

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

IN RE SOUTHEASTERN MILK ANTITRUST LITIGATION	:	
	:	No. 2:08-MD-1000
	:	
	:	
THIS DOCUMENT RELATES TO:	:	
	:	Judge J. Ronnie Greer
<i>All Consolidated Cases.</i>	:	
	:	Magistrate Judge Dennis H. Inman
	:	
	:	

**DEFENDANT NATIONAL DAIRY HOLDINGS, LP's
ANSWER TO PLAINTIFFS' CONSOLIDATED AMENDED COMPLAINT**

Defendant National Dairy Holdings, LP (“NDH” or “Defendant”) files its Answer to Plaintiffs’ Consolidated Amended Complaint (the “Complaint”).

NATURE OF THE CASE

1. NDH admits only that Plaintiffs purport to bring an antitrust case against Defendants. NDH denies the remaining allegations in paragraph 1 of the Complaint.
2. NDH denies the allegations in paragraph 2 of the Complaint.
3. NDH denies the allegations in paragraph 3, including all sub-parts.
4. NDH denies the allegations in paragraph 4 of the Complaint.
5. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations against others in paragraph 5 of the Complaint and therefore denies the same. To the extent the allegations in paragraph 5 are intended to refer to NDH, NDH denies such allegations.
6. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Complaint and therefore denies the same.

7. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations against others in paragraph 7 of the Complaint and therefore denies the same. To the extent the allegations in paragraph 7 are intended to refer to NDH, NDH denies such allegations.

8. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations against others in paragraph 8 of the Complaint and therefore denies the same. To the extent the allegations in paragraph 8 are intended to refer to NDH, NDH denies such allegations.

9. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 9 of the Complaint and therefore denies the same. NDH denies the remaining allegations in paragraph 9.

10. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 10 of the Complaint and therefore denies the same. NDH denies the remaining allegations in paragraph 10.

11. NDH admits only that Plaintiffs purport to bring a class action under the Sherman Act. NDH expressly denies all liability and expressly denies that classwide treatment of Plaintiffs' claims is proper. NDH denies all remaining allegations in paragraph 11 of the Complaint.

12. NDH admits only that Plaintiffs purport to seek various forms of relief. NDH denies that any relief is appropriate and denies all remaining allegations in paragraph 12 of the Complaint.

JURISDICTION, VENUE, AND INTERSTATE COMMERCE

13. Paragraph 13 of the Complaint contains legal conclusions to which no response is required.

14. Paragraph 14 of the Complaint contains legal conclusions to which no response is required.

15. Paragraph 15 of the Complaint contains legal conclusions to which no response is required.

16. Paragraph 16 of the Complaint contains legal conclusions to which no response is required. NDH is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 16 of the Complaint and therefore denies the same.

17. Paragraph 17 of the Complaint contains legal conclusions to which no response is required.

18. Paragraph 18 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, with respect to the allegations contained in the first sentence of paragraph 18 of the Complaint, NDH admits only that some of its subsidiaries purchase and process raw Grade A milk within the United States. NDH denies all remaining allegations in paragraph 18 to the extent they relate to NDH. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint as they relate to others and therefore denies the same.

PARTIES

Plaintiffs

19. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint and therefore denies the same.

20. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint and therefore denies the same.

21. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Complaint and therefore denies the same.

22. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Complaint and therefore denies the same.

23. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 23 of the Complaint and therefore denies the same.

24. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 24 of the Complaint and therefore denies the same.

25. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint and therefore denies the same.

26. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Complaint and therefore denies the same.

27. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 27 of the Complaint and therefore denies the same.

28. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Complaint and therefore denies the same.

29. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 29 of the Complaint and therefore denies the same.

30. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 30 of the Complaint and therefore denies the same.

31. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 31 of the Complaint and therefore denies the same.

32. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 32 of the Complaint and therefore denies the same.

33. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 33 of the Complaint and therefore denies the same.

Defendants

34. On information and belief, NDH admits the allegations contained in the first sentence of paragraph 34 of the Complaint. NDH is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 34 of the Complaint and therefore denies the same.

