

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

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

Plaintiffs,

v.

**NEFTALI SOTO SANTIAGO, in his  
official capacity, as the Secretary of the  
Department of Agriculture for the  
Commonwealth of Puerto Rico, and  
JULIO CESAR MELENDEZ  
MORALES, in his official capacity, as  
Administrator of the Office of the Milk  
Industry Regulatory Administration for  
the Commonwealth of Puerto Rico.**

Defendants

**CIVIL CASE NO.: 04-1840 (DRD)**

Consolidated with 08-2191 (DRD)

Consolidated with 08-2380 (DRD)

**RE:**

**INJUNCTIVE AND DECLARATORY  
RELIEF**

**OPPOSITION TO MOTIONS BY THE PUERTO RICO DAIRY FARMERS AND  
INDULAC REQUESTING THAT JUDGMENT NOT BE ENTERED IN THIS CASE**

**TO THE HONORABLE COURT:**

**COMES NOW** Plaintiff, **SUIZA DAIRY INC.** (“Suiza”), through the undersigned attorneys and respectfully states and prays as follows:

Through Dkt. No. 2324 the Puerto Rico Dairy Farmers Association (“PRDFA”) requested stay of entry of judgment in this case. Later on, on the same date, Industria Lechera de Puerto Rico, Inc. (“Indulac”) sought the same remedy through Dkt. No. 2328. The court ordered both plaintiffs and the Government defendants to respond by today at 6:00PM. See Dkt. No. 2330. Suiza hereby responds to both the filing of the PRDFA and that of Indulac.

## **I – Summary of the Argument**

Intervenors do not advance any valid legal argument that should prevent this court from entering judgment forthwith, pursuant to the settlement reached between the parties. This court sits in this case to adjudicate federal rights. At no time did the intervenors file a pleading setting forth federal a claim in this case.<sup>1</sup> The court is now left with nothing to adjudicate in this case in connection with said intervenors. Furthermore, whatever **federal** rights may be invoked by PRDFA will be given its day in court in Civil Action No. 08-2191 pending adjudication before this court.

Intervenor Indulac is an entity created by law wholly owned by the Fondo de Fomento de la Industria Lechera (“FFIL”), another entity created by law. As such, Indulac has no federal claim to make against the Government of Puerto Rico. Even if that were not the case, Indulac may still file its federal claim assuming one arises out of the termination of this case. Lastly, since there are no affirmative remedy pleadings, there is not even a basis for the court to determine that there are independent jurisdictional grounds that would allow it to entertain these motions.

Although the above is outcome-determinative of this incident, we will also correct the misrepresentations contained in intervenors’ filings.

## **II – Argument**

### **A. Intervenors have never sought a federal remedy in this case.**

The operative pleadings of both intervenors in this case are simply answers to the complaint which request as a remedy the dismissal of the same. Intervenors always took the

---

<sup>1</sup> Indulac filed an answer to the second amended complaint on October 10<sup>th</sup>, 2005 (Dkt. No. 220). PRDFA did the same on November 1<sup>st</sup>, 2005 (Dkt. No. 229). Both pleadings seek dismissal of the complaint but include no counterclaim or cross claim seeking an affirmative remedy. Those are the only operative intervenors’ pleadings under FRCP 24(c).

position that ORIL's regulation was adequate and constitutional and that the complaint should be dismissed. At no time intervenors sought the vindication of any federal right in this case. They acted solely as minions assisting ORIL in its defense.

That is not surprising. The PRDFA controls the FFIL and Indulac itself. See Dkt. No. 480, Amended Opinion and Order granting preliminary injunction, (Dkt. No. 480) at pages 7 to 8. The farmers "want to consolidate in their hands the control of the whole industry" by eliminating the fresh milk processors. *Id.* Those efforts that entail the participation of officials of the Government of Puerto Rico, continued throughout these proceedings. *Id.* page 10.<sup>2</sup> The position of Indulac and the PRDFA has a clear explanation. "The more desperate the financial condition of the fresh milk processors, the easier for the dairy farmers to acquire them or eliminate them." See Dkt. No. 480, page 10.

