

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

VAQUERÍA TRES MONJITAS, INC. and  
SUIZA DAIRY, INC.

Plaintiffs

v.

MYRNA COMAS, in her official capacity, as  
the Secretary of the Department of  
Agriculture for the Commonwealth of Puerto  
Rico; and, JOSÉ PANTOJA, in his official  
capacity, as Administrator of the Office  
of the Milk Industry Regulatory  
Administration for the Commonwealth of  
Puerto Rico

Defendants

Civil No.  
04-1840 (DRD)

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PUERTO RICO DAIRY FARMERS ASSOCIATION

Plaintiff

v.

MYRNA COMAS, in her official capacity, as  
the Secretary of the Department of  
Agriculture for the Commonwealth of Puerto  
Rico; and, JOSÉ PANTOJA, in his official  
capacity, as Administrator of the Office  
of the Milk Industry Regulatory  
Administration for the Commonwealth of  
Puerto Rico

Defendants

Consolidated with  
Civil No.  
08-2191 (DRD)

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**MOTION REQUESTING STAY OF ENTRY OF JUDGMENT**

TO THE HONORABLE COURT:

The intervenors in Civil No. 04-1840 (DRD) and plaintiffs in  
the consolidated action Civil No. 08-2191 (DRD), Puerto Rico Dairy

Farmers Association ("PRDFA"), through the undersigned attorneys very respectfully requests and prays as follows:

1. On October 28, 2013, there was scheduled before this Honorable Court a Contempt proceeding within Civil No. 04-1840 (DRD) which was ordered by a comprehensive Amended Opinion and Order of September 23, 2013, Docket #2289.

2. At the commencement of the hearing on contempt the attorney for the Government defendants announced that he was ready to proceed with the contempt hearing but that he understood, but did not have knowledge of, that a settlement had been entered into between the plaintiffs and the Government defendants that would obviate the need for the contempt hearing. Thereafter, the plaintiff Suiza Dairy, Inc. ("Suiza") announced that in effect a settlement had been reached in principle which, when finalized into a written document would close the case. Co-plaintiff, Vaquería Tres Monjitas, Inc. ("VTM") represented to the Court that it was without knowledge of the specifics of any settlement discussions or the terms of any settlement document. It was, thereafter, requested that the hearing be adjourned and rescheduled for the following day, October 29, 2013, to allow an opportunity to finalize the settlement that was in discussion, and to complete the necessary documents memorializing the settlement. On October 29, the hearing was reconvened, at which time the plaintiffs and the attorneys for the Government announced and confirmed to the Court that a settlement had been reached in Civil No. 04-1840. It was represented that the

settlement would dispose of all claims between these parties, including the peripheral issues of contempt, except as to contempt proceedings against a non-party, Ronald Cotterill, Ph.D. The settling parties then filed the settlement document in open court. No copies were provided to intervenors or plaintiffs in the consolidated action. Upon the filing of the settlement document, with terms unknown to the Court or to those parties not participating, directly or indirectly in the settlement, a discussion ensued as to the next steps within Civil No. 04-1840 (DRD) and as to the further course of action in Civil No. 08-2191 (DRD). Because the appearing party, PRDFA, had absolutely no idea what was negotiated, what was settled, or what consequences or ramifications flowed to them from this separate settlement, they expressed the concern that all rights be reserved with respect to their claims and causes of action in the consolidated action. The PRDFA was granted a term to advise and propose to the Court a proper course to continue with these claims.

3. At the hearing of October 29, the Court expressed its intent to enter a final Judgment in Civil No. 04-1840 (DRD) in an expedited manner, most likely by simply approving and adopting the terms of the settlement agreement filed in open court, containing the terms (and consequences) unknown to any other non-participating party.

4. On October 30, 2013 the intervenors and plaintiffs in the consolidated actions, the PRDFA, have had the opportunity, for the

first time, of examining the content of the "Final Settlement Agreement and Memorandum of Understanding Between the Parties." (Docket #2322). As expressed at the outset of the document, the terms of the settlement have the intent of a "final, absolute, binding and unappealable judgment." The terms of the settlement are striking in three major respects. First, it assigns and commits some \$95 million dollars of general fund public monies to be paid to the plaintiffs. Second, and more important with respect to the appearing party, and indeed the entire milk industry of Puerto Rico, it adopts by fiat and without the required studies, public participation or procedures, a new "Regulation Number 12 of the Milk Industry to Establish the Price of Milk at All Levels." Third, the defendant Administrator of the Office of the Milk Industry Regulatory Administration ("ORIL")<sup>1</sup> implements a Price Order setting the price of milk at the different levels of production and distribution which becomes effective November 7, 2013. This quasi-legislative action was carried out behind closed doors without any notice or participation.<sup>2</sup>

5. As the Honorable Court, and all the parties to this action, are very well aware of, the genesis and the crux of this longstanding litigation has been the aim of setting into place scientific and reasonable prices for all the milk market

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<sup>1</sup> It is perhaps very telling that the administrator of ORIL has presented his resignation. As we have been informed this was because he could not agree with the terms of the Settlement Agreement.

