlife shall make regular welfare visits to each such farm. The frequency of farm visits shall be determined by the Veterinarian of Record based on his or her professional judgment, the well-being of the cows, and the type and size of the operation. Veterinary visits are intended to proactively monitor the health and well-being of the herd and should include the prevention, treatment, and control of diseases along with the treatment of physical conditions affecting the herd, including lameness, locomotion issues, body condition concerns, behavioral issues, and any other areas of veterinary concern.

g. Each such Select Member Farm Supplier to fairlife shall provide protection from typical climatic heat and cold, taking into account geography, for all age classes of animals, including appropriate care and protection from heat and cold stress for calves. Care and protection strategies shall be consistent with each such farm’s written herd health plan, as approved no less frequently than annually by each such farm’s Veterinarian of Record.

h. Each such Select Member Farm Supplier to fairlife shall provide: (a) access to clean, fresh water as necessary to maintain proper hydration to all age classes of animals (including milk-fed dairy calves); and (b) access to sufficient quantities of feed for

maintenance, health, and growth to all age classes of animals. Unless emergency circumstances arise making performance not reasonably practicable (*e.g.*, blizzard, tornado, floods, fire, unforeseen hazards), no such farm shall allow an animal to go without food or water for any period exceeding 24 hours unless authorized by the herd manager acting under the supervision of a veterinarian.

i. Each such Select Member Farm Supplier to fairlife shall immediately euthanize or provide care for any cattle identified as having a serious, painful, or life-threatening condition, including, but not limited to, prolapses, non-ambulatory conditions, or difficult deliveries. Non-ambulatory animals will be cared for pursuant to FARM guidelines. All care will be provided pursuant to a current Veterinarian-Client Relationship Agreement. Each such Select Member Farm Supplier to fairlife shall euthanize all animals that are required to be euthanized only through the use of methods approved by the American Association of Bovine Practitioners (“AABP”) or American Veterinary Medical Association (“AVMA”).

j. Each such Select Member Farm Supplier to fairlife shall refrain from dragging animals except for emergency cases where an animal must be moved a few feet before an appropriate movement device can be used. Non-ambulatory animals shall be handled with dignity and in a manner that minimizes pain and discomfort. Non-ambulatory animals may be moved using sleds, belting with reinforced sides, slings, skidsteer buckets (so long as the bucket lip is padded, and it is large enough to hold the entire animal), float tanks, and palleted forklifts (so long as exposed forks are never used). In all situations, animals shall be restrained appropriately so as not to risk or cause additional injury.

k. Each such Select Member Farm Supplier to fairlife shall prohibit its employees from kicking, punching, or beating any animals or subjecting them to any act of

cruelty or instance of gross negligence. Any employee caught committing such acts will be immediately terminated, and egregious or repeated acts shall be referred to law enforcement and the Monitor. “Gross negligence” means an act or course of action, or inaction, which denotes a lack of reasonable care and a conscious disregard or indifference to the rights, safety, or welfare of others, including animals.

l. Each such Select Member Farm Supplier to fairlife shall maintain milking parlors and equipment in a commercially reasonable manner designed to prevent animal injury or death.

m. Each such Select Member Farm Supplier to fairlife shall disbud calves before eight (8) weeks of age and provide pain mitigation for disbudding or dehorning.

3. Monitor.

a. Appointment of Monitor. The Honorable Wayne R. Andersen (Ret.), a retired federal judge selected by the Parties, shall serve as an independent, third party, Court-appointed Monitor to monitor compliance with this Stipulated Injunction. Defendants shall pay or cause to be paid the Monitor Costs from their own funds and not from the Settlement Amount.

b. Annual Reports. The Monitor shall issue an annual report, which shall be based upon the Monitor’s review of the annual third-party audits for each year during the term of the Stipulated Injunction. Upon determining that each such farm is in substantial compliance, the Monitor shall confirm the same by denoting such farm to be “Compliant.”

c. Reporting Periods. The reporting period for the Monitor shall be coterminous with the audit period.

d. The Monitor’s Follow-Up on Reports. Final audit reports will be provided to each audited Select Member Farm Supplier to fairlife, Select, fairlife, and the Monitor only.

