

EXHIBIT 1

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

IN RE: SOUTHEASTERN MILK ANTITRUST LITIGATION)	
)	
)	Master File No. 2:08-MD-1000
)	
THIS DOCUMENT RELATES TO:)	Judge J. Ronnie Greer
<i>Sweetwater Valley Farm, Inc., et al. v.</i>)	
<i>Dean Foods Co., et al., No. 2:07-CV 208.</i>)	
)	

MEMORANDUM OPINION AND ORDER

This matter is before the Court on the “DFA plaintiffs’ Motion To Re-Certify The DFA Litigation Subclass And Appoint DFA Subclass Counsel And Representatives,” [Doc. 1787]. Defendants Dairy Farmers of America, Inc. (“DFA”), Dairy Marketing Services, LLC (“DMS”), Mid-Am Capital (“Mid-Am”), National Dairy Holdings, LP (“NDH”), and Gary Hanman have responded in opposition, [Doc. 1793], and DFA plaintiffs have replied, [Doc. 1816]. The Court heard oral argument on the motion on April 17, 2012, and the matter is now ripe for disposition. For the reasons which follow, the motion will be granted.

I. Background

On September 7, 2010, the Court granted in part plaintiffs’ motion for class certification and certified a class consisting of two subclasses, [Doc. 934]. One of the two subclasses within the class certified was a DFA member dairy farmer subclass (“DFA subclass”). [Id.]. On August 25, 2011, the Court decertified the DFA subclass because of a conflict between the subclasses such that the same counsel could not continue to represent both the DFA subclass and the independent dairy farmer subclass, [Doc. 1681].

The Court then appointed Gary E. Brewer, Esq., as interim counsel for the DFA subclass, [Doc. 1752], and Payne Dairy was added as another representative of the putative DFA subclass, [Doc. 1758]. Thereafter, the Court recertified the DFA subclass for purposes of completing a settlement with Dean Foods, Southern Marketing Agency and James Baird and appointed Brewer as counsel for the settlement subclass, [Doc. 1782]. DFA plaintiffs now seek recertification of the DFA subclass, for litigation against the remaining defendants, previously certified on September 7, 2010, arguing that the conflict previously identified by the Court leading to the decertification has now been cured by the appointment of separate counsel. The remaining defendants, i.e. the non-settling defendants, oppose the motion.

II. Analysis

The arguments made by DFA plaintiffs for recertification of the DFA subclass are simple and straightforward. They now argue that the Court initially certified the DFA litigation class on the basis that all of the requirements of Rule 23 were satisfied and that the sole basis for the subsequent decertification of the DFA litigation subclass was the Court's conclusion that Rule 23(a)(4) was no longer satisfied. Because the interclass conflict identified by the Court has now been cured by appointment of separate counsel, DFA plaintiffs seek recertification. More specifically, they argue that the Court's decertification decision based on Rule 23(a)(4) did not change the Court's findings with respect to all other Rule 23 requirements and that those findings remain the "law of the case" absent changed circumstances. As a result, they argue that it is not now necessary for the Court to revisit any of its prior analysis with respect to all Rule 23 requirements except for that of Rule 23(a)(4).

Defendants argue that intra-class conflicts of interest preclude recertification of the DFA

subclass because some members claim to have been harmed by the same conduct that benefited other members of the class. Defendants once again cite the case of *Pickett v. Iowa Beef Processors*, 209 F.3d 1276 (11th Cir. 2000) as a case closely analogous to the present one. They argue that many DFA members benefit from the very agreements which DFA plaintiff representatives attack. They further argue that the appointment of separate counsel does not cure the conflict that exists within the proposed DFA member class and that the DFA class representatives have not provided their own common proof of impact and damages but rather have relied on the damages evidence of the independent subclass which does not distinguish between independents and the dairy farmers in the proposed DFA subclass.

DFA plaintiffs predictably reply that there is no intra-class conflict, only one invented by the defendants by exaggerating the injunctive relief sought. They further argue that defendants' reliance on *Pickett* and other similar cases is misplaced because defendants cannot demonstrate actual differences of impact on members of the DFA subclass. Plaintiffs point to what they refer to as a "fundamental fact that whatever the outcome of the litigation, there will not be winners and losers in the DFA subclass because, by the very nature of DFA, every member will be equally affected."

Most of the arguments now made by the defendants in opposition to the recertification of the DFA subclass have been previously made and were considered by the Court in prior opinions. Defendants have argued from the beginning of this litigation that plaintiffs' claim for injunctive relief creates a conflict which precludes certification in that certain of DFA members benefit from the conduct and agreements which are the subject of the sought after injunctive relief while others, including the class representatives, come to a different conclusion. The most that can be said about these matters at this point is that plaintiffs and defendants continue to make competing claims in the

litigation and these competing claims will not ultimately be resolved until after a trial of the case. Should the plaintiffs prevail at a trial of this case, the issue of injunctive relief will then be one for the Court and the Court, after hearing all of the evidence during what promises to be a lengthy trial, will attempt to fashion injunctive relief in such a way that it will benefit the greatest number of the stakeholders in this litigation. It may be that some of the arguments now put forth by defendants will ultimately cause the Court to deny certain injunctive relief sought by the plaintiffs or to grant that relief in a form much different than sought by plaintiffs. Those are matters which simply cannot be decided at this point.

As the Court noted in its September 7, 2010 order, the question raised by the defendants and plaintiffs' effort to distinguish *Pickett* and similar cases presents a very close question. As the Court noted in that order, however, doubt should generally be resolved in favor of the plaintiffs, especially given the Court's authority to modify or decertify the class at any time prior to judgment, even after trial, if the Court finds the requirements of Rule 23(a)(4) are no longer met. To the extent such a conflict exists, that conflict, for purposes of Rule 23(a)(4), has now been resolved by having separate counsel represent the two subclasses.

With respect to the sought after injunctive relief, some members of DFA obviously claim benefits from the challenged conduct while other members of DFA, including class representatives, see no benefit. The simple fact remains, however, that plaintiffs have offered substantial proof that the alleged conspiracy has injured all members of the independent farmer subclass and the DFA farmer subclass. In his expert report, Dr. Gordon Rausser states the opinion that "Defendants' actions to fix and suppress the prices paid to dairy farmers in the Orders 5 and 7 . . . [have] reduce[d] prices that all members of the class received for their milk below competitive levels." According

to Dr. Rausser,

This happened in at least the following ways *First*, the prices farmers received for their milk were artificially reduced via the mechanism of reduced announced over order premiums. *Second*, the prices farmers received were artificially reduced by the reduction in the uniform minimum blend prices as a result of flooding. *Third*, the prices farmers received were also reduced by the substantial added costs attributable to the acquisition and transportation of excess quantities of raw milk from outside Orders 5 and 7. *Fourth*, the prices that DFA farmers received were further reduced by substantial rebates and side payments made to Dean, NDH and other processors. Finally, I have analyzed the prices paid by farmers throughout Orders 5 and 7. That analysis indicates that the conspiracy reduced actual prices to everyone.

Expert Report of Gordon Rausser, Ph.D, March 5, 2010 at 175-76. So far as this Court can tell, defendants' experts have not specifically taken issue with the conclusion reached by Dr. Rausser.

If plaintiffs can prove at trial that all members of the DFA subclass have been equally harmed by illegal acts committed by the defendants, the requirements of Rule 23(a)(4) are met. On the other hand, if plaintiffs cannot prove that at trial, the Court is well aware of its continuing obligation to ensure that class certification requirements are met and will not hesitate to decertify the subclass once again. The Court is also well aware of the dispute among the experts about the damages framework used by the plaintiffs and the conflicting opinions of the respective experts. It may well be that plaintiffs are unable to offer proof across both subclasses with respect to damages from the alleged illegal conduct; however, the resolution of that factual dispute is one for later resolution by the fact finder.

The Court needs to make one further point. The Court is very mindful of the fact that it has certified the DFA subclass for purposes of settlement with Dean, SMA and Baird and that it did so ultimately upon the agreement of all parties to those settlement agreements that the appointment of

separate counsel had cured the conflict of interest which manifested itself. Defendants, while conceding that no conflict of interest manifested itself when the only matter at stake was collecting money from Dean or other defendants, argue that those interests are burdened with great tension when one considers the injunctive relief issues which are at stake here but were not part of the prior settlements. As noted above, that is a matter the Court can deal with, if necessary, after a verdict for plaintiffs in the case. In any event, DFA members who claim benefit from the agreements and conduct which may be the subject of injunctive relief will find themselves in the same perilous position whether they are members of a subclass which is part of this litigation or not given that the independent subclass seeks the same injunctive relief and injunctive relief granted to them would have an impact on DFA's members.

III. Conclusion

For the foregoing reasons, the motion of DFA plaintiffs to recertify the DFA subclass for litigation and appoint DFA subclass counsel and representatives, [Doc. 1787] is GRANTED. The Court will recertify the subclass of DFA dairy farmer members with respect to all of the plaintiffs' claims except for the breach of contract claim by DFA against DFA by its dairy farmer members, as set forth in the Court's prior order. [Doc. 934]. Furthermore, the Court appoints Gary E. Brewer, Esq. as DFA subclass counsel and appoints Payne Dairy, Messrs. Fraizer and McCain d/b/a McCain Dairy and Mr. Holmes as representatives for the DFA subclass.

Within five (5) days from the entry of this order, DFA plaintiffs' counsel shall submit to the Court a proposed order, with accompanying memorandum, for complying with Rule 23(c)(2) and (d) to the extent applicable. Defendants may file a response within five (5) days of the filing by plaintiffs of the proposed order. No reply will be permitted.

At any time before final judgment, the Court shall modify this recertification order or decertify the subclass should subsequent circumstances warrant such action.

So ordered.

ENTER:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE

EXHIBIT 2

**EXPERT REPORT
OF
GORDON RAUSSER, Ph.D.
REGARDING ANTITRUST LIABILITY AND DAMAGES**

In the matter of

Alice H. Allen and Laurence E. Allen, et al.

v.

Dairy Farmers of America, Inc., et al.

USDC, District of Vermont

Case No. 5:09-cv-00230-cr

**Highly Confidential
Pursuant to Protective Order**

July 22, 2011

remaining lower value usages for manufactured dairy products (Classes II, III, and IV). However, increases in Class I utilization rates have been very limited in the Northeast region. While seasonal variation in these rates naturally occurs, the average Class I utilization rate in Order 1 has increased by just 3.4% over nearly a ten-year period.⁴⁰⁰

The combination of all of these facts strongly suggests that the Northeastern market for raw milk has been subjected to manipulation, and that prices have been suppressed. This hypothesis can be tested and the degree of any such suppression quantified using the standard statistical modeling methodologies described in Section XI of this Report.

B. Northeastern Sales Practices Assure Uniformity of Price

Four important characteristics of Northeastern milk marketing and sales operate together to assure that individual farmers will suffer the same economic impact in the event prices paid by processors are suppressed. The first of these is federally regulated pooling of revenue that combines raw milk sales to different classes and types of processors. The second is the pooling of revenue earned and expenses incurred by multiple cooperatives through a master pool operated at the level of the marketing agent, DMS. This system is designed so that each cooperative receives the same price per hundredweight regardless of who bought its milk, or how expensive it was to transport and market, and how the milk was ultimately used. Third, after receiving its payment based on average prices, each cooperative then pays (and generally is required to pay) its individual farmer members an average price per hundredweight of milk that they have sold over the period, subject only to formulaic premiums and, in some cases, deduction of extra hauling charges. These several layers of revenue pooling and payments based on

⁴⁰⁰ Calculation based on USDA AMS, Milk Marketing Order Statistics Database, "Pool Totals" Table, <http://apps.ams.usda.gov/USDAMIB/Main/Welcome.aspx>

average prices assure uniformity of impact in the event payments by processors are suppressed. Fourth, there is active price coordination through GNEMMA and DMS in Order 1, as well as individual cooperatives that make retroactive price adjustments (known as “competitive credits”) to assure their individual customers pay no more and no less than each other.⁴⁰¹

Raw milk is unlike other commodities because of the pooling mechanisms described above which are employed in its sale. At the cooperative level, these techniques aggregate all revenue and expenses across a large number of producers and assure that all members receive the same base unit price for their production. A second level of pooling occurs through marketing agents (in this case, DMS) who aggregate revenue and expenses across cooperatives so that each of those cooperatives receives the same price for the milk that they deliver. The end result of this process is that individual farmers receive the same standardized price dependent upon the processors’ willingness to pay. This is confirmed by deposition testimony: Stoddart of Agri-Mark indicates that “there is not a lot of difference between—everybody’s getting the same money for milk in the marketplace.”⁴⁰² This is the perception of dairy farmers as well. Named Plaintiff Alice Allen testified that “the pay prices are all pretty much the same.”⁴⁰³ Under these circumstances, price suppression produces a common impact upon all farmers, lowering equivalently the price paid to each of them. These characteristics of the Northeastern milk market make it entirely dissimilar to other commodity markets in which prices received by sellers are likely to be the result of the individual transactions they negotiate on their own behalf.

⁴⁰¹ Deposition of Dennis Schad, April 26, 2011, at p. 137:8-140:9.

⁴⁰² Stoddart Deposition, 1/24/11, at p. 175.

⁴⁰³ Deposition of Alice Allen, 1/14/11, p.59: 19-20.

1. Regulated Pooling

As previously described, the prices paid by processors are part regulated and part negotiated. Each month, the Market Administrator announces the minimum blend price for all milk pooled on the Order which is also referred to as the “statistical uniform price.”⁴⁰⁴ Minimum prices are also set for each of the four classes of milk, with the understanding that their revenues are pooled together; in Order 1 the minimum blend price equals the Class III price plus the Producer Price Differential (PPD).⁴⁰⁵ The Class III price is determined by a formula based on the price of butter, cheese and dry whey.⁴⁰⁶ The PPD itself is the average of the differences between the Class I, II and IV prices above the Class III price (weighted by Class I, II and IV pool-wide utilization rates).⁴⁰⁷ The PPD captures the essence of regulated revenue sharing, because it is designed to ensure that *all* producers share in the value of the Order-wide pool that is above the Class III price.⁴⁰⁸ The PPD is adjusted by the location differential which is designed to direct milk to where it is most needed. This location adjustment is specific to the location of the processing plant. The resulting uniform price (Class III Price + PPD) applies to all milk pooled on Order 1 during the month (regardless of its use), and differs only by a formulaic adjustment based on the location of the processing plant purchaser. This adjustment increases the price for plants located in populous areas (e.g., Boston, MA), as this is where the regulators most want to guarantee adequate supply. The cooperatives that supply milk are guaranteed this single blend

⁴⁰⁴ Federal Milk Market Administrator, Press Release, February 2008, Northeast Order Uniform Price for January 2008.

⁴⁰⁵ Federal Milk Market Administrator, Press Release, February 2008, Northeast Order Uniform Price for January 2008. *See also*, DL-NE LIT-115019, at p. 1-2.

⁴⁰⁶ Jesse & Cropp, p. 13, figure 8.

⁴⁰⁷ Specifically, $PPD = (Class\ I\ Price - Class\ III\ Price) * Class\ I\ Utilization + (Class\ II\ Price - Class\ III\ Price) * Class\ II\ Utilization + (Class\ IV\ Price - Class\ III\ Price) * Class\ IV\ Utilization$. Jesse & Cropp, p. 15.

⁴⁰⁸ The PPD can be negative if large portions of milk in the pool are used for Class IV manufacturing and the Class IV price is lower than the Class III price. For example, this occurred in Order 1 in May and June of 2008. *See* Memorandum by Greg Wickham, Jul. 14, 2008, DFA-NE2009-002652, at -652.

minimum price for their particular milk, even though the processors pay regulated minimum prices based on their milk usage (Class I, II, III or IV).⁴⁰⁹ In order to accomplish this objective, the Market Administrator for Order 1 pools the minimum Class prices paid by processors into the Producer Settlement Fund and then distributes this regulated part of the Order's milk revenue to the producers in line with the blend minimum price.⁴¹⁰

2. Marketing Agent Pooling

Cooperatives, and in some cases individual farmers, typically operate through Marketing Agents who market their milk for them and provide services such as hauling and testing. The dominant marketing agent in Order 1 is DMS which was formed by DFA and Dairylea in 1999, and which shares with them many overlapping personnel and resources.

Revenue from the full milk price, including all over-order premiums, was until July 2010 effectively pooled by DMS into two main pools with very similar accounting treatments - a North pool and a South pool. Thereafter DMS began to use just one pool for the entire Northeast.⁴¹¹ Among other witnesses, Ellen O'Connor (Dairylea CFO) has testified to the single pool currently used to aggregate all DMS milk sale revenue in the Northeast.⁴¹² Once all revenue received from processors has been pooled by DMS and expenses have been deducted,

⁴⁰⁹ The processors must pay the Class I minimum price for milk intended for Class I use, the Class II minimum price for milk intended for Class II use, and so on through Class III and Class IV.

⁴¹⁰ This is acknowledged by Dr. Kalt in his class certification report (*see* Kalt Class Report, at p. 58-59); *see* also Novakovic, Alexander and Stephenson, "Glossary Terms of Dairy Marketing Terms," Jan. 2000, definitions of "Equalization Payment" (at p. 10) and "Producer Settlement Fund" (at p. 21).