35. NDH admits the allegations in the first sentence of paragraph 35 of the Complaint. NDH denies the allegations in the second sentence of paragraph 35 of the Complaint. With respect to the allegations in the third sentence of paragraph 35 of the Complaint, NDH admits that its operating subsidiaries collectively operate eight fluid Grade A milk processing plants in the Southeast United States. NDH denies any remaining allegations in paragraph 35 of the Complaint.

36. On information and belief, NDH admits the allegations contained in the first sentence of paragraph 36 of the Complaint. NDH is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 36 of the Complaint and therefore denies the same.

37. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 37 of the Complaint and therefore denies the same.

38. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 38 of the Complaint and therefore denies the same.

39. On information and belief, NDH admits the allegations contained in the first sentence of paragraph 39 of the Complaint. NDH is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 39 of the Complaint and therefore denies the same.

40. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 40 of the Complaint and therefore denies the same.

41. On information and belief, NDH admits the allegations contained in the first sentence of paragraph 41 of the Complaint. NDH also admits that Hanman served on the management committee of Dairy Management LLC. NDH is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 41 of the Complaint and therefore denies the same. To the extent the third sentence of paragraph 41 is intended to assert “illegal conduct” against NDH, NDH expressly denies such allegation.

42. On information and belief, NDH admits the allegations contained in the first sentence of paragraph 42 of the Complaint. NDH admits the allegations in the second sentence of paragraph 42 of the Complaint. NDH is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 42 of the Complaint and therefore denies the same. To the extent the third sentence of paragraph 42 is intended to assert “illegal conduct” against NDH, NDH expressly denies such allegation.

Co-conspirators

43. NDH denies the allegations in paragraph 43 of the Complaint.

44. With respect to the allegations contained in paragraph 44 of the Complaint, NDH admits that Plaintiffs purport to assert “averments” against various co-conspirators. NDH denies all such averments.

45. NDH denies the allegation in paragraph 45 of the Complaint.

OVERVIEW OF THE RELEVANT MARKETS

46. NDH admits the allegations in the fifth and sixth sentences of paragraph 46, and also admits that raw Grade A milk is perishable and is often produced on a daily basis. NDH denies the allegations in paragraph 46 to the extent they suggest that raw Grade A milk is sold or

delivered only to milk bottling plants. NDH is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 46 of the Complaint and therefore denies the same.

47. Paragraph 47 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, NDH denies the allegations contained in the first two sentences of paragraph 47 of the Complaint to the extent they are inconsistent with the referenced regulations. NDH denies the allegations in the third sentence of paragraph 47.

48. Paragraph 48 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, NDH denies the allegations contained in paragraph 48 of the Complaint to the extent they are inconsistent with the referenced regulations.

49. With respect to the allegations in the third sentence of paragraph 49, NDH admits only that Plaintiffs contend that the Complaint is concerned with raw Grade A milk in Federal Milk Marketing Orders 5 or 7, and that the Complaint purports to refer to those Federal Orders as the "Southeast." Paragraph 49 of the Complaint otherwise contains legal conclusions to which no response is required. To the extent a response is required, NDH denies the allegations contained in paragraph 49 of the Complaint to the extent they are inconsistent with the referenced regulations.

50. Paragraph 50 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, NDH denies the allegations contained in paragraph 50 of the Complaint to the extent they are inconsistent with the referenced regulations.

51. Paragraph 51 of the Complaint contains legal conclusions and hypotheticals to which no response is required. To the extent a response is required, NDH denies the allegations and hypotheticals contained in paragraph 51 of the Complaint to the extent they are inconsistent with the referenced regulations.

52. With respect to the allegations in paragraph 52 of the Complaint, on information and belief, NDH admits that there are seasonal and other variations in raw Grade A milk production and demand, that there is uneven distribution of dairy farmers throughout the United States, that Class I utilization varies among Orders, and that demand for raw Grade A milk has exceeded Grade A milk production at times. NDH further admits that the Market Administrators compile and publish various statistics but denies Plaintiffs' characterizations of the statistics to the extent they are inconsistent with the actual statistics. NDH is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 52 of the Complaint and therefore denies the same

53. NDH denies the allegations in the first sentence of paragraph 53 of the Complaint. NDH is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 53 of the Complaint and therefore denies the same.

