

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

)	CASE NO. 2:08-MD-01000
IN RE SOUTHEASTERN MILK)	
ANTITRUST LITIGATION)	JUDGE GREER
)	MAGISTRATE JUDGE INMAN
)	
THIS DOCUMENT RELATES TO:)	
)	
ALL CONSOLIDATED CASES)	
)	

**DAIRY FARMERS OF AMERICA, INC.’S ANSWER
TO CONSOLIDATED AMENDED COMPLAINT**

Defendant Dairy Farmers of America, Inc. (“DFA”), through its undersigned counsel, hereby answers and asserts the following affirmative defenses to Plaintiffs’ Consolidated Amended Complaint:

NATURE OF THE CASE

1. DFA admits that Plaintiffs purport to bring an antitrust case against Defendants. DFA denies the remaining allegations in paragraph 1.
2. DFA denies each allegation in paragraph 2.
3. DFA denies each allegation in paragraph 3, including all subparagraphs.
4. DFA denies each allegation in paragraph 4.
5. DFA denies each allegation in paragraph 5.
6. DFA denies each allegation in paragraph 6.
7. DFA denies each allegation in paragraph 7.
8. DFA denies each allegation in paragraph 8.
9. DFA admits that certain Plaintiffs are current or former producers of Grade A milk marketed to bottling plants in the Southeast. DFA is without sufficient

knowledge or information to form a belief as to the truth of the remaining allegations in the first sentence of paragraph 9. DFA denies the remaining allegations in paragraph 9.

10. DFA admits that certain Plaintiffs are current or former DFA members who produce or produced Grade A milk marketed to bottling plants in the Southeast. DFA denies the remaining allegations in paragraph 10.

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

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

JURISDICTION, VENUE AND INTERSTATE COMMERCE

13. Paragraph 13 is a legal statement to which no response is required.

14. Paragraph 14 is a legal statement concerning jurisdiction to which no response is required.

15. Paragraph 15 is a legal statement concerning jurisdiction to which no response is required.

16. Paragraph 16 is a legal statement concerning jurisdiction to which no response is required. To the extent that paragraph 16 requires further response, DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 16.

17. Paragraph 17 is a legal statement concerning venue to which no response is required.

18. DFA admits that it markets fluid Grade A milk in many parts of the United States and receives payments in connection with those sales. DFA further admits that Defendant Dean and Defendant NDH operating subsidiaries purchase raw milk and process milk in various different states in the United States. DFA further admits that Defendant DMS and Defendant SMA engage in business activities in numerous States. DFA further admits that Defendant Mid-Am has engaged in financing activities in connection with DFA investments in certain milk plants. DFA denies the remaining allegations in paragraph 18 as they relate to DFA. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 18.

PARTIES

Plaintiffs

19. DFA admits that Plaintiffs Arwoods operate a dairy farm in Madisonville, Tennessee, and that milk produced by Plaintiffs Arwoods has been sold to milk processors in Orders 5 and/or 7. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 19.

20. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 20.

21. DFA admits that Plaintiff Davis operates a dairy farm in Philadelphia, Tennessee, and that milk produced by Plaintiff Davis has been sold to milk processors in Orders 5 and/or 7. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 21.

22. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 22.

23. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 23.

24. DFA admits that Plaintiff Moore operates a dairy farm in Cleveland, Tennessee, and that milk produced by Plaintiff Moore has been sold to milk processors in Orders 5 and/or 7. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 24.

25. DFA admits that Plaintiff Robey Farms operates a dairy farm in Adairville, Kentucky, and that milk produced by Plaintiff Robey Farms has been sold to milk processors in Orders 5 and/or 7. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 25.

26. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 26.

27. DFA admits that Plaintiff Sweetwater Farms operates a dairy farm in Philadelphia, Tennessee, and that milk produced by Plaintiff Sweetwater Farms has been sold to milk processors in Orders 5 and/or 7. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 27.

28. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 28.

29. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 29.

