

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

**Food Lion, LLC, and Maryland and
Virginia Milk Producers Cooperative
Association, Inc.,**

Plaintiffs,

v.

**DAIRY FARMERS OF AMERICA,
INC.,**

Defendants.

Docket No. 1:20-cv-442-CCE-JLW

**DAIRY FARMERS OF AMERICA, INC.’S ANSWER AND DEFENSES TO
PLAINTIFFS’ COMPLAINT**

Defendant Dairy Farmers of America, Inc. (“DFA”), by and through its undersigned counsel, answer Plaintiffs’ Complaint, ECF No. 1, as follows.

Introduction

This matter involves failed bidders and failing competitors who are turning to the antitrust laws to try to change the marketplace.

On May 19, 2020, and after failing to convince the Bankruptcy Court for the Southern District of Texas (“Bankruptcy Court”) to block the sale of certain Dean Foods Company (“Dean”) processing plants to DFA, Plaintiffs—Food Lion, LLC (“Food Lion”) and Maryland and Virginia Milk Producers Cooperative Association, Inc. (“MDVA”)—

filed a Complaint seeking to undo this acquisition under Section 7 of the Clayton Act and Section 2 of the Sherman Act.

The thrust of Plaintiffs' theory is that DFA's acquisition of bankrupt Dean's three processing plants in North and South Carolina (the "Carolina Plants") might, in 2021, prevent MDVA from competing to supply those plants with raw milk, and that as a result of MDVA perhaps not gaining that potential business, Food Lion might not receive as low prices as it would like for future purchases of processed fluid milk ("Processed Milk") from the Carolina Plants.

But the Plaintiffs also concede that competition remains unaffected in the market: the Carolina Plants still process raw milk from DFA (as they did prior to DFA's acquisition of these plants); MDVA still sells its raw milk to processors other than Dean or DFA; and Food Lion still purchases its Processed Milk from processors other than Dean or DFA. And there is no allegation that the competition, as it presently exists, is illegal or improper in any way.

The Plaintiffs also concede that the Carolina Plants were purchased by DFA through procedures governed and approved by the Bankruptcy Court and in an orderly, public process, overseen by the Bankruptcy Court. The Bankruptcy Court established bidding procedures. MDVA and DFA were two of several potential bidders. DFA sought to purchase the vast majority of Dean's assets, 44 facilities, including corporate headquarters and fluid milk and frozen operations across the country. MDVA sought to purchase a single plant, in High Point, North Carolina. Food Lion made no effort to bid for or acquire

any plant. The Court approved Dean’s selection of DFA as the winning bidder of these facilities, with full awareness of MDVA’s bid for the High Point, North Carolina plant, and over the objections of Plaintiffs.

The incontrovertible reality behind these admissions is that but for DFA stepping forward and buying these assets, all or most of the Carolina plants would have been liquidated and critical fluid milk capacity and output would have left the market supplying the Carolinas. Thus, the only “change” to the market and competition is that DFA preserved competitive supply that would have otherwise left the market. Simple economics says that is unambiguously procompetitive, not anticompetitive.

In order to claim that they could be harmed in the future, the Plaintiffs are forced to allege a geographic market that is implausible. Plaintiffs argue the geographic market is limited to North and South Carolina because of the Atlantic Ocean and Appalachian Mountains, omitting the existence of Virginia to the north and Georgia to the south. Plaintiffs admit participation in Federal Milk Marketing Order 5, which reflects the movement of milk throughout the Southeast. And further, Plaintiffs admit seeking milk from outside the Carolinas, such as Food Lion’s 2017 request for proposal sent to MDVA’s Virginia processing facility.

DFA is a cooperative made up of a diverse group of dairy farmers who seek to work together to achieve the best price and distribution that they can for their product. Because of its diversity and the large number of farmers who it represents, DFA has successfully advanced the interests of its farmers, enabling the survival of family and

small farms. It is laser-focused on both creating demand, and finding a home for farmers' milk, which includes capturing the plainly procompetitive vertical efficiencies of operating fluid milk processing plants. MDVA sues because it has been unable to compete in the marketplace; Food Lion, which is part of a \$70 billion international conglomerate, sues because it seeks to extract the lowest possible prices to enhance its profit margins. This is an improper use of the antitrust laws.

The allegations and argument in Plaintiffs' eight introductory paragraphs constitute Plaintiffs' characterization of the facts and legal and economic arguments to which no response is required. To the extent a response is required, the allegations in these introductory paragraphs are denied. Further, the headings and sub-headings contained in Plaintiffs' Complaint are improper statements of fact or legal conclusion to which no response is required. To the extent a response is required, DFA denies those allegations.

THE PARTIES

1. Plaintiff Food Lion is a North Carolina limited liability company headquartered in Salisbury, North Carolina. It operates more than 1,000 supermarkets, either directly or through affiliates, in ten states, including approximately 600 supermarkets in North and South Carolina and dozens more that purchase fluid milk from milk processing facilities in the Carolinas. Food Lion purchases processed fluid milk in interstate commerce and is one of the largest retail purchasers of processed fluid milk from processing facilities in North and South Carolina.

ANSWER: DFA is without information or knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 1, and on that basis, denies these allegations.

2. Plaintiff MDVA is a corporation organized and existing under the laws of the Commonwealth of Virginia with its principal place of business in Reston, Virginia. MDVA is a dairy cooperative with approximately 950 member farms in eleven states throughout the Mid-Atlantic and Southeast. MDVA also owns two fluid milk processing facilities outside of the Carolinas and two plants that produce bulk dairy ingredients for food manufacturers.

ANSWER: DFA is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2, and on that basis, denies these allegations.

3. Defendant DFA is a dairy cooperative organized and existing under the laws of the State of Kansas, with its principal place of business in Kansas City, Missouri. DFA is the largest dairy cooperative in the United States, representing over 14,000 dairy producers in forty-eight states and recognizing \$13.6 billion in revenue in 2018. In the wake of the Asset Sale, DFA is also the nation's largest processor and direct-to-store distributor of fluid milk and other dairy and dairy case products. Now DFA not only engages in the production and marketing of raw milk, but it also manufactures, markets, and distributes processed milk to retailers, distributors, foodservice outlets, educational institutions, and governmental entities across the country, including from its legacy Dean plants in High Point, North Carolina; Winston Salem, North Carolina; and Spartanburg, South Carolina.

ANSWER: DFA admits it is a not-for-profit corporation organized and existing under the laws of the State of Kansas. DFA denies its principal place of business is in Kansas City, Missouri. DFA admits it is a cooperative as defined under Chapter 17, Article 16 of the Kansas Cooperative Marketing Act. DFA admits that it is the largest dairy cooperative in the United States with over 13,000 producer members as of the date of this response. DFA admits that it had \$13.6 billion in net sales in 2018. DFA admits that it markets its producer-members' raw milk. DFA further admits it has ownership interests in entities that operate certain milk processing plants in multiple states in the United States that manufacture fluid milk and other dairy-based products. DFA further admits that the customers of these products include retailers, distributors, foodservice outlets, educational

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