

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

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

**MID-AM CAPITAL, LLC'S ANSWER  
TO CONSOLIDATED AMENDED COMPLAINT**

Defendant Mid-Am Capital, LLC (“Mid-Am”), through its undersigned counsel, hereby answers and asserts the following affirmative defenses to Plaintiffs’ Consolidated Amended Complaint:

**NATURE OF THE CASE**

1. Mid-Am admits that Plaintiffs purport to bring an antitrust case against Defendants. Mid-Am denies the remaining allegations in paragraph 1.
2. Mid-Am denies each allegation in paragraph 2.
3. Mid-Am denies each allegation in paragraph 3, including all subparagraphs.
4. Mid-Am denies each allegation in paragraph 4.
5. Mid-Am denies each allegation in paragraph 5.
6. Mid-Am denies each allegation in paragraph 6.
7. Mid-Am denies each allegation in paragraph 7.
8. Mid-Am denies each allegation in paragraph 8.

9. Mid-Am admits that certain Plaintiffs are current or former producers of Grade A milk marketed to bottling plants in the Southeast. Mid-Am 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. Mid-Am denies the remaining allegations in paragraph 9.

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

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

12. Mid-Am admits that Plaintiffs purport to seek the relief set forth in paragraph 12. Mid-Am 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, Mid-Am

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

## **PARTIES**

### **Plaintiffs**

19. Mid-Am 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. Mid-Am is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 19.

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

21. Mid-Am 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. Mid-Am is without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 21.

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

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

24. Mid-Am 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. Mid-Am is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 24.

25. Mid-Am 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. Mid-AM is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 25.

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

27. Mid-Am 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. Mid-Am is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 27.

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

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

30. Mid-Am 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. Mid-Am is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 30.

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

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

33. Mid-Am admits that Plaintiff Holmes operated a dairy farm in Keatchie, Louisiana, has been a member of DMS, and that milk produced by Plaintiff Holmes has been sold to milk processors in Orders 5 and/or 7. Mid-Am is without sufficient

knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 33.

### **Defendants**

34. Mid-Am admits that Defendant Dean, either directly or through subsidiaries, owns fluid Grade A milk bottling plants in the Southeast United States. Mid-Am is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 34.

35. Mid-Am admits the allegations in the first sentence of paragraph 35. Mid-Am denies the allegations in the second sentence of paragraph 35. Mid-Am 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, Mid-Am denies all such allegations.

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

37. Mid-Am 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. Mid-Am denies the remaining allegations in paragraph 37.

38. Mid-Am 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. Mid-Am denies the remaining allegations in paragraph 38.

39. Mid-Am admits the allegations in the first sentence of paragraph 39. Mid-Am admits that it 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. Mid-Am denies the remaining allegations in paragraph 39.

40. Mid-Am denies that Defendant Baird is the manager of SMA. Mid-Am 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. Mid-Am denies the allegations in the second and third sentences of paragraph 40.

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

42. Mid-Am admits the allegations in the first and second sentences of paragraph 42. Mid-Am denies the allegations in the third sentence of paragraph 42.

#### **Co-conspirators**

43. Mid-Am denies each allegation in paragraph 43.

44. Mid-Am 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, Mid-Am denies each such allegation.

45. Mid-Am denies each allegation in paragraph 45.

## **OVERVIEW OF THE RELEVANT MARKETS**

46. Mid-Am admits the allegations in the first sentence of paragraph 46. Mid-Am admits that milk is often produced on a daily basis. Mid-Am denies the remaining allegations in the second sentence of paragraph 46. Mid-Am admits that many dairy farmers milk their cows at least twice a day. Mid-Am 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. Mid-Am 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, Mid-Am 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, Mid-Am denies the allegations in paragraph 48 to the extent that they are inconsistent with the referenced regulations.

49. Mid-Am 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. Mid-Am denies that 10 Federal Milk Market Orders comprise the entire geographic area in the United States where milk is produced. Mid-Am 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. Mid-Am 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, Mid-Am denies the allegations in paragraph 50 to the extent that they are inconsistent with the referenced regulations.

