

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION**

IN RE SOUTHEASTERN MILK ANTITRUST LITIGATION) Case No. 2:08-MD-01000) MDL No. 1899))
THIS DOCUMENT RELATES TO: ALL CONSOLIDATED CASES) Judge J. Ronnie Greer) Magistrate Judge Dennis H. Inman)) Jury Trial Demand

**GERALD L. BOS' ANSWER
TO CONSOLIDATED AMENDED COMPLAINT**

Defendant Gerald L. Bos, through his undersigned counsel, hereby answers and asserts the following affirmative defenses to Plaintiffs' Consolidated Amended Complaint ("Complaint"):

NATURE OF THE CASE

1. Bos admits that Plaintiffs purport to bring an antitrust case against Defendants. Bos denies the remaining allegations in paragraph 1.
2. Bos denies the allegations in paragraph 2.
3. Bos denies the allegations in paragraph 3, including all subparagraphs.
4. Bos denies the allegations in paragraph 4.
5. Bos denies the allegations in paragraph 5.
6. Bos denies the allegations in paragraph 6.
7. Bos denies the allegations in paragraph 7.
8. Bos denies the allegations in paragraph 8.
9. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 9 and, therefore, denies those allegations. Bos denies the remaining allegations in paragraph 9.

10. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in the first sentence of paragraph 10 and, therefore, denies those allegations. Bos denies the remaining allegations in paragraph 10.

11. Bos admits that Plaintiffs purport to bring this case as a class action on behalf of the putative classes alleged. Bos denies that this case may be properly maintained as a class action and denies the remaining allegations in paragraph 11.

12. Bos admits that Plaintiffs purport to seek the relief set forth in paragraph 12 but denies that Plaintiffs are entitled to any relief. Bos denies the remaining allegations in paragraph 12.

JURISDICTION, VENUE AND INTERSTATE COMMERCE

13. The allegations in paragraph 13 contain legal argument and conclusions to which no response is required. To the extent a response is required, Bos denies the Complaint adequately states a cause of action under sections 1 or 2 of the Sherman Act.

14. The allegations in paragraph 14 contain legal argument and conclusions to which no response is required. To the extent a response is required, Bos denies the allegations.

15. The allegations in paragraph 15 contain legal argument and conclusions to which no response is required. To the extent a response is required, Bos lacks information or knowledge sufficient to form a belief as to the truth of allegations and, therefore, denies the allegations.

16. The allegations in paragraph 16 contain legal argument and conclusions to which no response is required. To the extent a response is required to the allegations contained in subparagraph (b), Bos denies the allegations in the first sentence, and states that he lacks information or knowledge sufficient to form a belief as to the truth of the allegations in the second sentence and, therefore, denies those allegations. To the extent a response is required to

the remaining allegations in paragraph 16, Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations and, therefore, denies those allegations.

17. The allegations in paragraph 17 contain legal argument and conclusions to which no response is required.

18. Bos retired from DFA in 2005 and, therefore, lacks information or knowledge sufficient to form a belief as to the truth of the allegations concerning the current activities of the named entities. Bos admits that DFA marketed fluid Grade A milk in many parts of the United States and received payments in connection with those sales. Bos denies the remaining allegations in paragraph 18 as they relate to Bos. Bos lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 18 and, therefore, denies those allegations.

PARTIES

Plaintiffs

19. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 19 and, therefore, denies those allegations.

20. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 20 and, therefore, denies those allegations.

21. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 21 and, therefore, denies those allegations.

22. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 22 and, therefore, denies those allegations.

23. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 23 and, therefore, denies those allegations.

24. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 24 and, therefore, denies those allegations.

25. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 25 and, therefore, denies those allegations.

26. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 26 and, therefore, denies those allegations.

27. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 27 and, therefore, denies those allegations.

28. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 28 and, therefore, denies those allegations.

29. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 29 and, therefore, denies those allegations.

30. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 30 and, therefore, denies those allegations.

31. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 31 and, therefore, denies those allegations.

32. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 32 and, therefore, denies those allegations.

33. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 33 and, therefore, denies those allegations.

Defendants

34. Bos retired from DFA in 2005 and, therefore, lacks information or knowledge sufficient to form a belief as to the truth of the allegations concerning Dean's current activities. Bos admits that Dean, either directly or through subsidiaries, was a milk processor that owned

fluid Grade A milk bottling plants in the Southeast United States. Bos lacks information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 34 and, therefore, denies those allegations.

