

IN THE IOWA DISTRICT COURT OF DALLAS COUNTY

DUANE SMITH and BROOKE SMITH, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

MARTIN BROTHERS DISTRIBUTING COMPANY, INC., IOWA EDUCATORS CORPORATION d/b/a IOWA EDUCATORS CONSORTIUM, and THE IOWA ASSOCIATION FOR EDUCATIONAL PURCHASING,

Defendants.

Case No. **CVCV036641**

ORDER GRANTING PRELIMINARY APPROVAL OF MARTIN BROTHERS CLASS SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION AND PERMISSION TO DISSEMINATE CLASS NOTICE

WHEREAS, Plaintiffs have filed their Motion for Preliminary Approval of Martin Brothers Class Settlement, For Certification of A Settlement Class, and For Permission to Disseminate Class Notice;

WHEREAS, this Court has reviewed the motion, including the Settlement Agreement (“the Settlement”);

WHEREAS, the Court finds good cause to grant the motion;

NOW, THEREFORE, for purposes of the Settlement only, the Court finds as follows:

1. The Settlement is fair, reasonable, and adequate;
2. The Summary Notice and Long-Form Notice (attached to the Settlement as Exhibits B and C, respectively) comply with due process because they are reasonably calculated to adequately apprise Class Members of: (i) the pending lawsuit; (ii) the proposed settlement; and (iii) their rights, including the right to object to and opt out of the settlement;
3. The Class is so numerous that joinder of all Class Members is impracticable;

4. There are questions of law and/or fact common to the Class;
5. Class certification is superior for purposes of implementing the Settlement to other available methods for the fair and efficient adjudication of the controversy; and
6. The representative parties will fairly and adequately protect the interests of the class.

FURTHER, IT IS HEREBY ORDERED THAT:

1. Settlement Approval. The Settlement, including the Notice forms attached to the Settlement, is preliminarily approved. Plaintiffs and Martin Brothers Distributing Company (“Martin Brothers”) are ordered to comply with the terms of the Settlement.

2. Provisional Certification. For settlement purposes only, the Class is provisionally certified as: All persons who paid for food between January 1, 2000 and [the date of preliminary approval] at an Iowa-based school that, at the time of payment (i) was a member of the Iowa Educators Corporation (IEC) or The Iowa Association for Educational Purchasing (IAEP), and (ii) had one or more grades from pre-kindergarten through 12th grade. Excluded from the Settlement Class are: the IEC and the IAEP and each of their respective affiliates, subsidiaries, and parents; each of the respective directors, officers, employees, legal representatives, successors, and assigns of the IEC, the IAEP, and their respective affiliates, subsidiaries, and parents; persons who purchased for purposes of resale; Martin Brothers and each of their respective affiliates, subsidiaries, and parents; each of the respective directors, officers, employees, legal representatives, successors, and assigns of Martin Brothers, and their respective affiliates, subsidiaries, and parents; and any Judge to whom the Action is assigned and all members of his or her immediate family.

3. Class Notice. The Court approves the form, substance and requirements of the Short-Form and the Long-Form Notice, attached to the Settlement Agreement as Exhibits B and C, respectively. The form and method of notifying the Settlement Class of the Settlement and its

terms and conditions as set forth in the Declaration of Alan Vasquez meet the requirements of due process and the Iowa Rules of Civil Procedure, are reasonably calculated to adequately apprise Class Members of this matter, and shall constitute due and sufficient notice to all persons and entities entitled thereto. Under no circumstances shall any Settlement Class Member be relieved from the terms of the Settlement, including the releases provided for therein, based upon the contention or proof that such Settlement Class Member failed to receive actual or adequate notice. Within 30 calendar days after entry of this Order, or by August 31, 2014, the Notice Administrator as specified in the Settlement shall cause the Class Notice to be disseminated as provided in the Declaration of Alan Vasquez. Class Counsel shall, at or before the Settlement Fairness Hearing, file with the Court an affidavit or declaration by a competent affiant or declarant, attesting that the Notice has been disseminated and published in accordance with this Order.

4. Motion for Final Approval of Settlement. Class Counsel shall file their Motion for Final Approval of the Settlement and any applications for attorneys' fees and expenses, and incentive awards for the Class Representatives within 60 days of this Order, or by September 30, 2014.