⁴¹¹ Cook Deposition [VP of Accounting for Dairylea from 2000 to 2009, *see* 9:3-9], at p. 51:3-21. Cook later testified that she was aware of a separate pool, called the "south pool," for Land O' Lakes (at p. 74:19-75:5). She also testified that a "south pool equalization calculation" is used to ensure that Land O'Lakes and the cooperatives in the main pool – Dairylea, DFA and St. Albans – get the same net marketing revenue – i.e. the same price per hundredweight (at p. 98:1-21). *See* also Rule 30(b)(6) Deposition of DFA, DMS & Dairylea, at 15:3-18:11: Dairylea, DFA and Land O'Lakes participated in the South pool and Dairylea, DFA and St. Albans participated in the North pool, the dividing lines of the two pools being roughly the northern border of Pennsylvania and New Jersey; 30:3-5 (DMS formed a new pool in July 2010).

⁴¹² O'Connor Deposition, at p. 152:6-153:14, 159:11-15.

100% of the balance is distributed.⁴¹³ DMS itself is owned in equal shares by St. Albans, Dairylea, and DFA.

After deduction of haulage, marketing and other expenses,⁴¹⁴ DMS makes a direct payment to a small number of independent farmers that are not directly affiliated with any cooperatives. After that payment, four cooperatives—DFA, Dairylea, St. Albans and Land O'Lakes—collect their share of the DMS proceeds, the allocation of which is determined according to the volume of milk those cooperatives and their affiliates marketed through DMS, including any affiliated independent farmers and affiliated cooperatives assigned to them.⁴¹⁵ Contractual assurances are in place to guarantee that prices will be equal across these members. The contract between St. Albans and DFA specifies that DMS proceeds will be distributed in a manner so that “St. Albans will have available for payment to the members of St. Albans an amount that if paid, would return said St. Albans’ members the same pay price as the DFA and/or Dairylea producer/members.”⁴¹⁶ This process is confirmed through a review of DMS Settlement Reports.⁴¹⁷ As a result of this pooling process, cooperatives receive from DMS effectively the same price per hundredweight for their milk.⁴¹⁸

⁴¹³ DMS 01-0000190-236, at -218-219 (DMS Restated LLC Operating Agreement, Jan 2003); Cook Deposition at 56:12-20: “Q When Dairylea collects a share of the proceeds from the DMS pool, is that calculation based on the volume of milk that Dairylea marketed through DMS? A Yes. Q Does that volume include the milk that cooperative members of Dairylea also produced? A Yes,” p. 41:7-11.

⁴¹⁴ Cook Deposition, at p. 51:3-21. Cook also states that DMS does not really own any fixed assets (“Like a filing cabinet or something like that at different locations but they don’t own, to speak of, any fixed assets.”), and therefore no milk revenue is required for asset servicing (at p. 42:16-18).

⁴¹⁵ O’Connor Deposition, at p. 104:8-105:6, 109:12-16, 108:17-109:2, 112:7-15, 117:7-118:6; O’Connor Exhibit 9. DMS 01-000190-236, at -218-9.

⁴¹⁶ O’Connor Deposition, at p. 84:18-85:18; O’Connor Exhibit 8.

⁴¹⁷ DMS Financial Statements, Jan. 31, 2004, DMS-NE2009-063219-224. The allocation of the pool (see DMS-NE2009-063223) among the four cooperatives is approximately but not exactly in proportion to the share of volume they directly supplied themselves (see DMS-NE2009-063221), each cooperative gets a little more than their volume would suggest. This is likely due to the allocation of the independents’ supply to each cooperative, as described by O’Connor. See O’Connor Deposition, at p. 108:17-109:16, 117:7-118:6.

⁴¹⁸ Cook Deposition, at p. 53:21-54:13.

3. *Cooperative Pooling*

Cooperatives are, by their very nature, designed to pool revenue, expenses and risk across their individual farmer members in a uniform manner. In fact, their rules generally *require* them to do so. DFA's Articles of Incorporation lists three items as Purposes of the Association, the second of which reads:⁴¹⁹

To distribute on a ***uniform basis*** the marketing proceeds after paying the expenses and matured liabilities of the Association [emphasis added].

Each cooperative allocates revenue to its farmers by issuing milk checks. An example milk check is shown in Exhibit 31.⁴²⁰ Milk checks are calculated and processed formulaically and generally consist of four main elements:

- 1) Component values (in yellow) – these are the dollar values of butterfat, protein and other solids. The values are equal to the volume of the farmer's milk that consists of each of the components multiplied by the component price (in Order 1 this is usually the USDA component price).
- 2) The Producer Price Differential – PPD (in green). In this example, the PPD is negative.
- 3) Premiums (in red). Premiums are determined based on pre-existing formulas, applied across the board to members of the cooperative. In this example, the farmer receives premiums because his milk is rBST-free and for quality, protein and volume.

⁴¹⁹ Articles of Incorporation and Bylaws of Dairy Farmers of America, Inc., effective Jan. 1, 1998 (amended Mar., 2004), DFA-NE2009-019640-656, at -643.

⁴²⁰ This milk check is for a payment to farmer Aaron Zimmerman for milk delivered in Apr. 2007.

4) Deductions (in blue). Money may be deducted from the farmer's check to represent their share of previously unrecovered costs for services such as haulage.

The first three elements (component values + PPD + premiums) combine to make up the farmer's Total Gross Pay (in this example \$11,326.36) and the subtraction of the fourth element (deductions) gives the farmer's Net Payment (in this example \$6,858.80). There are obvious parallels here with the breakdown of payments at the price point from Processor to DMS. The total component value is a reflection of the Class III price, which is calculated as a weighted average of the same three components.⁴²¹ As previously discussed, the PPD is a reflection of the federally mandated PPD. When the PPD is added to the component values, the result is referred to as the Producer Blend (similar in terminology and substance to the blend price set by the Order 1 marketing administrator). On top of this Producer Blend price, premiums may be added on a formulaic basis to account for volume, quality, rBST free or, occasionally, other characteristics of the farmers milk. The critical point is that all of these price elements constitute a distribution of the milk revenue pooled by DMS. The cooperative can treat the component prices, the PPD and the premiums as fungible and they often do. DMS, for example, adjusts the PPD to producers in order to "offset" changes to other components of the milk check, such as hauling, balancing, etc.⁴²² Agri-Mark has adjusted the PPD paid to farmers each month based on the cooperative's total performance, and has been criticized for being "sneaky" because members

⁴²¹ Jesse and Cropp, p. 13, figure 8.

⁴²² See DMS-NE2009-137607; see also DL-C 808105, at -106.

have no way of knowing what the price reduction will be for a given month since they are unaware of the cooperative's total performance.⁴²³

In sum, the cooperative is designed to distribute uniformly to its farmer members all pooled revenue it has received (including any premiums paid by processors). The alleged suppression of prices paid by processors would have reduced each cooperative's pool of revenue and, thus, the amount of money that is uniformly distributed to farmers. As representatives of DFA, DMS and Dairylea have all testified, when processors pay more to DMS the cooperatives distribute more to farmers; when processors pay less, the farmers receive less:⁴²⁴

Q. And in the south pool, if DFA received less money, they would have less money to distribute to their member farmers, member co-ops and affiliated co-ops, as well as the independent farmers that are affiliated with them, correct?

A. Yes.

Q. And that would be true for Dairylea, as well, as far as the south pool, correct?

THE WITNESS: Yes.

Q. And that would be true for Land O'Lakes, as well, correct?

A. Yes.

Q. And in the north pool, if DFA received less proceeds from the north pool, it would then have less money to distribute to its members, member cooperatives, affiliated cooperatives, and the independent farmers affiliated with DFA, correct?

A. Yes.

Q. And the same is true for Dairylea, as far as the north pool, correct?

A. Yes.

Q. And the same is true for St. Albans, as far as the north pool, correct?

A. Yes, along with their primary handling. It's all based on sharing.

Q. And if a cooperative receives less money from any of the DMS pools, they have less money to pay their members, member cooperatives, affiliated cooperatives and affiliated independent farmers quality

⁴²³ See AGR00057, at -260.

⁴²⁴ Rule 30(b)(6) Deposition of DFA, DMS & Dairylea, 54:22 - 56:14 (objections omitted). Indeed, DFA, DMS and Dairylea also testified that, all other factors aside, DFA and Dairylea would be more likely to pay their member and affiliated cooperatives and independent farmers more if revenue from the DMS pool increased and less if revenue from the DMS pools decreased. At p. 101:18 – 103:22.

premiums, volume premiums, base premiums and any other premiums, correct?

A. Yes, that would be correct.

Given these basic dynamics, how individual cooperatives choose to label the different elements of the total price that the farmer receives and the fact that the labels used might be different for different cooperatives, has no relevance to the questions of either price uniformity or common impact. Instead, the pricing and pooling mechanisms of the milk industry in Order 1 guarantee that farmers receive very similar prices for their milk and that they receive an allocable share of the *total* revenue collected from processors. These facts enable a common analysis in this case, and assure the existence of common impact.

4. Coordination through GNEMMA, DMS and “Price Matching Adjustments”

Acting alongside DMS is GNEMMA—an unincorporated common marketing agency of Northeastern dairy farmer cooperatives.⁴²⁵ GNEMMA was formed “to provide any desired aspect of milk pricing for milk produced in, or [sic] solid into, the Northeastern U.S.”⁴²⁶ GNEMMA was preceded in its operations by the Northeast Milk Marketing Agency (“NEMMA”). NEMMA was formed in 2000 (shortly before the beginning of the Class Period) by DFA, Advantage Dairy Group, Dairylea, DMS, Land O’ Lakes, and MDVA.⁴²⁷ The Common Marketing Agency Agreement that established GNEMMA was executed on September 15, 2006 between the cooperative members of DMS—DFA, Dairylea, St. Albans and Land

⁴²⁵ GN000272-276.

⁴²⁶ Letter from Greg Wickham, CEO of Dairylea Cooperative, undated (GN000544-545).

⁴²⁷ GN000535-542 at -535

O'Lakes—as well as non-DMS cooperatives Agri-Mark, MDVA and Upstate Farms (also known as Upstate Niagara).⁴²⁸

In August 2008, GNEMMA entered into an agreement to terminate NEMMA and consolidate its affairs and operations into GNEMMA. Like GNEMMA, NEMMA was a “common marketing agency” with “substantially the same member base, marketing objectives and significant overlap of the represented geographical areas.”⁴²⁹ By September 2008, NEMMA was terminated and, pursuant to the termination agreement, DMS, which had been a member of NEMMA but not of GNEMMA, became a member of GNEMMA.⁴³⁰ With the dissolution of NEMMA and the absorption of its functions by GNEMMA, GNEMMA became responsible for pricing in the former NEMMA area – the states of Pennsylvania, New Jersey, Delaware, Maryland, and Virginia.⁴³¹ Operating under its pricing guidance are DFA, Dairylea, St. Albans, Land O' Lakes, Agri-Mark, Upstate Farms Cooperative, and Maryland and Virginia Milk Producers Cooperative Association as well as all other DMS members and affiliates.⁴³² Although some documents imply an originally narrow role in establishing rBST free premiums, the documents and testimony I have reviewed indicate a much broader role has been undertaken by GNEMMA in influencing and coordinating raw milk prices paid by processors in Order 1. These include the statement that “The purpose of the Agency shall be to facilitate discussion and cooperation among the Members with respect to the marketing by each Member of the raw milk

⁴²⁸ GN000272-276; LOL0000282-290.

⁴²⁹ GN000776-777 at -776.

⁴³⁰ GN000755; Email from Marvin Beshore re GNEMMA-South pricing call, dated September 23, 2008 (GN000752-753, at -752); GN000531-532.

⁴³¹ Email from Marvin Beshore re GNEMMA-South pricing call, dated September 23, 2008 (GN000752-753 at -752).

⁴³² LOL0000282-290.

production of dairy farmers.”⁴³³ A letter authored by Greg Wickham, currently the CEO of DairyIea and the president of a division of DFA⁴³⁴, outlines the impetus behind the formation of GNEMMA: to “have a vehicle that might provide a measure of pricing on the independent supplies that are outside of our businesses...[including] a number of independent farms and cooperatives.”⁴³⁵ Yet Wickham goes on to indicate that it was not the intent of GNEMMA to make these independent farms and cooperatives members of the Agency unless at some point there was a competitive or political reason to do so.⁴³⁶ Thus, GNEMMA may facilitate the conspirators’ ability to monitor the prices paid by processors in the Northeast, even for non-members. Mr. Wickham’s letter goes on to state:

The intent of the Agency [GNEMMA] is to cover any desired aspect of milk pricing for milk produced in, or sold into the Northeastern US...At the outset, the initial intent of the Agency is to provide a vehicle to implement uniform rBST-free milk pricing throughout the Northeast. I fully anticipate the Agency becoming involved in other pricing matters as well, over time.⁴³⁷

When testifying on behalf of DFA and DairyIea before the Vermont Milk Commission in 2007, Edward Gallagher confirmed GNEMMA cooperatives’ collective influence and control over pricing in Order 1. According to the DairyIea and DFA testimony, GNEMMA pricing covers 75% of the Northeast region’s milk; further, *nearly 100%* of the Class I milk deliveries to New Jersey, Vermont, Massachusetts, Rhode Island, and New Hampshire plants were from GNEMMA members.⁴³⁸ This case alleges that processor premiums have been suppressed through agreement, thus leading to lower payments to dairy farmers in Order 1. Those premiums

⁴³³ LOL0000282-290 at ¶3. “The purpose of the Agency shall be to facilitate discussion and cooperation among the Members with respect to the marketing by each Member of the raw milk production of dairy farmers.”

⁴³⁴ DairyIea Management, Gregory I. Wickham, *See* <http://www.dairyIea.com/management.aspx>.

⁴³⁵ GN000544-545 at -544.

⁴³⁶ GN000544-545 at -544.

⁴³⁷ GN000544-545 at -544 (Letter from Greg Wickham to Jay Bryant, dated May 17, 2006).

⁴³⁸ DFA 01-1202016-053 at -039.

are by far largest for Class I milk, and GNEMMA's coordinating influence over the pricing of almost all such Class I milk therefore provides a clear mechanism for collusion.

GNEMMA has submitted a declaration in which it admitted that it *did* in fact announce over-order premiums to be charged to processors in the southern part of Order 1 (the territory previously covered by GNEMMA's predecessor NEMMA). As set forth in that declaration, "For GNEMMA-South, the GNEMMA Managers, by motion made, seconded and adopted unanimously, have approved over-order premiums on Class I milk . . . Approval by the GNEMMA Managers of over-order prices and credits means that the GNEMMA cooperatives agree to charge where and as applicable those prices and credits to customers."⁴³⁹

Mr. Wickham has testified that GNEMMA managers also discuss the prices charged to processor-customers throughout the Northeast:⁴⁴⁰

Q. Now, among other things on those calls, GNEMMA members discuss prices for raw milk in the Northeast?

A. Correct.

Q. And in particular they discuss over-order premiums or handling charges for different classes of milk in the Northeast that they're charging to their processor customers?

MR. KUNEY: Objection to form.

A. Yes, but I should point out, because I think you're familiar with some other agencies and how they work, it so happens that GNEMMA does not put out a standard price schedule or list like some of the other agencies do, it just happens to be or way.

...

Q. Is it true that the cooperatives that are members of GNEMMA discuss the premium levels their customers are providing at GNEMMA meetings?

A. I've heard you over the last two days use the word "premiums" and "over-order" and "handling" and I'm not sure in which vein you're using the word "premium" in the question. If you're talking about the charge that we charge customers in excess of the Federal Order minimum.

Q. That's what I'm talking about.

⁴³⁹ Declaration of Leon Berthiaume in Response to Notice of Deposition of Non-Party Greater Northeast Milk Marketing Agency (GNEMMA), dated May 17, 2011 ("Berthiaume Declaration"), at ¶ 4; *see also* GN000887-88.

⁴⁴⁰ Wickham Deposition, at p. 131:8-22; 136:4-15.

A. Okay. Yes, we would discuss those charges.

Mr. Wickham further testified that the managers of GNEMMA would discuss whether to change prices and would then agree to delay any final decision until the managers had approached their major customers [processors] to see if such changes were acceptable.⁴⁴¹ More specifically, Mr. Wickham testified that:⁴⁴²

Q. Right. But basically what was going on was that each of the GNEMMA members was going to approach their customers, get a feel for whether a price increase was going to be possible in the marketplace and then they were going to come back and discuss the topic together and try to reach a final decision?

MR. KUNEY: Objection to form.

A. Yes.

GNEMMA actions are consistent with its description of itself as an organization whose “goal...is to set Class I prices in the Northeast.”⁴⁴³ For example, it is actively involved in influencing the setting of premiums payable from the Pennsylvania Milk Marketing Board (PMMB) and makes presentations to that board to influence its price-setting decisions, including consideration of reasons for increasing premiums unrelated to rBST-free milk.⁴⁴⁴ GNEMMA has also been active in considering and responding to defendant Dean Foods’ proposals on counter-cyclical premiums that do not appear to be specific to rBST-free milk.⁴⁴⁵ A DMS document states that:⁴⁴⁶

GNEMMA is comprised of Dairylea, DFA, St. Albans, Land O’Lakes, Upstate, MDVA and Agri-Mark. On a regular basis, the CEO’s [sic] from these organizations get together to talk about rbST-free pricing [sic], Class I pricing, and Northeast milk marketing dynamics.

⁴⁴¹ Wickham Deposition, at p. 127-178.