35. Bos retired from DFA in 2005 and, therefore, lacks information or knowledge sufficient to form a belief as to the truth of the allegations concerning NDH's current status and activities. Bos admits that NDH owned Grade A milk bottling plants. Bos denies the allegations contained in the second sentence of paragraph 35. Bos lacks information or knowledge to form a belief as to the truth of the remaining allegations in paragraph 35 and, therefore, denies those allegations.

36. Bos retired from DFA in 2005 and, therefore, lacks information or knowledge sufficient to form a belief as to the truth of the allegations concerning DFA's current status and activities. Bos admits that DFA was organized as a non-profit corporation with its principal place of business located at 10220 North Ambassador Drive, Kansas City, Missouri 64153. Bos further admits that DFA's Southeast Council was located in Knoxville, Tennessee. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in second, third, fourth and fifth sentences and, therefore, denies those allegations. Bos denies the allegations in the sixth sentence of paragraph 36.

37. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in first sentence and, therefore, denies those allegations. Bos denies the remaining allegations in paragraph 37.

38. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in the first sentence and, therefore, denies those allegations. Bos denies the remaining allegations in paragraph 38.

39. Bos retired from DFA in 2005 and, therefore, lacks information or knowledge sufficient to form a belief as to the truth of the allegations concerning Mid-Am's current status and activities. Bos admits that Mid-Am engaged in various financing activities in connection with investments by DFA. Bos denies the remaining allegations in paragraph 39.

40. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in first and second sentences and, therefore, denies those allegations. Bos denies the remaining allegations in paragraph 40.

41. Bos admits the allegations in the first sentence of paragraph 41, and further admits that Hanman served on the management committee of Dairy Management LLC. Bos lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in the second sentence and, therefore, denies those allegations. Bos denies the remaining allegations in paragraph 41.

42. Bos admits the allegations in the first and second sentences of paragraph 42. Bos denies the allegations in the third sentence of paragraph 42.

Co-conspirators

43. Bos denies the allegations in paragraph 43.

44. Bos denies the allegations in paragraph 44.

45. Bos denies the allegations in paragraph 45.

OVERVIEW OF THE RELEVANT MARKETS

46. Bos admits the allegations in the first sentence of paragraph 46. Bos admits that milk is often produced on a daily basis. Bos admits that some dairy farmers may milk their cows at least twice a day. Bos admits that milk is typically stored in refrigerated tanks until it is transported to bottling plants, and further admits that certain bottling plants prepare milk for sale and human consumption. The allegations in the sixth sentence of paragraph 46 contain legal

argument and conclusions to which no response is required. Bos denies all other allegations contained in paragraph 46.

47. The allegations in paragraph 47 contain legal argument and conclusions to which no response is required. To the extent a response is required, Bos denies the allegations in the first and second sentences of paragraph 47 to the extent the allegations are inconsistent with the referenced regulations. Bos denies the allegations in the third sentence of paragraph 47.

48. The allegations in paragraph 48 contain legal argument and conclusions to which no response is required. To the extent a response is required, Bos denies the allegations in paragraph 48 to the extent the allegations are inconsistent with the referenced regulations.

49. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 49 and, therefore, denies those allegations.

50. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 50 and, therefore, denies those allegations.

51. Bos admits the allegations contained in the first sentence of paragraph 51. The remaining allegations contained in paragraph 51 consist of a hypothetical to which no response is required. To the extent a response is required, Bos lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 51 and, therefore, denies those allegations.

52. Bos admits that there are seasonal and other variations in Grade A milk production and demand, that Class I utilization can vary between Orders, and that dairy farmers are not evenly distributed throughout the United States. Bos lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 52 and, therefore, denies those allegations.

53. Bos denies the allegations in paragraph 53.

54. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in the first sentence and, therefore, denies those allegations. Bos admits that cooperatives and dairy farmers may negotiate for prices in excess of FMMO minimum prices. Bos denies the remaining allegations in paragraph 54.

55. Bos admits that the net price that a dairy farmer receives for Grade A Milk is sometimes referred to as the “mailbox price.” Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in the second and third sentences and, therefore, denies those allegations. Bos denies the remaining allegations in paragraph 55.

56. The allegations in paragraph 56 contain legal argument and conclusions to which no response is required. To the extent a response is required, Bos denies the allegations in paragraph 56.