30. DFA admits that Plaintiffs Baisleys have operated a dairy farm in Crossville, Tennessee, have been members of DFA, and that milk produced by the Baisley Plaintiffs has been sold to milk processors in Orders 5 and/or 7. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 30.

31. DFA admits that Plaintiff Cornett operated a dairy farm in Madisonville, Tennessee, was a member of DFA, and that milk produced by Plaintiff Cornett has been sold to milk processors in Orders 5 and/or 7. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 31.

32. DFA admits that Plaintiff McCain Dairy has operated a dairy farm in Sophia, North Carolina, has been a member of DFA, and that milk produced by Plaintiff McCain Dairy has been sold to milk processors in Orders 5 and/or 7. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 32.

33. DFA admits that Plaintiff Holmes operated a dairy farm in Keatchie, Louisiana, has been a member of DFA, and that milk produced by Plaintiff Holmes has been sold to milk processors in Orders 5 and/or 7. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 33.

Defendants

34. DFA admits that Defendant Dean, either directly or through subsidiaries, owns fluid Grade A milk bottling plants in the Southeast United States. DFA is without

sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 34.

35. DFA admits the allegations in the first sentence of paragraph 35. DFA denies the allegations in the second sentence of paragraph 35. DFA admits that NDH subsidiaries collectively operate eight fluid Grade A milk bottling plants in the Southeast United States. To the extent that paragraph 35 contains additional allegations requiring response, DFA denies all such allegations.

36. DFA admits the allegations in the first sentence of paragraph 36. DFA denies the allegations in the second, third and sixth sentences of paragraph 36. DFA admits that it has ownership interests in certain milk processing plants. DFA denies the remaining allegations in paragraph 36.

37. DFA admits that DMS is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 5001 Brittonfield Parkway, Syracuse, New York, and that DMS' Southeast operations are carried out from offices located at 10411 Cogdill Road, Knoxville, Tennessee 37932. DFA denies the remaining allegations in paragraph 37.

38. DFA admits that SMA is a not-for-profit corporation organized and existing under the laws of the Commonwealth of Kentucky and that its registered agent's office is located at 1812 Waterfront Plaza, 325 West Main Street, Louisville, Kentucky 40202. DFA denies the remaining allegations in paragraph 38.

39. DFA admits the allegations in the first sentence of paragraph 39. DFA admits that Mid-Am Capital is a partially-owned subsidiary of DFA and that it has

engaged in various financing activities in connection with the investment in dairy plants by DFA. DFA denies the remaining allegations in paragraph 39.

40. DFA denies that Defendant Baird is the manager of SMA. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in the first sentence of paragraph 40. DFA denies the allegations in the second and third sentences of paragraph 40.

41. DFA admits the allegations in the first sentence of paragraph 41. DFA admits that Defendant Hanman served on the management committee of Dairy Management LLC during the period when it was the general partner of Defendant NDH. DFA denies the remaining allegations in paragraph 41.

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

Co-conspirators

43. DFA denies each allegation in paragraph 43.

44. DFA admits that Plaintiffs purport to level all averments contained in the Consolidated Amended Complaint against any Defendant against all unnamed Co-conspirators. To the extent that paragraph 44 contains additional allegations requiring a response, DFA denies each such allegation.

45. DFA denies each allegation in paragraph 45.

OVERVIEW OF THE RELEVANT MARKETS

46. DFA admits the allegations in the first sentence of paragraph 46. DFA admits that milk is often produced on a daily basis. DFA denies the remaining allegations in the second sentence of paragraph 46. DFA admits that many dairy farmers

milk their cows at least twice a day. DFA admits that certain fluid Grade A milk bottling plants prepare some of the Grade A milk processed at their plants for human consumption by processing the milk in bottles or cartons for wholesale or retail sale. DFA denies the remaining allegations in the fourth and fifth sentences of paragraph 46. The sixth sentence of paragraph 46 contains a legal conclusion that does not require a response.

47. Paragraph 47 contains legal conclusions that do not require a response. To the extent a response is required, DFA denies the allegations in the first and second sentences of paragraph 47 to the extent that they are inconsistent with the referenced regulations, and denies the allegations in the third sentence of paragraph 47.