⁴⁴² Wickham Deposition, at p. 151:12-20.

⁴⁴³ PMMB Hearing, Jun. 3, 2009. GN000153-164, at -162.

⁴⁴⁴ GNEMMA Update and Overview, Mar. 14, 2008. GN001106-107, at -106.

⁴⁴⁵ GNEMMA Operations Committee Update, Jun. 2007, GN000963-965, at -963. Deposition of Dean Ellinwood, Apr. 21, 2011 (“Ellinwood Deposition”), at p. 64:1-65:14.

⁴⁴⁶ DMS Financial Results and Comments, Feb. 2008. DMS-NE2009-141648-650, at -650.

The record is replete with evidence that GNEMMA set prices throughout the region, covering 75 percent of raw milk in the Northeast. Further the alleged Conspirators Agri-Mark, MDVA and Upstate Niagara are members of GNEMMA, along with the cooperatives that market milk through DMS- DFA, Dairylea, St. Albans and Land O'Lakes.⁴⁴⁷ Regardless of whether or not GNEMMA formally “announced” over-order premiums in Order 1, it provided an excellent facilitating mechanism for the conspiracy, one attended by all of the cooperative Defendants and by Co-conspirators. In this way the organization had the ability to set premiums for the large majority of milk sold in Order 1 in a way that assured uniform pricing.

In addition to the coordination of prices accomplished by DMS and GNEMMA, cooperatives themselves engage in explicit price parity. Full Supply and Outsourcing Agreements require them to match the lowest price in the market or risk losing their supply contracts. Full Supply Agreements generally included a Most Favored Nations (MFN) clause in which the Buyer was guaranteed the lowest price charged to any other competitor.⁴⁴⁸ This clause protects the processor from competitors receiving a more favorable price but does not protect the cooperative, marketing agency, or member farmers. The MFN also gives the supplier the right of last refusal to the processor, preventing any competing cooperative or independent producers

⁴⁴⁷ In a May 6, 2009 hearing before the US Secretary of Agriculture, Leon Berthiaume agreed that GNEMMA is “primarily a price agreement agency” designed to “reach out and embrace those that are not part of the DMS system into a common decision-making and strategic organization.” See <http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5076908>, at p. 652:5-6, 651:5-19). GNEMMA members consult with “key customers regarding total price of milk” before issuing recommendations and policies on price- Greg Wickham noted in a DMS Weekly Report that a GNEMMA conference call was held to “update the group on discussions with major customers and try to make a determination whether or not an increase on fluid handling was going to be possible.” DFA 01-1354222. According to a 2007 presentation by Greg Wickham, GNEMMA members market 75% of the milk in the Northeast. See <http://www.icar.org/niagara/Presentations/3Wednesday/ICAR/07 - Wickham.pdf>. NEMMA set prices for DMS, DFA, Dairylea, LOL and MDVA in the Mid-Atlantic region of the Northeast from 2000 before its functions were taken on by GNEMMA in 2007, GN000776; Ellinwood Deposition, at p. 32:11 - 33:11.

⁴⁴⁸ DEAN00000705 – DEAN00000724, at -705; DEAN00000735 – DEAN00000746, at -735; DFA 01-0231239 – DFA 01-0231249, at -39-40; DEAN00000769 – DEAN00000782, at -769-770; DEAN00003995 – DEAN00004008, at -3996.

from gaining access to bottling plants by undercutting the supplier's price to these plants. Furthermore, as described above competitive credits are often given to processors to assure that they will not have paid more than their putative competitors. Testimony from cooperative representatives elucidates the mechanics by which prices in the region rapidly equalize. For example, the Director of Mid-Atlantic Marketing and Regulatory Affairs at Land O' Lakes, Dennis Schad, has testified to the process by which Land O' Lakes retroactively granted "competitive credits" to its customers so that their net prices were reduced to match those Land O' Lakes had made available to other processors.⁴⁴⁹ These techniques have contributed to the standardization of prices across Order 1.

5. Any benefits to farmers from increased processor profits are negligibly small

Defendants suggest that some cooperatives (and their members) may have benefitted disproportionately through ownership of processing plants, thus posing a challenge to common impact. From the point of view of Class members, such gains—if any—would have taken the form of increased patronage refunds and would have had no impact on the payments they received for their current milk supply. A large portion of such "refunds" are, in fact, not even received by the members, but are instead held by the cooperative as retained earnings.⁴⁵⁰ These retained earnings are required to be paid back to the farmer member upon departing the cooperative, but the duration associated with such repayments is at the discretion of the cooperative and the risk associated with receiving such payments undermines their value to

⁴⁴⁹ Deposition of Dennis Schad, April 26, 2011, at p. 137:8-140:9.

⁴⁵⁰ Further, Paul Johnston, CEO of Agri-Mark, testified that Agri-Mark does not provide profits derived from non-member milk to members, and, as for profits from milk produced by members, some is kept as tax-paid reserves and, of the remainder, only 20% is required to be paid out in cash while the rest is allocated to Agri-Mark individual farmer equity accounts. Johnston Deposition, at p. 35:4-37:15

points that relate to milk produced and pooled on Order 1 and it is equal to zero for all data points that relate to milk produced and pooled on Orders 32 and 33. The estimated coefficient on this variable gives the dollar value of the suppression of Farmers' Premiums due to the alleged conspiracy.

D. Model Specification - The Farmer Premium Variable

Plaintiffs' contend that the over-order premiums paid by processing plants to cooperatives and independent farmers (the Processor Over-Order Premiums) were suppressed by virtue of the Conspirators' wrongful conduct. As discussed in Section X of this report, for farmers who are members of cooperatives, the Processor Over-Order Premiums are pooled along with revenue from the federally guaranteed Blend Minimum price. However, if those premiums are not large enough to cover the marketing and administrative expenses deducted by the Marketing Agent and Cooperative, the price actually distributed to the former may be less than the Blend Minimum.⁵⁰⁸ Therefore, although raw milk sales revenue comes from two separately determined prices (the Blend Minimum and Processor Over-Order Premiums), the revenue is pooled and treated fungibly in determining the Gross Price paid to farmers. This Gross Price is routinely divided into various parts for the purpose of reporting and computation. Individual cooperatives may (and often do) apply different labels or names to the constituent parts of the Gross Price in their payroll data. Further, unlike some other Federal Orders, in Order 1 the Processor Over-Order Premium may be distributed to farmers through a number of different premiums, the labeling of which is inconsistent and, at times, counter-intuitive. For example, the Producer Price Differential paid to Order 1 farmers, although labeled as such, is not an exact reflection of the federally mandated Producer Price Differential (the "PPD") that must be paid by

⁵⁰⁸ Jesse & Cropp, p. 9.

processors to cooperatives or independents who sell them milk. DMS, for example, adjusts the PPD to producers as a means of “offsetting” changes to other components of the milk check, such as hauling, balancing, etc.⁵⁰⁹ Agri-Mark has adjusted the PPD paid to farmers each month based on the cooperative's total performance, and has been criticized for being “sneaky” because members have no way of knowing what the price reduction will be for a given month since they are unaware of the cooperative’s total performance.⁵¹⁰ As a result, it is neither necessary nor appropriate to attempt to separately measure the impact on each of these premiums, as opposed to the impact on the total Farmer Premium paid to Class members.⁵¹¹ Similarly, it is inaccurate to consider some premiums paid to farmers and not others when investigating the effect of the price suppression. The alleged actions of the conspirators led to a suppression of Gross Prices paid to farmers relative to the Blend Minimum. Therefore, the correct pricing variable with which to quantify damages is the Gross Price paid to each farmer each month, minus the Blend Minimum price established for the Order in that same month.⁵¹² As previously explained, I refer

⁵⁰⁹ See DMS-NE2009-137607; see also DL-C 808105, at -106.

⁵¹⁰ See AGR00057, at -260.

⁵¹¹ In his Initial Expert Report, Dr. Kalt presented an analysis of what he referred to as the “competitive premium” paid to farmers. I demonstrated that his calculation of this variable was *ad hoc* and included an arbitrary collection of premiums while excluding important premiums that could still incorporate distributions to farmers of Processor Over Order Premium revenue. In his Sur-Reply Report, Dr. Kalt dispensed with his “competitive premium” variable and proceeded to use a second premium variable which he calculated by subtracting from the Gross Price the component prices (for butterfat content, protein content and other solids content) as well as the PPD paid to farmers. For the reasons outlined in this section this treatment is also inappropriate given testimony on how the PPD can be adjusted at the cooperative’s will and therefore can reflect revenue from Processor Over Order Premiums, and given the fact that in some rare instances the component prices paid to farmers in Order 1 are not exactly equal to the nationally regulated and reported component prices.

⁵¹² In my main damage results I use the Gross Price (minus the Uniform Price) rather than the Mailbox Price (minus the Uniform Price). In theory the difference between the Mailbox Price and the Gross Price is simply that the former is after deductions have been made to the Gross Price by the cooperatives for haulage, dues and other items. However, the payroll data does not contain fully comparable information on dues and other items for all of the cooperatives and does not contain an item on haulage for Land O’Lakes. Dr. Kalt, in the analysis that he presented in his reports on class certification used an incorrectly calculated version of the Mailbox Price (which I refer to as the “Kalt Mailbox Price”), which inexplicably removed items such as rBST-free premiums. Nevertheless, I have performed my damage analysis using both a Mailbox Price that deducts haulage from the Gross Price (where

to this price variable as the Farmer Premium and it serves as the *dependent* variable in the damage regression model. The *dependent* variable in a regression is the variable that is explained by (i.e. depends upon) the explanatory variables.

The Farmer Premium is calculated in the same fashion for Order 1 as it is for Orders 32 and 33. The calculation of the variable begins by taking the Gross Revenue a given farmer receives and dividing this amount by the hundredweight of milk that this same farmer sold in that month. The result is the total price received per hundredweight of milk for each farmer in each month. A pooling Order variable is then assigned to each farmer's sales in each month, thus reflecting the Order on which his milk was pooled.⁵¹³ This pooling Order variable is used to subtract the correct federally established Blend Minimum price from the Gross Price that the farmer received in each month, giving the Farmer Premium. Summary statistics are presented in Exhibit 37b for the Farmer Premium including its average value, standard deviation, maximum value and minimum value. In keeping with the hypothesis that the farmers in the conspiratorial Order 1 received lower premiums than the farmers in the competitive Orders 32 and 33, the average Farmer Premium in Order 1 is \$0.65 per hundredweight, significantly lower than that in Order 32, which is \$1.27 and lower than that in Order 33, which is \$1.33.⁵¹⁴ As described in Section XII of this report, the Farmer Premium is frequently negative in Order 1, a far less common occurrence in Orders 32 and 33. As presented in Exhibit 37c, in Order 1 27% of farmer-month observations exhibit a negative Farmer Premium. Whereas in Order 32 or Order

haulage is reported) and, again, on the Kalt Mailbox Price. In both cases the estimated price suppression is higher than in my results based on Gross Price.

⁵¹³ For Lone Star Milk Producers and Arkansas Virginia Cooperative members, the payroll data provided through discovery does not specify the Order on which a farmer's milk was pooled or the pooling plant to which the milk was delivered. As a result, this data was not used in the regression analysis. However, despite this fact, the data used to measure price suppression still accounts for approximately 65% of Class pounds over the entire Class period through July 2.

⁵¹⁴ Expressed in 2011 dollars.

33, respectively, 14% and 12% of farmer-month observations exhibit a negative Farmer Premium.

E. Preparing the Payroll Data and Secondary Data Sources

The model was applied to the payroll data supplied by defendants' expert Dr. Kalt on May 5, 2011. That data was modified to add county location codes for farmers belonging to Agri-Mark which were missing in Dr. Kalt's data and were subsequently supplied by Agri-Mark. In addition, payroll data for Agri-Mark from 2010 was added. The time period included in the analysis runs from January 2002 through July 2010. This covers the time span in the Class period for which the cooperatives consistently provided payroll data. Information about commodity prices was taken from the USDA Milk Marketing Order Statistics Public Database. Information about diesel fuel prices was obtained from the Department of Energy, and alfalfa hay costs were taken from USDA Economic Research Service Feed Grain Database. Population statistics were obtained from the U.S. Census Bureau. Class utilization rates and total milk pooled on each Order were obtained from reports of the Federal Market Administrators and the USDA. All of this data is fully described in Exhibit 3.

As with all such large datasets there are a number of data quality issues, with occasionally erroneous data input leading to *outlier* values that are appropriately discarded from the analysis. The data was treated to remove these outliers using standard statistical techniques. In addition, data points for which the butterfat percentage, the protein percentage, or the other solids percentage is missing, zero or greater than 100% are removed. Further, data points with negative Gross Price, negative milk volume or with missing Pooling Order information are also removed. As is clear from the maximum and minimum numbers presented for the variables in Exhibit 37b, the final cleaned dataset still contains a handful of data points that may be suspect

Summary Statistics

Variable	# of Observation	Mean	Standard Deviation	Minimum	Max
Farmer Premium	928,652	0.90	1.22	-5.58	9.03
Diesel Price	928,652	2.71	0.75	1.46	4.83
Alfalfa Hay Price	928,652	128.98	19.56	103.27	184.62
Butterfat Percent	928,652	3.77	0.34	0.00	7.26
Protein Pct	928,652	3.07	0.43	0.00	100.00
Other Solids Pct	928,652	5.65	0.76	0.00	100.00
Total Order Pound	928,652	20,353	4,163	11,193	25,358
Total State Population	928,652	10.36	6.20	0.61	19.58
Ratio of Population under 19	928,652	0.25	0.01	0.22	0.28
Per Capita Income	928,652	37.29	3.73	27.51	52.00
Relative Class I Utilization	928,652	0.75	0.19	0.28	1.65
NASS Butter Price	928,652	1.56	0.32	1.15	2.64
NASS Cheese Price	928,652	1.66	0.30	1.17	2.52
NASS Dry Whey Price	928,652	0.33	0.15	0.17	0.85
NASS Non-fat Dry Milk Price	928,652	1.17	0.32	0.87	2.23

Farmer Premium in Order 1, 32, and 33

	# of Observation	Mean	Standard Deviation	Minimum	Max
FMMO 1	568,367	0.65	1.10	-5.58	7.11
FMMO 32	117,168	1.27	1.30	-3.95	9.03
FMMO 33	243,117	1.33	1.29	-4.39	8.72

Percentage of Farmers with negative Farmer Premium

	# of Farmer-Month Obs with Negative Farmer Premium	Total # of Farmer- Month Obs	% of Farmer-Month Obs with Negative Farmer Premium
FMMO 1	154,261	568,367	27.1%
FMMO 32	16,841	117,168	14.4%
FMMO 33	30,082	243,117	12.4%

XII. CONCLUSION

Exhibits to be used in support of the opinions stated in this Report include all of the tables, graphics and information contained herein as well as the Exhibits cited in or accompanying this report. Additional demonstrative exhibits based upon this same information may be prepared for trial and used to support my opinions.

I declare under penalty of perjury under the laws of the United States of America that all statements and affirmations made herein are believed to be true and correct.

July 22, 2011

Respectfully submitted,

A handwritten signature in black ink that reads "Gordon Rausser". The signature is written in a cursive style with a horizontal line underneath the name.

Gordon Rausser, Ph.D.

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
GREENVILLE DIVISION

IN RE: SOUTHEASTERN MILK)	
ANTITRUST LITIGATION)	CASE NO.
)	2:08-MD-1000
)	
)	
THIS DOCUMENT RELATES TO:)	
ALL CASES.)	
)	

HIGHLY CONFIDENTIAL

The discovery deposition of RANDY MOONEY, taken before JENNIFER DUNN, RMR, CRR, and Notary Public, pursuant to the Federal Rules of Civil Procedure of the United States District Courts, pertaining to the taking of depositions for the purpose of discovery, at 321 North Clark Street, Suite 3500, in the City of Chicago, Illinois, commencing at 10:10 a.m., on July 2, 2009.