54. With respect to the first sentence of paragraph 50 of the Complaint, it contains legal conclusions to which no response is required. To the extent a response is required, NDH denies the allegations contained in the first sentence of paragraph 50 of the Complaint to the extent they are inconsistent with the relevant regulations. With respect to the second and third sentences of paragraph 50, NDH admits that cooperatives and independent dairy farmers are free to negotiate for prices in excess of FMMO minimum prices and that the prices negotiated above the minimum blend prices are sometimes referred to as "over-order premiums." NDH is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 54 of the Complaint as they relate to others and therefore denies the same. NDH denies all remaining allegations in paragraph 54 to the extent they relate to NDH.

55. NDH admits only that paragraph 55 of the Complaint purports to define the term "mailbox price." NDH denies all remaining allegations in paragraph 55 to the extent they relate

to NDH. Otherwise, NDH is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 55 of the Complain and therefore denies the same.

56. Paragraph 56 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, NDH admits only that Plaintiffs purport to define a relevant market consisting of the states comprising Federal Orders 5 and 7, but denies that such area comprises a relevant geographic market. NDH is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 56 of the Complaint and therefore denies the same.

57. Paragraph 57 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, NDH denies the allegations contained in paragraph 57 of the Complaint to the extent they are inconsistent with the referenced regulations and denies Plaintiffs' allegations purporting to define a relevant market. NDH is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 57 of the Complaint and therefore denies the same.

58. Paragraph 58 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, NDH denies the allegations contained in paragraph 58 of the Complaint to the extent they are inconsistent with the referenced regulations. NDH is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 58 of the Complaint and therefore denies the same.

59. Paragraph 59 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, NDH denies the allegations contained in paragraph 59 of the Complaint to the extent they are inconsistent with the referenced regulations and denies Plaintiffs' allegations purporting to define a relevant market. NDH is without

knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 59 of the Complaint and therefore denies the same.

60. Paragraph 60 of the Complaint contains legal conclusions to which no response is required. To the extent a response is required, NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 of the Complaint and therefore denies the same.

DAIRY FARMERS AND MILK BOTTLERS

61. On information and belief, NDH admits that dairy cooperatives are associations of dairy farmers who agree to market collectively their dairy products. Otherwise, NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 61 of the Complaint and therefore denies the same.

62. On information and belief, NDH admits that not all dairy farmers are cooperative members, that some dairy farmers are referred to as “independent dairy farmers,” and that some dairy farmers have marketed their Grade A milk directly to an NDH operating subsidiary. To the extent the remaining allegations in paragraph 62 of the Complaint are directed at NDH, NDH denies them. Otherwise, NDH is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 62 of the Complaint and therefore denies the same.

63. On information and belief, NDH admits the allegations in the first sentence of paragraph 63 of the Complaint. NDH is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 63 of the Complaint as they relate to activities that do not involve NDH and therefore denies the same. NDH denies any remaining allegations in paragraph 63.

64. NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 64 of the Complaint and therefore denies the same.

65. On information and belief, NDH admits that various cooperatives other than DFA have marketed or sought to market raw Grade A milk to various milk bottlers in the Southeast United States. NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 65 of the Complaint to the extent they relate to others and therefore denies the same. To the extent the allegations in paragraph 62 of the Complaint are directed at NDH, NDH denies them and denies the remaining allegations in paragraph 65 of the Complaint.

66. With respect to the allegations in paragraph 66 of the Complaint, NDH admits only that raw Grade A milk supply is essential to the milk bottling operations of plants owned by NDH operating subsidiaries. To the extent the remaining allegations in paragraph 66 of the Complaint are directed at NDH, NDH denies them. NDH is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 66 of the Complaint and therefore denies the same.

67. NDH denies the allegations in paragraph 67 of the Complaint.

DEFENDANTS' DOMINANCE AND PREDATORY CONDUCT

Overview

68. NDH denies the allegations in paragraph 68 of the Complaint.

69. NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences of paragraph 69 of the Complaint and therefore denies the same. NDH denies all remaining allegations in paragraph 69 of the Complaint.

70. NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences of paragraph 70 of the Complaint as they relate

to others and therefore denies the same. NDH denies the allegations in paragraph 70 of the Complaint as they relate to NDH and denies all remaining allegations in paragraph 70 of the Complaint.