48. Paragraph 48 contains legal conclusions that do not require a response. To the extent a response is required, DFA denies the allegations in paragraph 48 to the extent that they are inconsistent with the referenced regulations.

49. DFA admits that on a monthly basis milk market administrators calculate, according to a formula established by the Secretary of Agriculture, the minimum price for each class of Grade A milk for each Order. DFA denies that 10 Federal Milk Market Orders comprise the entire geographic area in the United States where milk is produced. DFA admits that Plaintiffs' Consolidated Amended Complaint purports to address only raw Grade A milk that is marketed to, sold to, or purchased by fluid Grade A milk bottling plants in Orders 5 and 7. DFA denies the remaining allegations in Paragraph 49.

50. Paragraph 50 contains legal conclusions that do not require a response. To the extent a response is required, DFA denies the allegations in paragraph 50 to the extent that they are inconsistent with the referenced regulations.

51. DFA admits the first sentence in paragraph 51. The remaining allegations in paragraph 51 consist of hypotheticals to which no legal response is required. To the extent a response is required, DFA states that the alleged hypothetical does not accurately and completely explain the manner in which minimum blend prices are determined.

52. DFA admits that there are seasonal and other variations in Grade A milk production and demand, that Class I utilization frequently varies between Orders, and that dairy farmers are not evenly distributed throughout the United States. DFA further admits that demand for bottled fluid Grade A milk has exceeded production in Orders 5 and 7, and admits that Class I utilization has exceeded 70 percent in Orders 5 and 7 during certain time periods, and that Class I utilization in Order 126 has been as low as 40% during certain time periods. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 52.

53. DFA denies each allegation in paragraph 53.

54. The first sentence of paragraph 54 contains legal conclusions that do not require a response. To the extent a response is required, DFA denies the allegations in the first sentence of paragraph 54 to the extent that they are inconsistent with the referenced regulations. DFA admits that dairy farmers and cooperatives can attempt to negotiate prices for milk that exceed the FMMO minimum blend prices, and that the price negotiated above the minimum blend price is sometimes referred to as an “over-order premium.” DFA denies the remaining allegations in paragraph 54.

55. DFA admits that the term “mailbox price” is used in the dairy industry and that within DFA, the mailbox price is the net price that DFA members receive for their milk after deductions for costs incurred in connection with the marketing, sale and

delivery of raw milk to dairy processors. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in the first, second and third sentences of paragraph 55.

56. The first and second sentences of paragraph 56 contain legal conclusions that do not require a response. To the extent a response is required to the first and second sentences of paragraph 56, DFA denies such allegations. DFA admits that Elvin Hollon has testified as an expert on behalf of SMA, but denies that Mr. Hollon has testified to the existence of the relevant antitrust market alleged by Plaintiffs. To the extent that paragraph 56 contains additional allegations requiring response, DFA denies all such allegations.

57. The first sentence of paragraph 57 contains legal conclusions that do not require a response. To the extent a response is required, DFA denies the allegations in the first sentence of paragraph 57. DFA denies the allegations in the second sentence of paragraph 57.

58. The first sentence of paragraph 58 contains legal conclusions that do not require a response. To the extent a response is required, DFA denies the allegations in the first sentence of paragraph 58. DFA denies the allegations in the second sentence of paragraph 58.

59. The first sentence of paragraph 59 contains legal conclusions that do not require a response. To the extent a response is required, DFA denies the allegations in the first sentence of paragraph 59. DFA denies the allegations in the second and third sentences of paragraph 59.

60. DFA denies each allegation in paragraph 60.

DAIRY FARMERS AND MILK BOTTLERS

61. DFA admits that dairy cooperatives are associations of dairy farmers who agree to market collectively their dairy products, and that are owned by their member farmers. DFA states that it has marketed its members' milk and/or participated in milk marketing agencies that market its members' milk. DFA denies the remaining allegations in paragraph 61.