In short, having no counterclaim or pleading claiming a federal right in case 04-1840 intervenors cannot preclude a settlement between plaintiffs and defendants and the corresponding entry of judgment.

Lastly, since the already executed settlement agreement puts an end to this case with no claim for the vindication of federal rights on the part of intervenors, this court cannot but conclude that there is no independent jurisdictional basis that would permit it to even entertain these particular motions.

**B. PRDFA has a federal claim independent of this case.**

PRDFA itself recognizes (see Dkt. No. 2324, p.1) that it has a complaint for federal relief in Civil Case No. 08-2191. That case is scheduled to move forward as soon as this one is over.

---

<sup>2</sup> Hopefully, the resignation of the latest Administrator of ORIL to which PRDFA refers in footnote 1 of Dkt. No. 2324, will put an end to this control of ORIL by the farmers.

The exchange between the court and the attorney for the farmers the day the settlement was entered into the record demonstrates that the farmers understand this perfectly well:

THE COURT: Now, counsel for the farmers, **there is a pending case as to the farmers, which the Court has said would begin immediately after this case would end.** Is that case over, or is that case being litigated, or what's the story with that case?

MR. MENDEZ: Your Honor, Alejandro Mendez representing the Dairy Farmers. It is our position that we cannot **stop our case** based on the settlement agreement reached between the Government defendants and the plants, as we were not a party to any of the negotiations. We haven't even seen the document. It is our position that, yes, the case would continue as scheduled in the first trimester of next year.

THE COURT: All right. So the issue then becomes whether -- to what extent does this third party litigation mitigate your case, and then **what is left in your case.** (Emphasis added.)

That is exactly why the farmers were given fifteen working days to decide what to do with their case. See Tr. October 29<sup>th</sup>, 2013 at pages 19-20. It is also the reason why we advised that we would file our responsive pleadings to the farmers' complaint as soon as they clarify their position by amending the complaint or otherwise. See transcript of October 29<sup>th</sup>, 2013, page 16 and pages 20-21. The court concurred in the procedural status of this matter. ("So the only case left is 08-2191, which the court must finish by March. That's my obligation."). Tr. of October 29<sup>th</sup>, 2013, page 23. As the court indicated, there is no reason to reopen this case. ("The Court: No, this case is not going to be reopened.") Tr. October 29<sup>th</sup>, 2013, page 21.

But because the court knows the farmers and Indulac all too well, it anticipated and closed the door to their attempt to prevent resolution of this controversy. See Tr. of October 29<sup>th</sup>, 2013, pages 20-21:

**THE COURT: But it is not 15 working days to attempt to nullify. Because this is the resolution of our case, that is, my case A, which was consolidated with case B, which is your case, simply this case runs by itself.**

**MR. MENDEZ: And that is our position.**

THE COURT: All right. This case runs by itself.

MR. ESCALERA: That's the —

**THE COURT: I am going to issue a judgment on this case.**

**MR. ESCALERA: That is precisely the point we were making, Your Honor. The conflict between Suiza, VTM, and the Government of Puerto Rico is over.**

**THE COURT: That's right.**

**MR. ESCALERA: The only thing that remains, there is only one set of allegations that remains. The allegations of the farmers in a case that was consolidated, which is no longer consolidated.**

**THE COURT: Which is no longer consolidated.**

MR. ESCALERA: The main case was terminated. So the only party suing the Government at this point is the farmers. Not Suiza, nor VTM, and we are intervenors in that case, and we will file our pleadings at the appropriate time, Your Honor.

**THE COURT: Okay.** (Emphasis added.)

Clearly, PRDFA acquiesced with the Court's position.