Consolidation In The Industry

71. NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 71 of the Complaint and therefore denies the same.

72. On information and belief, NDH admits the allegations in the first sentence of paragraph 72 of the Complaint. NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 72 of the Complaint and therefore denies the same. With respect to the allegations in the third sentence in paragraph 72 of the Complaint, NDH admits that it acquired certain milk processing plants in connection with the Dean-Suiza merger. NDH denies any remaining allegations to the extent they are directed at NDH. NDH is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 72 of the Complaint and therefore denies the same.

73. With respect to the allegations in paragraph 73 of the Complaint, NDH admits that DFA has provided financing to NDH, that DFA has owned at least a 50 percent equity and voting interest in NDH since its formation and that DFA recently increased its ownership interest in NDH. NDH denies plaintiffs' characterizations of agreements involving NDH and DFA to the extent they are inconsistent with the agreements themselves. NDH denies the remaining allegations in paragraph 73 of the Complaint.

74. NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first two sentences of paragraph 74 of the Complaint and therefore denies the same. With respect to the allegations in the third sentence of paragraph 74 of the

Complaint, NDH admits only that sales increased after it acquired additional processing plants. NDH denies all remaining allegations in paragraph 74 of the Complaint.

75. NDH denies the allegations in paragraph 75 of the Complaint.

76. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 76 of the Complaint and therefore denies the same. With respect to the allegations in the second sentence of paragraph 76 of the Complaint, NDH admits that its operating subsidiaries collectively own eight fluid Grade A milk processing plants in Federal Milk Marketing Orders 5 and 7. NDH denies that all of the plants located in Federal Milk Marketing Orders 5 and 7 purchase their supply of raw Grade A milk solely from DFA. NDH denies the remaining allegations in paragraph 76 of the Complaint to the extent they are directed at NDH. NDH is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 76 of the Complaint and therefore denies the same.

77. With respect to the allegations in the second sentence of paragraph 77 of the Complaint, NDH admits that balancing plants process raw Grade A milk into storable products such as cheese or powdered milk. To the extent the allegations in paragraph 77 of the Complaint are directed at NDH, NDH denies them. NDH is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 77 of the Complaint and therefore denies the same.

78. NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 78 of the Complaint and therefore denies the same.

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

79. NDH denies the allegations in paragraph 79 of the Complaint.

80. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 80 of the Complaint and therefore denies the same.

81. NDH denies the allegations in paragraph 81 of the Complaint.

82. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in the second sentence of paragraph 82 of the Complaint and therefore denies the same. NDH denies the remaining allegations in paragraph 82 of the Complaint.

83. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in the first and third sentences of paragraph 83 of the Complaint and therefore denies the same. NDH denies all remaining allegations in paragraph 83 of the Complaint.

84. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 84 of the Complaint and therefore denies the same.

85. NDH denies the allegations in paragraph 85 of the Complaint.

86. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 86 of the Complaint regarding the alleged conduct and/or statements of others and therefore denies the same. NDH denies all remaining allegations in paragraph 86 of the Complaint.

87. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 87 of the Complaint regarding the alleged conduct of others and therefore denies the same. NDH denies the existence of any “conspiracy” and denies all remaining allegations in paragraph 87 of the Complaint.

88. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 88 of the Complaint as they relate to the alleged conduct of

others and therefore denies the same. NDH denies the existence of any alleged “conspiracy” and denies all remaining allegations in paragraph 88 of the Complaint.

89. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 89 of the Complaint as they relate to the alleged conduct of others and therefore denies the same. NDH denies the existence of any alleged “conspiracy” and denies all remaining allegations in paragraph 89 of the Complaint.

90. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 90 of the Complaint as they relate to the alleged conduct of others and therefore denies the same. NDH denies the existence of any alleged “cartel” or “agreement” and denies all remaining allegations in paragraph 90 of the Complaint.

91. NDH denies the allegations in paragraph 91 of the Complaint.

92. NDH denies the allegations in paragraph 92 of the Complaint.

93. NDH denies the allegations in paragraph 93 of the Complaint.

94. NDH denies the allegations in paragraph 94 of the Complaint.

95. NDH denies the allegations in paragraph 95 of the Complaint.

96. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 96 of the Complaint regarding others and therefore denies the same. NDH denies the allegations directed at NDH and denies all remaining allegations in paragraph 96 of the Complaint.