62. DFA admits the allegations in the first sentence of paragraph 62. DFA admits that some dairy farmers seek to remain independent of cooperatives and that some of these dairy farmers are referred to as "independent dairy farmers." DFA denies the remaining allegations in paragraph 62.

63. DFA admits that it is the largest dairy cooperative in the United States. DFA further admits that it markets its members' milk in certain areas of the United States, participates in milk marketing agencies that market its members' milk in other areas of the United States, and has ownership interests in entities that operate milk processing plants. DFA further admits that it performs or arranges for the provision of various services for its members and charges its members for certain services. To the extent that paragraph 63 contains additional allegations requiring response, DFA denies all such allegations.

64. DFA denies the allegations in paragraph 64.

65. DFA admits that there are dairy cooperatives aside from DFA, including the Maryland & Virginia Milk Producers Cooperative, that market milk in the Southeast United States. DFA denies the remaining allegations in paragraph 65.

66. DFA admits that fluid Grade A milk is essential to Grade A milk bottling operations. DFA denies the remaining allegations in paragraph 66 as they pertain to DFA. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 66.

67. DFA denies the allegations in paragraph 67.

DEFENDANTS' DOMINANCE AND PREDATORY CONDUCT

Overview

68. DFA denies the allegations in paragraph 68.

69. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in the first and second sentences of paragraph 69. DFA denies the remaining allegations in paragraph 69.

70. DFA denies the allegations in paragraph 70.

Consolidation In The Industry

71. DFA admits that by the end of 2000, it was the largest dairy cooperative in the United States. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in the third sentence of paragraph 71, and the remaining allegations in paragraph 71 as they pertain to other Defendants. DFA denies the remaining allegations in paragraph 71, including the remaining allegations pertaining to DFA.

72. DFA admits the allegations in the first sentence of paragraph 72. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence of paragraph 72. DFA admits that certain milk processing plants were acquired by NDH in connection with the Dean-Suiza merger.

DFA further admits that it sold its ownership interest in Suiza in connection with the Dean-Suiza merger. DFA denies the remaining allegations in paragraph 72.

73. DFA denies the allegations in the first sentence of paragraph 73. DFA admits that it has owned at least a 50 percent equity and voting interest in NDH since NDH was formed, and that DFA recently increased its ownership interest in NDH. DFA denies the remaining allegations in paragraph 73.

74. The allegations in the first two sentences of this paragraph are Plaintiffs' characterizations of agreements which are in writing and speak for themselves. DFA denies Plaintiffs' characterizations of those agreements to the extent they are inconsistent with the agreements themselves. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 74.

75. DFA denies the allegations in paragraph 75.

76. DFA admits that Dean or Dean subsidiaries operate Grade A milk processing plants in the Southeast. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in the first sentence of paragraph 76. DFA admits that NDH operating subsidiaries operate 8 milk processing plants in Federal Orders 5 and 7, and that DFA has ownership interests in milk processing plants in the Southeast. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in the second and third sentences of paragraph 76. DFA denies the allegations in the fourth sentence of paragraph 76. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in the fifth sentence of paragraph 76. DFA denies the allegations in the sixth sentence of paragraph 76. DFA admits that it has full-supply agreements with certain

milk processing plants in the Southeast. DFA denies the allegations in the eighth sentence of paragraph 76. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in the eighth sentence of paragraph 76. DFA denies the allegations in the ninth sentence of paragraph 76. To the extent that there are remaining allegations in paragraph 76 requiring response, DFA denies all such allegations.

77. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence of paragraph 77. DFA states that Grade A milk balancing plants often convert bulk supplies of surplus Grade A milk into storable, non-fluid commodities. DFA denies the remaining allegations in paragraph 77.