57. The allegations in paragraph 57 contain legal argument and conclusions to which no response is required. To the extent a response is required, Bos denies the allegations in paragraph 57.

58. The allegations in paragraph 58 contain legal argument and conclusions to which no response is required. To the extent a response is required, Bos denies the allegations in paragraph 58.

59. The allegations in paragraph 59 contain legal argument and conclusions to which no response is required. To the extent a response is required, Bos denies the allegations in paragraph 59.

60. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 60 and, therefore, denies those allegations.

DAIRY FARMERS AND MILK BOTTLERS

61. Bos admits that, as a general principle, dairy cooperatives are associations of dairy farmers who agree to market collectively their dairy products, and that are owned by their member farmers. Bos further admits that the second sentence identifies some of the marketing activities in which a dairy cooperative may engage. Bos denies the remaining allegations in paragraph 61.

62. Bos admits the allegations contained in the first sentence of paragraph 62, and further admits that dairy farmers who are not members of cooperatives may be referred to as “independent dairy farmers.” Bos lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 62 and, therefore, denies those allegations.

63. Bos admits that at the time he retired from DFA in 2005, DFA was the largest dairy cooperative in the United States. Because Bos retired from DFA in 2005, he lacks information or knowledge sufficient to form a belief as to the truth of the allegations concerning DFA’s current status and activities. As a result, Bos denies the remaining allegations contained in paragraph 63.

64. Bos denies the allegations in paragraph 64.

65. Bos admits there are other dairy cooperatives other than DFA that market milk in the southeastern United States. Bos denies the remaining allegations contained in paragraph 65.

66. Bos admits that fluid Grade A milk is essential to fluid Grade A milk bottling operations. Bos lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 66 and, therefore, denies those allegations.

67. Bos denies the allegations in paragraph 67.

DEFENDANTS' DOMINANCE AND PREDATORY CONDUCT

Overview

68. Bos denies the allegations in paragraph 68.

69. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in the first and second sentences of paragraph 69 and, therefore, denies those allegations. Bos denies the remaining allegations in paragraph 69.

70. Bos denies the allegations in paragraph 70.

Consolidation In The Industry

71. Bos admits that DFA was the largest dairy cooperative at the end of 2000. Bos denies the allegations contained in the fourth sentence of paragraph 71 to the extent the allegations pertain to DFA. Bos lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 71 and, therefore, denies those allegations.

72. Bos admits the allegations contained in the first sentence. Bos admits that Dean and Suiza divested certain Grade A milk bottling plants to NDH, and further admits that DFA sold its interest in Suiza. Bos denies the remaining allegations in paragraph 72.

73. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained in the first sentence and, therefore, denies those allegations. Because Bos retired from DFA in 2005, he lacks information or knowledge sufficient to form a belief as to the truth of the allegation that “[a]t all times relevant to this Complaint, DFA has owned at least 50 percent of NDH’s equity and voting shares[.]” Bos admits that at the time he retired from DFA in 2005, DFA held at least 50% of NDH’s equity. Bos lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 73 and, therefore, denies those allegations.

74. The allegations in the first and second sentences of paragraph 74 are Plaintiffs' characterizations of agreements which are in writing and speak for themselves. Bos denies Plaintiffs' characterizations of those agreements to the extent they are inconsistent with the agreements themselves. Bos lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 74 and, therefore, denies those allegations.

75. Bos denies the allegations in paragraph 75.

76. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 76 and, therefore, denies those allegations.

77. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in the first, second and third sentences of paragraph 77 and, therefore, denies those allegations. Bos denies the remaining allegations in paragraph 77.

78. Bos denies the allegations in paragraph 78.

Defendants' Full-Supply Agreements, Foreclosure and Price-Fixing

79. Bos denies the allegations in paragraph 79.

80. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 80 and, therefore, denies those allegations.

81. Bos denies the allegations in paragraph 81.

82. Bos denies the allegations in paragraph 82.

83. Bos denies the allegations in paragraph 83.

84. Bos denies the allegations in paragraph 84.

85. Bos denies the allegations in paragraph 85.

86. Bos denies the allegations in the first sentence of paragraph 86. Bos lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 86 and, therefore, denies those allegations.