**C. Indulac has no federal claim.**

Indulac has no federal claim pending before this court. But as the court itself recognized, Indulac may decide to have one. But even in that situation that would be a case against the Regulator. At page 21 of the October 29<sup>th</sup>, 2013 transcript that much was left clear:

The Court: I think Indulac doesn't have a case.

Mr. Escalera: Exactly.

The Court: Indulac, who does not have a case, may decide to have a case. But it is a case against the Government . . .

Indulac was given fifteen working days to decide whether to file a case or not.

But yet, one cannot overlook the immense obstacle such an action would face. See findings of facts 2, 3 and 4 at pages 7 and 8 of Dkt. No. 480. See also transcript of October 29<sup>th</sup>, 2013 at pages 21-22. (Mr. Escalera: This case is over. The only allegation -- that's why I said the only allegations that remain are the farmers against the Government, and if Indulac wants to file a case against the Government, it is Indulac's right to do so. The Court: That would be very strange because they are a Government entity. They are a Government entity.")

**D. The real facts about milk price increases.**

Although the dairy farmers sided with the non-prevailing party, most of the fresh milk price increases since the Preliminary Injunction have gone to compensate them, not Suiza. Although the Preliminary Injunction gave 30 days to ORIL and the Secretary of Agriculture to establish a margin for the fresh milk processing plants that would allow them to recoup their costs (after years of **proven** losses) and obtain a reasonable return on their equity, ORIL and the Secretary of Agriculture did not act for years and were eventually found in contempt. However, ORIL and the Secretary of Agriculture increased the price for the farmers almost every time that the dairy farmers asked for an increase. For instance, the price of fresh milk to the consumer was \$1.05 per quart when the Preliminary Injunction was issued (July, 13, 2007), from which the dairy farmer was netting \$0.50 per quart. Currently, the order price is \$1.50 per quart from which the dairy farmer has been assigned a net of \$0.85 cents per quart since January 20, 2011. While the price for the consumer increased by 45 cents since the Preliminary Injunction, the price to the dairy farmers increased 35 cents. In other words, **78% of the increase** went to the dairy farmers, although the price they had a month before the injunction, was the price they themselves had requested.