78. DFA denies the allegations in paragraph 78.

Defendants Full-Supply Agreements, Foreclosure and Price-Fixing

79. DFA denies the allegations in paragraph 79.

80. DFA denies the allegations in paragraph 80.

81. DFA denies the allegations in paragraph 81.

82. DFA denies the allegations in paragraph 82.

83. DFA denies the allegations in paragraph 83.

84. DFA denies the allegations in paragraph 84.

85. DFA denies the allegations in paragraph 85.

86. DFA denies the allegations in the first sentence of paragraph 86 as they pertain to DFA. DFA is without sufficient knowledge or information to form a belief as to whether the allegations in the second and third sentences of paragraph 86 may be attributed to the DOJ. DFA denies the remaining allegations in paragraph 86.

87. DFA denies the allegations in paragraph 87.

88. DFA denies the allegations in paragraph 88.

89. DFA denies the allegations in paragraph 89.

90. DFA denies the allegations in paragraph 90.

91. DFA denies the allegations in paragraph 91.

92. DFA denies the allegations in paragraph 92, including all subparagraphs, as they pertain to DFA. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 92, including all subparagraphs, as they pertain to other Defendants.

93. DFA denies the allegations in paragraph 93.

94. DFA denies the allegations in paragraph 94.

95. DFA denies the allegations in paragraph 95.

96. DFA denies the allegations in paragraph 96.

97. DFA denies the allegations in paragraph 97.

98. DFA denies the allegations in paragraph 98.

99. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in the first sentence of paragraph 99. DFA denies the remaining allegations in paragraph 99.

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

100. DFA admits that it is a dairy cooperative organized under the Kansas Cooperative Marketing Act, and that it has approximately 3000 members in the DFA Southeast region. DFA states that it has executed written membership agreements with some but not all of its members, and that the DFA Bylaws are incorporated by reference in

certain written membership agreements executed by DFA and its members, but denies that there is a single, identical membership and marketing agreement that every DFA member has signed. DFA admits that the current Bylaws of DFA and certain DFA Membership and Marketing Agreements contain the excerpts set forth in paragraph 100, but DFA denies that those excerpts contain all of the relevant articles and provisions at issue in this action.

101. DFA denies the allegations in the first sentence of paragraph 101. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence of paragraph 101. DFA denies the allegations in the third sentence of paragraph 101.

102. DFA denies the allegations in the first sentence of paragraph 102. DFA denies the allegations in the second sentence of paragraph 102. DFA admits that it has acquired ownership interests in certain Grade A milk bottlers, including Southern Belle, HP Hood LLC, Turner Holdings, LLC, Wilcox Dairy Farms LLC, and Melody Farms, L.L.C., has acquired ownership interests in certain entities that manufacture wholesale and/or retail cheese or dairy products, including DairiConcepts L.P., and Dietrich Milk Products LLC., and has acquired an ownership interest in Dairy.com. DFA further admits that it acquired certain Borden assets, and has ownership interests in Southwest Cheese Company L.L.C. and Melrose Dairy Products LLC, which also manufacture cheese products. To the extent that paragraph 102 contains additional allegations requiring response, DFA denies all such allegations.

103. The allegations in paragraph 103 are Plaintiffs' characterizations of agreements which are in writing and speak for themselves. DFA denies Plaintiffs'

characterizations of those agreements to the extent they are inconsistent with the agreements themselves. DFA admits that Suiza and DFA entered into a joint venture to form the Suiza Dairy Group in January 2000, that DFA contributed its share of Southern Foods Group to the joint venture, and that DFA obtained an ownership interest of approximately 33.8 percent in the Suiza Dairy Group. DFA further admits that Pete Schenkel became a member of Dean's Board of Directors and became Vice Chairman of Dean's Board in January 2006, and that Allen Meyer served as Chief Executive Officer of NDH. DFA denies the remaining allegations in paragraph 103.

104. DFA denies the allegations in paragraph 104.

105. DFA admits that Gregg Engels is Chief Executive Officer and Chairman of the Board of Dean, and that he was an executive of Suiza prior to the merger with Dean. DFA admits that Robert Allen was an executive with Borden. DFA denies the remaining allegations in paragraph 105.

