

## **IOWA DISTRICT COURT FOR DALLAS COUNTY**

**If you paid for food purchases between January 1, 2000 and August 1, 2014 at an Iowa-based pre-kindergarten, elementary school, middle school, or high school that, at the time of payment, was a member of the Iowa Educators Corporation or The Iowa Association for Educational Purchasing, your legal rights may be affected by two class action settlements.**

*A district court authorized this Notice. This is not a solicitation from a lawyer.*

- Plaintiffs Duane Smith of 432 N. 11<sup>th</sup> Pl., of Adel, IA 50003, and Brooke Smith of 16330 O Ave., Bouton, IA 50039, on behalf of themselves and all others similarly situated, sued Iowa Educators Corporation (“IEC”) and its successor The Iowa Association for Educational Purchasing (“IAEP”), and Martin Brothers Distributing Company, Inc. (“Martin Brothers”), in the Iowa District Court for Dallas County, Case No. CVC036641, claiming that they conspired to restrain competition in the market for the retail sale of food at schools in Iowa and that Martin Brothers attempted to monopolize that market in violation of Iowa antitrust laws. Among other things, Plaintiffs seek a determination that the case may be maintained as a class action; a declaration that the Plaintiffs be the representatives of the class and that their counsel be counsel for the class; a declaration of the unlawfulness of the alleged conduct, in violation of Iowa antitrust laws and the common laws of civil conspiracy and unjust enrichment; recovery of actual and exemplary damages; recovery of the amounts by which the Defendants allegedly were unjustly enriched; injunction against the continuation of the alleged illegal activities; and recovery of the Plaintiffs’ and the class’ costs of suit including reasonable attorneys’ fees and expenses.
- Defendants dispute these claims. They deny engaging in any unlawful conduct. Defendants assert that the bidding for school foodservice distribution was fair and appropriate. Defendants assert that they have reached settlements to avoid the costs and delays associated with litigation. No court, or other authority, has found that Defendants engaged in any wrongdoing.
- The IEC and IAEP have agreed to settle the claims against them with the Settlement Class (defined in Paragraph 2.1 below). Neither the IEC nor the IAEP has or maintains significant cash reserves and neither has the financial reserves to withstand a substantial monetary judgment. However, they do maintain limited insurance and have the ability to agree to injunctive relief. Accordingly, for the benefit of the Settlement Class and to resolve all claims, the IEC and IAEP have agreed to injunctive relief that requires changes to the IAEP contract bidding process as well as requires information regarding pricing to be made publicly available. The IEC and IAEP will make payments totaling \$150,000 to cover certain costs, including one half of the costs of Notice to the class and a portion of Class Counsel’s attorneys’ fees and expenses.
- Martin Brothers has separately agreed to settle the claims against it with the Settlement Class. Martin Brothers has agreed to pay \$1,925,000 to cover Class members’ claims, attorneys’ fees and costs, and incentive awards for the Class Representatives, as well as to separately pay for one half of the costs of Notice to the Class and the full costs of administering the Settlement.
- Claims for personal injury, product liability or breach of warranty are expressly not released. Each of the settlements is contingent on the Court’s final approval of that proposed settlement.

**TO DETERMINE WHETHER YOU ARE AFFECTED BY THE PROPOSED SETTLEMENTS IN THESE CASES, PLEASE READ THIS NOTICE CAREFULLY.**

Your rights and options – **and the deadlines to exercise them** – are explained in this Notice.

Please contact the Settlement Administrator at Gilardi & Co. LLC, P.O. Box 8060, San Rafael, CA 94912-8060 or visit [www.IowaSchoolFoodSettlement.com](http://www.IowaSchoolFoodSettlement.com) for court documents about the proposed settlement, frequently asked questions, and more information.

**DO NOT CONTACT THE COURT IF YOU HAVE QUESTIONS REGARDING THIS NOTICE**

## **PART 1: GENERAL INFORMATION**

### **WHAT IS THIS NOTICE ABOUT?**

#### ***1.1 Why has this Notice been published?***

This Notice has been published to notify Settlement Class Members:

- a. that two proposed settlements have been reached on behalf of the Settlement Class with the IEC and IAEP, and with Martin Brothers;
- b. that Settlement Class Members shall be entitled to and will be bound by the terms of equitable and injunctive relief set forth in the IEC Settlement Agreement and Injunction Order and shall not be permitted to opt out of the IEC Settlement Class, and that Settlement Class Members have the opportunity to object to the terms of the IEC Settlement;
- c. that Settlement Class Members have the opportunity to submit claims for payment in the Martin Brothers Settlement, object to the terms of the Martin Brothers Settlement or exclude themselves from the Martin Brothers' Settlement;
- d. that Class Counsel will petition the Court for an award of attorneys' fees and reimbursement of expenses; and
- e. that Class Counsel will petition the Court for service awards for Settlement Class Representatives.