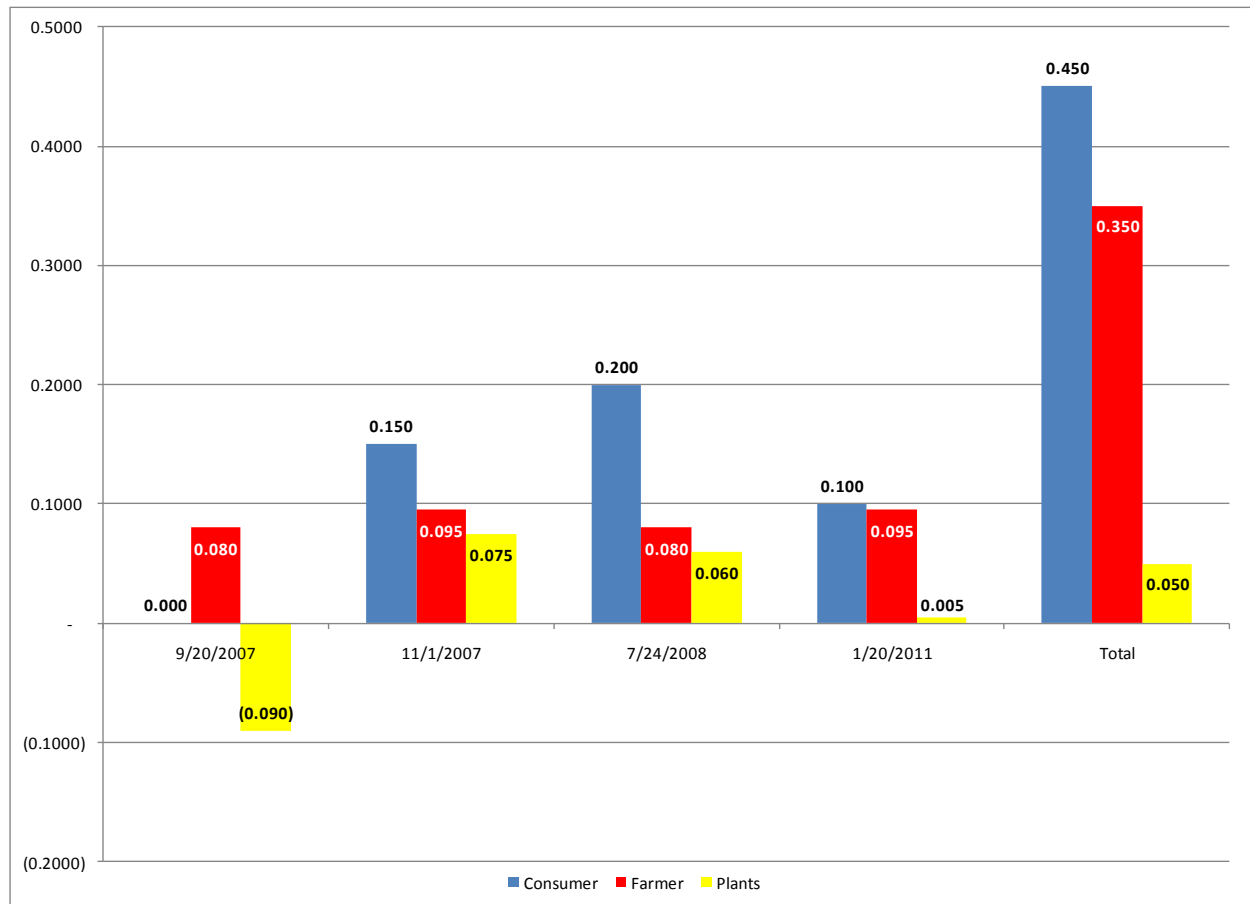
The dairy farmers got a **70% increase in their price** from the Preliminary Injunction to date. In comparison, the price of fresh milk to final consumers increased by 43% while Puerto Rico inflation has been 14.5% since the Preliminary Injunction. On the other hand, Suiza had a margin of \$0.40 per quart at the time of the Preliminary Injunction and currently has a margin of \$0.45 per quart, an increase of 5 cents per quart, or 12.5% increase in its margin. Clearly, the price increase in fresh milk has been driven by the dairy farmers and not by the Preliminary Injunction or the fresh milk processing plants.

The history of price increases from the Preliminary Injunction tells a story of retaliation against Suiza and constant price increases for the farmers. After the Preliminary Injunction, ORIL issued a temporary order on September of 2007 that maintained the price for consumers unchanged but increased the dairy farmers' compensation by 8 cents per quart while reducing Suiza's compensation by 9 cents per quart. A few days later, on November 2007, ORIL increased the price of fresh milk by 15 cents, increasing the dairy farmers a further 9.5 cents and restoring 7.5 cents of Suiza's margin. After the Preliminary Injunction, the price of fresh milk was increased then by 15 cents while the dairy farmer increased its price by 17.5 cents and Suiza's margin dropped 1.5 cents.

**Figure 1** below shows the increases in the price of milk since the Preliminary Injunction, including each change done by ORIL's orders. The first bar shows the change in the price of fresh milk to the final consumer, while the second bar shows the increase in the price of the dairy farmer. The third bar shows the increase in the margin for the fresh milk processing plants. The first set shows the temporary order of September 2007 with a huge decrease in Suiza's margin. Then in November ORIL restores back some of the decrease but not all. The cumulative then for

the dairy farmer (17.5 cents per quart) more than exceeded the increase of fresh milk prices to the consumer (15 cents per quart).