97. NDH denies the allegations in paragraph 97 of the Complaint.

98. NDH denies the allegations in paragraph 98 of the Complaint.

99. NDH denies the allegations in paragraph 99 of the Complaint.

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

100. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 100 of the Complaint and therefore denies the same.

101. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 101 of the Complaint and therefore denies the same.

102. With respect to the allegations in paragraph 102 of the Complaint, NDH admits, on information and belief, that DFA has obtained ownership interests in various entities. NDH is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 102 of the Complaint and therefore denies the same.

103. Paragraph 103 of the Complaint contains Plaintiffs' characterizations of agreements that are in writing and speak for themselves. To the extent Plaintiffs' characterizations are inconsistent with the agreements themselves, NDH denies them. On information and belief, NDH admits that DFA and Suiza entered into a joint venture to form Suiza Dairy Group and that DFA obtained an ownership interest in Suiza Dairy Group. NDH admits that Allen Meyer formerly served as Chief Executive Officer of NDH but denies that Allen Meyer currently owns 50% of NDH. NDH is without information or knowledge sufficient to form a belief as to the truth of the remaining allegations in paragraph 103 of the Complaint to the extent they relate to others and therefore denies the same. NDH denies any remaining allegations in paragraph 103 of the Complaint.

104. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 104 of the Complaint and therefore denies the same.

105. On information and belief, NDH admits the allegations contained in the parenthetical section of paragraph 105 of the Complaint regarding Gregg Engles. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations

contained in the parenthetical section of paragraph 105 of the Complaint as they relate to Robert Allen and therefore denies the same. NDH denies all remaining allegations contained in paragraph 105 of the Complaint.

106. To the extent the allegations in paragraph 106 of the Complaint are Plaintiffs' characterizations of agreements and transactions which are in writing and speak for themselves, NDH denies Plaintiffs' characterizations to the extent they are inconsistent with the agreements and transactions themselves. NDH denies all remaining allegations in paragraph 106 of the Complaint.

107. On information and belief, NDH admits that Jay Bryant is the General Manager of the Maryland and 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 Products, Inc. and Continental Dairy Products, Inc. NDH denies the remaining allegations contained in paragraph 107 of the Complaint.

108. NDH denies the allegations contained in paragraph 108 of the Complaint.

109. To the extent the allegations in paragraph 109 are directed at NDH, NDH denies the same. Otherwise, NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 109 of the Complaint and therefore denies the same.

110. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 110 of the Complaint and therefore denies the same.

111. NDH denies the allegations contained in paragraph 111 of the Complaint.

112. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations in paragraph 112 of the Complaint and therefore denies the same.

Concealment and Tolling

113. NDH denies the allegations contained in paragraph 113 of the Complaint.

114. NDH denies the allegations contained in paragraph 114 of the Complaint.

CLASS ACTION ALLEGATIONS

115. With respect to the allegations in paragraph 115 of the Complaint, NDH admits only that Plaintiffs purport to bring this action on behalf of various classes and sub-classes, but NDH denies that class certification is proper and otherwise denies the remaining allegations in paragraph 115 of the Complaint.

116. NDH is without information or knowledge sufficient to form a belief as to the truth of the allegations contained in paragraph 116 of the Complaint and therefore denies the same.

117. NDH denies the allegations contained in paragraph 117 of the Complaint, including all sub-parts.

118. NDH denies the allegations contained in paragraph 118 of the Complaint.

119. NDH denies that class action treatment is proper in this case and otherwise denies the allegations in paragraph 119 of the Complaint.

120. NDH denies the allegations in paragraph 120 of the Complaint.

121. NDH denies that class treatment is appropriate in this case and otherwise denies all remaining allegations in paragraph 121 of the Complaint.

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

122. NDH incorporates by reference its responses to paragraphs 1 through 99 of the Complaint as if fully set forth herein.

123. NDH denies the allegations in paragraph 123 of the Complaint.

124. NDH denies the allegations in paragraph 124 of the Complaint.

125. NDH denies the allegations in paragraph 125 of the Complaint.

126. NDH denies the allegations in paragraph 126 of the Complaint.

127. NDH denies the allegations in paragraph 127 of the Complaint.

128. NDH denies the allegations in paragraph 128 of the Complaint.

129. With respect to the allegations in paragraph 129 of the Complaint, NDH admits only that Plaintiffs purport to seek damages. NDH denies that Plaintiffs are entitled to any damages and denies all remaining allegations in paragraph 129 of the Complaint.