<sup>2</sup> This would be expected if the plaintiffs and defendants were entering into a private agreement limited to the contracting parties, but not in a situation adopting a new specialized Regulation affecting an entire industry.

participants in order to make the same strong and viable. In this, the Court was very eloquent in receiving the settlement document in open court last night when it counseled all the participants in the industry to respect and work with each other at every level. The appearing party, having examined the terms of the settlement, and the manner in which the same is to be implemented, considers that the fundamental basis of this case, (which is to establish just, non-discriminatory, scientific and reasonable pricing in a manner that accords all participants respect and due process) is openly violated to the extent of causing grave harm to the guiding principals which have been established by the Court in this case.

6. On its face the adoption of this Regulation and Price Order affects with extreme prejudice the first link in milk production, the dairy farmers. First, without adhering to the most basic administrative law process, general participation, or review of scientific and technical matters, the Government adopts and puts immediately into place a new Regulation. This mechanism must cause great concern to the Court, since, on its face, it violates the most elementary principals set forth in the original preliminary injunction, which was the goal of allowing all participants reasonable, fair and open participation in the setting of prices and regulations which affect them. Second, contrary to general representations, both in open Court and in the general press, the price structure that emanates from both the new Regulation and the new Price Order, are detrimental and cause grave harm to dairy

farmers in that it effectively lowers and reduces payments now in place. For example, at present, the farmers receive 90 cents per quart for fluid milk (that is, the fresh milk processing companies and Indulac pay the farmer 90 cents per quart for the raw milk they buy). Under the price structure which is to be placed into effect by the new Regulation and the New Price Order, the same is now set at 76 cents per quart.<sup>3</sup> This already harmful low price to the farmer is further exacerbated when one takes into account the average of the price for the milk byproducts (which leaves a waited average of 70.4 cents per quart). The administrative Price Order that will be placed into effect on November 7, 2013 also eliminates the necessary funding for the following vital programs: (1) quality program (putting in direct peril the Grade A certification); (2) school luncheon program; (3) Head Start program; (4) Elderly persons program; (5) "Fondo de Fomento de la Industria Lechera" ("FFIL")<sup>4</sup>; and, the funding for repayment for loans.<sup>5</sup> Further shocking to the dairy farmers is that the Settlement Agreement states that the price of milk will not increase during the next four years, absent substantial change. Not only is it irresponsible to agree to this, but illegal as the law mandates price reviews every year.

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<sup>3</sup> The 76 cents per quart are calculated after adding 4 cents that will be provided by the Government as an additional incentive to purchase cattle feed. It is of great importance noting, however, that this 4 cents per quart incentive is nowhere to be found in the Settlement Agreement, nor it mentions when it will start or end.

<sup>4</sup> It is the PRDFA position that this should be null and void insofar as the funding for the FFIL is created by Act 34, which, of course, cannot be derogated by way of a settlement agreement.

<sup>5</sup> The deletion of funding for certain programs will have the effect of forcing the default on capital funding loans insofar as this funding served as security for these loans.

7. Since time is of the essence, insofar as the Honorable Court stated an interest in entering an expedited Judgment in this matter, and given the conceptual difficulties in the manner in which this settlement was negotiated and executed, which in effect legislates and adopts final administrative regulations, the appearing party would respectfully request that there be no immediate rush to enter Judgment in this case, and that all other milk industry participants be allowed to carefully and responsibly review the terms of new Regulation and Price Order. Participation in new Regulations and Price Order should not be limited solely to the processors and the Government. We fear that an expedited issuance of the Court's Judgment, adopting and approving the Settlement it will pose the entire producer sector on the verge of imminent collapse. The Court and the parties may simply be curing one deficiency by creating more complicated and unfair rules and process. The PRDFA would request that such Judgment be held in abeyance for a reasonable amount of time so that proper, intelligent and technically correct comments can be submitted to the Court for its further action. The PRDFA is well aware of this Court's great interest in concluding this litigation but, having waited this long for resolution, it is fair and proper that a final resolution of issue not cause the economic destruction of all other participants in the milk industry. All participants, and the public at large, should be granted assurances that the terms of this settlement are legal, fair and proper to all, and will not have the ultimate effect

of causing further due process violations. As it stands now, the ills that beset the administrative process which this same Court so properly condemned in its various orders throughout this case would remain very much alive by approving this settlement.

WHEREFORE, for all the above stated reasons, the Puerto Rico Dairy Farmers would respectfully pray that this Honorable Court hold in abeyance the entry of final Judgment in this matter to allow a reasonable amount of time for the proper scrutiny of the new administrative Regulation and Price Order which affects not only the parties to the settlement, but all participants in the industry and the general public at large.

RESPECTFULLY SUBMITTED.

**I HEREBY CERTIFY** that on this same date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties.

In San Juan, Puerto Rico, this 24<sup>th</sup> day of October 2013.

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