

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
05 CVS 188
05 CVS 1938

KAYE W. FISHER, DAN LEWIS, GEORGE)
ABBOT, ROBERT C. BOYETTE, KYLE A. COX,)
C. MONROE ENZOR, JR., Executor of the)
Estate of CRAFTON MONROE ENZOR, SR.,)
ARCHIE HILL, KENDALL HILL, WHITNEY E.)
KING, CRAY MILLIGAN, RICHARD RENEGAR,)
LINWOOD SCOTT, JR., ORVILLE WIGGINS,)
ALFORD JAMES WORLEY, Executor of the)
Estate of DENNIS ANDERSON, CHANDLER)
WORLEY, HAROLD WRIGHT, and OTHERS)
SIMILARLY SITUATED,)
Plaintiffs)
v.)
FLUE-CURED TOBACCO COOPERATIVE)
STABILIZATION CORPORATION,)
Defendant)

**AMENDED ORDER ON MOTION FOR
CLASS CERTIFICATION**

THIS Amended Order on Motion for Class Certification is entered by the court pursuant to the provisions of Rule 60, North Carolina Rules of Civil Procedure. The previous Order on Motion for Class Certification entered by this court shall be deemed WITHDRAWN, and this Amended Order on Motion for Class Certification shall take its place in all respects.

THESE consolidated civil actions, designated as exceptional cases by Order of the Chief Justice of the North Carolina Supreme Court, pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts, and assigned to the undersigned, come before the court upon Plaintiffs' Motion for Class Certification ("Motion"); and

THE COURT, after reviewing the Motion, briefs in support of and in opposition to the Motion, arguments of counsel and other appropriate matters of record, FINDS and CONCLUDES as follows:

PROCEDURAL HISTORY

1. On January 6, 2005, and February 11, 2005, Plaintiffs filed the respective original Complaints in these civil actions.

2. On March 24, 2005, and March 28, 2005, Defendant filed Answers to the original Complaints.

3. On May 4, 2009, Plaintiffs filed a Motion for Leave to File Second Amended and Consolidated Complaint, which was granted by the court on May 15, 2009.

4. On May 15, 2009, Plaintiffs filed their Second Amended and Consolidated Complaint alleging fourteen claims for relief. On July 14, 2009, Defendant filed a Motion to Dismiss Plaintiffs' Second Amended Consolidated Complaint ("Motion to Dismiss").

5. On March 30, 2012, the court granted, in part, the Motion to Dismiss. On July 9, 2012, Plaintiffs filed their Third Amended and Consolidated Complaint, alleging nine claims for relief against Defendant ("Claim(s)": Claim I — Conversion; Claim II — Breach of Contract; Claim III — Imposition of Constructive Trust; Claim IV — Accounting; Claim V — Distribution; Claim VI — Declaratory Judgment; Claim VII — Ultra Vires; Claim VIII — Breach of Contract and Claim IX — Unfair Trade Practices.

6. On July 9, 2012, Plaintiffs filed the Motion, pursuant to Rule 23 of the North Carolina Rules of Civil Procedure ("Rule(s)"), seeking certification of this civil action as a class action, appointing the named Plaintiffs as class representatives and appointing Plaintiffs' counsel as class counsel.

7. The Motion has been fully briefed and argued and is ripe for determination.

THE MOTION

8. Plaintiffs are or were tobacco farmers residing in North Carolina or South Carolina and bring this action individually and on behalf of all others similarly situated.

9. Defendant is a non-profit cooperative corporation organized in 1946 under the laws of North Carolina, with its principal place of business in Wake County, North Carolina.

10. Defendant is a tobacco marketing cooperative that, from 1946 through 2005, administered the price component of the Federal Tobacco Program ("Program"), which was implemented to stabilize and raise tobacco prices through supply restrictions in exchange for minimum price guarantees to tobacco growers.