DIGITAL EVIDENCE GROUP
1111 16th Street, NW Suite 410
Washington, DC 20036
(202) 232-0646

7/2/2009

In Re: Southeastern Milk Antitrust Litigation
Highly Confidential

Randy Mooney

1 A. I can't think of any other examples.
 2 Q. Let me ask this again because I'm not sure
 3 you answered it: Has there been a time between 1990 and
 4 2007 when your dairy operations did not touch base?
 5 A. Not that I know of.
 6 Q. There were times, though -- well, let me ask
 7 it this way: Was there ever a time between 1990 and
 8 today when your dairy operations did not qualify for the
 9 federal blend price?
 10 MR. DOBIE: Object to the form.
 11 THE WITNESS: Not that I'm aware of.
 12 BY MR. COMMINS:
 13 Q. But there were times that you recall when
 14 the mailbox price that you received your milk check was
 15 below the federal blend price, right?
 16 A. Yes.
 17 Q. Can you say for how many -- how many times
 18 between 2002 and 2007 your price was below the federal
 19 blend price?
 20 A. No, I can't.
 21 Q. Can you say how many complaints you received
 22 from dairymen regarding mailbox prices being below the

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1 federal blend?
 2 A. Very few. I can't say a number, but . . .
 3 Q. Who were the dairy farmer members that
 4 complained to you about prices being below the federal
 5 blend?
 6 A. Mainly it's at a council meeting that we
 7 would have in the southeast. It comes up as an issue.
 8 You know, we -- as a board, we -- we use reference
 9 points to manage -- to -- to measure where we're at and
 10 that's one measurement that some people use.
 11 Q. And who are the some people that use that as
 12 the one measurement?
 13 A. Let me think. You want individual names?
 14 Q. Yes, sir.
 15 A. One of them would be Mickey Childers. I
 16 really can't think specifically of any other names.
 17 Q. And Mr. Childers is also on the Southeast
 18 Council board, right?
 19 A. Right.
 20 Q. Leaving aside board members, did you receive
 21 any complaints from the people you represent, dairy
 22 farmers that are not on the board, regarding prices

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1 being below the federal minimum?
 2 A. I don't recall any.
 3 Q. Did you have discussions with any of the
 4 people you represent regarding prices being below the
 5 federal minimum?
 6 A. I'm trying to think because I go to -- I go
 7 to a lot of producer meetings and I don't ever remember
 8 that being a specific question.
 9 Q. You don't remember any time when you had
 10 meetings with dairy farmers that you represent where you
 11 raised the issue of prices being below the federal
 12 minimum?
 13 A. Where I raised the issue? No.
 14 Q. Is it fair to say, then, that in the
 15 meetings that you had with your producer members, you
 16 didn't tell them of efforts you were making to try to
 17 raise prices up to the federal minimum?
 18 A. We tell them of efforts that we use to try
 19 to raise milk prices. Yeah.
 20 Q. And what efforts did you tell dairy
 21 producers you were using to try to raise milk prices?
 22 A. There's a lot of efforts that we try. One

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1 of them would be increasing premiums. Anything that we
 2 can do to offset costs. There's costs and there are
 3 revenues. Revenues would be one to increase dollars.
 4 Costs would be one, you know, you lower -- you lower
 5 your lab costs, you lower your transportation costs and
 6 you just get more efficient, so there's -- there's
 7 several things, you know, that goes into that.
 8 Q. Okay. Well, following up on that, is it
 9 fair to say that if you can increase premiums, you can
 10 deliver more money to your dairy farmer members?
 11 A. If you have higher premiums, obviously it
 12 offsets costs, so when you net out, if you have more
 13 money, you can send more money back to the country. If
 14 your costs go up, you may just be offsetting costs.
 15 Q. If your costs go down and your premiums go
 16 up, do you have more money available to distribute to
 17 members?
 18 A. In that scenario you would, yes.
 19 Q. Well, I was just following up on what you
 20 said, you try to increase premiums and lower costs and
 21 if you accomplish those two things you have more money
 22 to deliver to members, right?

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1 A. That would be correct.
 2 Q. Okay. If you have lower premiums and higher
 3 costs, then you have less money available to distribute
 4 to members, right?
 5 A. Correct.
 6 Q. You mentioned DCMA. What is that?
 7 A. Dairy Cooperative Marketing Associations.
 8 Q. Does it have a board?
 9 A. Yes.
 10 Q. Are you on the board?
 11 A. Yes.
 12 Q. And what is the purpose for DCMA?
 13 A. To set overorder premiums.
 14 Q. Who are the members of DCMA?
 15 A. Individual producers or companies?
 16 Q. Companies.
 17 A. Members of DCMA would be SMI, Southern -- I
 18 think Southern -- the Florida co-op, whatever it is, you
 19 have Maryland-Virginia co-op, Arkansas Dairy co-op,
 20 Dairy Marketing co-op, DCMI, whatever that is, Dairy
 21 Co-op Marketing Association, DFA, Lone Star and now
 22 Cobblestone is a member.

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1 Q. Okay. Anyone else from Dairy Farmers of
 2 America on the board?
 3 A. Yes.
 4 Q. Who is -- who are they?
 5 A. Myself, of course. You've got
 6 Joe T. Parker, Jerrel Heatwole, Bryant Fisher and
 7 Michael Ferguson.
 8 Q. All right. And you said that the purpose of
 9 DCMA is to set overorder premiums, right?
 10 A. That's correct.
 11 Q. Does it set overorder premiums for the
 12 southeast?
 13 A. Yes.
 14 Q. And which federal orders does that include?
 15 A. Federal Orders 5 and 7.
 16 Q. And when you say it sets overorder premiums,
 17 what does that mean?
 18 A. It means that there's a price announcement
 19 sent out on a monthly basis and that any price above
 20 federal order price is what I term as "overorder
 21 premiums." So it's any price above federal order price.
 22 Q. Is the overorder premium that DCMA sets, is

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1 that the price that is announced to bottling processors?
 2 A. Yes.
 3 Q. And when you say "overorder premium" in this
 4 context, is that the price that processors will pay for
 5 milk they purchase from the cooperative members of DCMA?
 6 A. Can you say that one again? I want to make
 7 sure I'm not confused.
 8 Q. We probably should read that one back.
 9 A. I'm not -- just don't want to get confused.
 10 (Record read as requested.)
 11 THE WITNESS: Yes.
 12 MR. COMMINS: Mr. Kuney asked for, perhaps,
 13 a break. I'm fine if you want to take a break now.
 14 MR. KUNEY: Yeah. I'm fine right now.
 15 MR. COMMINS: All right.
 16 MR. KUNEY: Wait until he says we're going
 17 off the record.
 18 VIDEOGRAPHER: We're going off the record at
 19 11:23.
 20 (Recess.)
 21 VIDEOGRAPHER: We are back on record at
 22 11:38 with the beginning of tape No. 3.

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1 BY MR. COMMINS:
 2 Q. Okay. Mr. Mooney, we were talking about
 3 premiums announced by DCMA. DCMA meets on a monthly
 4 basis; is that correct?
 5 A. Correct.
 6 Q. Do you attend the meetings in person?
 7 A. Try to whenever we have an in-person
 8 meeting.
 9 Q. Are the meetings sometimes by phone?
 10 A. Yes.
 11 Q. When you attend the meeting of DCMA to
 12 consider overorder premium, you're -- you're considering
 13 the overorder premium for the -- for the next month,
 14 correct?
 15 A. Correct.
 16 Q. When you attend the meeting, do you go to
 17 the meeting with your thoughts on what the overorder
 18 premium should be?
 19 A. No.
 20 Q. Does anyone from DFA go to the meeting with
 21 thoughts on what the overorder premium should be?
 22 A. Yes.

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7/2/2009

In Re: Southeastern Milk Antitrust Litigation
Highly Confidential

Randy Mooney

1 Q. And --
 2 A. I don't remember.
 3 Q. When Jim Hahn was -- sorry. I didn't mean
 4 to cut you off.
 5 A. That's all right.
 6 Q. But when Jim Hahn was the COO of the
 7 southeast, did he also work on the operations? Did he
 8 also work with SMA?
 9 A. Yes.
 10 MR. ABBASI: Thank you. That's all the
 11 questions I have.
 12 THE WITNESS: Thank you.
 13 VIDEOGRAPHER: We're going off record at
 14 7:06 concluding the deposition.
 15 FURTHER DEPONENT SAITH NOT
 16
 17
 18
 19
 20
 21
 22

Page 354

1 IN TESTIMONY WHEREOF, I have hereunto set my hand
 2 on this day, July 8, 2009.
 3
 4 _____
 5 JENNIFER DUNN, RMR, CRR
 6 Notary Public
 7 License No. 084-003626
 8
 9
 10
 11
 12
 13
 14
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Page 356

1 STATE OF ILLINOIS)
 2) SS.
 3 COUNTY OF COOK)
 4
 5 I, JENNIFER DUNN, Certified Shorthand Reporter No.
 6 084-003626, Registered Merit Reporter, Certified Realtime
 7 Reporter, and Notary Public within and for the County of
 8 Cook and State of Illinois, do hereby certify that
 9 previous to the commencement of the examination, said
 10 witness was duly sworn by me to testify the truth; that
 11 the said deposition was taken at the time and place
 12 aforesaid; that the testimony given by said witness was
 13 reduced to writing by means of shorthand and thereafter
 14 transcribed into typewritten form; and that the foregoing
 15 is a true, correct, and complete transcript of my
 16 shorthand notes so taken as aforesaid.
 17 I further certify that there were present at the
 18 taking of the said deposition the persons and parties as
 19 indicated on the appearance page made a part of this
 20 deposition transcript.
 21 I further certify that the signature of the
 22 witness to the foregoing deposition was NOT WAIVED by
 agreement of counsel; and that I am not counsel for nor in
 any way related to any of the parties to this suit, nor am
 I in any way interested in the outcome thereof.

Page 355

1 Mr. Randy Mooney c/o
 2 Williams & Connolly LLP
 3 725 Twelfth Street, N.W.
 4 Washington, DC 20005
 5 Case: In Re: Southeastern Milk Antitrust Litigation
 6 Date of deposition: 07/02/09
 7 Deponent: Mr. Randy Mooney
 8 Please be advised that the transcript in the above
 9 referenced matter is now complete and ready for signature.
 10 The deponent may come to this office to sign the transcript,
 11 a copy may be purchased for the witness to review and sign,
 12 or the deponent and/or counsel may waive the option of signing.
 13 Please advise us of the option selected.
 14 Please forward the errata sheet and the original signed
 15 signature page to counsel noticing the deposition, noting the applicable
 16 time period allowed for such by the governing Rules of Procedure.
 17 If you have any questions, please do not hesitate to call our office at
 18 (202)-232-0646.
 19 Sincerely,
 20
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EXHIBIT 4

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

-----X	MDL No. 1899
IN RE: SOUTHEASTERN MILK	:
ANTITRUST LITIGATION	: Master File No.
-----:	2:08-MD-1000
THIS DOCUMENT RELATES TO	:
	: Judge J. Ronnie
Sweetwater Valley Farm, et al.	: Greer
v. Dean Foods, et al.,	:
No. 2:07-CV-208	: Magistrate Judge
-----X	Dennis H. Inman

HIGHLY CONFIDENTIAL

Boston, Massachusetts
Wednesday, June 23, 2010

Videotaped Deposition of:
JOSEPH P. KALT, Ph.D.,

the witness, was called for examination by counsel for the Plaintiffs, pursuant to notice, commencing at 9:08 a.m., at the law offices of Dechert LLP, 200 Clarendon Street, Boston, Massachusetts, before Kimberly A. Smith, CRR, RDR, and Notary Public in and for the Commonwealth of Massachusetts, when were present on behalf of the respective parties:

DIGITAL EVIDENCE GROUP
1299 Pennsylvania Avenue, N.W., Suite 1130E
Washington, D.C. 20004
(202) 232-0646

1 think it's a coherent argument. I don't think it is
 2 true that one expects some systematic relationship,
 3 and I was just showing you that, in fact, you don't
 4 whether you look, you know, anywhere, you can see
 5 there's no systematic relationship.
 6 Q. Is there anything particularly anomalous
 7 with regard to 126 that you're aware of? That's the
 8 only one here that shows negative for the OOP.
 9 A. I don't think it's anomalous. I discussed
 10 it in my report that Order 126 is a so-called surplus
 11 area and there are a number of instances in which
 12 sales have been made which effectively have the
 13 consequence of making Professor Rausser's R-OOP
 14 negative, the red bar being below zero.
 15 Q. In 126?
 16 A. In 126. I discuss that in my report.
 17 Q. Right. In addition to the producer price
 18 analyses that we have --
 19 A. Premium processor? That's what we were
 20 looking at.
 21 Q. -- processor price analyses that you have
 22 done, you also did a number of analyses of mailbox
 Page 218

1 prices --
 2 A. That's correct.
 3 Q. -- is that right?
 4 A. Yes.
 5 Q. Now, the mailbox price as you have used it
 6 depends in part on the prices that plants pay for raw
 7 milk, including the over order premiums, correct?
 8 MR. FRIEDMAN: Object to the form.
 9 THE WITNESS: Well, not directly. Mailbox
 10 prices, I've captured the -- I've employed payroll
 11 data showing payments basically from cooperatives
 12 back to their farmer members. I'm aware that the
 13 revenue that the co-ops have gotten reflect the
 14 prices and revenues they received for the milk they
 15 sold. But I've actually gone back to the payroll
 16 data, is the basic source of information --
 17 BY MR. BROOKHISER:
 18 Q. Right.
 19 A. -- for calculating mailbox prices.
 20 Q. But that payroll data reflects the prices
 21 that the plants paid for raw milk, including any over
 22 order premiums, correct?
 Page 219

1 A. But one of the sources of revenue would be
 2 prices paid for raw milk. There's no question about
 3 it.
 4 Q. Including the over order premiums?
 5 MR. FRIEDMAN: Object to the form.
 6 THE WITNESS: The price is the price. It
 7 can be decomposed if you want into an over order
 8 premium and a minimum blend price. But whatever
 9 prices the processors paid is a source of revenue to
 10 the co-ops that, if I understand it, then gets flowed
 11 through the payroll process to the farmer members so
 12 that the farmers get paid.
 13 BY MR. BROOKHISER:
 14 Q. And if the over order premiums the plants
 15 pay is lower, there is a smaller amount to flow
 16 through to the co-ops and the farmers; is that right?
 17 MR. FRIEDMAN: Object to the form.
 18 THE WITNESS: All else equal, if prices at
 19 which the co-ops sell are lower, all else equal,
 20 there would be less money to flow through to the
 21 farmers.
 22
 Page 220

1 BY MR. BROOKHISER:
 2 Q. Now, can you look at page 20 of your
 3 report, please, at paragraph 2(a) at the bottom.
 4 MR. FRIEDMAN: I'm sorry. Which paragraph?
 5 BY MR. BROOKHISER:
 6 Q. 2(a) at the bottom. The last sentence --
 7 A. It's a long sentence.
 8 Q. Yes, it is. But I'm mostly interested --
 9 and you probably won't be surprised to hear -- to the
 10 first part where you say, "The producers mailbox
 11 price depends in part on the prices that plants pay
 12 for raw milk in a month (including the usage weighted
 13 averages of any OOPs)" and then a number of other
 14 factors.
 15 A. Um-hum.
 16 Q. Is that a true statement in your opinion?
 17 A. Yes, I believe it's true, sure. That's
 18 what I was trying to say to you a minute ago.
 19 Q. And I just wanted to make sure we were
 20 hitting on all cylinders here.
 21 I want to look at a few of the
 22 exhibits that you have generated in your report
 Page 221

1 CERTIFICATE
 2 I, Kimberly A. Smith, a Certified Realtime
 3 Reporter, Registered Diplomate Reporter, and Notary
 4 Public in and for the Commonwealth of Massachusetts,
 5 do hereby certify that the foregoing deposition of
 6 JOSEPH P. KALT, Ph.D., who was first duly sworn,
 7 taken at the place and on the date hereinbefore set
 8 forth, was stenographically reported by me and later
 9 reduced to print through computer-aided
 10 transcription, and the foregoing is a full and true
 11 record of the testimony given by the deponent.
 12 I further certify that I am a disinterested
 13 person in the event or outcome of this cause of action.
 14 THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT
 15 DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY
 16 MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR
 17 DIRECTION OF THE CERTIFYING COURT REPORTER.
 18 Signed and sealed this 24th day of June, 2010.
 19
 20
 21 KIMBERLY A. SMITH, CRR, RDR
 22 My commission expires: November 29, 2013

Page 298

1 Joseph P. Kalt, Ph.D. c/o
 2 Dechert LLP
 3 1775 I Street, N.W.
 4 Washington, D.C. 20006-2401
 5
 6 Case: In Re: Southeastern Milk Antitrust Litigation
 7 Date of Deposition: June 23, 2010
 8 Deponent: Joseph P. Kalt, Ph.D.
 9
 10 Please be advised that the transcript in the above-
 11 referenced matter is now complete and ready for
 12 signature. The deponent may come to this office to
 13 sign the transcript, a copy may be purchased for the
 14 witness to review and sign, or the deponent and/or
 15 counsel may waive the option of signing. Please
 16 advise us of the option selected.
 17 Please forward the errata sheet and the original
 18 signed signature page to counsel noticing the
 19 deposition, noting the applicable time period allowed
 20 for such by the governing Rules of Procedure.
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 22 If you have any questions, please do not hesitate to
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 6
 7 SIGNATURE PAGE
 8 Case: In Re: Southeastern Milk Antitrust Litigation
 9 Deponent: Joseph P. Kalt, Ph.D.
 10 Deposition Date: June 23, 2010
 11
 12 I do hereby acknowledge that I have read and examined
 13 the foregoing pages of the transcript of my
 14 deposition and that:
 15
 16 (Check appropriate box):
 17
 18 () The same is a true, correct, and complete
 19 transcription of the answers given by me to the
 20 questions therein recorded.
 21 () Except for the changes noted in the attached
 22 Errata Sheet, the same is a true, correct, and
 complete transcription of the answers given by me to
 the questions therein recorded.

DATE	WITNESS SIGNATURE
------	-------------------

Page 300

1 Digital Evidence Group, LLC
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 6
 7 ERRATA SHEET
 8 Case: In Re: Southeastern Milk Antitrust Litigation
 9 Deponent: Joseph P. Kalt, Ph.D.
 10 Deposition Date: June 23, 2010
 11
 12 Page No. Line No. Change
 13 _____
 14 _____
 15 _____
 16 _____
 17 _____
 18 _____
 19 _____
 20 _____
 21 _____

Signature	Date
-----------	------

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EXHIBIT 5

UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF VERMONT
DOCKET #: 5:09-cv-00230

ALICE H. ALLEN and LAURENCE E. ALLEN,
d/b/a AL-LENS FARMS, et al.,
Plaintiffs,

vs.