**Figure 1: Increases in the Price of Milk Since the Preliminary Injunction (\$ per quart)**



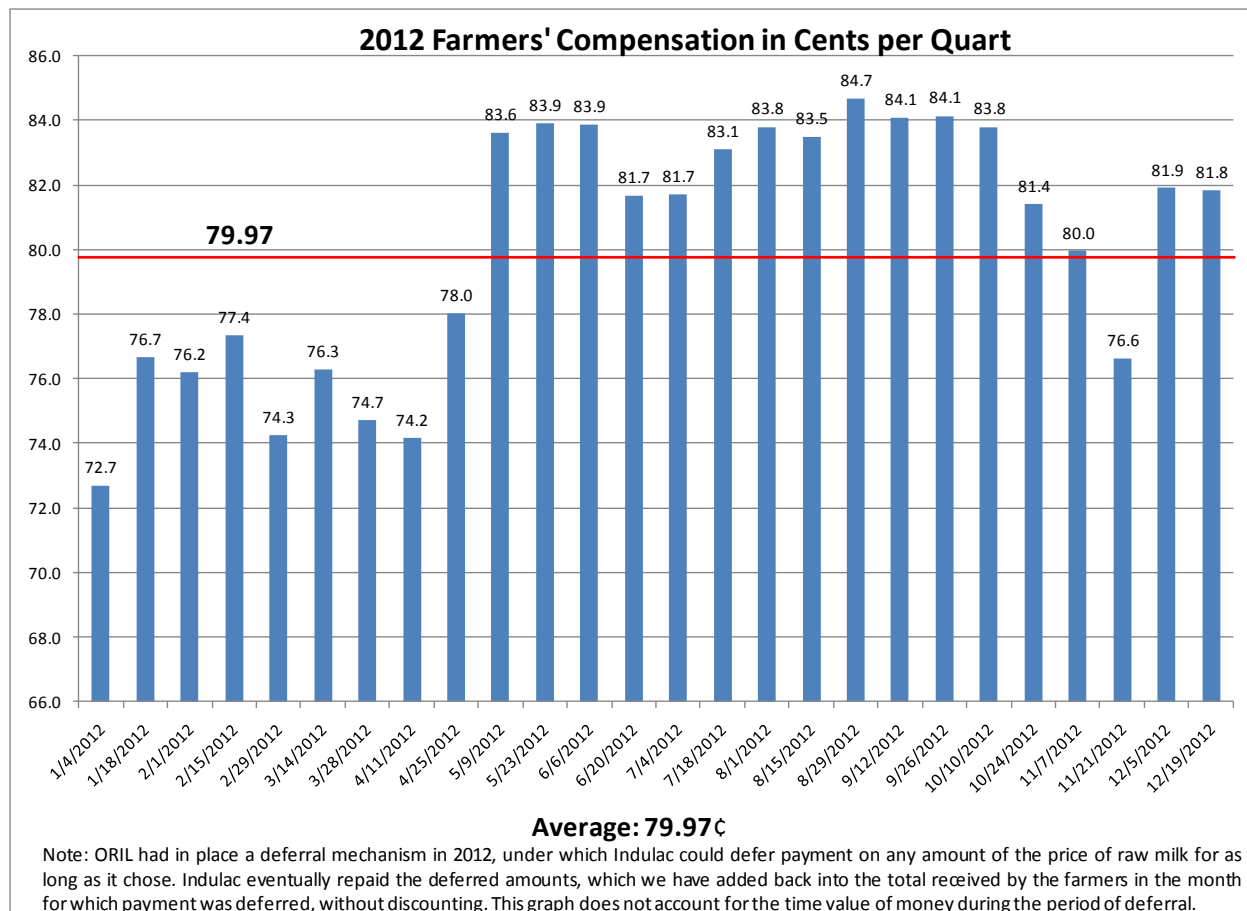
In July 24, 2008, another ORIL Price Order became effective with another fresh milk price increase to the consumer of 20 cents per quart. More than a year later ORIL determined that the dairy farmer would receive another 8 cents per quart while Suiza was to receive 6 cents per quart (most of the additional increase went to the Marketing Fund which was mainly used to subsidize Indulac's UHT). This is the Price Order that ORIL went on defending in Court as compliant with the Preliminary Injunction.