130. With respect to the allegations in paragraph 130 of the Complaint, NDH admits only that Plaintiffs purport to seek injunctive relief. NDH denies that Plaintiffs are entitled to any such relief and denies all remaining allegations in paragraph 130 of the Complaint.

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

131. NDH incorporates by reference its responses to paragraphs 1 through 99 of the Complaint as if fully set forth herein.

132. NDH denies the allegations in paragraph 132 of the Complaint.

133. NDH denies the allegations in paragraph 133 of the Complaint.

134. NDH denies the allegations in paragraph 134 of the Complaint.

135. NDH denies the allegations in paragraph 135 of the Complaint.

136. NDH denies the allegations in paragraph 136 of the Complaint.

137. NDH denies the allegations in paragraph 137 of the Complaint.

138. NDH denies the allegations in paragraph 138 of the Complaint.

139. NDH denies the allegations in paragraph 139 of the Complaint.

140. NDH denies the allegations in paragraph 140 of the Complaint.

141. With respect to the allegations in the first sentence of paragraph 141 of the Complaint, NDH admits only that Plaintiffs purport to seek damages. NDH denies that Plaintiffs

are entitled to any damages and denies all remaining allegations in paragraph 141 of the Complaint.

142. With respect to the allegations in paragraph 142 of the Complaint, NDH admits only that Plaintiffs purport to seek injunctive relief. NDH denies that Plaintiffs are entitled to any such relief and denies all remaining allegations in paragraph 142 of the Complaint.

COUNT THREE
SHERMAN ACT SECTION 2 VIOLATION
Unlawful Monopolization

143. NDH incorporates by reference its responses to paragraphs 1 through 99 of the Complaint as if fully set forth herein.

144. NDH denies the allegations in paragraph 144 of the Complaint.

145. NDH denies the allegations in paragraph 145 of the Complaint.

146. NDH denies the allegations in paragraph 146 of the Complaint.

147. NDH denies the allegations in paragraph 147 of the Complaint.

148. With respect to the allegations in the first sentence of paragraph 148 of the Complaint, NDH admits only that Plaintiffs purport to seek damages. NDH denies that Plaintiffs are entitled to any damages and denies all remaining allegations in paragraph 148 of the Complaint.

149. With respect to the allegations in paragraph 149 of the Complaint, NDH admits only that Plaintiffs purport to seek injunctive relief. NDH denies that Plaintiffs are entitled to any such relief and denies all remaining allegations in paragraph 149 of the Complaint.

COUNT FOUR
SHERMAN ACT SECTION 2 VIOLATION
Unlawful Monopsony

150. NDH incorporates by reference its responses to paragraphs 1 through 99 of the Complaint as if fully set forth herein.

151. NDH denies the allegations in paragraph 151 of the Complaint.

152. NDH denies the allegations in paragraph 152 of the Complaint.

153. NDH denies the allegations in paragraph 153 of the Complaint.

154. NDH denies the allegations in paragraph 154 of the Complaint.

155. NDH denies the allegations in paragraph 155 of the Complaint.

156. NDH denies the allegations in paragraph 156 of the Complaint.

157. NDH denies the allegations in paragraph 157 of the Complaint.

158. With respect to the allegations in the first sentence of paragraph 158 of the Complaint, NDH admits only that Plaintiffs purport to seek damages. NDH denies that Plaintiffs are entitled to any damages and denies all remaining allegations in paragraph 158 of the Complaint.

159. With respect to the allegations in paragraph 159 of the Complaint, NDH admits only that Plaintiffs purport to seek injunctive relief. NDH denies that Plaintiffs are entitled to any such relief and denies all remaining allegations in paragraph 159 of the Complaint.

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

160. NDH incorporates by reference its responses to paragraphs 1 through 99 of the Complaint as if fully set forth herein.