DAIRY FARMERS OF AMERICA,
DAIRY MARKETING SERVICES, LLC, and
DEAN FOODS COMPANY,
Defendants.

CONFIDENTIAL

This is the Videotaped Trial Testimony of
DR. JOSEPH KALT
held on the 6th day of May, 2011
held at Williams & Connolly at 725 12th
Street, Northwest, Washington, D.C.,
commencing at 8:50 a.m., ending at
2:33 p.m.

REPORTED BY: PAULA G. SATKIN
Shorthand Reporter, Notary Public

DIGITAL EVIDENCE GROUP
1299 Pennsylvania Ave, N.W., Suite 1130E
Washington, D.C. 20004
(202) 232-0646

1 A. I've examined it as a general
 2 matter. I know there are differences. But
 3 beyond that I have not done say a numerical
 4 analysis, no.
 5 Q. Describe the analysis that you've
 6 done?
 7 A. I'm aware that there's a great
 8 geographic variation around where plants are,
 9 for example, whether they're rural or not, those
 10 kind of --
 11 Q. I asked about demographic
 12 differences?
 13 A. That's what I'm referring to,
 14 rural or urban, for example.
 15 Q. Right. And beyond being aware
 16 that there are these demographic differences
 17 around the different plants have you done any
 18 further analysis?
 19 A. Sure. I have a long analysis
 20 about, you know, how many, for example,
 21 non-conspirator plants are near certain plants,
 22 near farmers.

Page 122

1 I've looked at the capacity of
 2 those plants. You've seen those figures where
 3 it looks like a weather map with the different
 4 colors.
 5 Q. I hate to interrupt, but what does
 6 that have to do with demographics?
 7 A. You said, beyond demographics in
 8 your question.
 9 Q. No, I'm sorry. If I did I was --
 10 A. You did.
 11 Q. Let me try again. Beyond the
 12 analysis that you've described so far, have you
 13 done any other analysis that looks at the
 14 demographics of the population surrounding the
 15 different plants?
 16 A. I believe I've described what I've
 17 considered.
 18 Q. Okay. Can you conclude merely
 19 from the variation in the size of the over order
 20 premiums reflected in Figure V.15 A that the
 21 over order premiums could not all be at
 22 suppressed levels?

Page 123

1 A. That wasn't my purpose, one way or
 2 the other. I was looking at class cert issues.
 3 Professor Rausser said there GNEMMA was setting
 4 a single over order premium and that's not true.
 5 That's not quite accurate. I wasn't trying to
 6 give your analysis. What I'm pointing out here.
 7 MR. SMALL: Can you read back my
 8 question, please.
 9 (The record was read as
 10 requested.)
 11 THE WITNESS: I would just add to
 12 my answer, as I point out in my report, in order
 13 to do that you would need to go look at the
 14 localized supply and demand, competitive and
 15 other conditions. You can't do it on an order
 16 wide common proof basis.
 17 BY MR. SMALL:
 18 Q. But that's not my question,
 19 Professor Kalt. My question is can you look at
 20 the over order premiums reflected in Figure
 21 V.15 A and rule out that all those premiums,
 22 over order premiums, were at suppressed levels?

Page 124

1 MR. HARDY: Objection. Asked and
 2 answered.
 3 THE WITNESS: No. You would have
 4 to go do the inquiry and look at those locales
 5 and their conditions and their localized supply
 6 and demand conditions. That's what I point out
 7 in my report.
 8 BY MR. SMALL:
 9 Q. Your answer would be the same for
 10 Figure V.15 B?
 11 A. Yes.
 12 Q. And the other V.15 figures?
 13 A. Yes.
 14 Q. And would this answer be the same
 15 for Figure V.16 A?
 16 A. That's correct, yes.
 17 Q. And the other V.16 figures?
 18 A. That's correct.
 19 Q. Let's look at Figure VI.48.
 20 A. Yes.
 21 Q. Now, the title of this figure is
 22 can the variation in competitive premiums be

Page 125

1 that's going to affect the revenue that comes
 2 in, so they do play a role. Yes, they do.
 3 Q. And in an -- in an indirect sense?
 4 MR. METZ: Object to form.
 5 THE WITNESS: Pretty direct. I
 6 mean, I'm going to make an investment and say,
 7 I'm going to invest in this plant, and I'm going
 8 to get revenues off that plant, and we do that
 9 by an allocation where we literally say, okay,
 10 we're going to hold back a dollar from every
 11 hundred weight or something, what did we do?
 12 It's pretty direct. But -- but, anyway, I was
 13 trying to answer your question about the
 14 allocation.
 15 BY MR. SMALL:
 16 Q. Okay. If -- if a farmer supplies
 17 milk to a cooperative, he will see some money
 18 for his milk; right?
 19 A. If a farmer does what?
 20 Q. If -- if a farmer supplies milk to
 21 his cooperative, he will receive some money for
 22 the milk?

Page 234

1 just to create an example, and we're chasing
 2 customers. Our customers are saying, you guys
 3 aren't big enough. I need a more secure supply.
 4 We might want to go attract you into our co-op
 5 to be able to go back to the customer and say,
 6 now I've got enough supply, and in that sense
 7 we're making an investment, if you will, to
 8 attract you as a member. So, you know, we do it
 9 by, say, offering you -- you see them -- sign-up
 10 bonuses or whatever, something like that.
 11 Q. All right. But -- but the farmer
 12 receives some compensation for his milk?
 13 A. Definitely. I think so far as I
 14 know, none of them just voluntarily send their
 15 milk in for free.
 16 Q. Right. And -- and all else equal,
 17 would you agree that the higher the price a
 18 processor pays for the farmer's milk, the larger
 19 will be his milk check?
 20 A. Not necessarily the milk check.
 21 It will depend on -- for example, let's say you
 22 have a not vertically integrated so-called

Page 236

1 A. As a general matter, yes, unless
 2 it got rejected for health reasons or something.
 3 But, yeah.
 4 Q. And a co-op's allocation rules and
 5 procedures do not permit a co-op to pay another
 6 farmer for his farmer's milk?
 7 MR. METZ: Object to form.
 8 BY MR. SMALL:
 9 Q. Let me ask it this way. If farmer
 10 A --
 11 A. Uh-huh.
 12 Q. -- supplies milk to his co-op, and
 13 the co-op sells that milk, the co-op cannot use
 14 the revenue from that milk to pay another
 15 farmer; right?
 16 A. No, it's not quite right. No,
 17 it's not quite right.
 18 Q. Okay. How is that wrong?
 19 A. Well, as I talk about in my
 20 report, you started with a hypothetical. I'll
 21 explain it with a hypothetical. Maybe the four
 22 of us on this side of the table form a co-op,

Page 235

1 bargaining cooperative that has no downstream
 2 investments, in that case, the answer would --
 3 as I understand your question, would be yes. In
 4 other cases, it can vary.
 5 Q. All right. And normally a
 6 farmer's milk check shows the gross prices;
 7 right?
 8 MR. METZ: Object to form.
 9 THE WITNESS: We have data -- or
 10 we see -- we can see the checks of some of the
 11 co-ops here. In each -- in each case there of
 12 the defendant co-ops, you can see a gross price
 13 on the milk checks.
 14 BY MR. SMALL:
 15 Q. Okay. And the gross price
 16 consists of two parts, one of which is the
 17 component price?
 18 A. Generally. I can't generalize
 19 necessarily across all co-ops in Order 1. But
 20 generally, there will be -- it looks like lines.
 21 I actually have visuals of these checks in my
 22 report, and those components will -- excuse me

Page 237

1 A. I think it was listing by case,
2 and if you depose me and I file a rebuttal
3 report or something, it's all the same case to
4 me. But that's fine. I can see why you would
5 want to do that.
6 Q. Okay. When you first began
7 testifying back in 1984, what was your hourly
8 rate back then?
9 A. Oh, geez, I have no idea, but
10 certainly lower than it is now.
11 Q. And what is it now?
12 A. I think \$1,050 an hour.
13 Q. And how many times have you opined
14 on class certification issues?
15 A. I have never tried -- tried to
16 count, but, you know, quite a few times.
17 Q. Okay. And have you opined on
18 relevant market issues in other cases?
19 A. Yes.
20 Q. Okay. And have you opined on
21 issues in agricultural markets in other cases?
22 A. Yes.

Page 246

1 Q. And have you ever estimated
2 damages in a case?
3 A. Yes.
4 Q. In an antitrust case, have you?
5 A. Yes.
6 Q. For the plaintiffs?
7 A. Yes.
8 Q. Okay. And you're affiliated with
9 Compass Lexecon?
10 A. Yes. I'm a senior economist at
11 Compass Lexecon. L-E-X-E-C-O-N.
12 Q. And how are you being compensated
13 for your work in this case?
14 A. I get paid my hourly rate, and I
15 -- and I guess I also get some percentage of
16 revenues on staff billings.
17 Q. I see. So you -- do you get the
18 \$1,050 an hour that you charge?
19 A. Yes.
20 Q. Okay. And do you -- and -- strike
21 that.
22 Have you ever testified that

Page 247

1 common impact on a class could be established
2 with common evidence?
3 MR. HARDY: Objection to form.
4 THE WITNESS: I don't believe I
5 have, no.
6 BY MR. SMALL:
7 Q. Have you ever testified that a
8 common formula could be used to measure class
9 members' damages?
10 A. Probably, yes, the damages after
11 class had already been certified, but not in the
12 course of a class certification proceeding.
13 Q. Have you ever been retained by a
14 plaintiff in a class action?
15 A. No, I have not.
16 Q. How many hours have you billed to
17 this case so far?
18 A. I don't know.
19 Q. Can you -- what's your best
20 estimate?
21 A. I really -- I really don't know.
22 I was thinking about the other day. You guys

Page 248

1 always ask that kind of question. I -- I don't
2 keep track of things on a case-by-case basis
3 like that in my mind. I don't know. A lot.
4 I've worked hard. Very hard.
5 Q. And have -- have all the hours
6 that you have worked on this case been in
7 preparation of the report that you submitted?
8 A. No. Also preparation for this
9 deposition as well.
10 Q. Okay.
11 A. And then prior to ever beginning
12 the preparation of the report, I was examining
13 the issues in the case to see what they were and
14 so forth.
15 Q. Have you been asked to do any work
16 in the future on this case?
17 A. I have no pending projects or
18 anything. No, nothing.
19 Q. Let's look at Figure VI.27.
20 A. What's the front page? It helps
21 me to see. VI.27?
22 Q. Yes.

Page 249

1 MR. HARDY: Objection to the form.
 2 THE WITNESS: For an individual
 3 class member it could be formulaically
 4 determined. That is -- that is, there may be no
 5 formula for volume, which the data tells us
 6 there isn't, particularly across co-ops, and
 7 certainly not across the entire the Order 1, but
 8 I can see in the data a number cents per hundred
 9 weight multiplied by your hundred weight, so
 10 it's a formula like that. I can see it being
 11 picked up. So, you know, I'm going to do that.
 12 In some cases, you can see somatic cell count
 13 and temperature and things like that, so --
 14 Q. Okay.
 15 MR. SMALL: Let's take a
 16 break.
 17 THE VIDEOGRAPHER: Going off
 18 the record. The time on the video screen is
 19 14:23:47.
 20 (A brief recess was taken.)
 21 THE VIDEOGRAPHER: Going back on
 22 the record. The time on the video screen is

Page 262

1 14:32:56. Please continue.
 2 MR. SMALL: I have no further
 3 questions. Thank you, Professor Kalt.
 4 THE WITNESS: Thank you. I
 5 enjoyed it.
 6 MR. HARDY: We don't have any
 7 questions.
 8 THE VIDEOGRAPHER: Thank you.
 9 Here marks the end of videotape
 10 number four. It also marks the end of today's
 11 proceeding in the deposition of Dr. Joseph Kalt.
 12 Going off the record. The time on
 13 the video screen is 14:33:18.
 14 (Signature reserved.)
 15 (Whereupon, at 2:33 p.m., the
 16 deposition was concluded.)
 17 - - - - -
 18
 19
 20
 21
 22

Page 263

1 CERTIFICATE OF NOTARY PUBLIC
 2 I, Paula G. Satkin, the officer before whom the
 3 foregoing proceedings were taken, do hereby
 4 certify that the witness whose testimony appears
 5 in the foregoing proceeding was duly sworn by
 6 me; that the testimony of said witness was taken
 7 by me in stenotype and thereafter reduced to
 8 typewriting under my direction; that said
 9 proceedings is a true record of the testimony
 10 given by said witness; that I am neither counsel
 11 for, related to, nor employed by any of the
 12 parties to the action in which these proceedings
 13 were taken; and, further, that I am not a
 14 relative or employee of any attorney or counsel
 15 employed by the parties hereto, nor financially
 16 or otherwise interested in the outcome of the
 17 action.
 18 My commission expires November 14, 2015.
 19
 20
 21
 22

PAULA G. SATKIN
 Notary Public in and for the
 District of Columbia

Page 264

1 DR. JOSEPH KALT c/o
 2 BAKER & MILLER, PLLC
 3 2401 Pennsylvania Ave, N.W., Suite 300
 4 Washington, D.C. 20037
 5
 6 Case: Alice Allen v. DFA
 7 Date of deposition: 05/06/11
 8 Deponent: DR. JOSEPH KALT
 9
 10 Please be advised that the transcript in the above
 11 referenced matter is now complete and ready for signature.
 12 The deponent may come to this office to sign the transcript,
 13 a copy may be purchased for the witness to review and sign,
 14 or the deponent and/or counsel may waive the option of signing.
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EXHIBIT 6

**REBUTTAL DECLARATION
OF
GORDON RAUSSER, Ph.D. IN RESPONSE TO
DEFENDANTS' DAUBERT MOTION AND THE EXPERT REPORT OF
JOSEPH P. KALT**

In the matter of

Alice H. Allen, et al.,

v.

*Dairy Farmers of America, Inc., and
Dairy Marketing Services, LLC,*

USDC, District of Vermont, No. 5:09-CV-00230-cr

**Highly Confidential
Pursuant to Protective Order**

March 16, 2012

130. Finally, Dr. Kalt presents a similarly flawed analysis concerning the gap between the wholesale prices processors received in Order 1 relative to the prices they paid to farmers.²⁶⁴ Dr. Kalt refers to this as the “monopsony wedge.” He states that were a monopsony really in effect, then the monopsony wedge in Order 1 should increase at a faster rate than the monopsony wedge calculated for the US as a whole, reflecting processors increasing their profits in Order 1 from their suppression. He claims to find the opposite. His analysis uses the same wholesale prices for Dean and for the US that he used in the analysis of wholesale prices in Order 1, and it is flawed for the same reason. He has not controlled for demand effects such as the decrease in the number of under 19s in Order 1 relative to the US (nor has he controlled for any other factors), which would equally explain the pattern that he observes regarding the monopsony wedge.

131. In addition, Dr., Kalt’s use of data is unreliable. He calculates his monopsony wedge for Order 1 as equal to the Dean wholesale price minus the price paid to farmers, using the payroll data as a source for the price paid to farmers. He compares this wedge in Order 1 to that for the US as a whole, also comparing their relationship during the Class Period, which starts in 2002, to their relationship before the Class Period. However, the payroll data is relatively sparse in 2000, covering only around one third of the prices paid to farmers in Order 1, whereas the data for the US as a whole necessarily covers very many milk transactions. This further renders his comparison inaccurate and misleading.

²⁶⁴ Kalt Report at p.200-203.

168. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed on March 16, 2012, in Berkeley, California.

Respectfully submitted,

A handwritten signature in black ink that reads "Gordon Rausser". The signature is written in a cursive style with a large initial 'G' and 'R'.

Gordon Rausser, Ph.D.

EXHIBIT 7



**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

_____)	
ALICE H. ALLEN and LAURENCE E.)	
ALLEN, d/b/a Al-Lens Farm,)	
GARRET SITTS and RALPH SITTS,)	Docket No. 5:09-cv-00230-cr
and JONATHAN and CLAUDIA)	
HAAR on behalf of themselves and all)	Judge Christina Reiss
others similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
DAIRY FARMERS OF AMERICA,)	
INC., DAIRY MARKETING)	
SERVICES, LLC, and DEAN FOODS)	
COMPANY,)	
)	
)	
Defendants.)	
_____)	

**On Behalf of the Defendants Dairy Farmers of America, Inc.
and Dairy Marketing Services, LLC**

**Expert Report of
JOSEPH P. KALT, Ph.D.
CONCERNING CLAIMS OF LIABILITY AND DAMAGES**

December 16, 2011

he wasn't concerned about losing supply at the Hood plants because the plants' owner told him he wanted multiple milk suppliers.²⁶⁶

- c) Similarly, "coercion" is implausible as the purported reason for Upstate Niagara's joining GNEMMA. Upstate Niagara was the 18th largest cooperative in the United States in 2010, with 425 members²⁶⁷ predominantly located in Western New York.²⁶⁸ Furthermore, Upstate Niagara owns 114,500,000 pounds of processing capacity, including its fluid milk plants which serve as an important outlet for its farmers' milk. (See Figure IV.2.) Lastly, it has consistently garnered customers other than Dean, including Casp and Perry's Ice Cream.²⁶⁹
- d) The parallel case of MDVA is summarized in Figure IV.17E. MDVA farmers have consistently produced and marketed through MDVA between 5.5% and 7.3% of the milk produced in and pooled on Order 1 during the nine year period from 2001 to 2009,²⁷⁰ and marketed 5.9% of such milk in 2006 when it joined GNEMMA. Further, MDVA has a strong presence in Maryland and Virginia, areas where DFA has a relatively smaller presence. In addition, MDVA had access to Dean and Hood plants prior to its association with GNEMMA,²⁷¹ and in fact continues to supply the Dean plant in Springfield, Virginia today,²⁷² and Hood plant in Winchester.²⁷³ MDVA also has supply contracts with processors other than Dean that include WaWa Dairy,²⁷⁴ Dreyer's Ice Cream and Giant Food. Furthermore, MDVA owns multiple plants with at least 142,000,000 pounds of processing capacity (See Figure IV.2), and

²⁶⁶ Johnston Deposition at 52–53.