11. Plaintiffs seek certification of a class of producers of flue-cured tobacco who were members/shareholders of Defendant at times material and signed marketing agreements with Defendant pursuant to which the putative class members delivered tobacco to Defendant that was either sold or otherwise used in the program. Specifically, they seek the class ("Class") to be defined as

All individuals, proprietorships, partnerships, corporations, or their heirs, representatives, executors or assigns, and other proper entities that have been members/shareholders of the Flue-Cured Tobacco Cooperative Stabilization Corporation (n/k/a United States Tobacco Cooperative, Inc.) (hereafter "Stabilization") at any time from its inception through the end of crop year 2004, and any heirs, representatives, executors, successors or assigns, and;

(a) had not requested cancellation of their membership and whose membership was cancelled by Stabilization without a hearing, and/or

(b) were issued a certificate of interest in capital reserve by Stabilization for any of the tobacco crop years between and including 1967-1973, and/or

- (c) delivered, consigned for sale, or sold flue-cured tobacco and paid an assessment for deposit into the No Net Cost Tobacco Fund or No Net Cost Tobacco Account during any tobacco crop years between and including 1982-2004.

DISCUSSION

12. In North Carolina, class actions are governed by Rule 23. Rule 23(a) provides, "[i]f persons constituting a class are so numerous as to make it impracticable to bring them all before the court, such of them, one or more, as will fairly insure the adequate representation of all may, on behalf of all, sue or be sued."

13. The party seeking to bring a class action under Rule 23(a) has the burden of showing that the prerequisites for utilizing the class action mechanism are present. *Crow v. Citicorp Acceptance Co.*, 319 N.C. 274, 282 (1987).

14. The requirements for class certification are that (a) the named and unnamed members each have an interest in either the same issue of law or of fact, and which issue predominates over issues affecting only individual class members, which is referred to as commonality; (b) the class must be so numerous as to make it impracticable to bring each member of the class before the court, which is referred to as numerosity; (c) the named representatives must establish that they will fairly and adequately represent the interests of all members of the class, including those outside the jurisdiction of the court and (d) adequate notice must be given to the class members. *Id.* at 280-84; *see also Nobles v. First Carolina Commc'ns, Inc.*, 108 N.C. App. 127, 132-33 (1992); *Faulkenbury v. Teachers' and State Emps.' Ret. Sys.*, 345 N.C. 683, 697 (1997).

15. Where all the above prerequisites are met, it is within the trial court's discretion to determine whether a class action is superior to other available methods for the

adjudication of the controversy. *Crow*, 319 N.C. at 284. Further, the trial court has broad discretion in deciding whether a class action should be certified and is not limited to consideration of matters expressly set forth in Rule 23 or in case law. *Id.*

16. When making class certification decisions the trial court should not prematurely determine the merits. *Maffei v. Alert Cable TV of NC, Inc.*, 316 N.C. 615, 617-18 (1986) (citing *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177-78 (1974)). Further, it is not for the court to determine at the time of class certification whether the common questions guarantee a determination of liability. *Tomlin v. Dylan Mortg., Inc.*, 2002 NCBC 1, ¶ 9 (N.C. Super. Ct. Feb. 1, 2002).

17. In the present action, Plaintiffs allege that in order to participate in the Program, a flue-cured tobacco farmer was required to purchase a share of stock for \$5 and enter into a contract with Defendant, thereby becoming a member/shareholder of Defendant, which Plaintiffs contend guaranteed each member a lifetime membership that could not be cancelled without a hearing.

18. In October 2004, the Program came to an end. Plaintiffs contend that in a letter dated December 20, 2004 ("December 20 Letter"), Defendant notified Plaintiffs and other members/shareholders that their membership in Defendant would be revoked and their initial \$5 stock investment would be refunded if Plaintiffs and other members/shareholders did not enter into a growing contract with Defendant. Plaintiffs further contend that the December 20 Letter stated further that members/shareholders had no interest in any capital account or retained earnings of Defendant. The content of December 20 Letter speaks for itself.

19. Plaintiffs allege that Defendant wrongfully removed many members/shareholders from Defendant's membership rolls without a hearing. Plaintiffs

contend that this was done in furtherance of a scheme designed to disenfranchise a large number of members/shareholders in an effort to increase the interests of a select group of surviving members/shareholders in Defendant's accumulated assets. Plaintiffs further allege that Defendant has designated an unreasonable portion of its accumulated assets to reserves, which assets Plaintiffs contend rightfully belong to them.

20. Plaintiffs seek the certification of a class with regard to the Claims and asks this court to define the Class as reflected in paragraph 11 above.

21. Defendant objects to certification of a class, contending that the issues raised by the Claims do not meet the requirements for a class action and should be litigated individually and not collectively.