51. Mid-Am 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, Mid-Am states that the alleged hypothetical does not accurately and completely explain the manner in which minimum blend prices are determined.

52. Mid-Am 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. Mid-Am 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. Mid-Am is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 52.

53. Mid-Am 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, Mid-Am denies the allegations in the first sentence of paragraph 54 to the extent that they are inconsistent with the referenced regulations. Mid-Am 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.” Mid-Am denies the remaining allegations in paragraph 54.

55. Mid-Am admits that the term “mailbox price” is used in the dairy industry and that within some cooperatives, the mailbox price is the net price that cooperative members receive for their milk after deductions for costs incurred in connection with the marketing, sale and delivery of raw milk to dairy processors. Mid-Am 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, Mid-Am denies such allegations. Mid-Am 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, Mid-Am 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, Mid-Am denies the allegations in the first sentence of paragraph 57. Mid-Am 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, Mid-Am denies the allegations

in the first sentence of paragraph 58. Mid-Am 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, Mid-Am denies the allegations in the first sentence of paragraph 59. Mid-Am denies the allegations in the second and third sentences of paragraph 59.

60. Mid-Am denies each allegation in paragraph 60.

### **DAIRY FARMERS AND MILK BOTTLERS**

61. Mid-Am 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. Mid-Am states that cooperatives often market their members' milk and/or participate in milk marketing agencies that market their members' milk. Mid-Am denies the remaining allegations in paragraph 61.

62. Mid-Am admits the allegations in the first sentence of paragraph 62. Mid-Am 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." Mid-Am denies the remaining allegations in paragraph 62.

63. Mid-Am admits that DFA is the largest dairy cooperative in the United States. Mid-Am further admits that DFA 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. Mid-Am further admits that DFA 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, Mid-Am denies all such allegations.

64. Mid-Am denies the allegations in paragraph 64.

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

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

67. Mid-Am denies the allegations in paragraph 67.

## **DEFENDANTS' DOMINANCE AND PREDATORY CONDUCT**

### **Overview**

68. Mid-Am denies the allegations in paragraph 68.

69. Mid-Am 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. Mid-Am denies the remaining allegations in paragraph 69.

70. Mid-Am denies the allegations in paragraph 70.

### **Consolidation In The Industry**

71. Mid-Am admits that by the end of 2000, DFA was the largest dairy cooperative in the United States. Mid-Am 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. Mid-Am denies the remaining allegations in paragraph 71.

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

73. Mid-Am denies the allegations in the first sentence of paragraph 73. Mid-Am admits that DFA 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. Mid-Am 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. Mid-Am denies Plaintiffs' characterizations of those agreements to the extent they are inconsistent with the agreements themselves. Mid-Am is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in paragraph 74.

75. Mid-Am denies the allegations in paragraph 75.

76. Mid-Am admits that Dean or Dean subsidiaries operate Grade A milk processing plants in the Southeast. Mid-Am 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. Mid-Am 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. Mid-Am 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. Mid-Am denies the allegations in the fourth sentence of paragraph 76. Mid-Am is without sufficient knowledge or information to form a belief as to the truth of the allegations in the fifth sentence of paragraph 76. Mid-Am denies the allegations in the sixth sentence of paragraph 76. Mid-Am admits that DFA has full-supply agreements with certain milk processing plants in the Southeast. Mid-Am denies the allegations in the eighth sentence of paragraph 76. Mid-Am 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. Mid-Am denies the allegations in the ninth sentence of paragraph 76. To the extent that there are remaining allegations in paragraph 76 requiring response, Mid-Am denies all such allegations.

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

78. Mid-Am denies the allegations in paragraph 78.

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

79. Mid-Am denies the allegations in paragraph 79.

80. Mid-Am denies the allegations in paragraph 80.

81. Mid-Am denies the allegations in paragraph 81.

82. Mid-Am denies the allegations in paragraph 82.

83. Mid-Am denies the allegations in paragraph 83.

84. Mid-Am denies the allegations in paragraph 84.

85. Mid-Am denies the allegations in paragraph 85.

86. Mid-Am denies the allegations in the first sentence of paragraph 86 as they pertain to Mid-Am. Mid-Am 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. Mid-Am denies the remaining allegations in paragraph 86.