²⁶⁷ Brown, Danielle, "Top 50 cooperatives produce over 152 billion pounds of milk", *Hoard's Dairyman*, 10/10/11 at 629.

²⁶⁸ It is my understanding that Upstate Niagara farmers are all in western New York, outside of Order 1. See <http://www.upstatefarms.com/about-upstate.asp>.

²⁶⁹ Northeast List of Plants, May 2010.

²⁷⁰ See Figure IV.18.

²⁷¹ Bryant Deposition at 37–38, 50.


²⁷² Bryant Deposition at 50, 52.

²⁷³ According to Jay Bryant, MDVA has supplied the Winchester plant since it opened around 2000. He testifies that MDVA supplies "roughly 50 percent of the milk to that plant, and Land O' Lakes supplies roughly the other 50 percent." Bryant Deposition at 37.

²⁷⁴ Bryant Deposition at 51–52, 54–55.

thinks he should have been for his job. Even that suggestion accounts for only approximately \$10 million of the more than half a billion dollars in damages that Plaintiffs' expert "finds".⁶⁸⁶

- (2) Nor does that amount pertain specifically to farmers in Order 1, but rather to unspecified suggested malfeasance affecting DFA farmers extending across the United States (including into the area that Plaintiffs' expert claims is a competitive benchmark)⁶⁸⁷ and over a time period that starts earlier and ends earlier than Plaintiffs' expert's damages period.⁶⁸⁸
- c) Plaintiffs and their expert's theories leave the purported \$580 million in ill-gotten gain unaccounted for.



Prof. Joseph P. Kalt
December 16, 2011

⁶⁸⁶ Rausser Report at 101–103.

⁶⁸⁷ For example, Professor Rausser describes incentive bonuses in 2003 that are related to DFA's *national* share of milk. See Rausser Report at 102.

⁶⁸⁸ Gary Hanman was CEO of DFA from 1998 to 2005. See Hanman Deposition at 15.

EXHIBIT 8

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

ALICE H. ALLEN and LAURENCE E.)
ALLEN, d/b/a AL-LENS FARM, and)
GARRET SITTS and RALPH SITTS,)
on behalf of themselves and)
all others similarly situated,)
Plaintiffs,)

V.

DAIRY FARMERS OF AMERICA, INC.;)
DAIRY MARKETING SERVICES, LLC;)
DEAN FOODS COMPANY; and HP)
HOOD LLC,)
Defendants.)

) CIVIL ACTION

) No. 2:09-cv-0230

D E P O S I T I O N

- of -

REG O. CHAPUT

taken on behalf of the Plaintiffs on Friday,
February 25, 2011, at the Newport City Motel,
444 East Main Street, Newport, Vermont,
commencing at 9:41 AM.

COURT REPORTER: JOHANNA MASSÉ, RMR, CRR

DIGITAL EVIDENCE GROUP

1299 Pennsylvania Ave, NW, Suite 1130E

Washington, DC 20004

(202) 232-0646

1 Q. What is the -- the quantification that you use
2 in the dairy industry again for the amount of milk that
3 you produce?
4 A. Oh. Hundredweight.
5 Q. Yup. Okay. Sorry.
6 A. Yup.
7 Q. How many hundredweight of milk do you produce
8 a year?
9 A. Let's see. 20 million pounds, so that's
10 200,000 hundredweight.
11 Q. And in your experience as a dairy farmer, does
12 that qualify you as one of the larger dairy producers
13 in the area?
14 A. Yes, it does.
15 Q. Do you have a general understanding as to the
16 size of most of the dairy farms in your area?
17 A. I do.
18 Q. Are you the biggest?
19 A. No.
20 Q. Are you in the top five?
21 A. I would say there's a thousand dairy
22 operations in the state. We're in the top ten.

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1 Q. You've never been solicited by Agri-Mark to
2 join them?
3 A. I -- no. It's unusual for co-ops to go out
4 and solicit. It's usually the farmers who will -- will
5 inquire and then -- and then go from there, in my 30
6 years of farming.
7 Q. Does Dairylea actively solicit growers from
8 other co-ops?
9 MR. HARDY: Objection. Lacks foundation.
10 A. The only solicitation that I've seen from
11 co-ops are basically like we had a dairy conference
12 yesterday. There were three co-ops -- four co-ops
13 there, I believe, that set up booths, and farmers will
14 go to the booths and inquire. But to make cold contact
15 inquiries to farms, it's highly unusual, in my
16 experience. So they all solicit basically the same
17 way.
18 Q. Is there sort of a gentleman's agreement among
19 the co-ops not to solicit each other's growers?
20 MR. HARDY: Objection to form.
21 A. I'm unaware -- I'm unaware if there is.
22 Q. You don't know one way or the other?

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1 A. I don't know one way or the other.
2 (There was a discussion off the record.)
3 BY MR. TOMPKINS:
4 Q. Mr. Chaput, I'm going to hand you a document
5 that the court reporter is going to mark as Exhibit
6 B -- excuse me, 2.
7 (Exhibit No. 2 was marked for identification.)
8 BY MR. TOMPKINS:
9 Q. I'd like you to take a look at Exhibit 2 and
10 tell me if you've ever seen that document before.
11 A. Yes, I have.
12 Q. To your understanding, what is this document,
13 Exhibit 2?
14 A. This is a settlement between the plaintiffs
15 and Dean Foods in regards to a civil suit that was
16 filed.
17 Q. Okay. In regards to the Allen action?
18 A. Correct.
19 Q. And when was the first time you saw this
20 agreement?
21 A. I can't recall. I would say the actual
22 document itself was -- the first time I saw it would

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1 have been when it was sent to me by either Bill Beeman
2 or Greg Wickham after they had contacted me. But the
3 exact date, I can't recall.
4 Q. Approximately when did Mr. Beeman or Mr.
5 Wickham contact you?
6 A. I would have to say it was mid-January,
7 possibly.
8 Q. And do you know who called you first? Was it
9 Beeman or Wickham?
10 A. It was Greg. Wickham.
11 Q. So in mid-January Mr. Wickham called you --
12 A. Um-hum.
13 Q. -- to discuss the Allen litigation. Had you
14 heard of this litigation before that point?
15 A. Yes, I had.
16 Q. How?
17 A. Through newspaper reports, farm periodicals.
18 It was -- it was widely known through the industry.
19 Q. Does DMS have a newsletter of any sort that it
20 provides to those farmers that market their milk
21 through DMS?
22 A. Dairylea has a newsletter. The independent

Page 33

1 MR. HARDY: Objection to form. Are you asking
 2 him to assume that -- assume what? Assume all the
 3 allegations are true? Assume that there's
 4 uncompetitive pricing? I mean --
 5 MR. TOMPKINS: Let's assume -- he doesn't have
 6 to assume the allegations are true.
 7 Q. I'm just saying if you were writing a
 8 settlement --
 9 A. Um-hum.
 10 Q. -- what provisions would you want?
 11 MR. FRANKLIN: Objection. Lacks foundation.
 12 That's highly speculative.
 13 MR. HARDY: Join.
 14 MR. TOMPKINS: I think these objections, by
 15 the way, are going beyond the scope of the rules. I'm
 16 just letting you know that. "Form" is plenty.
 17 MR. FRANKLIN: Well, it's not really within
 18 the scope of -- of the actual dispute or of his
 19 affidavit as well, so it's really -- I mean, he can
 20 answer if he can, but he hasn't filed a lawsuit.
 21 MR. TOMPKINS: Okay.
 22 MR. FRANKLIN: And you have to maybe establish

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1 that he has a complaint that he would try to resolve
 2 first, but --
 3 MR. TOMPKINS: Well, let me just suggest --
 4 THE WITNESS: And I agree with Mr. Franklin.
 5 MR. TOMPKINS: Well, that doesn't surprise me,
 6 because Mr. Franklin has had the opportunity now -- I
 7 want to put this on the record. -- has had the
 8 opportunity now to, you know, make a number of
 9 suggestive comments, the point of which was to get you
 10 to agree with them.
 11 THE WITNESS: Um-hum.
 12 MR. TOMPKINS: That is inappropriate.
 13 MR. FRANKLIN: No, I'm going to --
 14 MR. TOMPKINS: Let's go back to the question.
 15 I'm not going to argue with you about it, but I don't
 16 agree with your characterization of what I was
 17 intending to do.
 18 Q. Okay. So do you think the Northeast dairy
 19 market should be changed at all?
 20 MR. HARDY: Objection to form.
 21 A. I don't have an opinion on that one way or the
 22 other. I would like to answer your question that I'm

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1 not in a position at this point to -- I didn't have an
 2 opposition to what Dean Foods is doing. I don't -- I'm
 3 not in a position to file a lawsuit. I don't have a
 4 strong opinion in that way at all. What I do have
 5 opposition to is the way that this civil suit was --
 6 was formed and worded and the way that it went after
 7 Dairy Marketing Services. That's what I object to. So
 8 I don't know if that answers your question.
 9 Q. Well, let me -- let me ask a different
 10 question.
 11 A. Sure.
 12 Q. I guess what I'm trying to understand is,
 13 You've been a farmer for 40 years in the Northeast --
 14 A. Thirty-two years.
 15 Q. Thirty-two years. Do you believe that there
 16 should be changes in the manner in which milk is sold
 17 in the Northeast?
 18 MR. HARDY: Objection to form.
 19 MR. FRANKLIN: Join.
 20 A. I really -- no. I really don't have a strong
 21 opinion. I'm not saying that there couldn't be
 22 improvements made, but to have strong -- strong

Page 52

1 objections to it at this point, no. It wouldn't -- I
 2 don't think it would harm at all to have more
 3 competition, but competition -- I mean, that's Business
 4 101. Competition is good. But do I think that there's
 5 deceptive practices going on in order to -- I don't
 6 have enough information to make that decision, but I
 7 don't believe it is.
 8 Q. But you testified before that you don't have
 9 any personal knowledge one way or the other --
 10 A. Correct.
 11 Q. -- regarding the deceptive -- alleged
 12 deceptive practice.
 13 A. Correct.
 14 MR. HARDY: Objection to form.
 15 Q. How many different entities do you know of
 16 that DMS sells its milk to?
 17 A. The only three that I know of -- oh, entities
 18 that it sells its milk to.
 19 Q. Right.
 20 A. I -- I don't know of any in particular. I do
 21 know they sell to Dean Foods. Other than that, I don't
 22 know of any others.

Page 53

1 that.

2 The settlement does not address the fact that

3 there is more competition out there to purchase the

4 milk of farmers in Order I. It did not -- it didn't

5 provide more competition. It didn't -- didn't break

6 Dean Foods up. It did none of the things that was

7 originally intended to do in the complaint, so is it --

8 that concern is not directly in my affidavit, but it's

9 kind of underlying any other concerns that I have.

10 Q. There was -- we discussed this earlier.

11 A. Okay.

12 Q. And I mentioned -- you mentioned this concern,

13 that the settlement does not create more competition.

14 A. Um-hum.

15 Q. What provisions to create more competition

16 would you want?

17 MR. HARDY: Objection to form.

18 A. I don't have -- again, I'm not filing the

19 lawsuit. My concern is that the complaint is filed on

20 behalf of me as a farmer in Order I, and it states that

21 they want to create more competition for the milk

22 that's being sold in this Order I. The settlement

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1 doesn't do that in the least, and so that concerns me

2 that -- it almost sounds like they just wanted to get

3 20 million or \$30 million. They didn't achieve what

4 they were trying to achieve, which was creating more

5 competition.

6 Q. Okay. And what I'm asking you is, Do you have

7 any specific ideas yourself for what mechanisms you

8 would want to achieve more competition?

9 A. No, I don't. I have to admit that I believe

10 that that's why we pay our dues to Dairylea and the

11 other cooperative members pay it to theirs for the

12 cooperative themselves to create that competition.

13 Q. So after the conversation with Mr. McNall, you

14 then called Mr. Wickham and said you'd be interested?

15 A. I contacted. I can't say that I called. It

16 was via e-mail or --

17 Q. Okay. Fair enough.

18 A. Okay.

19 Q. Was there anything of substance in the e-mail

20 besides that you wanted to participate?

21 A. Again, not to be -- but I don't know if it was

22 an e-mail or a phone call. No, other than that I

Page 87

1 wanted -- when I contacted him, I let him know that I

2 would go ahead and participate.

3 Q. Okay.

4 A. And I can't recall how I contacted him.

5 Q. Right. And I guess what I'm trying to

6 understand is -- I mean, I just want to know, if it was

7 an e-mail, would it have said anything else besides

8 just, Hey, I want to participate?

9 A. No. That's probably all it did say and just

10 let him know to contact me if it was via e-mail.

11 Q. At any point do you remember sending e-mails

12 regarding this lawsuit to either Mr. Wickham or Mr.

13 Beeman that contained substance, you know, that

14 contained a description of your views of the lawsuit or

15 someone else's views, anything like that?

16 A. No.

17 Q. Okay. So then what happened next after you

18 contacted Mr. Wickham and said you wanted to get

19 involved?

20 A. I remember being contacted by Mr. Wickham. It

21 was at that point that we had a discussion. And I

22 think about it -- I remember receiving the packets

Page 88

1 after I let him know I wanted to become involved,

2 talked to Mr. McNall, decided to become -- okay. I

3 decided to become involved, let him know that, and then

4 he contacted me and let me know that, okay, there will

5 be attorneys contacting you, Kevin --

6 THE WITNESS: What's your partner's name?

7 MR. FRANKLIN: Henry.

8 THE WITNESS: Henry. Okay.

9 A. Kevin Henry would contact me, and which he

10 did, and then I believe Mr. Franklin became involved at

11 that point.

12 Q. If it makes you feel better, I can't keep all

13 the lawyers in this case straight, either, so don't

14 worry about it.

15 A. Okay.

16 Q. So you were told by Mr. Wickham that you would

17 be contacted by an attorney?

18 A. Right. And then -- and also at that point I

19 believe -- I believe that's when we had our discussion

20 about any financial -- if I would be financially liable

21 for any of that part of it.

22 Q. Okay. Are you paying for your counsel today?

Page 89

1 A. No.
 2 Q. Do you know how much he charges?
 3 A. No.
 4 Q. Do you know if he's doing this for free?
 5 A. I don't know that, but --
 6 Q. But?
 7 A. I don't know.
 8 Q. Do you know if anyone else or any other entity
 9 is paying him for his time here today?
 10 A. No. I don't believe I asked who was paying.
 11 As long as I knew I wasn't paying, I didn't delve any
 12 deeper into it.
 13 Q. Did Mr. Wickham ever tell you that DFA was
 14 paying?
 15 A. No.
 16 Q. DMS was paying?
 17 A. Didn't -- no. It wasn't -- I don't remember
 18 him indicating to me who was paying or who wasn't
 19 paying.
 20 Q. He just said, We'll get you a lawyer,
 21 basically?
 22 A. He said, right, Dairylea will have an attorney
 Page 90

1 representing them and thus you, so my assumption was
 2 that Dairylea was paying him, but I didn't ask and
 3 don't know.
 4 Q. Do you know if your lawyer also is Dairylea's
 5 lawyer?
 6 A. My lawyer being Gary Franklin?
 7 Q. Yes.
 8 A. Yes. I don't know.
 9 Q. And have you ever been provided any documents
 10 in this case besides the two that you received in the
 11 packet?
 12 A. No.
 13 Q. So you've never seen any of the papers
 14 produced by DMS or DFA?
 15 A. No.
 16 Q. And so your entire opinion about this lawsuit
 17 and the settlement are based upon just those two
 18 documents that you received in the packet and your
 19 conversations you've described?
 20 MR. FRANKLIN: Objection to form and asked and
 21 answered.
 22 Q. Oh, and the news reports.
 Page 91

1 A. Correct. News reports, discussions with other
 2 farmers, et cetera.
 3 Q. Okay. But I want to be very specific. You've
 4 never seen a document that has, like, one of these
 5 Bates labels on it?
 6 A. No.
 7 Q. That indicates it was produced by DMS or DFA
 8 or --
 9 A. No.
 10 Q. And so no document produced by them is part of
 11 any of your opinion?
 12 A. Correct.
 13 Q. Okay. Let's -- who typed Exhibit 3, your
 14 affidavit?
 15 A. It was typed by my attorney or someone in his
 16 office.
 17 Q. Did you dictate it?
 18 A. I'm sorry. You're referring to my affidavit?
 19 Q. Yes, your affidavit.
 20 A. Okay. I'm sorry. All right. Did I what?
 21 Q. Did you dictate it to them?
 22 A. We had a discussion, and it was basically a
 Page 92

1 form of they asked questions, I answered them, and then
 2 they -- they said, okay, we will provide it to you in a
 3 form of an affidavit, please review it, which they did.
 4 I reviewed it. I don't recall -- I don't think -- I
 5 think I made one slight change in it. Can't recall
 6 what it was. Sent it back. They -- if I did make a
 7 change, they sent a new copy, I signed it, and returned
 8 it.
 9 Q. Okay. So -- so this was actually written by
 10 your attorneys, this affidavit?
 11 MR. HARDY: Objection to form.
 12 MR. FRANKLIN: Join. Objection.
 13 A. It wasn't written by them. It was a recording
 14 of the conversation that I had with my attorneys. It
 15 was -- so it was --
 16 Q. All I'm asking is that it was physically --
 17 I'm not trying to --
 18 A. Okay. It was --
 19 Q. It was typed up by somebody at your lawyer's
 20 office?
 21 A. Okay. Thank you. Typed up, yes. When you
 22 say "written," I'm assuming that you mean that there's
 Page 93

1 me and saying he was disappointed that we were leaving
 2 and, you know, what the reasons were and that type of
 3 thing, but it wasn't a high-pressure tactic or anything
 4 like that.
 5 Q. Did he say -- I'm sorry. What was the name
 6 again?
 7 A. Leon Berthiaume.
 8 Q. Did Mr. Berthiaume say that he had been told
 9 you were going to switch by someone at Dairylea?
 10 A. No. I believe I'm the one who called and said
 11 that we were going to make the switch.
 12 Q. So you told him you were going to switch and
 13 then he called you back and --
 14 A. Correct.
 15 Q. -- attempted to -- to convince you to stay?
 16 A. Just -- I don't think he was attempting to
 17 convince me to stay but wanted to know why we were
 18 staying -- why we were leaving, what -- what the
 19 reasons were. You know, I'm sure he made a statement
 20 that we wish you weren't leaving, et cetera, so --
 21 Q. Do you think it's to the advantage of
 22 cooperatives generally to be bigger?