Commonality

22. In this action, the central issue common to all Plaintiffs is whether they are entitled to share in the accumulated assets held by Defendant, which Defendant contends is held as a reasonable reserve.

23. The issues of contractual membership invoke common issues of law and fact. One common issue is whether the class members are also members of Defendant from when their interests were created, and another is whether Defendant can terminate whatever interest those members have in the alleged excess reserves. This requires no individual inquiry because Defendant has a duty to record who its members are and what their interest was during both the relevant 1967-73 and 1982-2004 periods. Additionally, the 1967-73 contracts and the 1982-2004 contracts are not materially different nor were they individually negotiated.

24. The question of who actually received or relied on letters promising lifetime membership does not require individual inquiry to determine a member's reliance on that promise. The letter is not proof of a separate contractual agreement; rather, it demonstrates

a course of dealing with members, which is supported by cooperative law, such that one's patronage interest does not vanish because one does not currently patronize. There is also no individual inquiry necessary to determine whether Defendant has the authority to insist upon a current marketing agreement.

25. Facts common to the legal claims of the Plaintiffs are as follows: (a) the material language of the stock certificates is uniform; (b) all members paid \$5 for their stock; (c) all members signed a marketing agreement (Form 1) styled "Agreement & Receipt"; (d) all marketing agreements from 1946-1984 are substantially identical and all marketing agreements from 1985-2004 are substantially identical; (e) all members have numbers used to track their accounts and this number is uniformly used on the marketing agreement (Form 1), the Certificates of Interest in Capital Reserves, the Stock Certificate, the Qualified Per Unit Retains and Preferred Stock, the membership card and on the auction warehouse documents (Pl.'s Memo. In Support of Mot. for Class Certification Exhibit 14 (July 9, 2012)); (f) Defendant's relationship with all members was governed by uniform agreements with the USDA's Commodity Credit Corporation ("CCC") and uniform agreements with the auction warehouses; (g) the terms of the Certificates of Interest in Capital Reserve (1967-1973) are identical; (h) Defendant's communications with Class members were substantially uniform on the permanence of their membership, refunds of stock purchase amount, transfer or relinquishment of membership upon death of a member, inquiries about the Qualified Per Unit Retains and Preferred Stock, inquiries about the Certificates of Interest and other issues; (i) all members' gains in the 1967-1973 subclass were allocated pro rata by year based upon each member's percentage of the consigned pounds of tobacco; (j) member no net cost contributions/assessments between 1982 and 2004 were uniformly treated in how they were (i) assessed (all paid the same assessment per pound/per year), (ii) kept (all

monies were in the same No Net Cost Fund ("NNCF") or No Net Cost Account ("NNCA"), (iii) transferred (all member contributions were transferred from the NNCF to the NNCA), and (iv) used (to offset losses in any crop year or redeem tobacco from any crop year); (k) all members in the 1982-2004 time period will have the same method used to determine any damage, if any, they may recover because their interests are determined based on the ratio that the pounds/assessments/year have to the total pounds/assessments/year from 1982 through 2004, and this method is economically fair, equitable, and manageable (Pl.'s Memo. In Support Exhibit 27 — Affidavit of Glenn W. Harrison, July 3, 2012) and (l) the financial interests that class members have in the 1967-1973 crop gains, the proceeds from the sale of tobacco redeemed through the use of member no net cost assessments (1982-1984) and in the closure process at the end of the price support program have each been maintained as uniform accounting allocations by Defendant in its consolidated financial reports: "capital equity credits" of \$26,802,854, "additional paid in capital" of \$110,753,161 and "contributed capital" of \$126,009,429.

26. The legal issues common to all Class members include: (a) whether Defendant was required to allocate and identify its total equity to the members on a yearly basis; (b) whether Defendant violated and breached a fiduciary duty to Plaintiffs; (c) whether Defendant, by and through its corporate officers and agents, has intentionally and/or negligently breached Plaintiffs' contractual rights and interest and property rights in violation of the By-Laws, Articles of Incorporation, statutes, and North Carolina and United States Constitutional prohibitions; (d) whether the alleged conduct of Defendant is violative of Chapter 75 of the North Carolina General Statutes; (e) whether Defendant's failure to allocate and distribute capital earnings, income or other funds to its members is unlawful or is violative of class members' common law and statutory rights, including

Chapter 75 of the North Carolina General Statutes; (f) whether Defendant may only retain reasonable reserves and (g) whether the amounts retained are reasonable.