The Monitor shall have 30 days to review the audits to ensure substantial compliance with the Stipulated Injunction and to identify any compliance issues. Within that 30-day period, the Monitor must identify in writing any areas of compliance that the Monitor believes require further attention or otherwise appear to demonstrate non-compliance with the Stipulated Injunction. Areas of non-compliance noted by the Monitor will be addressed and/or corrected within 30 days thereafter. If the issues of non-compliance raised by the Monitor are not resolved within this 30-day period, the Monitor shall notify both Class Counsel and Defense Counsel of any unresolved issues.

e. Counsel's Follow-Up on Reports. To the extent the Monitor notifies Class Counsel and Defense Counsel of any unresolved issues of non-compliance as provided in the Paragraph above, Class Counsel may seek Court intervention to enforce the terms of the Stipulated Injunction. In such instances of unresolved issues of non-compliance, Class counsel reserve the right to request the Court to extend the term of the Stipulated Injunction; Defendants reserve the right to oppose any such request.

f. Confidentiality. The Parties and the Monitor agree that the Monitor Communications constitute highly confidential and proprietary business information under the Protective Order.

4. Additional Terms.

a. The costs to perform the practices necessary to comply with the obligations subject to the third-party audits shall be borne by Defendants and shall not be paid from the Settlement Amount.

b. The costs of the audits, including all auditor fees and expenses, shall be borne by Defendants and shall not be paid from the Settlement Amount.

c. Class Counsel may review the third-party audit checklist prior to approval, which the third-party auditor will use to determine whether a violation has occurred.

d. The Parties agree that this Court retains ongoing jurisdiction to enforce the terms of the Stipulated Injunction.

e. The Select member farm identified in the Consolidated Class Action Complaint as “Fair Oaks Farms” may resume milk shipments to fairlife only upon substantial compliance with the terms of this Stipulated Injunction.

f. The Parties acknowledge that following the initiation of this litigation on June 11, 2019, fairlife revised the labels on the bottles or containers of its products that were in use as of June 11, 2019 to remove the remaining statements of a “promise” of “extraordinary care and comfort for [its] cows,” “exceptional quality milk standards,” “traceability back to [its] farms,” and “continual pursuit of sustainable farming.” fairlife will not modify the labels on the bottles or containers of its products in use at the time this Agreement is executed in any way that is inconsistent with governing consumer protection and/or product liability laws.

g. fairlife agrees not to publicly represent, suggest, warrant, or convey in any way that its practices are endorsed by Animal Outlook or the Animal Legal Defense Fund.

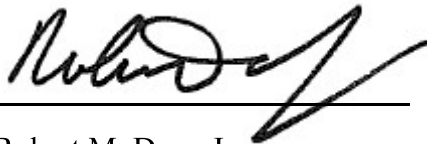
h. In the event that fairlife, during the term of the Stipulated Injunction, seeks to accept shipments of milk on a regular basis supplied by a farm that is a member of the Select cooperative that is not a Select Member Farm Supplier to fairlife as of the commencement date of the Stipulated Injunction, each such farm shall have one hundred twenty (120) days to come into compliance with the terms set forth herein. Notwithstanding the foregoing, if any such farm is ultimately unable to come into substantial compliance within the 120-day period, fairlife shall notify Class Counsel as soon as practicable, and the parties shall negotiate an extension or other

resolution in good faith, with the assistance of the Monitor if necessary. fairlife shall notify any such new and/or additional farms of the requirements set forth herein as soon as practicable and before such farm begins supplying milk to fairlife. This paragraph is in addition to and does not alter the rights afforded by Section 4(i) below.

i. In the event of an emergency or other temporary disruption in the supply of milk from any Select Member Farm Supplier to fairlife, fairlife may, to the extent necessary, use milk supplied from other farms that are members of the Select cooperative that have not been confirmed to be in compliance with the terms of the Stipulated Injunction until the emergency or temporary disruption has been resolved, but in no event longer than sixty (60) days.

Notwithstanding the foregoing, if the emergency or temporary disruption in the supply of milk from the Select Member Farm Supplier to fairlife has not been resolved within the 60-day period notwithstanding good faith efforts to do so, and if fairlife continues to require milk supplied from other farms that are members of the Select cooperative that have not been confirmed to be in compliance with the terms of the Stipulated Injunction in light of the emergency or temporary disruption in the supply of milk from the Select Member Farm Supplier to fairlife, fairlife shall notify Class Counsel as soon as practicable, and the parties shall negotiate an extension or other resolution in good faith, with the assistance of the Monitor if necessary.

Dated: September 28, 2022

A handwritten signature in black ink, appearing to read "Robert M. Dow, Jr.", written over a horizontal line.

Robert M. Dow, Jr.

United States District Judge