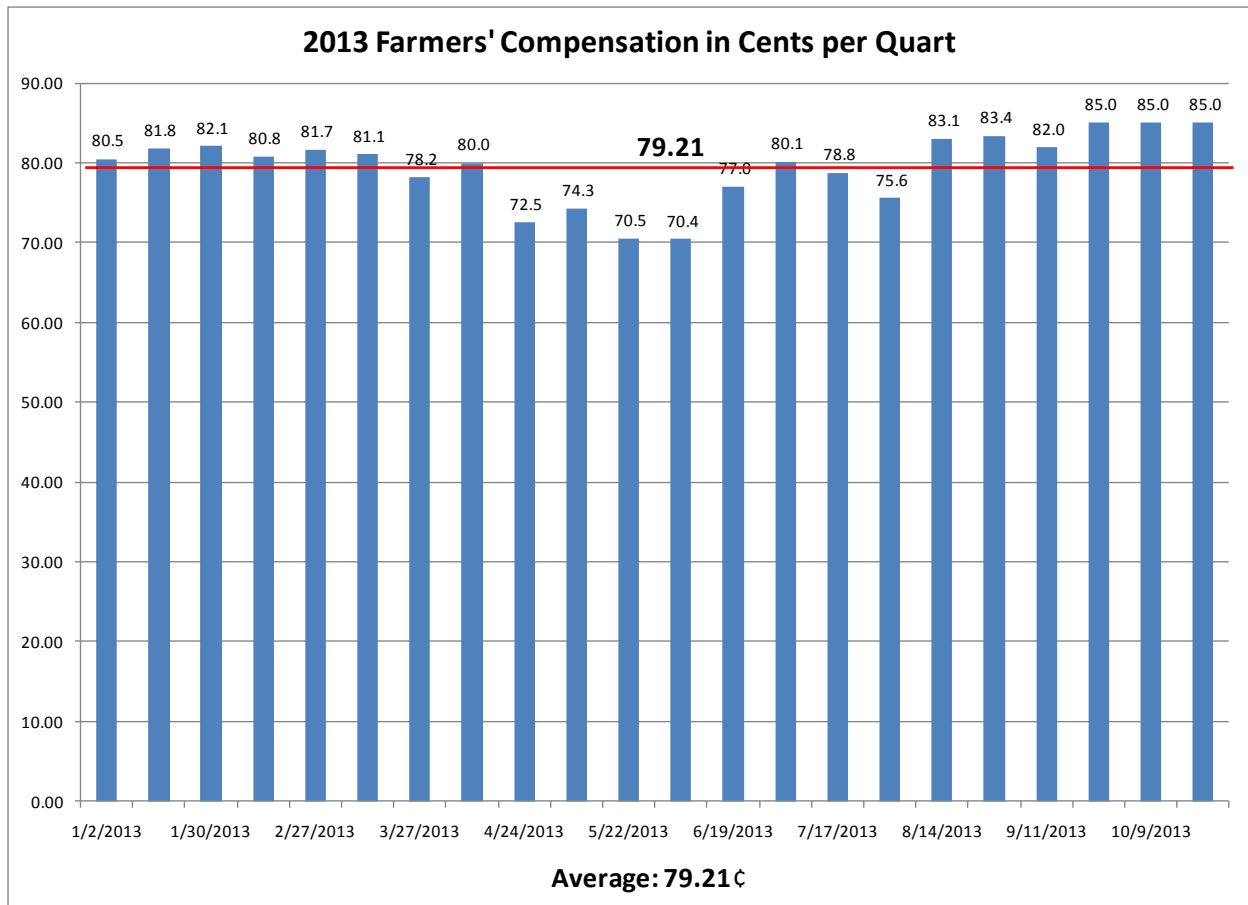


At the end of 2009 ORIL tried to increase the price of the dairy farmers once more but after an unsuccessful defense of its Price Order in Court, it withdrew it. Then in January 2011 ORIL increased fresh milk prices again by **10 cents**, of which **9.5 cents** went to the dairy farmers and **0.5 cents** per quart to Suiza. The Court found this new Price Order not compliant with the Preliminary Injunction but ORIL has maintained those prices until today.

