

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

GARRETT AND RALPH SITTS, LEON ATWELL,
VICTOR BARRICK, DANIEL BAUMGARDER,
WILLIAM BOARD, GEORGE BOLLES, ROGER
BOLLES, ANDY BOLLINGER, THOMAS
BOLLINGER, LOGAN BOWER, DWIGHT
BRANDENBURG, BERNARD BROUILLETTE,
THOMAS BROUILLETTE, AARON BUTTON,
HESTER CHASE, THOMAS CLARK, THOMAS
CLATTERBUCK, PAUL CURRIER, GERRY
DELONG, PETE AND ALICE DIEHL, MARK
DORING, MARK AND BARBARA DULKIS, GLEN
EAVES, MIKE EBY, WILLIAM ECKLAND, DOUG
ELLIOT, JAMES ELLIOT, WENDALL ELLIOTT,
MICHAEL FAUCHER, DAVID AND ROBIN
FITCH, DUANE AND SUSAN FLINT, JOSEPH
FULTS, RICHARD GANTNER, STEFAN AND
CINDY GEIGER, WILLIAM GLOSS, JOHN
GWOZDZ, DAVID AND LAURIE GRANT, JIM
AND JOYCE GRAY, DENNIS HALL, ROGER AND
JOHN HAMILTON, NEVIN AND MARLIN
HILDEBRAND, JAKE AND HARLEN HILLYERD,
RICHARD AND TERRI HOLDRIDGE, PAUL
HORNING, TERRY AND ROBERT HUYCK,
DONALD SCOTT HYMERS, TERRY INCH,
RANDY AND LYNETTE INMAN, THEODORE
JAYKO, JACK KAHLER, JAMES AND TERESA
KEATOR, JIM AND SHARON KEILHOLTZ,
GEORGE KEITH, LEE AND ELLEN KLOCK,
MIKE AND LISA KRAEGER, FRED LACLAIR,
TIM LALYER, FRANK AND JOHN LAMPORT,
CORRINE LULL, CHARLES AND GRETCHEN
MAINE, THOMAS AND DEBORA MANOS, FRED
MATTHEWS, RUSSELL MAXWELL, GERRY
MCINTOSH, STEPHEN MELLOTT, JOHN AND
DAVID MITCHELL, THOMAS MONTEITH,
WALT MOORE, RICHARD AND SHEILA
MORROW, DEAN MOSER, MELISSA MURRAY
AND SEAN QUINN, THOMAS NAUMAN,
CHARLES NEFF, DAVID NICHOLS, MICHAEL
NISSLEY, LOU ANN PARISH, DANIEL PETERS,
MARSHA PERRY, CAROLYN AND DAVE POST,
JUDY LEE POST, SCOTT RASMUSEU, BRIAN

Docket No. 2:16 cv-00287-cr

REAPE, DAVID AND LYNETTE ROBINSON,
BRIAN AND LISA ROBINSON, CALVIN ROES,
BRADLEY ROHRER, PAUL AND SARAH
ROHRBAUGH, ROBERTA RYAN, SCOTT AND
LIN SAWYER, S. ROBERT SENSENIG, THOMAS
AND DALE SMITH, DALE AND SUSAN SMITH,
DENNIS SMITH, DONALD T. AND DONALD M.
SMITH, ROGER AND TAMMY, SMITH, TODD
SNYDER, RICHARD SOURWINE, DANNY
SOURWINE, RANDY SOWERS, SHANE
STALTER, GEORGE AND SHIRLEY
STAMBAUGH, TRACY STANKO, STEPHEN
SOURWINE, RICHARD SWANTAK, GEORGE
AND PATRICIA THOMPSON, JEREMY
THOMPSON, KEN AND JUDY TOMPKINS,
DANIEL VAUGHN, MARK VISSAR, ERIC
WALTS, EDWARD WALLDROFF, GERALD
WETTERHAHN, JR., EUGENE WILCZEWSKI,
STEVE WILSON

Plaintiffs,

v.

DAIRY FARMERS OF AMERICA, INC., and
DAIRY MARKETING SERVICES, LLC,

Defendants.

REVISED FIRST AMENDED COMPLAINT AND JURY DEMAND

Plaintiffs, who collectively represent more than 115 Federal Milk Marketing Order 1 dairy farms and over 20,000 head of cattle (referred to herein as “Farmers United” or “Plaintiffs”), file this action against Defendants Dairy Farmers of America, Inc. (“DFA”) and Dairy Marketing Services, LLC (“DMS”) (together referred to as “Defendants”). Plaintiffs seek treble damages and injunctive relief for Defendants’ violations of Sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2.

NATURE OF THE CASE

1. Each Plaintiff herein was a class member in Alice H. Allen et al. v. DFA and DMS, Case No. 5:09-CV-230 (D. Vt. 2009) (the “Class Action”). Pursuant to the Court’s Order Granting Preliminary Approval of the Settlement dated February 8, 2016, putative class members were granted the right to “opt-out” of the Class Action and pursue claims directly against Defendants. Each of the Plaintiffs has done so.