Your rights and options regarding these matters are described in this Notice.

#### ***1.2 What is this lawsuit about?***

Plaintiffs claim that, since the year 2000, the IEC and/or IAEP, together with Martin Brothers, have engaged in a conspiracy to restrain competition in the market for retail sale of food at schools in Iowa and that Martin Brothers has attempted to monopolize that market in violation of Iowa antitrust laws. Plaintiffs also claim the alleged conduct has violated the common laws of civil conspiracy and unjust enrichment. Plaintiffs claim that the alleged misconduct has caused Iowa families whose children attended schools that were members of the IEC to pay higher prices for food at Iowa schools than they would have paid absent the alleged misconduct. Plaintiffs have sought injunctive relief to change the process by which the IEC and IAEP award contracts to food distributors to service Iowa schools, as well to recover damages that they allege the Defendants' conduct caused, the amounts by which the Defendants allegedly were unjustly enriched, and exemplary damages, as well as attorneys' fees and costs. The Court has not yet resolved the merits of the lawsuit, or determined whether any of the Plaintiffs' contentions are true. Defendants deny that the Plaintiffs' claims are true and deny that they did anything wrong.

#### ***1.3 What is a Class Action?***

In a class action lawsuit, one or more people called "Class Representatives" sue on behalf of people who have similar claims. The people together are called the "Class" or "Class Members." Accordingly, the people who sued on behalf of the Class Members are called "Settlement Class Representatives," and the people who paid for purchases of food at Iowa schools are considered part of a "Settlement Class" or "Class Members." One court resolves the issues for everyone in the Settlement Class. The case is located in the Iowa District Court for Dallas County.

The Court has decided to conditionally certify the Settlement Class. More information about why the Court allowed the lawsuit to be a class action is in the Court's Orders which are available by calling, writing to the Settlement Administrator or visiting [www.IowaSchoolFoodSettlement.com](http://www.IowaSchoolFoodSettlement.com).

#### ***1.4 What is the current status of the lawsuit?***

On December 28, 2012, the Plaintiffs reached a settlement agreement with the IEC and IAEP. Subsequently, on June 6, 2014, the Plaintiffs reached a settlement agreement with Martin Brothers. On August 1, 2014, the Court granted preliminary approval of the settlements.

Section 2 of this Notice explains your legal rights and options regarding the proposed settlements.

### **THE IEC SETTLEMENT: EQUITABLE AND INJUNCTIVE RELIEF**

#### ***1.5 What is the injunctive relief under the IEC settlement?***

The IEC and IAEP have agreed to an injunction order to be entered by the Court. To facilitate the IAEP's function as the food purchasing cooperative for member schools, the injunction order will require the IAEP to comply with the following requirements for a period of six (6) years from the date of the entry of the order:

- The 2013-14 agreement between the IAEP and a distributor for the purchase of school foodservice products, supplies and services for IAEP-Member Schools ("Prime Distributor Agreement") was subject to a request for proposal to Qualified Distributors ("Prime Distributor RFP").

- Those distributors who are deemed qualified by the IAEP (a “Qualified Distributor”) may submit a bid in response to any Prime Distributor RFP. The IAEP may determine whether a distributor is a Qualified Distributor based on clearly-defined criteria. Any distributor may apply to become a Qualified Distributor even if a Prime Distributor RFP is not pending. The IAEP will maintain a review or appeal process for those distributors denied qualification. The IAEP will not charge distributors for the application or review process to become a Qualified Distributor.
- In any Prime Distributor RFP, the IAEP will clearly define any permissible floating charges (such as fuel) or such charges will be eliminated from consideration in any bid. The IAEP will make full and equal information available in writing to all Qualified Distributors.
- The IAEP will award the Prime Distributor Agreement, and any subsequent agreement, to the Qualified Distributor that submitted the bid with the lowest price. The IAEP will not consider any subjective criteria in awarding the Prime Distributor Agreement.
- The IAEP may act as a data aggregator so long as the data is publicly available.
- The IAEP will make all pricing and/or allowances negotiated by the IAEP for school foodservice products, supplies and services publicly available.
- The IAEP will divide the state of Iowa into four service zones of comparable geographic size, serving comparable numbers of students. The IAEP will permit Qualified Distributors to submit proposals for any or all service zones.