5. Objection to Settlement. Class members who wish to object to the Settlement shall file a written statement with the Court and serve copies on Class Counsel and Defense Counsel by October 3, 2014, which is within 67 days of entry of this Order. The Statement shall include: (a) the name, address, telephone number of the person objecting and, if represented by counsel, of his/her counsel; and (b) the identity of the student(s), the IEC-Member School which the student(s) attended, and the years of attendance. An objecting Settlement Class Member must state, specifically and in writing, all objections and the basis for any such objections, and provide a statement of whether he/she intends to appear at the Fairness Hearing, either with or

without counsel. Any responses to the Statements shall be filed within 10 days thereafter, or by October 13, 2014.

6. Failure to Object to Settlement. Any Settlement Class Member who fails to file and serve timely a written objection and notice of whether he or she intends to appear at the Final Approval Hearing, as detailed in the Class Notice and Settlement Agreement, shall not be permitted to object to the approval of the Settlement at the Fairness Hearing and shall be foreclosed from seeking any review of the Settlement or the terms of the Settlement by appeal or other means.

7. Opting Out of Settlement. Members of the Settlement Class have the option to exclude themselves from the Settlement by submitting a timely request to the Settlement Administrator and postmarked within 45 days of this Order, or by September 15, 2014. No class or mass opt-outs are permitted under the Settlement Agreement. If a member of the Settlement Class chooses to exclude oneself, he or she will not receive the benefits available under the terms of the Settlement.

8. Submitting a Claim. Members of the Settlement Class who submit valid, sworn and timely claims may be entitled to a payment in the amount of \$3.50 for each year that the Settlement Class Member or each dependent of the Settlement Class Member attended an IEC-Member School between January 1, 2000 and the date of this Order, subject to a \$50 cap per student and any pro rata reduction if the number of valid claims exceeds the settlement fund. The claim form may be obtained online at www.IowaSchoolFoodSettlement.com. Claims must be submitted within 60 days of this Order, or by September 30, 2014. If a claim is submitted via email or on-line, it will be considered submitted when received. If a claim is submitted via U.S. mail, it must be postmarked by September 30, 2014.

9. Remaining Funds Distributed as *Cy-Pres* Payments to IEC-Member Schools. If the Settlement Fund has not been exhausted after all payments to Settlement Class Members, Attorneys' Fees and Expenses, and Incentive Awards ordered by the Court have been made, the

parties shall apply to the Court for an order to distribute the excess amount as *cy pres* payments to IEC-Member Schools as agreed to by the parties and approved by the Court.

10. Appointment of Class Representative and Class Counsel. For settlement purposes only, Plaintiffs are conditionally certified as the Class Representatives to implement the Settlement in accordance with its terms. The law firms of Hagens Berman Sobol & Shapiro LLP and Hudson, Mallaney, Shindler & Anderson, P.C. are appointed as Class Counsel. Plaintiffs and Class Counsel shall continue to fairly and adequately represent and protect the Class's interests.

11. Termination of Settlement. If the Settlement is not approved by the Court in its entirety or if the Settlement is terminated or fails to become effective in accordance with the terms of the Settlement, the Settling Parties will be restored to their respective positions in the Action as of the date of preliminary approval. In such event, the terms and provisions of the Settlement, except as otherwise stated therein, will have no further force and effect with respect to the Parties and will not be used in the Action, or in any other proceeding for any purpose, and any Judgment or order entered by the Court in accordance with the terms of the Settlement will be treated as vacated, *nunc pro tunc*. No order of the Court or modification or reversal on appeal of any order of the Court concerning any Attorney Fee and Expense Award to Settlement Class Counsel or Incentive Awards to the Plaintiffs will constitute grounds for cancellation or termination of the Settlement.

12. No Admissions. Nothing in this Order is or may be construed as an admission or concession on any point of fact or law by or against any Party.

13. Fairness Hearing. On November 4, 2014, at 1:30 p.m., this Court will hold a Fairness Hearing to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. This Court may order the Fairness Hearing to be postponed, adjourned, or continued. If that occurs, the Parties will not be required to provide additional notice to class members.



State of Iowa Courts

Type: OTHER ORDER

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Case Title DUANE & BROOKE SMITH VS MARTIN BROTHERS
DISTRIBUTING ET AL

So Ordered

A handwritten signature in black ink, appearing to read "Paul R. Huscher".

Paul R. Huscher, District Court Judge,
Fifth Judicial District of Iowa