106. The allegations in paragraph 106 are Plaintiffs' characterizations of agreements and transactions which are in writing and speak for themselves. DFA denies Plaintiffs' characterizations of those agreements to the extent they are inconsistent with the agreements themselves. To the extent that paragraph 106 contains additional allegations requiring response, DFA denies all remaining allegations.

107. DFA admits that SMA is an entity that was formed to market the Grade A milk sold in the Southeast by its cooperative members, and that SMA began operating in April 2002. DFA further admits that Jay Bryant is the General Manager of the Maryland & Virginia Milk Producers Cooperative and is a member of SMA's operations committee, and that Michael McCloskey is affiliated with Fair Oaks Dairy Farm, Select

Milk Producers, Inc. and Continental Dairy Products, Inc. DFA denies the remaining allegations in paragraph 107.

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

109. DFA denies the allegations of paragraph 109.

110. DFA denies the allegations of paragraph 110.

111. DFA denies the allegations in paragraph 111.

112. DFA denies the allegations in paragraph 112.

Concealment and Tolling

113. DFA denies the allegations in paragraph 113.

114. DFA denies the allegations in paragraph 114.

CLASS ACTION ALLEGATIONS

115. DFA admits that Plaintiffs purport to bring this case as a class action on behalf of the classes alleged. DFA denies that this action can be prosecuted as a class action. To the extent that paragraph 115 contains additional allegations requiring response, DFA denies all such allegations.

116. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 116.

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

118. DFA denies the allegations in paragraph 118.

119. DFA denies the allegations in paragraph 119.

120. DFA denies the allegations in paragraph 120.

121. DFA denies the allegations in the first sentence of paragraph 121. DFA is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 121.

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

122. DFA incorporates its answers to paragraphs 1 through 99 as if set forth herein.

123. DFA denies the allegations in paragraph 123.

124. DFA denies the allegations in paragraph 124.

125. DFA denies the allegations in paragraph 125.

126. DFA denies the allegations in paragraph 126.

127. DFA denies the allegations in paragraph 127.

128. DFA denies the allegations in paragraph 128.

129. DFA admits that Plaintiffs purport to seek money damages in this action. DFA denies the remaining allegations in paragraph 129.

130. DFA admits that Plaintiffs purport to seek injunctive relief in this action. DFA denies the remaining allegations in paragraph 130.

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

131. DFA incorporates its answers to paragraphs 1 through 99 as if set forth herein.

132. DFA denies the allegations in paragraph 132.

133. DFA denies the allegations in paragraph 133.

- 134. DFA denies the allegations in paragraph 134.
- 135. DFA denies the allegations in paragraph 135.
- 136. DFA denies the allegations in paragraph 136.
- 137. DFA denies the allegations in paragraph 137.
- 138. DFA denies the allegations in paragraph 138.
- 139. DFA denies the allegations in paragraph 139.
- 140. DFA denies the allegations in paragraph 140.
- 141. DFA admits that Plaintiffs purport to seek money damages in this action.

DFA denies the remaining allegations in paragraph 141.

- 142. DFA admits that Plaintiffs purport to seek injunctive relief in this action.

DFA denies the remaining allegations in paragraph 142.

COUNT THREE
SHERMAN ACT SECTION 2 VIOLATION
Unlawful Monopolization

143. DFA incorporates its answers to paragraphs 1 through 99 as if set forth herein.

- 144. DFA denies the allegations in paragraph 144.
- 145. DFA denies the allegations in paragraph 145.
- 146. DFA denies the allegations in paragraph 146.
- 147. DFA denies the allegations in paragraph 147.
- 148. DFA admits that Plaintiffs purport to seek money damages in this action.

DFA denies the remaining allegations in paragraph 148.

- 149. DFA admits that Plaintiffs purport to seek injunctive relief in this action.

DFA denies the remaining allegations in paragraph 149.