27. Accordingly, the court concludes that Plaintiffs have satisfied the commonality requirement.

Numerosity

28. In this action, the Class members are so numerous that it is impractical to bring them all before the court. The test for "impracticability" is "not 'impossibility' of joinder, but only difficulty or inconvenience of joining all members of the class." *English v. Holden*, 41 N.C. App. 1, 6-7 (1979). Plaintiffs contend that at minimum the size of the putative Class is likely to range into the hundreds of thousands, given the numerous producers who delivered tobacco to Defendant for the relevant periods of time under the Program. Defendant's records show that for each year between 1967 and 1973 certificates were issued to between 40,768 and 149,483 members. There were 209,186 members who paid no net cost assessments between 1982 and 2004. See Pl.'s Memo. In Support Exhibits 24 and 36. "There is no requirement that the party seeking certification allege in her certification motion the exact number of class members or their identities." *Pitts v. American Sec. Ins. Co.*, 144 N.C. App. 1, 10 (2002). Here, the members of the putative Class with regard to the Claims are sufficiently numerous so as to certify a class.

29. Accordingly, the court concludes that Plaintiffs have satisfied the numerosity requirement.

Fair and Adequate Representation of Class Interests

30. To represent the Class members in this case fairly and adequately, Plaintiffs must have no conflict with the members and must have a genuine personal interest in the outcome of the case. *Tomlin*, 2002 NCBC 1 at ¶¶ 19-29. The court concludes that no material conflicts exist between the named Plaintiffs and the potential

Class members. All Class members and representatives have a common unified interest in the determination of whether Defendant is retaining more than a reasonable reserve to the detriment of the current and former members. The Class representatives are not seeking the dissolution of Defendant. Varying interests among Class members arising from when and how much tobacco a Class member delivered do not create a conflict concerning Defendant's liability. If Plaintiffs succeed on the merits, a reasonable damages determination could be made through the application of cooperative patronage concepts to determine recovery based on that patronage. For those in the 1967-1973 certificate group, the financial interests of the Class representatives do not conflict with other Class representatives or with the putative Class members, because each would receive only that portion of the net gains for each year that is attributable to the tobacco they delivered for that year. These amounts have been separately accounted for and maintained in Defendant's records. For those in the 1982-2004 group, there are no material conflicts between the Class representatives and putative Class members, because there were no net cost assessments collected from 1982 forward, and the growers are thus on equal footing because their tobacco and assessments are proportionally taken into consideration during the entire period that they are common contributors. The court in *Pitts* stated, "A difference in the amount of damages does not create a material conflict of interest between Plaintiff and the other proposed class members." *Pitts*, 144 N.C. App. at 15 (citing *Faulkenbury*, 345 N.C. at 698 (1997) (differing interests among members of class does not necessarily create a conflict of interest as to the common issues that define the class)).

31. There are nineteen Class representatives in this case, each of whom has a personal stake in its outcome and each of whom has a justiciable claim. Small, medium and large growers are represented. There are individuals, corporations and estates. There

is one board member of Defendant. Each Class representative was a producer of flue-cured tobacco and a shareholder in Defendant during relevant time periods. Each signed a marketing agreement and delivered tobacco that was at various times auctioned, consigned for price support or sold directly to leaf dealers or to manufacturers.

32. Defendant contends that inappropriate behavior by Class representatives makes them inadequate representatives. However, claims against individual directors were voluntarily dismissed, and no claim dismissed alleged individual director misconduct. Even if those assertions properly indicated a character flaw in those particular representatives, such does not make them inadequate Class representatives, because challenges to adequacy on the basis of a character flaw are permitted only on rare occasion and even then are rarely upheld. *Pitts*, 144 N.C. App. at 16-18; *Tomlin*, 2002 NCBC 1 ¶ 25.