### ***1.6 Is the IEC or IAEP paying any money?***

Neither the IEC nor the IAEP has or maintains significant cash reserves and neither has the financial reserves to withstand a substantial monetary judgment. However, they do maintain limited insurance and have the ability to agree to injunctive relief. Upon preliminary approval of the settlement, the IEC and IAEP, through their insurer, paid \$150,000 into an escrow fund to cover certain costs, including one half of the costs of Notice to the Class, payment of a portion of Class Counsel’s attorneys’ fees and expenses, and incentive awards to Settlement Class Representatives.

### ***1.7 Can I receive money from the IEC settlement?***

You will not receive any money from the settlement with the IEC (but may receive money from the settlement with Martin Brothers as further described below). You are entitled to and will be bound by the terms of equitable and injunctive relief set forth in the IEC Settlement Agreement and Injunction Order and you shall not be permitted to opt out of the Injunctive Relief Settlement Class.

## **THE MARTIN BROTHERS SETTLEMENT: MONETARY RELIEF**

### ***1.8 Is Martin Brothers a party to any injunctive relief?***

The IEC and IAEP have agreed to the injunctive relief described above. Martin Brothers is not a party to any injunctive relief.

### ***1.9 Is Martin Brothers paying any money?***

Martin Brothers has agreed to pay \$1,925,000 to cover the claims of Settlement Class Members, Plaintiffs’ attorneys’ fees and costs, and Plaintiffs’ incentive awards. Martin Brothers has also agreed to separately pay the actual costs to provide notice to the Class and for implementing and administering the Settlement.

### ***1.10 Can I receive money from the settlement?***

You may receive money from the Martin Brothers Settlement if you submit a valid, sworn and timely claim. You may be entitled to a payment in the amount of \$3.50 for each year that you or each student who is your dependent attended an IEC-Member School between 2000 and August 1, 2014, 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](http://www.IowaSchoolFoodSettlement.com). Claims must be submitted by September 30, 2014. If your claim is submitted via email or on-line, it will be considered submitted when received. If your claim is submitted via U.S. mail, it must be postmarked by September 30, 2014. Mailed claims may be sent to:

IOWA SCHOOL FOOD LITIGATION SETTLEMENT  
 c/o Gilardi & Co. LLC  
 P.O. Box 8060  
 San Rafael, CA 94912-8060

Emailed claims may be sent to [info@IowaSchoolFoodSettlement.com](mailto:info@IowaSchoolFoodSettlement.com).

**THE LAWYERS**

**1.9 Do I have a lawyer in this case and how will they be paid?**

The Court appointed the following lawyers to represent the Settlement Class:

Elizabeth A. Fegan, Esq.  
**HAGENS BERMAN SOBOL SHAPIRO LLP**  
 (Co-Lead Counsel)  
 1144 West Lake Street, Suite 400  
 Oak Park, IL 60301-1043  
 (708) 628-4949  
 Fax: (708) 628-4950

J. Barton Goplerud  
**HUDSON MALLANEY SHINDLER & ANDERSON P.C.**  
 (Co-Lead and Liaison Counsel)  
 5015 Grand Ridge Drive, #100  
 West Des Moines, IA 50265  
 (515) 223-4567  
 Fax: (515) 223-8887

These individuals and their law firms are referred to as Class Counsel. They are experienced in handling class actions. More information about these law firms, their practices, and their lawyers' experience is available at [www.hbsslaw.com](http://www.hbsslaw.com) and [www.hudsonlaw.net](http://www.hudsonlaw.net).

You will not be personally charged for the services of Class Counsel in litigating these cases. You do not need to hire your own lawyer because Class Counsel is working on your behalf. But, if you want your own lawyer, you may hire one at your own expense. You have the right to enter an appearance in the case through your lawyer if you wish.