87. Mid-Am denies the allegations in paragraph 87.

88. Mid-Am denies the allegations in paragraph 88.

89. Mid-Am denies the allegations in paragraph 89.

90. Mid-Am denies the allegations in paragraph 90.

91. Mid-Am denies the allegations in paragraph 91.

92. Mid-Am denies the allegations in paragraph 92, including all subparagraphs, as they pertain to Mid-Am. Mid-Am 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. Mid-Am denies the allegations in paragraph 93.

94. Mid-Am denies the allegations in paragraph 94.

95. Mid-Am denies the allegations in paragraph 95.

96. Mid-Am denies the allegations in paragraph 96.

97. Mid-Am denies the allegations in paragraph 97.

98. Mid-Am denies the allegations in paragraph 98.

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

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

100. Mid-Am admits that DFA is a dairy cooperative organized under the Kansas Cooperative Marketing Act, and that it has approximately 3000 members in the DFA Southeast region. Mid-Am states that DFA 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. Mid-Am admits that the current Bylaws of DFA and certain DFA Membership and Marketing Agreements contain the excerpts set forth in paragraph 100, but Mid-Am denies that those excerpts contain all of the relevant articles and provisions at issue in this action.

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

102. Mid-Am denies the allegations in the first sentence of paragraph 102. Mid-Am denies the allegations in the second sentence of paragraph 102. Mid-Am admits that DFA 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. Mid-Am further admits that DFA 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, Mid-Am denies all such allegations.

103. The allegations in paragraph 103 are Plaintiffs' characterizations of agreements which are in writing and speak for themselves. Mid-Am denies Plaintiffs' characterizations of those agreements to the extent they are inconsistent with the agreements themselves. Mid-Am 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. Mid-Am 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. Mid-Am denies the remaining allegations in paragraph 103.

104. Mid-Am denies the allegations in paragraph 104.

105. Mid-Am 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. Mid-Am admits that Robert Allen was an executive with Borden. Mid-Am 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. Mid-Am

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, Mid-Am denies all remaining allegations.

107. Mid-Am 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. Mid-Am 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. Mid-Am denies the remaining allegations in paragraph 107.

108. Mid-Am denies the allegations in paragraph 108, including the subparagraphs.

109. Mid-Am denies the allegations of paragraph 109.

110. Mid-Am denies the allegations of paragraph 110.

111. Mid-Am denies the allegations in paragraph 111.

112. Mid-Am denies the allegations in paragraph 112.

#### **Concealment and Tolling**

113. Mid-Am denies the allegations in paragraph 113.

114. Mid-Am denies the allegations in paragraph 114.

#### **CLASS ACTION ALLEGATIONS**

115. Mid-Am admits that Plaintiffs purport to bring this case as a class action on behalf of the classes alleged. Mid-Am denies that this action can be prosecuted as a

class action. To the extent that paragraph 115 contains additional allegations requiring response, Mid-Am denies all such allegations.

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

117. Mid-Am denies the allegations in paragraph 117, including all subparagraphs.

118. Mid-Am denies the allegations in paragraph 118.

119. Mid-Am denies the allegations in paragraph 119.

120. Mid-Am denies the allegations in paragraph 120.

121. Mid-Am denies the allegations in the first sentence of paragraph 121.

Mid-Am 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. Mid-Am incorporates its answers to paragraphs 1 through 99 as if set forth herein.