33. Defendant contends that there are counterclaims applicable to certain Class representatives that make them inadequate Class representatives. However, defenses to individual Class members' claims relate to the merits and are therefore not to be considered at the class certification stage. *Pitts*, 144 N.C. App. at 12. Additionally, a counterclaim against a proposed class representative generally will not render the representative's claims atypical. *See, e.g., International Woodworkers of Am., AFL-CIO, CLC v. Chesapeake Bay Plywood Corp.*, 659 F.2d 1259, 1269 (4th Cir. 1981) (granting certification in an action by a union alleging employment discrimination on behalf of its members even though defendant had filed a counterclaim alleging the union had failed to resolve discrimination claims by arbitration and grievances and finding that "[t]he counterclaim simply does not create the kind of conflict that would defeat commonality, typicality, or prevent the Union from adequately protecting the interests of the class"). A contrary rule could encourage class action defendants to file counterclaims for the

purpose of defeating class certification. See *Ballard v. Equifax Check Servs., Inc.*, 186 F.R.D. 589, 595-96 (E.D. Cal. 1999) ("The mere existence of a counterclaim does not preclude class certification. Were it otherwise, every motion for class certification would be defeated simply by the vehicle of filing a counterclaim against the named plaintiffs." (quoting *Heartland Commc'ns, Inc. v. Sprint Corp.*, 161 F.R.D. 111, 116 (D. Kan. 1995))).

34. Further, the named Plaintiffs have continually exhibited an interest in the outcome of this civil action and have been diligent in their involvement, such that the court is satisfied that the Class representatives will protect the interests of all Class members. The representatives have been directly involved in the case since its commencement. Each Class representative's deposition was taken on all issues in the case at least once. Each Class representative attended two mediation sessions in Raleigh for a total of four days. Each Class representative has produced documents and answered written discovery, collectively producing 10,966 pages of documents.

35. Further, after certification, any Class member who opposes Plaintiffs' efforts or prefers to litigate individually can opt out of the Class. *Srail v. Village of Lisle*, 249 F.R.D. 544, 553 (N.D. Ill. 2008) (finding class representatives adequate despite the fact that members of the class might be opposed to the class action because such an objection is "not particularly significant in determining whether to certify a Rule 23(b)(3) class [Absent class members] will have the opportunity to opt out of the litigation.").

36. Additionally, the court is satisfied that counsel for the Class is adequate and appropriately experienced with this type of litigation to prosecute this civil action on behalf of the entire Class. Class counsel includes experienced attorneys from North Carolina and South Carolina who collectively have significant class action experience.

37. Accordingly, the court concludes that Plaintiffs have satisfied the adequacy requirement.

Superiority of Class Action Mechanism

38. The prerequisites for a class claim having been met, it is within the trial court's discretion to determine whether "a class action is superior to other available methods for the adjudication of th[e] controversy." *Crow*, 319 N.C. at 284. A class action "should be permitted where [it is] likely to serve useful purposes such as preventing a multiplicity of suits or inconsistent results" *Id.* Those useful purposes are to be balanced against "inefficiency or other drawbacks." *Pitts*, 144 N.C. App. at 11. "Some proper considerations include, but are not limited to, the amount of recovery compared to the cost of administration of the lawsuit, the interest of members of the class in individually controlling the prosecution or defense of separate actions, the extent and nature of any litigation concerning the controversy already commenced by or against members of the class, the desirability or undesirability of concentrating the litigation of the claims in the particular forum, and the difficulties likely to be encountered in the management of a class action." *Id.*

39. Defendant contends that notification and administration of the Class would be difficult. However, Defendant's board members and employees have testified that Defendant can allocate interests "to certain individuals." Pl.'s Reply to Def. Memo. In Opposition to Pl.'s Mot. for Class Certification Exhibit R-15 — Deposition of Jimmy Hill/ Public Director (August 13, 2012). Defendant has annually told the IRS that its bylaws and other documents create a pre-existing legal obligation requiring Defendant to allocate all patronage income based on business done with or for its patrons. Pl.'s Reply Exhibit R-7 — Deposition of Defendant (Kenneth Bopp designee). Membership data is maintained by both member name and member number. See Pl.'s Reply Exhibit R-16 (chart of Defendant records of tobacco deliveries by a Class representative with multiple member numbers). Multiple numbers for a member's interest create no management issue

that is not solved by the method used to track patronage interests. Finally, this class action is demonstrably manageable as shown by the past eight years of litigation leading up to this motion as well as by the proposed method of damages determination.