161. NDH denies the allegations in paragraph 161 of the Complaint.

162. NDH denies the allegations in paragraph 162 of the Complaint.

163. NDH denies the allegations in paragraph 163 of the Complaint.

164. NDH denies the allegations in paragraph 164 of the Complaint.

165. NDH denies the allegations in paragraph 165 of the Complaint.

166. NDH denies the allegations in paragraph 166 of the Complaint.

167. NDH denies the allegations in paragraph 167 of the Complaint.

168. NDH denies the allegations in paragraph 168 of the Complaint.

169. With respect to the allegations in the first sentence of paragraph 169 of the Complaint, NDH admits only that Plaintiffs purport to seek damages. NDH denies that Plaintiffs are entitled to any damages and denies all remaining allegations in paragraph 169 of the Complaint.

170. With respect to the allegations in paragraph 170 of the Complaint, NDH admits only that Plaintiffs purport to seek injunctive relief. NDH denies that Plaintiffs are entitled to any such relief and denies all remaining allegations in paragraph 170 of the Complaint.

**COUNT SIX
AGAINST DFA
Breach of Contract**

171. NDH incorporates by reference its responses to paragraphs 1 through 112 of the Complaint as if fully set forth herein.

172. NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 172 of the Complaint and therefore denies the same.

173. NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 173 of the Complaint and therefore denies the same.

174. NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 174 of the Complaint and therefore denies the same.

175. NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 175 of the Complaint and therefore denies the same.

176. NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 176 of the Complaint and therefore denies the same.

177. NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 177 of the Complaint and therefore denies the same.

178. NDH is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 178 of the Complaint and therefore denies the same.

JURY TRIAL DEMAND

NDH admits only that Plaintiffs have demanded a trial by jury of all issues triable by a jury. NDH denies that Plaintiffs are entitled to any relief.

PRAYER FOR RELIEF

NDH admits only that Plaintiffs have requested various forms of relief. NDH denies that Plaintiffs are entitled to any of the relief request in their Prayer for Relief contained in the Complaint.

AFFIRMATIVE DEFENSES

NDH asserts the following defenses without assuming the burden of proof as to any issue or element that otherwise rests upon Plaintiffs. NDH reserves the right to plead any other defenses, including affirmative defenses, that become available.

1. NDH affirmatively alleges and pleads that Plaintiffs' Complaint fails to state a claim upon which relief may be granted.
2. NDH affirmatively alleges and pleads that Plaintiffs' claims are barred by the applicable statute of limitations.
3. NDH affirmatively alleges and pleads that Plaintiffs' claims are barred by the equitable doctrine of laches.
4. NDH affirmatively alleges and pleads that Plaintiffs lack standing and/or antitrust standing to assert some or all of the claims for relief contained in the Complaint.

5. NDH affirmatively alleges and pleads that Plaintiffs have not suffered an antitrust injury.

6. NDH affirmatively alleges and pleads that Plaintiffs have suffered no injury or damages as a result of any conduct alleged in the Complaint.

7. NDH affirmatively alleges and pleads that to the extent Plaintiffs suffered any injury or damage, the injury or damage was not caused by any of the alleged conduct of NDH, and/or because any injury or damage was caused by superseding and/or intervening causes and/or the acts of third parties for whom NDH is not responsible.

8. NDH affirmatively alleges and pleads that Plaintiffs' claims are barred by the doctrines of unclean hands and/or *in pari delicto*.

9. NDH affirmatively alleges and pleads that Plaintiffs' claims are barred by the doctrines of waiver and estoppel.

10. NDH affirmatively alleges and pleads that Plaintiffs are barred from recovery for any alleged injury or damages because of their failure to mitigate any alleged injury or damages.

11. 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.

12. NDH affirmatively alleges and pleads that the Court lacks personal jurisdiction over NDH.

13. NDH incorporates any all defenses asserted by any other Defendant to the extent they are not inconsistent with NDH's defenses.

WHEREFORE, Defendant National Dairy Holdings, LP respectfully requests that Plaintiffs take nothing, that all claims in the Complaint be dismissed, that Defendant National

Dairy Holdings, LP be awarded its costs, fees and expenses incurred as the result of having to defend this action, and that NDH have such other and further relief to which it may be entitled.

Dated: July 21, 2008.

Respectfully submitted,

/s/ Jerry L. Beane

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CERTIFICATE OF SERVICE

I certify that on July 21, 2008, Defendant National Dairy Holdings, LP's Answer to Plaintiffs' Consolidated Amended Complaint was served on the following counsel by operation of the Court's electronic filing system as indicated on the electronic filing receipt:

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