

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 PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS PURSUANT TO IOWA RULE OF CIVIL PROCEDURE 1.276

This cause coming to be heard on Plaintiffs' Motion For Attorneys' Fees, Expenses, and Service Awards, and the Court being full advised in the premises:

A. BACKGROUND

1. Plaintiffs and Defendants have entered into two separate settlements: the Settlement Agreement and Release dated July 31, 2014 between Plaintiffs and Martin Brothers Distributing Company, Inc. ("MB SA") and the Settlement Agreement dated December 28, 2012 between Plaintiffs and the Iowa Educators Corporation d/b/a Iowa Educators Consortium, and The Iowa Association For Educational Purchasing.

2. The Martin Brothers Settlement Agreement provides that Martin Brothers will not oppose an award of attorneys' fees not to exceed a total of 33% of the Settlement Payment plus actual out of pocket expenses. MB SA, § III(I). Similarly, the IEC Settlement Agreement provides that the IEC will not oppose an award of attorneys' fees not to exceed a total of \$130,000. IEC SA, § XI.

3. Plaintiffs have filed their Motion for Attorneys' Fees, Services Awards, and Reimbursement of Expenses Pursuant to Iowa Rule of Civil Procedure 1.276 ("Motion") requesting: i) an award of attorneys' fees in the amount of \$635,350.00 from the MB Settlement; (ii) an award of attorneys' fees in the amount of \$118,728.68 from the IEC Settlement; (ii) reimbursement of out-of-pocket litigation expenses of \$217,806.16 from the MB Settlement; and (iv) Service Awards in the amount of \$2,500 for each Class Representative from the MB Settlement and \$1,000 for each Class Representative from the IEC Settlement.

4. In the Motion, Class Counsel reports to the Court that they have devoted more than 4,000 total hours to the case, documenting a lodestar of \$1,443,371.50 at their regular hourly rates, and \$217,806.16 in out-of-pocket expenses.

B. FINDINGS

5. Upon review and consideration of Plaintiffs' Motion, the Court finds as follows:
- a. The factors contained in Iowa Rule of Civil Procedure 1.275(5) support the reasonableness of Class Counsel's fee request;
 - b. Class Counsel are experienced litigators and are highly experienced in complex, class-action and/or multidistrict litigation;
 - c. For over three years, Class Counsel prosecuted this Action, conducting discovery of Defendants as well as third parties, taking and defending depositions, reviewing documents and transactional data, fully briefing their motion class certification, working with experts, and arguing motions before the Court;
 - d. The MB Settlement provides monetary relief and the IEC Settlement provides injunctive relief to class members;

- e. The Settlements and results achieved by Class Counsel on behalf of class members are significant in light of the risks of continued litigation;
- f. The reaction of class members to the Settlements has been overwhelmingly positive as reflected by the amount of claims filed and lack of objections filed to date;
- g. The case was a hard-fought, adversarial proceeding in which Plaintiffs' claims were subject to multiple defenses that were vigorously advocated by defense counsel. The claims were complex in terms of both subject matter (antitrust) and legal and procedural issues resulting from, among other things, hurdles that plaintiffs can face when seeking to certify a class for litigation purposes including the tracing of damages to indirect purchasers;
- h. The complexity of the case is demonstrated by the time and labor required to prosecute Plaintiffs' claims involving over 4,000 hours of legal service by Class Counsel;
- i. Class Counsel prosecuted the case on an entirely contingent basis and entailed substantial risk that the litigation would yield little or no recovery or compensation;
- j. The economic impact of the fee award on Defendants is minimal;
- k. The Iowa Rules of Professional Conduct do not preclude the fee award and weigh in favor of the fee requested;
- l. The hourly rates of Class Counsel are reasonable for this type of complex, class action antitrust litigation;

- m. The hours expended by Class Counsel are reasonable in light of the significant work done on the case including, but not limited to, case investigation and filing, discovery and document review, the briefing of the motion for class certification, working with experts, full day oral arguments, and two formal, full-day mediations as well as extensive follow-up negotiation;
- n. Class Counsel's request for an award of \$118,728.68 under the IEC Settlement Agreement is reasonable pursuant to Iowa Rule of Civil Procedure 1.275(4) because the injunctive relief obtained relates directly to the alleged anticompetitive conduct. The changes also provide benefit for consumers as increased competition will ensure that pricing is competitive. Moreover, this fee award represents just 8% of the total lodestar incurred by Class Counsel which favors the award of fees here and is reasonable;
- o. Class Counsel's request for an award of \$635,350.00 from the MB Settlement represents 33% of the common fund from the MB Settlement and is reasonable under either a percentage of the fund approach or a lodestar approach. When Class Counsel's lodestar of \$1,443,371.50 is compared with and cross-checked against the 33% requested award, there is a negative multiplier of .44. This negative multiplier is well below the accepted range in class action cases and indicates that the requested award is reasonable;
- p. The expenses incurred by Class Counsel in prosecution of this case are reasonable and consist of the types of expenses routinely charged to hourly clients;

- q. The requested Service Awards to Class Representatives are reasonable because they were active participants in the litigation and provided factual information and documents, participated in discovery, and were deposed by defense counsel.

WHEREFORE, IT IS HEREBY ORDERED THAT:

6. **Attorneys' Fees.** Class Counsel is awarded attorneys' fees in the amount of \$635,350.00 from the Settlement Payment under the MB SA. Class Counsel shall be paid attorneys' fees in the amount of \$118,728.68 from the Settlement Payment under the IEC SA.

7. **Litigation Expenses.** Class Counsel shall be awarded reimbursement of out-of-pocket litigation expenses of \$217,806.16 to be paid from the Settlement Payment under the MB SA.

8. **Service Awards.** Each named Plaintiff shall be paid Service Awards in the amount of \$2,500 each from the Settlement Payment under the MB SA and \$1,000 each from the Settlement Payment under the IEC SA.

SO ORDERED.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV036641
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". The signature is written in a cursive, flowing style.

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