COUNT FOUR
SHERMAN ACT SECTION 2 VIOLATON
Unlawful Monopsony

150. DFA incorporates its answers to paragraphs 1 through 99 as if set forth herein.

151. DFA denies the allegations in paragraph 151.

152. DFA denies the allegations in paragraph 152.

153. DFA denies the allegations in paragraph 153.

154. DFA denies the allegations in paragraph 154.

155. DFA denies the allegations in paragraph 155.

156. DFA denies the allegations in paragraph 156.

157. DFA denies the allegations in paragraph 157.

158. DFA admits that Plaintiffs purport to seek money damages in this action.

DFA denies the remaining allegations in paragraph 158.

159. DFA admits that Plaintiffs purport to seek injunctive relief in this action.

DFA denies the remaining allegations in paragraph 159.

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

160. DFA incorporates its answers to paragraphs 1 through 99 as if set forth herein.

161. DFA denies the allegations in paragraph 161.

162. DFA denies the allegations in paragraph 162.

163. DFA denies the allegations in paragraph 163.

164. DFA denies the allegations in paragraph 164.

165. DFA denies the allegations in paragraph 165.

166. DFA denies the allegations in paragraph 166.

167. DFA denies the allegations in paragraph 167.

168. DFA denies the allegations in paragraph 168.

169. DFA admits that Plaintiffs purport to seek money damages in this action.

DFA denies the remaining allegations in paragraph 169.

170. DFA admits that Plaintiffs purport to seek injunctive relief in this action.

DFA denies the remaining allegations in paragraph 170.

COUNT SIX
AGAINST DFA
Breach of Contract

171. DFA incorporates its answers to paragraphs 1 through 112 as if set forth herein.

172. DFA states that it has executed a written member agreement with some but not all dairy farmers that market milk through DFA, and denies that there is a single, identical membership agreement that has been executed by all DFA members.

173. DFA admits that certain executed written membership agreements contain the truncated excerpts quoted in paragraph 173, but DFA denies that such provisions represent all relevant provisions in the agreements.

174. DFA admits that certain executed written membership agreements contain the truncated excerpts quoted in paragraph 174, but DFA denies that such provisions represent all relevant provisions in the agreements.

175. DFA admits that certain executed written membership agreements incorporate the DFA Bylaws, and that the truncated excerpts of certain articles quoted in

paragraph 175 are contained within the current DFA Bylaws. DFA denies that such excerpted articles contain all relevant provisions in the DFA membership agreements or the DFA Bylaws.

176. DFA denies the allegations in paragraph 176.

177. DFA is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 177.

178. DFA denies the allegations in paragraph 178.

JURY TRIAL DEMAND

DFA demands a trial by jury of all issues triable by a jury.

PRAYER FOR RELIEF

DFA denies that Plaintiffs and the classes that they purport to represent are entitled to class certification, judgment in this action or any relief whatsoever.

AFFIRMATIVE AND OTHER DEFENSES

DFA asserts the following defenses without assuming the burden of proof as to any issue or element that otherwise rests with Plaintiffs.

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 have not suffered antitrust injury.

NINTH DEFENSE

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

TENTH DEFENSE

Plaintiffs' claims are barred in whole or in part by the doctrine of ratification.

ELEVENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because they have not suffered any injury or damages.

TWELFTH DEFENSE

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

THIRTEENTH DEFENSE

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

FOURTEENTH DEFENSE

Plaintiffs have failed to mitigate any alleged losses.

FIFTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, because their alleged damages, if any, are too remote and/or speculative to allow recovery and because determining whether, or to what extent, Plaintiffs were damaged is impossible.

SIXTEENTH DEFENSE

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

SEVENTEENTH DEFENSE

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

WHEREFORE, having fully answered all of the allegations of the Complaint to which any answer was required, Defendant DFA prays that the Consolidated Amended

Complaint be dismissed with prejudice and that DFA be awarded its costs and expenses incurred as a result of having to defend this action.

Dated: July 21, 2008

Respectfully submitted,

/s/ Steven R. Kuney
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CERTIFICATE OF SERVICE

I hereby certify that on July 21, a copy of the foregoing Answer of Defendant Dairy Farmers of America, Inc. 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. Parties may access this filing through the Court's electronic filing system.

/s/ John E. Schmidlein

John E. Schmidlein