Finally, **Figure 1** shows a set of bars at the end (“Total”) that summarize the price changes in the period. The overwhelming portion of the price increase in the fresh milk price went to the dairy farmers, which had yet to present their case in court.

Moreover, the charts below show the real average compensation received by the farmers in the years 2012 and 2013. As shown, the yearly average is 79.97 cents per quart for 2012 and 79.21 cents per quart for 2013.





**E. PRDFA misrepresents the facts and the law.**

It is clearly untrue that the new milk price order incorporated into the settlement agreement sets the price of the farmers at 76 cents, “after adding 4 cents that would be provided by the Government.” See Dkt. No. 2324 at p. 6 and fn. 3 therein. By simply looking at the price order, (Exh. 2 of the stipulation, p. 2-3) the Court will realize that the price to be paid by Suiza to the farmers is fixed at **78.5** cents, with the transportation reimbursement of 2.5 cents as the only deduction. It is to the remaining 76 cents that 4 cents are added by the Government for a net compensation of 80 cents per quart. That is clearly more than the average compensation received by the farmers in the last two years.

Moreover, any deduction in that compensation due to “milk byproducts” (Dkt. No. 2324 at p. 6) is the fault of the farmers themselves. As indicated to the Court, originally Suiza

committed to buying **all** surplus milk for export and manufacturing of non-fluid milk products under reasonable market conditions. It was the Government itself, (presumably at the request of the farmers or ORIL) who eliminated that obligation from the agreement. See Tr. October 29<sup>th</sup>, 2013, pages 16-17. Although there is absolutely no logic to this position if a solution to the surplus is to be found, Suiza made it clear that its offer stands. See Tr. October 29<sup>th</sup>, 2013 at page 24, (“Mr. Escalera: And, Your Honor, a last word for the record, although it is not a condition of the agreement, the offer to take care of the surplus by Suiza stands.”).

A few additional words are in order regarding PRDFA’s filing. Although it’s control for decades over the milk industry in Puerto Rico has given the farmers a sense of entitlement, they certainly have no standing to determine what Government programs should continue and at what level they should be funded. See Dkt. No. 2324 at page 6. Needless to say, the elimination of program funding from the milk price structure does not mean that said funding will not come from elsewhere. This Court has no authority to order the Commonwealth of Puerto Rico to abide by its own laws, even assuming only for argument’s sake that said laws are violated. See allegation in footnote 4 of Dkt. No. 2324 and *Pennhurst State School v. Halderman*, 465 US 89 (1984).

## **F. Conclusion**

There is no reason to prevent the entry of judgment in this case. This case is finished and Indulac and PRDFA are free to continue their federal claims, if they have any, before this court. The factual misinterpretations and baseless allegations of the farmers and their alter-ego, Indulac, should not derail this Court from the fulfillment of its duty. Judgment pursuant to the settlement stipulation should be entered forthwith.

**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 the attorneys of the record.

In San Juan, Puerto Rico, on this 31<sup>st</sup> day of October, 2013.

**COUNSEL FOR SUIZA DAIRY, INC.**

**REICHARD & ESCALERA**

MCS Plaza  
255 Ponce de León Ave., Suite 1000  
San Juan, PR 00917-1913  
PO Box 364148  
San Juan, PR 00936-4148  
Tel.: 777-8888  
Fax: 765-4225  
counsellors@reichardescalera.com

**S/RAFAEL ESCALERA-RODRÍGUEZ**

escalera@reichardescalera.com  
U.S.D.C. No. 122,609

**S/AMELIA CAICEDO SANTIAGO**

caicedo@reichardescalera.com  
U.S.D.C. No. 223,614