87. Bos denies the allegations in paragraph 87.

88. Bos denies the allegations in paragraph 88.

89. Bos denies the allegations in paragraph 89.

90. Bos denies the allegations in paragraph 90.

91. Bos denies the allegations in paragraph 91.

92. Bos denies the allegations in paragraph 92.

93. Bos denies the allegations in paragraph 93.

94. Bos denies the allegations in paragraph 94.

95. Bos denies the allegations in paragraph 95.

96. Bos denies the allegations in the first sentence. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in the second sentence and, therefore, denies those allegations.

97. Bos denies the allegations in paragraph 97.

98. Bos denies the allegations in paragraph 98.

99. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in the first sentence and, therefore, denies those allegations. Bos denies the remaining allegations in paragraph 99.

**DFA'S RELATIONSHIP WITH ITS MEMBER DAIRY
FARMERS AND TRANSFORMATION INTO A PROCESSOR**

100. Bos admits the allegations contained in the first sentence of paragraph 100. Bos lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 100 and, therefore, denies those allegations.

101. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in the first and second sentences of paragraph 101 and, therefore, denies those allegations. Bos denies the remaining allegations in paragraph 101.

102. Bos denies the allegations in the first sentence of paragraph 102. Bos admits DFA acquired ownership interests in certain of the entities listed in the second sentence of paragraph 102, but Bos denies the remaining allegations in the second sentence. Bos admits that DFA acquired certain assets from Borden. Bos denies the remaining allegations in paragraph 102.

103. The allegations in paragraph 103 are Plaintiffs' characterizations of agreements which are in writing and speak for themselves. Bos denies Plaintiffs' characterizations of those agreements to the extent they are inconsistent with the agreements themselves. Bos admits the allegations in the third sentence. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in the fourth sentence of paragraph 103 and, therefore, denies those allegations. Bos denies the remaining allegations in paragraph 103.

104. Bos denies the allegations in paragraph 104.

105. Bos admits that Greg Engles served as Chief Executive Officer of Suiza prior to the Dean/Suiza merger. Bos denies the remaining allegations in paragraph 105.

106. Bos denies the allegations in paragraph 106, including the subparagraphs.

107. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 107 and, therefore, denies those allegations.

108. Bos denies the allegations in paragraph 108, including the subparagraphs.

109. Bos denies the allegations of paragraph 109.

110. Bos denies the allegations of paragraph 110.

111. Bos denies the allegations in paragraph 111.

112. Bos denies the allegations in paragraph 112.

Concealment and Tolling

113. Bos denies the allegations in paragraph 113.

114. Bos denies the allegations in paragraph 114.

CLASS ACTION ALLEGATIONS

115. Bos admits that Plaintiffs purport to bring this case as a class action on behalf of the putative classes alleged. Bos denies that this case may be properly maintained as a class action and denies the remaining allegations in paragraph 115.

116. Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in the first and second sentences of paragraph 116 and, therefore, denies those allegations. The allegations in the third sentence of paragraph 116 contain legal argument and conclusions to which no response is required. To the extent a response is required to the allegations contained in the third sentence, Bos denies the allegations.

117. Bos denies the allegations in paragraph 117, including all subparagraphs.

118. Bos denies the allegations in paragraph 118.

119. Bos denies the allegations in paragraph 119.

120. Bos denies the allegations in paragraph 120.

121. Bos denies the allegations in the first sentence of paragraph 121. Bos lacks information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 121 and, therefore, denies those allegations.

COUNT ONE
SHERMAN ACT SECTION 2 VIOLATION
Conspiracy to Monopolize and Monopsonize

122. Bos incorporates his answers to paragraphs 1 through 99 as if set forth herein.
123. Bos denies the allegations in paragraph 123.
124. Bos denies the allegations in paragraph 124.
125. Bos denies the allegations in paragraph 125.
126. Bos denies the allegations in paragraph 126.
127. Bos denies the allegations in paragraph 127.
128. Bos denies the allegations in paragraph 128.
129. Bos admits that Plaintiffs purport to seek money damages in this action. Bos denies the remaining allegations in paragraph 129.
130. Bos admits that Plaintiffs purport to seek injunctive relief in this action. Bos denies the remaining allegations in paragraph 130.

COUNT TWO
SHERMAN ACT SECTION 2 VIOLATION
Attempt to Monopolize and Monopsonize

131. Bos incorporates his answers to paragraphs 1 through 99 as if set forth herein.
132. Bos denies the allegations in paragraph 132.
133. Bos denies the allegations in paragraph 133.
134. Bos denies the allegations in paragraph 134.
135. Bos denies the allegations in paragraph 135.
136. Bos denies the allegations in paragraph 136.
137. Bos denies the allegations in paragraph 137.
138. Bos denies the allegations in paragraph 138.
139. Bos denies the allegations in paragraph 139.