123. Mid-Am denies the allegations in paragraph 123.

124. Mid-Am denies the allegations in paragraph 124.

125. Mid-Am denies the allegations in paragraph 125.

126. Mid-Am denies the allegations in paragraph 126.

127. Mid-Am denies the allegations in paragraph 127.

128. Mid-Am denies the allegations in paragraph 128.

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

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

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

131. Mid-Am incorporates its answers to paragraphs 1 through 99 as if set forth herein.

132. Mid-Am denies the allegations in paragraph 132.

133. Mid-Am denies the allegations in paragraph 133.

134. Mid-Am denies the allegations in paragraph 134.

135. Mid-Am denies the allegations in paragraph 135.

136. Mid-Am denies the allegations in paragraph 136.

137. Mid-Am denies the allegations in paragraph 137.

138. Mid-Am denies the allegations in paragraph 138.

139. Mid-Am denies the allegations in paragraph 139.

140. Mid-Am denies the allegations in paragraph 140.

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

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

**COUNT THREE**  
**SHERMAN ACT SECTION 2 VIOLATION**  
**Unlawful Monopolization**

143. Mid-Am incorporates its answers to paragraphs 1 through 99 as if set forth herein.

144. Mid-Am denies the allegations in paragraph 144.

145. Mid-Am denies the allegations in paragraph 145.

146. Mid-Am denies the allegations in paragraph 146.

147. Mid-Am denies the allegations in paragraph 147.

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

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

**COUNT FOUR**  
**SHERMAN ACT SECTION 2 VIOLATON**  
**Unlawful Monopsony**

150. Mid-Am incorporates its answers to paragraphs 1 through 99 as if set forth herein.

151. Mid-Am denies the allegations in paragraph 151.

152. Mid-Am denies the allegations in paragraph 152.

153. Mid-Am denies the allegations in paragraph 153.

154. Mid-Am denies the allegations in paragraph 154.

155. Mid-Am denies the allegations in paragraph 155.

156. Mid-Am denies the allegations in paragraph 156.

157. Mid-Am denies the allegations in paragraph 157.

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

159. Mid-Am admits that Plaintiffs purport to seek injunctive relief in this action. Mid-Am 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. Mid-Am incorporates its answers to paragraphs 1 through 99 as if set forth herein.

161. Mid-Am denies the allegations in paragraph 161.

162. Mid-Am denies the allegations in paragraph 162.

163. Mid-Am denies the allegations in paragraph 163.

164. Mid-Am denies the allegations in paragraph 164.

165. Mid-Am denies the allegations in paragraph 165.

166. Mid-Am denies the allegations in paragraph 166.

167. Mid-Am denies the allegations in paragraph 167.

168. Mid-Am denies the allegations in paragraph 168.

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

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

**COUNT SIX**  
**AGAINST DFA**  
**Breach of Contract**

171. Mid-Am incorporates its answers to paragraphs 1 through 112 as if set forth herein.

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

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

175. Mid-Am 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. Mid-Am denies that such excerpted articles contain all relevant provisions in the DFA membership agreements or the DFA Bylaws.

176. Mid-Am denies the allegations in paragraph 176.

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

178. Mid-Am denies the allegations in paragraph 178.

#### **JURY TRIAL DEMAND**

Mid-Am demands a trial by jury of all issues triable by a jury.

#### **PRAYER FOR RELIEF**

Mid-Am 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**

Mid-Am 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, because they have not suffered any injury or damages.

**ELEVENTH DEFENSE**

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

**TWELFTH DEFENSE**

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

**THIRTEENTH DEFENSE**

Plaintiffs have failed to mitigate any alleged losses.

**FOURTEENTH 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.

**FIFTEENTH DEFENSE**

Mid-Am adopts by reference all other applicable defenses asserted by all other parties.

**SIXTEENTH DEFENSE**

Mid-Am 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 Mid-Am prays that the Consolidated Amended Complaint be dismissed with prejudice and that Mid-Am 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

Steven R. Kuney  
John E. Schmidlein  
Williams & Connolly LLP  
725 Twelfth Street, N.W.  
Washington, D.C. 20005  
Tel: (202) 434-5000  
skuney@wc.com  
jschmidlein@wc.com

W. Todd Miller  
Baker & Miller PLLC  
2401 Pennsylvania Avenue, N.W.  
Suite 300  
Washington, D.C. 20037  
Tel: (202) 663-7820

tmiller@bakerandmiller.com

G.P. Gaby  
Milligan & Coleman  
P.O. Box 1060  
Greeneville, TN 37744-1060  
Tel: (423) 639-6811  
sweems@milligancoleman.com

*Attorneys for Defendant Mid-Am Capital,  
LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on July 21, a copy of the foregoing Answer of Defendant Mid-Am Capital, LLC 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