

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

OTHART DAIRY FARMS, LLC, PAREO FARM, INC., PAREO FARM II, INC., DESERTLAND DAIRY, LLC, DEL ORO DAIRY, LLC, BRIGHT STAR DAIRY, LLC, and SUNSET DAIRY, LLC, individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

DAIRY FARMERS OF AMERICA, INC., SELECT MILK PRODUCERS, INC., and GREATER SOUTHWEST AGENCY,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

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Plaintiffs Othart Dairy Farms, LLC, Pareo Farm, Inc., Pareo Farm II, Inc., Desertland Dairy, LLC, Del Oro Dairy, LLC, Bright Star Dairy, LLC, and Sunset Dairy, LLC, (“Plaintiffs”), bring this action on behalf of themselves individually and on behalf of a plaintiff class (the “Class”), pursuant to Rule 23 of the Federal Rules of Civil Procedure consisting of all dairy farmers, whether individuals or entities, who produced Grade A milk and sold Grade A milk independently or directly or through an agent to Defendants, Dairy Farmers of America, Inc. (“DFA”) and Select Milk Producers, Inc. (“Select Milk”) or Co-Conspirators within DFA’s Southwest Area region any time from at least January 1, 2015 until present (the “Class Period”). Plaintiffs also allege claims against Defendant Greater Southwest Agency (“GSA”). Plaintiffs bring this action for treble damages under the antitrust laws of the United States against Defendants, and demand a trial by jury.

I. NATURE OF ACTION

1. Dairy cooperatives are meant to serve dairy-farmer owners. However, as alleged herein, in the Southwest United States the two largest dairy cooperatives, DFA and Select Milk, have conspired in violation of the Sherman Act to suppress pay to dairy farmers. DFA and Select Milk control at least 75% of the Southwest market, and together have used that control to significantly depress the price dairy farmers receive for their raw milk. The effect of Defendants’ conspiracy has been devastating to many dairy farmers, causing numerous farmers to borrow from generations of equity built up in their land, relying on that equity to pay themselves and keep their farms in operation. Many Southwestern dairy farmers have been forced to declare bankruptcy and completely closed their operations.

2. Upon information and belief, as alleged herein, DFA and Select Milk have conspired with one another to stabilize and depress the prices paid to these cooperatives’ farmers

for the raw Grade A milk they produce in several ways, including: (a) unlawfully sharing pricing information though, *inter alia*, their various commercial joint ventures as well as Defendant GSA; (b) driving down take-home pay for dairy farmers through selective and increasingly frequent non-pooling of milk, allowing the cooperatives as entities to market members' milk at higher prices without passing those increases on to farmers; and (c) unlawfully coordinating pricing and pricing-related decisions. Upon information and belief, DFA's and Select Milk's monthly rates to their respective member-farmers – what Plaintiffs and Class members actually receive – are almost always within a few pennies of each other. This would not be the case absent the conspiracy alleged herein.

3. Since at least January 2015, the prices paid by DFA and Select Milk for the raw Grade A milk their member-farmers have produced have been unlawfully and artificially depressed as a result of the conduct alleged herein, even though these Defendants' revenues and profits have increased. As a direct result of this unlawful conspiracy, the percentage of their revenues that DFA and Select Milk are paying to Plaintiffs and the Class has dwindled.

4. DFA and Select Milk are organized as member-owned, non-profit dairy cooperatives, obligated to operate for the benefit of their farmer-members. Their members are obligated to deliver all of their milk to the cooperative to market on their behalf. In turn, the cooperatives must market or process their member-farmers' raw Grade A milk to obtain the best possible price for the product. DFA and Select Milk have utterly forsaken this obligation, and have conspired to stabilize, fix, and maintain at artificially depressed rates the raw Grade A milk prices paid to Plaintiffs and Class members.

5. The vast majority of milk marketed in the Southwest, approximately 85-90%, is marketed via a dairy cooperative. DFA is the largest dairy cooperative both in the Southwest and

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