Page 122

1 MR. HARDY: Objection to form.
 2 A. Cooperatives to be bigger. I don't have an
 3 opinion on that. I think it's great to have a co-op
 4 the size of St. Albans, which is not large. So I
 5 just -- I mean, the idea of co-ops is that farmers work
 6 together. Whether they work together in groups of 4 or
 7 500 or 4 or 5,000 is irrelevant.
 8 Q. Well, I think -- maybe I mis- -- I'm sorry.
 9 Maybe I misunderstood. I thought you said that one of
 10 your reasons -- if I got this wrong, correct me.
 11 -- that one of your reasons for moving from being an
 12 independent farmer to being a cooperative farmer was
 13 your belief that the cooperative collectively could
 14 negotiate a better deal --
 15 A. Correct.
 16 Q. -- than you could get on your own.
 17 A. Um-hum.
 18 Q. Is that correct?
 19 A. That's correct, yes.
 20 Q. Do you think that the cooperatives, if they
 21 were -- so you think that the cooperative -- the fact
 22 that the bargaining is collective on behalf of many

Page 123

1 farmers allows for greater bargaining power?
 2 A. Correct.
 3 Q. And then my question is, Do you think it would
 4 be in the cooperatives' interest to be as large as
 5 possible, then, to give it the greatest bargaining
 6 power?
 7 MR. HARDY: Objection to form.
 8 A. I think it depends on the cooperative, because
 9 St. Albans Cooperative is at a size that allows them
 10 to -- I can't say niche market, but they supply Ben &
 11 Jerry's. Now, Ben & Jerry's likes the idea of being
 12 involved with a Vermont co-op. Now, if St. Albans were
 13 to get large, they may not be a Vermont co-op and then
 14 lose that market. So I think it's -- it's specific to
 15 each co-op, but I think the idea that farmers are able
 16 to work together is very beneficial.
 17 MR. TOMPKINS: Okay. I don't think I have any
 18 further questions.
 19 MR. HARDY: I have nothing.
 20 (The deposition concluded at 12:30 PM.)
 21
 22

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1 CERTIFICATE
 2 I, Johanna Massé, Court Reporter and Notary
 3 Public, do hereby certify that the foregoing pages,
 4 numbered 3 through 110, inclusive, are a true and
 5 accurate transcription of my stenographic notes of the
 6 Deposition of Reg O. Chaput, who was first duly sworn
 7 by me, taken before me on Friday, February 25, 2011,
 8 commencing at 9:41 AM, for use in the matter of Alice
 9 H. Allen, et al. v. Dairy Farmers of America, Inc., et
 10 al., Civil Action No. 2:09-cv-0230, as to which a
 11 transcript was duly ordered.
 12 I further certify that I am neither attorney
 13 nor counsel for, nor related to or employed by any of
 14 the parties to the action in which this transcript was
 15 produced, and further that I am not a relative or
 16 employee of any attorney or counsel employed in this
 17 case, nor am I financially interested in this action.
 18 THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT
 19 DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY
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 21 OF THE CERTIFYING REPORTER.
 22

 JOHANNA MASSÉ, RMR, CRR
 Comm. expires: 2/10/15

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2/25/2011

Alice H. Allen v. Dairy Farmers of America Inc.

Reg Chaput

<p>1 Reg O. Chaput c/o 2 Primmer, Piper, Eggleston & Cramer, P.C. 150 South Champlain Street 3 P. O. Box 1489 Burlington, VT 05402-1489 4 Case: Alice Allen v. DFA 5 Date of deposition: 02/25/11 6 Deponent: Reg O. Chaput 7 Please be advised that the transcript in the above 8 referenced matter is now complete and ready for signature. 9 The deponent may come to this office to sign the transcript, 10 a copy may be purchased for the witness to review and sign, 11 or the deponent and/or counsel may waive the option of signing. 12 Please advise us of the option selected. 13 Please forward the errata sheet and the original signed 14 signature page to counsel noticing the deposition, noting the applicable 15 time period allowed for such by the governing Rules of Procedure. 16 If you have any questions, please do not hesitate to call our office at 17 (202)-232-0646. 18 19 Sincerely, 20 21 Digital Evidence Group Copyright 2009 Digital Evidence Group 22 Copying is forbidden, including electronically, absent express written consent.</p> <p style="text-align: right;">Page 126</p>	<p>1 Digital Evidence Group, L.L.C. 2 1299 Pennsylvania Ave NW, Suite 1130E 3 Washington, D.C. 20004 4 (202) 232-0646 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p> <p style="text-align: center;">ERRATA SHEET</p> <p>8 Case Name: Alice Allen v. DFA 9 Witness Name: Reg O. Chaput 10 Deposition Date: 02/25/11 11 Page No. Line No. Change</p> <hr style="width: 100%;"/> <p style="text-align: center;">Signature Date</p> <p style="text-align: right;">Page 128</p>
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EXHIBIT 9

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

ALICE H. ALLEN and LAURENCE E.)
ALLEN, d/b/a AL-LENS FARM, and)
GARRET SITTS and RALPH SITTS,)
on behalf of themselves and)
all others similarly situated,)
Plaintiffs,)

V.

DAIRY FARMERS OF AMERICA, INC.;)
DAIRY MARKETING SERVICES, LLC;)
DEAN FOODS COMPANY; and HP)
HOOD LLC,)
Defendants.)

) CIVIL ACTION
) No. 2:09-cv-00230
)

D E P O S I T I O N
- of -
BRYAN E. DAVIS

taken on behalf of the Plaintiffs on Tuesday,
March 1, 2011, at the offices of Primmer,
Piper, Eggleston & Cramer, P.C., 150 South
Champlain Street, Burlington, Vermont,
commencing at 9:56 AM.

COURT REPORTER: JOHANNA MASSÉ, RMR, CRR

DIGITAL EVIDENCE GROUP
1299 Pennsylvania Ave, NW, Suite 1130E
Washington, DC 20004
(202) 232-0646

1 A. The question again?
 2 Q. Sure.
 3 MR. TOMPKINS: Why don't you read it back,
 4 actually.
 5 (The record was read as requested.)
 6 THE WITNESS: I couldn't.
 7 BY MR. TOMPKINS:
 8 Q. I mean, just as common sense, you'd have to
 9 know what the plaintiffs said St. Albans did in order
 10 to even investigate the accuracy of the allegation,
 11 correct?
 12 A. Correct.
 13 Q. Or -- or to handle it internally if you
 14 thought there was any inaccuracy to it?
 15 A. Correct.
 16 Q. But you still think the complaint should
 17 remain redacted?
 18 MR. FRANKLIN: Objection. I think that
 19 mis- -- I don't think he said that.
 20 MR. HARDY: Join.
 21 Q. Okay. Do you think the complaint should
 22 remain redacted?

Page 22

1 A. I guess my question is, Why is it -- why is it
 2 blacked out? That's my question.
 3 Q. It's blacked out at the request of the
 4 defendants.
 5 MR. HARDY: That's a misrepresentation. The
 6 plaintiffs redacted the complaint. I mean, you can --
 7 MR. TOMPKINS: Is -- do the defendants have
 8 any objection to nonredacting it?
 9 MR. HARDY: DFA doesn't have -- a lot of the
 10 things that are redacted, I can't conceive of why they
 11 were redacted. I mean, they certainly don't pertain to
 12 any confidential information of our client, and --
 13 but --
 14 MR. TOMPKINS: Our -- I guess --
 15 MR. HARDY: We were never consulted -- just
 16 for the record, the defendants, at least to my
 17 knowledge, weren't consulted regarding the redactions
 18 and would be happy to discuss -- I mean, my clients
 19 don't have the power to unredact other people's
 20 confidential information.
 21 MR. TOMPKINS: Right.
 22 MR. HARDY: But insofar as it relates to us, I

Page 23

1 think we're perfectly happy to have a dialogue about --
 2 MR. TOMPKINS: Okay.
 3 MR. HARDY: -- unredacting most or the
 4 entirety of the complaint. But I just want it to be
 5 clear the defendants did not redact or request to have
 6 redacted that document.
 7 MR. TOMPKINS: Let me just ask this. This may
 8 actually -- we -- there is a motion to unseal the
 9 complaint on file right now with the Court that the
 10 plaintiffs don't oppose. Does DFA oppose it?
 11 MR. HARDY: There's a motion? You know, we
 12 should talk about it -- I'm unaware of that, but we
 13 can --
 14 MR. TOMPKINS: Okay. We'll do this off the
 15 record. That's a fair point. There's no reason to
 16 take up your time, Mr. Davis, with this stuff.
 17 BY MR. TOMPKINS:
 18 Q. Prior to providing the affidavit that you
 19 provided in this case, did you ask to see an unredacted
 20 copy of the complaint?
 21 A. No.
 22 Q. What other documents, if any, did you review

Page 24

1 prior to preparing your affidavit in this case?
 2 A. None.
 3 Q. Let me ask you a question. Are you sure you
 4 didn't review the settlement agreement in this case,
 5 the proposed settlement agreement with Dean Foods?
 6 A. Oh, I get these all mixed up, so this is the
 7 complaint.
 8 Q. Right.
 9 A. This is a new one.
 10 Q. Right.
 11 A. The --
 12 MR. FRANKLIN: When he says "this is a new
 13 one," he's pointing to Davis 1.
 14 Q. I tell you what. Let me show you the document
 15 and ask you if you've seen it, because I don't ...
 16 (Exhibit No. 3 was marked for identification.)
 17 BY MR. TOMPKINS:
 18 Q. Exhibit 3 is the proposed settlement agreement
 19 with Dean Foods, and this doesn't have to change your
 20 answer, but just before -- have you seen that document
 21 before?
 22 A. I've seen two documents, so I need to

Page 25

1 apologize. I was confused. I've seen the complaint,
 2 and I've seen another document, and without thinking I
 3 thought this memorandum of law in support was the
 4 second document, but I have seen the settlement
 5 agreement, so I apologize for the wrong answer.
 6 Q. No problem. That's why I wanted to show it to
 7 you.
 8 A. Yup.
 9 Q. I know they kind of tend to look the same.
 10 A. Yes.
 11 Q. How closely did you read the settlement
 12 agreement, Exhibit 3?
 13 A. Read it once. There were two -- I read it --
 14 I read it once.
 15 Q. Would you say you read it more or less closely
 16 than the complaint?
 17 A. Closer.
 18 Q. Can you just provide your general
 19 understanding of what is in the settlement agreement?
 20 A. Two things stuck out in my mind with the
 21 agreement. One of them -- and I don't know the --
 22 well, what do you call them, the paragraphs or the

Page 26

1 numbers, but one of them had to do with a cash
 2 settlement, and the other part that concerned me was
 3 the breaking up the supply of milk by 60 million pounds
 4 that Dean Foods would go outside of DMS and purchase.
 5 Those -- those two were items of concern of mine I
 6 remember reading about.
 7 Q. Okay. Let's take the two in order. What are
 8 your concerns about the cash settlement?
 9 A. The cash settlement, very -- very tiny amount
 10 of money, a small amount of money that would be divided
 11 up amongst the dairy farmers in Federal Order 1.
 12 Q. Have you done any analysis as to how much
 13 money each farmer would receive on average under the
 14 settlement?
 15 A. I -- in my own mind, I think it looks like
 16 maybe 1,500 to \$2,000 per farm.
 17 Q. And how did you reach that calculation?
 18 A. You know, I'm terrible with numbers, but --
 19 you know, and I don't have any -- I don't have any
 20 notes in front of me, but you take the amount of milk
 21 in Federal Order 1 and you can -- you can do some math
 22 and come up with that amount.

Page 27

1 Q. And you think 1500 to \$2,000 per farm on
 2 average is too low of a settlement number?
 3 A. With -- yeah.
 4 Q. Do you have a number in mind that you think
 5 would be a fair number?
 6 A. No. You know, actually, I don't want a cash
 7 settlement. It's -- you know, I don't think there's
 8 been any wrongdoing here, so I don't think the cash
 9 settlement's too small. I don't think there should be
 10 one at all.
 11 Q. Okay. So just to clarify, it's not that you
 12 think farmers should get more money; it's you think
 13 they should get no money because Dean Foods shouldn't
 14 settle?
 15 A. I -- I don't see a problem --
 16 MR. FRANKLIN: I'm just going to object to the
 17 form of the question.
 18 But go ahead. Go ahead.
 19 A. Could you ask the question again, please?
 20 Q. Sure. I'll try to ask it differently. It's
 21 not that you think that there should be more money
 22 paid; you think that Dean Foods should not pay any

Page 28

1 money to settle this case?
 2 MR. FRANKLIN: Objection.
 3 Go ahead.
 4 A. From what I know, I don't think there's been
 5 any wrongdoing between DMS and Dean Foods to conspire
 6 to lower the prices that we receive for our milk.
 7 Q. What knowledge do you base that opinion on?
 8 A. Sitting on the board of directors for 15 years
 9 at St. Albans, I've never been led to believe that our
 10 leadership has been conspiring to lower pay prices to
 11 the dairy farm.
 12 Q. When you say "our leadership," who's the
 13 "our"?
 14 A. St. Albans Co-op.
 15 Q. Have you ever attended any meetings between
 16 any representative of Dean Foods and any representative
 17 of DFA?
 18 A. I have not.
 19 Q. So you have no personal knowledge of what was
 20 or was not discussed at any of those meetings?
 21 A. No.
 22 Q. Is your opinion that there's been no

Page 29

1
2 CERTIFICATE
3 I, Johanna Massé, Court Reporter and Notary
4 Public, do hereby certify that the foregoing pages,
5 numbered 1 through 89, inclusive, are a true and
6 accurate transcription of my stenographic notes of the
7 Deposition of Bryan E. Davis, who was first duly sworn
8 by me, taken before me on Tuesday, March 1, 2011,
9 commencing at 9:56 AM, for use in the matter of Alice
10 H. Allen, et al. v. Dairy Farmers of America, Inc., et
11 al., Civil Action No. 2:09-cv-00230, as to which a
12 transcript was duly ordered.
13 I further certify that I am neither attorney
14 nor counsel for, nor related to or employed by any of
15 the parties to the action in which this transcript was
16 produced, and further that I am not a relative or
17 employee of any attorney or counsel employed in this
18 case, nor am I financially interested in this action.
19 THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT
20 DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY
21 MEANS UNLESS UNDER THE DIRECT CONTROL AND/OR DIRECTION
22 OF THE CERTIFYING REPORTER.

21 JOHANNA MASSÉ, RMR, CRR
22 Comm. expires: 2/10/15

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4 (202) 232-0646
5
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7
8 Case Name: Alice Allen v. DFA
9 Witness Name: Davis
10 Deposition Date: 03/1/11
11 I do hereby acknowledge that I have read
12 and examined the foregoing pages
13 of the transcript of my deposition and that:
14 (Check appropriate box):
15 () The same is a true, correct and
16 complete transcription of the answers given by
17 me to the questions therein recorded.
18 () Except for the changes noted in the
19 attached Errata Sheet, the same is a true,
20 correct and complete transcription of the
21 answers given by me to the questions therein
22 recorded.