40. The various litigation management difficulties pointed out by Defendant do not overcome the court's conclusion that the class action mechanism is superior to other available methods of adjudicating the controversies raised in this action. Indeed, the only pragmatically effective way to provide relief under the circumstances of this matter is through certification of a class because each individual class member's damages suffered may be relatively small while the burden and expense of individual litigation would be very high. Further, the forum is proper because the vast majority of Defendant's past and present members reside in North Carolina and Defendant is headquartered in Wake County.

41. The court concludes, in its discretion, that a class action is a superior method for adjudicating the Claims raised because class certification of this matter (a) will avoid a multiplicity of lawsuits; (b) will protect against inconsistent results by allowing issues common to all Class members to be resolved in a single forum; (c) will result in reduced transaction costs for the Plaintiffs, Class members and Defendant and (d) will preserve the rights of numerous absent, unnamed Class members.

42. Plaintiffs contend that, using North Carolina conflict of laws principles, the application of North Carolina law is appropriate as to each Claim and that the application of the chosen substantive law will not violate due process. Defendant contends to the contrary, apparently taking the position that there is no basis for finding that a class mechanism is manageable here because of unresolved choice of law issues. Defendant further contends that it would be premature for the court to make decisions at this stage regarding the choice of law to be applied to the various Claims. The court concludes that it is likely that the

application of North Carolina law will be appropriate as to each Claim and that such application will not raise due process issues. It finds no basis to conclude that a class determination of manageability should be defeated by unresolved choice of law issues.

43. In light of the foregoing, the court, in its discretion, CONCLUDES that Plaintiffs have demonstrated that a Class exists with regard to the Claims and that the Motion should be GRANTED.¹ Therefore, with regard to the Claims, a Plaintiff Class should be certified to exist and defined as set forth above.

Adequate Class Notice and Costs of Notice

44. The trial court has broad discretion in determining which party properly bears the costs of identifying and notifying Class members of the existence of this matter. *Frost v. Mazda Motor of Am., Inc.*, 353 N.C. 188, 198 (2000). The general rule is that the plaintiff should bear such costs, since it is the plaintiff who has the burden of proof, is bringing the suit, seeks to maintain it as a class action and intends to represent the members of the Class in prosecuting the action. *Id.* at 197. Certain exceptions do exist to the general rule; however, none of the exceptions are applicable to this civil action. Accordingly, in the exercise of its discretion, the court CONCLUDES that Plaintiffs should bear the costs identifying and notifying Class members of this matter. The form and mechanics of identifying and notifying Class members will be determined by the court at a later date.

NOW THEREFORE, based upon the foregoing FINDINGS and CONCLUSIONS, it hereby is ORDERED that:

¹ The court is aware of cases from other jurisdictions that are factually and conceptually similar to the present civil action, but where class certification was not granted. Those cases are not binding on this court, but the court has reviewed them for the purpose of guidance in deciding the Motion. The court concludes that the material issues that precluded those cases from being certified as a class action are not present in the instant matter.

1. Plaintiffs' Motion for Class Certification is GRANTED.
2. As to Plaintiffs' Claims, the certified Class shall include:

All individuals, proprietorships, partnerships, corporations, or their heirs, representatives, executors or assigns, and other proper entities that have been members/shareholders of the Flue-Cured Tobacco Cooperative Stabilization Corporation (n/k/a United States Tobacco Cooperative, Inc.) (hereafter "Stabilization") at any time from its inception through the end of crop year 2004, and any heirs, representatives, executors, successors or assigns, and;

- (a) had not requested cancellation of their membership and whose membership was cancelled by Stabilization without a hearing, and/or
- (b) were issued a certificate of interest in capital reserve by Stabilization for any of the tobacco crop years between and including 1967-1973, and/or
- (c) delivered, consigned for sale, or sold flue-cured tobacco and paid an assessment for deposit into the No Net Cost Tobacco Fund or No Net Cost Tobacco Account during any tobacco crop years between and including 1982-2004.

3. Plaintiffs shall bear the costs of identifying and notifying Class members of Plaintiffs' Claims.

4. The court will conduct a status conference in this matter at 12:00 noon on February 27, 2014, at the North Carolina Business Court at 225 Hillsborough Street, Suite 303, Raleigh, North Carolina. At that time the parties shall be prepared to discuss Class management issues, including Class notice mechanics and procedures.

This the 7th day of February, 2014.

/s/ John R. Jolly, Jr.
John R. Jolly, Jr.
Chief Special Superior Court Judge for
Complex Business Cases