140. Bos denies the allegations in paragraph 140.

141. Bos admits that Plaintiffs purport to seek money damages in this action. Bos denies the remaining allegations in paragraph 141.

142. Bos admits that Plaintiffs purport to seek injunctive relief in this action. Bos denies the remaining allegations in paragraph 142.

COUNT THREE
SHERMAN ACT SECTION 2 VIOLATION
Unlawful Monopolization

143. Bos incorporates his answers to paragraphs 1 through 99 as if set forth herein.

144. Bos denies the allegations in paragraph 144.

145. Bos denies the allegations in paragraph 145.

146. Bos denies the allegations in paragraph 146.

147. Bos denies the allegations in paragraph 147.

148. Bos admits that Plaintiffs purport to seek money damages in this action. Bos denies the remaining allegations in paragraph 148.

149. Bos admits that Plaintiffs purport to seek injunctive relief in this action. Bos denies the remaining allegations in paragraph 149.

COUNT FOUR
SHERMAN ACT SECTION 2 VIOLATON
Unlawful Monopsony

150. Bos incorporates his answers to paragraphs 1 through 99 as if set forth herein.

151. Bos denies the allegations in paragraph 151.

152. Bos denies the allegations in paragraph 152.

153. Bos denies the allegations in paragraph 153.

154. Bos denies the allegations in paragraph 154.

155. Bos denies the allegations in paragraph 155.

156. Bos denies the allegations in paragraph 156.

157. Bos denies the allegations in paragraph 157.

158. Bos admits that Plaintiffs purport to seek money damages in this action. Bos denies the remaining allegations in paragraph 158.

159. Bos admits that Plaintiffs purport to seek injunctive relief in this action. Bos denies the remaining allegations in paragraph 159.

COUNT FIVE
SHERMAN ACT SECTION 1 VIOLATION
Unlawful Conspiracy Among Defendants to Foreclose Competition and Fix Prices

160. Bos incorporates his answers to paragraphs 1 through 99 as if set forth herein.

161. Bos denies the allegations in paragraph 161.

162. Bos denies the allegations in paragraph 162.

163. Bos denies the allegations in paragraph 163.

164. Bos denies the allegations in paragraph 164.

165. Bos denies the allegations in paragraph 165.

166. Bos denies the allegations in paragraph 166.

167. Bos denies the allegations in paragraph 167.

168. Bos denies the allegations in paragraph 168.

169. Bos admits that Plaintiffs purport to seek money damages in this action. Bos denies the remaining allegations in paragraph 169.

170. Bos admits that Plaintiffs purport to seek injunctive relief in this action. Bos denies the remaining allegations in paragraph 170.

COUNT SIX
AGAINST DFA
Breach of Contract

171. Bos incorporates his answers to paragraphs 1 through 112 as if set forth herein.

172. The allegations in paragraph 172 are not directed at Bos and, therefore, no response is required. To the extent a response is required, Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 172 and, therefore, denies those allegations.

173. The allegations in paragraph 173 are not directed at Bos and, therefore, no response is required. To the extent a response is required, Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 173 and, therefore, denies those allegations.

174. The allegations in paragraph 174 are not directed at Bos and, therefore, no response is required. To the extent a response is required, Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 174 and, therefore, denies those allegations.

175. The allegations in paragraph 175 are not directed at Bos and, therefore, no response is required. To the extent a response is required, Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 175 and, therefore, denies those allegations.

176. The allegations in paragraph 176 are not directed at Bos and, therefore, no response is required. To the extent a response is required, Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 176 and, therefore, denies those allegations.

177. The allegations in paragraph 177 are not directed at Bos and, therefore, no response is required. To the extent a response is required, Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 177 and, therefore, denies those allegations.

178. The allegations in paragraph 178 are not directed at Bos and, therefore, no response is required. To the extent a response is required, Bos lacks information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 178 and, therefore, denies those allegations.

179. All allegations not specifically admitted above are hereby denied.

AFFIRMATIVE AND OTHER DEFENSES

Each defense set forth below is asserted as to all claims against Bos. By alleging these defenses, Bos is not agreeing or conceding that it has the burden of proving any fact, issue, or element of a cause of action raised in these defenses or that any particular subject matter is relevant to Plaintiffs' allegations.