2. Plaintiffs are cognizant of the fact that the Class Action has been pending since 2009 and that the Court (Reiss, J.) has issued a series of substantive orders, including on a motion to dismiss and a motion for summary judgment. Plaintiffs, therefore, have included herein the claims that the Court has already ruled sufficient to proceed to trial.

3. Plaintiffs have attempted to mirror the allegations in the Revised Consolidated Amended Class Action Complaint dated November 12, 2010 (the “Class Action Complaint”).¹ Due to Defendants’ liberal use of the April 29, 2010 protective order, much of the record for the Class Action is under seal and/or heavily redacted, including the entire record of summary judgment and even portions of the Class Action Complaint itself.

4. At the same time, some of the information and allegations in the Class Action Complaint -- most recently amended in 2010 -- is stale. Plaintiffs, therefore, have updated the allegations to the best of their ability without access to the record evidence.

5. As detailed herein, since the Class Action Complaint, the Defendants’ vice-grip on the Northeast milk industry has tightened and choked some of the last remaining vestiges of competition.

¹Footnote intentionally deleted pursuant to Court’s May 2, 2017 directive.

6. Defendants' acquisition appetite remains unsatiated. In particular, since the filing of the Class Action Complaint, Defendants and their Co-conspirators have made a number of mergers and acquisitions including, without limitation:

- a. On April 1, 2009, Dean acquired the Consumer Products Division of Foremost Farms USA, a dairy cooperative, including two milk processing plants in Wisconsin.
- b. On April 19, 2011, DFA acquired Keller's Creamery LP ("Keller's"), based in Harleysville, Pennsylvania, the nation's second-largest manufacturer of butter. In July 2012, DFA closed the Harleysville facility, moving the warehousing and distribution to Balford Farms, a privately-owned dairy distributor in Burlington, New Jersey.
- c. On or around February 21, 2012, DFA acquired Guida-Seibert Dairy Co., Inc. ("Guida's Milk"), located in New Britain, Connecticut, the leading milk processors in New England.
- d. On or around September 4, 2013, DFA acquired Dairy Maid Dairy ("Dairy Maid"), located in Frederick, Maryland, a dairy processor. Rick Smith, the CEO of DFA, explained that the acquisition of Dairy Maid aligned with DFA's "strategy to increase its commercial footprint and expand ownership in the fluid and fresh dairy category."
- e. On or around January 31, 2014, DFA acquired Oakhurst Dairy ("Oakhurst"), a family-owned dairy processor located in Portland, Maine.
- f. On or around April 1, 2014, DFA and Dairylea Cooperative, Inc. ("Dairylea"), a cooperative based in the Northeast, merged. This combined Dairylea's 1,200 members with DFA's 13,000 members nationwide, thereby drastically increasing DFA's market share
- g. On or around December 31, 2015, DFA acquired the Müller Quaker yogurt plant in Batavia, New York, a \$208 million facility previously owned by PepsiCo and the Theo Müller Group.
- h. On June 20, 2016, Dean acquired the manufacturing and retail ice cream business of Friendly's Ice Cream.

7. In short, as of 2015, DFA had a stake in 77 dairy processing facilities across the United States. And, as of 2016, DFA was the largest milk processor in the world. DFA's 8,000 (plus) member farms nationwide produce approximately 46 billion pounds of milk annually,

representing more than 20% of the total United States milk production. DFA also markets approximately 30% of the total United States milk production, which constitutes approximately three-quarters of DFA's total revenue.

8. Thus, DFA's market share as a cooperative has drastically increased. Indeed, in 2000, 26% of the milk marketed in the United States was by non-cooperatives. This number dropped to 14% in 2014. In the Northeast in particular, there were about 40% fewer cooperative associations operating in 2014 as compared to 2000. While DFA controlled approximately 11% of the producers in the Northeast in 2010, that number has increased to approximately 21% as of 2016.

9. Dean currently owns more than 110 processing plants across the country and is one of the largest processors and distributors of milk and other dairy products in the United States.

10. Not only has Defendants' market share increased since the filing of the Class Action Complaint, Defendants' threats and retaliation against Northeast dairy farmers -- each of which constitute a continuing violation of the antitrust law -- have escalated, as further detailed herein.

11. The most recent (and blatant) example of which is DFA and DMS milk inspectors making "special trips" (*i.e.*, unrelated to scheduled milk inspections) to thousands of dairy farms to coerce support for the Class Action settlement. By sending the very people who are empowered to reject the farmers' milk, the unmistakable message being sent by Defendants was "support the settlement or face the consequences." As a result, Defendants were able to extract over 1,200 form letters of support for the 2015 settlement - - compared to the three letters of support they had for the 2014 settlement (which was for the same monetary amount).

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