To date, Class Counsel have not been paid any attorneys' fees. In compensation for their time and risk in prosecuting the litigation on a wholly contingent fee basis, Class Counsel will petition the Court for an award of attorneys' fees and for reimbursement of litigation expenses incurred. After this motion is filed with the Court, a copy of this motion will be available by calling the Settlement Administrator and on the settlement website. Class Counsel will request an award of attorneys' fees and expenses that will not exceed \$130,000 from the IEC settlement and will not exceed one-third of the Martin Brothers settlement fund plus actual out-of-pocket expenses. Class Counsel will also petition the Court to provide service awards to Settlement Class Representatives in the amount of \$3,500 each.

Any attorneys' fees and reimbursement of litigation expenses will be awarded only as approved by the Court in amounts determined to be fair and reasonable. If you wish to object to the petition for attorneys' fees and reimbursement of litigation expenses, you may do so, but you must do so following the procedures set forth below.

**PART 2: THE SETTLEMENT CLASS**

<b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS AS A MEMBER OF THE SETTLEMENT CLASS:</b>	
Object	If you are a member of the Settlement Class, you have the option to object to: (1) the proposed settlement with the IEC or the proposed settlement with Martin Brothers; (2) Class Counsel's request for an award of attorney's fees and reimbursement of litigation expenses; and/or (3) Class Counsel's request for service awards for Settlement Class Representatives. Your written objection to one or more of these matters must be received by the Court no later than October 3, 2014. (See Paragraph 2.4 of this Notice for further information about your right to object.)
Submit a Claim	If you are a member of the Settlement Class, you have the option to submit a Claim Form under the Martin Brothers Settlement by September 30, 2014. If you do not submit a valid Claim Form by September 30, 2014, you will not receive any compensation.
Exclude Yourself from the Martin Brothers Settlement	If you are a member of the Settlement Class, you have the option to exclude yourself from the Martin Brothers Settlement (but not from the IEC Settlement). You must submit a timely written request to exclude yourself from the Martin Brothers Settlement by September 15, 2014. If you choose to exclude yourself, you will not receive the benefits available under the terms of the Martin Brothers Settlement.
Attend the Fairness Hearing	If you are a member of the Settlement Class, you may ask to speak at the Fairness Hearing regarding the proposed settlements if you have complied with the procedures set forth in Paragraph 2.4 of this Notice.
Hire Your Own Lawyer	If you are a member of the Settlement Class, you may, but are not required to, hire your own lawyer at your expense to advise you of your rights with respect to (1) the proposed settlements; (2) Class Counsel's request for an award of attorney's fees and reimbursement of litigation expenses; and/or (3) Class Counsel's request for service awards for Settlement Class Representatives. You have the right to enter an appearance in the lawsuit either personally or through your lawyer if you wish.
Do Nothing	If you are a member of the Settlement Class and do nothing, you will be bound by the Releases and the other provisions contained in both Settlement Agreements.

**ARE YOU A MEMBER OF THE SETTLEMENT CLASS?**

**2.1 How do I know if I am a member of the Settlement Class?**

You are a member of the Settlement Class if you paid for food, between January 1, 2000 and August 1, 2014, 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. To determine whether the school where you paid for food purchases was a member of the IEC or IAEP, please see the list posted at [www.IowaSchoolFoodSettlement.com](http://www.IowaSchoolFoodSettlement.com) or call the Settlement Administrator. Excluded from the Settlement Class are: the IEC, the IAEP, and Martin Brothers 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 Martin Brothers and their respective affiliates, subsidiaries, and parents; persons who purchased for purposes of resale; and any Judge to whom the action is assigned and all members of his or her immediate family.

**2.2 Can I be excluded from the Settlement?**

You may be excluded from the Martin Brothers Settlement, but you may not be excluded from the IEC Settlement. For the IEC Settlement, Settlement Class Members shall be entitled to and will be bound by the terms of equitable and injunctive relief set forth in the IEC Settlement Agreement and Injunction Order and shall not be permitted to opt out of the Settlement Class. To opt out of the Martin Brothers settlement, please send your opt out request **by September 15, 2014** to:

IOWA SCHOOL FOOD LITIGATION SETTLEMENT  
c/o Gilardi & Co. LLC  
P.O. Box 6002  
Larkspur, CA 94977-6002

**2.3 What if I still do not know whether I am a member of the Settlement Class?**

If you still do not know whether you are included in the Settlement Class, please contact the Settlement Administrator through the contact information below in section 2.7.