FIRST DEFENSE

Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

Plaintiffs have suffered no injury or damages as a result of the conduct alleged herein.

THIRD DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrine of laches and/or the statute of limitations.

FOURTH DEFENSE

Plaintiffs' claims are barred by the immunities and exemptions conferred by the Capper-Volstead Act, 7 U.S.C. §§ 291-292.

FIFTH DEFENSE

Plaintiffs' claims are barred by the immunities and exemptions conferred by the filed rate doctrine.

SIXTH DEFENSE

Plaintiffs' claims are barred by the doctrine of unclean hands and/or *in pari delicto*.

SEVENTH DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrines of waiver and estoppel.

EIGHTH DEFENSE

Plaintiffs' claims and those of the putative classes are barred because any alleged injury and any alleged damages are too remote and/or speculative to allow recovery and because determining whether, or to what extent, Plaintiffs were damaged is impossible.

NINTH DEFENSE

Plaintiffs lack standing, including antitrust standing, to bring some or all claims.

TENTH DEFENSE

Plaintiffs have not suffered antitrust injury.

ELEVENTH DEFENSE

Plaintiffs injuries and/or damages were not caused by any of the acts alleged to have been performed by Bos.

TWELFTH DEFENSE

Any loss was caused by superseding and/or intervening cause(s) and/or the conduct of third parties for whom Bos is not responsible.

THIRTEENTH DEFENSE

Plaintiffs have failed to mitigate any alleged losses.

FOURTEENTH DEFENSE

This action may not be maintained as a class action.

FIFTEENTH DEFENSE

The Complaint fails to give Bos fair notice of the wrongdoing alleged against him.

SIXTEENTH DEFENSE

The Complaint fails to allege that Bos participated in any inherently wrongful conduct and, therefore, fails to state a claim for individual liability under the antitrust laws.

SEVENTEENTH DEFENSE

Plaintiffs fail to adequately plead, and cannot prove, the existence of an antitrust conspiracy. To the extent, however, Plaintiffs prove the existence of any conspiracy, Bos' retirement from DFA constituted his withdrawal from any conspiracy.

EIGHTEENTH DEFENSE

Plaintiffs' claims against Bos are barred, in whole or in part, because any conduct in which Bos is alleged to have engaged was unilateral, reasonable, and based on independent, legitimate business and economic justification, and was not the product of any illicit contract, combination, or conspiracy between or among Bos and any other persons or entities.

NINETEENTH DEFENSE

Plaintiffs' claims asserted against Bos are barred, in whole or in part, because any conduct in which Bos is alleged to have engaged was not intended to have, and did not have, and is not likely to have any adverse effects on competition in any relevant market, and did not otherwise restrain trade or commerce.

TWENTIETH DEFENSE

Bos adopts by reference all other applicable defenses asserted by all other parties.

TWENTY-FIRST DEFENSE

Bos reserves the right to assert any and all other defenses, including affirmative defenses, that become available during the course of discovery or trial.

PRAYER FOR RELIEF

Bos denies that Plaintiffs and the classes they purport to represent are entitled to judgment in this action or any relief.

DEMAND FOR JURY TRIAL

To the extent Plaintiffs' claims are not disposed of by the Court, Bos demands a jury trial.

Respectfully submitted,

ROUSE HENDRICKS GERMAN MAY PC

By /s/ Brandon Boulware
Charles W. German *pro hac*
Brandon J.B. Boulware *pro hac*
1010 Walnut, Suite 400
Kansas City, MO 64106
Tele: (816) 471-7700
Fax: (816) 471-2221
charleyg@rhgm.com
brandonb@rhgm.com

By /s/ Bradley E. Griffith
Edward T. Brading TN13724
Bradley E. Griffith TN20770
Herndon, Coleman, Brading & McKee
104 E. Main St
Johnson City, TN 37604
Tele: (423) 434-4700
Fax: (423) 434-4738
bgriffith@lawyerfirm.com
ebrading@lawyerfirm.com

ATTORNEYS FOR GERALD L. BOS

CERTIFICATE OF SERVICE

I hereby certify that on July 21, 2008, a copy of the foregoing Answer of Defendant Gerald L. Bos was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt.

/s/ Brandon Boulware

Brandon J.B. Boulware