**OBJECTING**

**2.4 How do I object to one or more of the proposed settlements; Class Counsel's requests for an award of attorneys' fees and reimbursement of litigation expenses; and/or Class Counsel's requests for service awards for the Settlement Class Representatives?**

If you are a member of the Settlement Class, you may object to one or more of the following: (1) the proposed settlements; (2) Class Counsel's request for an award of attorneys' fees and reimbursement of litigation expenses; and/or (3) Class Counsel's request for service awards for Settlement Class Representatives. If you wish to make an objection, you must file your objection with the Court and serve it on Class Counsel and Defense Counsel by October 3, 2014. Your objection must include: (a) your name, address, and telephone number, and, if represented by counsel, your counsel's name, address, and telephone number; and (b) the identity of the student(s), the IEC-Member School which the student(s) attended, and the years of attendance. You must state, specifically and in writing, all objections and the basis for any such objections, and provide a statement of whether you intend to appear at the Final Approval Hearing, either with or without counsel. If you fail to file and serve timely a written objection and notice of whether you intend to appear at the Final Approval Hearing, you shall not be permitted to object to the approval of the settlement at the Final Approval Hearing and shall be foreclosed from seeking any review of the settlement or the terms of the settlement agreement by appeal or other means.

Objections can be filed with the Clerk of Court, Dallas County Courthouse, 801 Court Street, Adel, Iowa 50003 with copies to the following counsel:

Elizabeth A. Fegan, Esq. <b>HAGENS BERMAN SOBOL SHAPIRO LLP</b> 1144 West Lake Street, Suite 400 Oak Park, IL 60301-1043	J. Barton Goplerud <b>HUDSON MALLANEY SHINDLER &amp; ANDERSON P.C.</b> 5015 Grand Ridge Drive, #100 West Des Moines, IA 50265
Deborah Tharnish <b>DAVIS BROWN LAW FIRM</b> 215 - 10th St., Ste 1300 Des Moines, IA 50309	Todd Strother <b>BRADSHAW FOWLER PROCTOR &amp; FAIRGRAVE P.C.</b> 801 Grand Ave. - Suite 3700 Des Moines, IA 50309-8004

**FAIRNESS HEARING**

**2.5 Fairness Hearing**

The Iowa District Court for Dallas County will hold a hearing on November 4, 2014 at 1:30 p.m., at the Dallas County Courthouse, 801 Court Street, Adel, Iowa 50003, for the purpose of determining whether the proposed settlements with the IEC and IAEP and with Martin Brothers should be approved as fair, adequate and reasonable. The proposed settlements are contingent upon the Court's final approval of them. This hearing is known as the Fairness Hearing. The hearing may be rescheduled without further announcement.

You do not have to attend the hearing. Class Counsel will answer any questions the Court may have. If you send a written objection, you do not have to attend the hearing to discuss it. As long as you mailed your written objection on time, following the instructions in Paragraph 2.4 of this Notice, the Court will consider it. You may also pay your own lawyer to attend.

You may attend the hearing at your own expense. You may speak at the hearing only if you have submitted your objection as provided in Paragraph 2.4 of this Notice and have stated in your objection letter that you wish to be heard at the Fairness Hearing.

**IF YOU TAKE NO ACTION**

**2.6 What happens if I do nothing at all?**

If you are a member of the Settlement Class and you do nothing, you will be bound by the terms of both settlements and will receive no compensation under the Martin Brothers Settlement.

**GETTING MORE INFORMATION**

**2.7 How can I get more information on the proposed settlement with the IEC and IAEP and the proposed settlement with Martin Brothers?**

This Notice is only a summary of the proposed settlements. You may obtain copies of the Settlement Agreements by writing the Settlement Administrator or visiting the Settlement website:

**IOWA SCHOOL FOOD LITIGATION SETTLEMENT**

c/o Gilardi & Co. LLC

P.O. Box 8060

San Rafael, CA 94912-8060

1-888-223-8707

[info@IowaSchoolFoodSettlement.com](mailto:info@IowaSchoolFoodSettlement.com)

[www.IowaSchoolFoodSettlement.com](http://www.IowaSchoolFoodSettlement.com)

The Settlement Agreements are also on file with the Clerk of the Court.

**Please do not contact the Clerk of the Court or the Judge regarding this Notice. Instead, please direct any inquiries to any of the Class Counsel listed above on page 4 or contact the Settlement Administrator.**