21 DATE
22 WITNESS SIGNATURE

1 Davis c/o
2 Primmer, Piper, Eggleston & Cramer, P.C.
3 150 South Champlain Street
4 P. O. Box 1489
5 Burlington, VT 05402-1489
6 Case: Alice Allen v. DFA
7 Date of deposition: 03/1/11
8 Deponent: Davis
9 Please be advised that the transcript in the above
10 referenced matter is now complete and ready for signature.
11 The deponent may come to this office to sign the transcript,
12 a copy may be purchased for the witness to review and sign,
13 or the deponent and/or counsel may waive the option of signing.
14 Please advise us of the option selected.
15 Please forward the errata sheet and the original signed
16 signature page to counsel noticing the deposition, noting the applicable
17 time period allowed for such by the governing Rules of Procedure.
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9 Witness Name: Davis
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11 Page No. Line No. Change
12
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16
17
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19
20
21
22

Signature Date

EXHIBIT 10

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

ALICE H. ALLEN and LAURENCE E. ALLEN, a/b/a
Al-lens Farm, GARRET SITTS and RALPH SITTS,
JONATHAN HAAR and CLAUDIA HAAR, on behalf of
themselves and all others similarly situated,
Plaintiffs,

Docket No. 5:09-cv-00230

v.

DAIRY FARMERS OF AMERICA, INC.,
DAIRY MARKETING SERVICES, LLC, and
DEAN FOODS COMPANY,

Defendants.

Deposition Upon Oral Examination of

Todd A. Hathorn

Location: Nixon Peabody LLP
1100 Clinton Square
Rochester, New York 14604

Date: February 28, 2011

Time: 9:00 a.m.

Reported By: KIMBERLY A. BONSIGNORE

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Washington, DC 20004
(202) 232-0646

1 than his?
 2 A. No.
 3 Q. Or lower?
 4 A. No.
 5 Q. Do you have any understanding of how the
 6 premiums paid by Byrne Dairy to Mr. DeBoover for his
 7 milk compare to the premiums that are received by
 8 members of Dairylea?
 9 A. No.
 10 Q. Have you seen any documents that have been
 11 produced in the lawsuit?
 12 A. Documents such as...
 13 Q. Well, you're aware Dairy Farmers of
 14 America is a defendant in a lawsuit, correct?
 15 A. Yes.
 16 Q. And you're aware that Dairy Marketing
 17 Services is a defendant in a lawsuit?
 18 A. Yes.
 19 Q. Have you seen any documents from the files
 20 of DFA?
 21 A. No.
 22 Q. Have you seen any documents from the files

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1 of Dairy Marketing Services?
 2 A. No.
 3 Q. Have you seen any materials that have been
 4 marked confidential?
 5 A. Other than what I was mailed, no.
 6 Q. So the only two documents you've seen are
 7 the Complaint, the public version of the Complaint,
 8 and the Settlement Agreement?
 9 A. Correct.
 10 Q. You're aware that a Motion to Intervene
 11 for the limited purpose of opposing the settlement was
 12 filed?
 13 A. I don't understand the question.
 14 (The following exhibit was marked for
 15 identification: Exhibit No. 5.)
 16 Q. I've handed you what's been marked as
 17 Exhibit 5, which is -- the first page of which is a
 18 Notice of Motion to Intervene, and behind that is a
 19 memorandum in support -- of law in support of Motion
 20 to Intervene.
 21 Have you seen Exhibit 5 prior to today?
 22 A. No.

Page 39

1 (The following exhibit was marked for
 2 identification: Exhibit No. 6.)
 3 Q. I've handed you what's been marked as
 4 Exhibit 6, a document captioned the "Affidavit of Todd
 5 A. Hathorn."
 6 Do you see that?
 7 A. Yes.
 8 Q. And your signature appears on page 6?
 9 A. Correct.
 10 Q. Did you appear before a Notary and sign
 11 the document?
 12 A. Yes, I did.
 13 Q. Okay. Is the Notary located somewhere in
 14 Ontario County?
 15 A. Yes.
 16 Q. Where?
 17 A. Canandaigua.
 18 Q. And is this an independent Notary?
 19 A. It is my lawyer.
 20 Q. And who is your lawyer today, sir?
 21 A. Terence Robinson.
 22 Q. What firm is Mr. Robinson with?

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1 THE WITNESS: What's the name of your
 2 firm?
 3 A. I'm kind of drawing a blank here. I'm
 4 not --
 5 Q. Do you have a --
 6 A. I'm drawing a blank on the name.
 7 Q. That's fine.
 8 Prior to the execution of your affidavit,
 9 did you have an attorney/client relationship with
 10 Mr. Robinson?
 11 A. Prior to this (indicating)?
 12 Q. Yes.
 13 A. No.
 14 Q. Okay. Has he ever represented you before?
 15 A. No.
 16 Q. Has his law firm ever represented you
 17 before?
 18 A. No.
 19 Q. Has his law firm ever represented any
 20 organization to which you are a member?
 21 A. Yes.
 22 Q. What organization?

Page 41

1 CERTIFICATION
 2 STATE OF NEW YORK:
 3 COUNTY OF MONROE:
 4 I, KIMBERLY A. BONSIGNORE, being a
 5 Freelance Court Reporter and Notary Public in and for
 6 Monroe County, New York, do hereby certify that I
 7 reported in machine shorthand the foregoing pages of
 8 the above-styled cause, and that they were prepared by
 9 computer-assisted transcription under my personal
 10 supervision and constitute a true and accurate record
 11 of the proceedings.
 12 I further certify that I am not an
 13 attorney or counsel of any parties, nor a relative or
 14 employee of any attorney or counsel connected with the
 15 action, nor financially interested in the action.
 16 WITNESS my hand in the City of Rochester,
 17 County of Monroe, State of New York.
 18 Kimberly Bonsignore
 19 Freelance Court Reporter and
 20 Notary Public No. 01B06032396 in
 21 and for Monroe County, New York
 22

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 9 Witness Name: Hathorn
 10 Deposition Date: 02/28/11
 11 I do hereby acknowledge that I have read
 12 and examined the foregoing pages
 13 of the transcript of my deposition and that:
 14 (Check appropriate box):
 15 () The same is a true, correct and
 16 complete transcription of the answers given by
 17 me to the questions therein recorded.
 18 () Except for the changes noted in the
 19 attached Errata Sheet, the same is a true,
 20 correct and complete transcription of the
 21 answers given by me to the questions therein
 22 recorded.

DATE WITNESS SIGNATURE

Page 92

1 Hathorn c/o
 2 Nixon Peabody LLP
 3 1100 Clinton Square
 4 Rochester, New York 14604-1792
 5 Case: Alice Allen v. DFA
 6 Date of deposition: 02/28/11
 7 Deponent: Hathorn
 8 Please be advised that the transcript in the above
 9 referenced matter is now complete and ready for signature.
 10 The deponent may come to this office to sign the transcript,
 11 a copy may be purchased for the witness to review and sign,
 12 or the deponent and/or counsel may waive the option of signing.
 13 Please advise us of the option selected.
 14 Please forward the errata sheet and the original signed
 15 signature page to counsel noticing the deposition, noting the applicable
 16 time period allowed for such by the governing Rules of Procedure.
 17 If you have any questions, please do not hesitate to call our office at
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 9 Witness Name: Hathorn
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 12
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 19
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 21
 22

Signature Date

Page 93

EXHIBIT 11

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

ALICE H. ALLEN, et al.,	:	NO. 5:09-CV-00230
Plaintiffs	:	
	:	
vs.	:	
	:	
DAIRY FARMERS OF	:	
AMERICA, INC., DAIRY	:	
MARKETING SERVICES, LLC,	:	
AND DEAN FOODS CO.,	:	
Defendants	:	

* * *

FEBRUARY 28, 2011

* * *

Deposition of EVERETT LEE RAMSBURG JR.
taken at the law offices of Pepper Hamilton LLP,
100 Market Street, Suite 200, Harrisburg,
Pennsylvania, commencing at 10:32 a.m. before
Debbie Leonard, Registered Diplomat Reporter,
Certified Realtime Reporter.

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1 So your testimony is that you have
 2 reviewed the version of the Complaint that has had
 3 sections of it blacked out; is that correct?
 4 A. Yes, sir.
 5 Q. Have you ever reviewed a version
 6 of the Complaint without the blacked-out sections?
 7 A. No, sir.
 8 Q. So your testimony that the lawsuit
 9 is ludicrous is based on your review of just the
 10 redacted version of the Complaint, correct?
 11 MR. HARDY: Objection to form.
 12 THE WITNESS: No.
 13 BY MR. TOMPKINS:
 14 Q. So what other documents besides
 15 this Complaint have you reviewed?
 16 MR. HARDY: Objection to form.
 17 BY MR. TOMPKINS:
 18 Q. If any.
 19 MR. DOWNEY: Do you mean ever in his life
 20 or related --
 21 MR. TOMPKINS: Related to this lawsuit,
 22 obviously.

Page 22

1 MR. HARDY: Objection to form.
 2 MR. DOWNEY: Same objection.
 3 You can certainly answer if you can.
 4 THE WITNESS: What other documents have I
 5 read concerning this lawsuit? I was presented
 6 with a copy of the proposed settlement.
 7 BY MR. TOMPKINS:
 8 Q. With Dean Foods, you mean?
 9 A. Yes.
 10 Q. What else?
 11 A. What other documents? I don't
 12 recall any other documents, other than those two.
 13 MR. DOWNEY: Charles, just so we're -- are
 14 you asking him for pleadings or settlement things
 15 or do you mean in the abstract any document that
 16 might be related, like business documents that
 17 might be related, that kind of stuff?
 18 MR. TOMPKINS: I'll ask some specific
 19 questions.
 20 MR. DOWNEY: Okay.
 21 BY MR. TOMPKINS:
 22 Q. Do you understand that, during

Page 23

1 this litigation, DFA has produced or provided to
 2 the plaintiffs certain documents.
 3 A. DFA has -- say the question again.
 4 Q. Sure. And if the answer is no,
 5 that's okay. Do you have any understanding as to
 6 whether DFA has produced any documents to the
 7 plaintiffs in this litigation?
 8 A. It's my understanding they have.
 9 Q. Have you seen any of those
 10 documents?
 11 A. No.
 12 MR. DOWNEY: Object to the form.
 13 MR. HARDY: Yeah. Ditto. Lacks
 14 foundation.
 15 MR. DOWNEY: You may have missed
 16 something. Are you asking him whether he's seen
 17 them as they were produced or ever seen them in
 18 his life, without knowing what's --
 19 BY MR. TOMPKINS:
 20 Q. Have you seen them as they were
 21 produced?
 22 A. Okay. As they are produced, what

Page 24

1 do you mean by as they are produced?
 2 Q. I don't want to make this harder
 3 than it is. What I'm asking you is this: Have
 4 you seen any of the documents that DFA produced in
 5 this litigation with DFA Bates numbers on them?
 6 MR. HARDY: Objection. Lacks foundation.
 7 THE WITNESS: No.
 8 BY MR. TOMPKINS:
 9 Q. Have you seen any of the documents
 10 the plaintiffs have produced to DFA in this
 11 litigation?
 12 A. No.
 13 Q. Did you ever ask, prior to your
 14 testimony here under oath regarding this lawsuit,
 15 to see an unredacted version of the Complaint?
 16 A. Did I ever ask to? No.
 17 Q. Is it fair to say, sir, that your
 18 testimony that this lawsuit is ludicrous, for
 19 pages of this Complaint, you don't even know what
 20 it says, right?
 21 MR. HARDY: Objection.
 22 MR. DOWNEY: Object to the form.

Page 25

1 that any settlement above \$1 would not be fair
 2 based on your position that Dean Foods did not do
 3 anything wrong in this case?
 4 MR. DOWNEY: Object to the form. I don't
 5 know that that fairly characterizes his prior
 6 testimony.
 7 MR. HARDY: Join.
 8 THE WITNESS: Okay. We're going to have
 9 to do that over again.
 10 BY MR. TOMPKINS:
 11 Q. Okay. Let me ask you. Does the
 12 settlement agreement -- in the settlement
 13 agreement, does Dean Foods admit that it did
 14 anything wrong?
 15 A. I think they spell out in detail
 16 that they are not -- have no admission of any
 17 guilt.
 18 Q. And is the fact that they contend
 19 that they've done nothing wrong, is that the
 20 reason you think payment of more than \$1 would not
 21 be fair?
 22 MR. HARDY: Objection to form.

Page 70

1 THE WITNESS: Well, if they've done
 2 nothing wrong and DFA has done nothing wrong, why
 3 should anything be paid?
 4 BY MR. TOMPKINS:
 5 Q. So is that a yes to my question?
 6 MR. HARDY: Objection to form.
 7 MR. DOWNEY: Object to form. I think he's
 8 answered your question.
 9 BY MR. TOMPKINS:
 10 Q. Do you understand that Dean Foods
 11 has produced certain documents during the course
 12 of this litigation to the plaintiffs?
 13 A. I wasn't aware of that.
 14 Q. Do you know whether or not any
 15 Dean Foods employees have testified during the
 16 course of litigation?
 17 A. I wouldn't be aware of that.
 18 Q. Do you know if any DFA executives
 19 or employees have testified?
 20 A. I believe some of them have been
 21 deposed, but I'm not sure who, when, or any of the
 22 details.

Page 71

1 Q. Have you read any transcript of
 2 any deposition taken in this case?
 3 A. No.
 4 Q. Have you read any unredacted
 5 version of any pleading, that is, any document
 6 filed before the Court in this case?
 7 A. I don't believe -- the settlement
 8 agreement that I did read I don't believe was
 9 redacted in any way.
 10 Q. Besides the settlement agreement,
 11 have you read any other unredacted document in
 12 this case --
 13 A. No.
 14 Q. -- filed with the Court.
 15 A. No. Sorry. The answer is no.
 16 Q. And I assume that you have no
 17 knowledge of any of the settlement negotiations
 18 that took place between the plaintiffs and Dean
 19 Foods.
 20 A. The settlement communications?
 21 Q. The negotiations that led to the
 22 execution of the settlement between the plaintiffs

Page 72

1 and Dean Foods.
 2 A. I would have no knowledge of them.
 3 Q. Did you draft paragraph 23 of your
 4 affidavit?
 5 A. Yes.
 6 Q. Okay. That's a sentence you
 7 wrote?
 8 A. Yes.
 9 Q. So I think one thing that's become
 10 clear is, you disagree with this entire lawsuit,
 11 don't you, sir?
 12 A. Are you asking or answering?
 13 Q. Yes, I'm asking you.
 14 A. Yes.
 15 Q. Is your opposition to the
 16 settlement in this case based on your disagreement
 17 with the lawsuit?
 18 MR. HARDY: Objection to form.
 19 MR. DOWNEY: Same objection.
 20 THE WITNESS: Okay. Ask the question
 21 over.
 22 MR. TOMPKINS: Would you read it back,

Page 73

1 complaining about the financial difficulties on
 2 their farm. We all felt that. But I think
 3 they're using DFA has a scapegoat for tough
 4 economic times.
 5 Q. Any other reasons you object to
 6 the settlement?
 7 A. None that come to mind right now.
 8 Q. Have you ever been asked to join
 9 another co-op besides DFA?
 10 A. Well, you understand that I was a
 11 member of three predecessor co-ops before DFA. So
 12 my answer to that would be no, not since I've been
 13 with DFA.
 14 Q. Have you ever heard of a co-op
 15 called Saint Albans?
 16 A. Yes.
 17 Q. Have you ever asked any member of
 18 Saint Albans to join DFA?
 19 A. I'm not sure I know a member of
 20 Saint Albans. Saint Albans is a cooperative that
 21 I believe is part of the DMS, but I know very
 22 little about them.

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1 Q. Have you ever asked a member of
 2 another cooperative to switch from their co-op and
 3 join DFA?
 4 A. There have probably been times
 5 when I've encouraged over farmers to consider
 6 joining DFA, yes.
 7 Q. Do you remember any specific
 8 instances?
 9 A. I'm going to say no.
 10 Q. Do you know whether it's DFA's
 11 policy to try and get farmers from other co-ops to
 12 switch to DFA?
 13 A. Well, certainly DFA is always
 14 looking for any members. There's competition
 15 between cooperatives for members.
 16 Q. Do you know if DFA has ever
 17 changed the terms of any hauling agreements to
 18 attempt to provide an economic push for farmers to
 19 join DFA?
 20 A. I have no knowledge of that.
 21 Q. You don't know one way or the
 22 other?

Page 91

1 A. The answer would be no.
 2 Q. Under provision 9.2 of the
 3 settlement agreement, are farmers required to
 4 accept any particular offer from Dean for their
 5 milk?
 6 A. Farmers required to accept what
 7 kind of offer?
 8 Q. An offer to purchase their milk at
 9 any particular price.
 10 A. Okay. You're going to have to ask
 11 that one over again.
 12 Q. Sure.
 13 MR. DOWNEY: Is the settlement agreement
 14 marked?
 15 MR. HARDY: No.
 16 MR. DOWNEY: It would be helpful to have
 17 it in front of him if you want to ask him about
 18 its terms.
 19 MR. TOMPKINS: Sure.
 20 BY MR. TOMPKINS:
 21 Q. Well, let me ask you this. What
 22 is your general understanding of the operation of

Page 92

1 section 9.2 of the settlement?
 2 A. Well, without having it in front
 3 of me, as I recall from reading it, which has
 4 been, you know, several weeks ago, 9.2, Dean Food
 5 would be allowed to purchase raw milk from
 6 independent dairy farmers or from farmers who are
 7 not involved with DFA or DMS.
 8 And I think the number was up to
 9 20 percent, and I think the number was up to 60
 10 million. I'm not swearing to that.
 11 But suffice it to say, Dean Foods,
 12 under section 9.2, would be allowed to buy --
 13 purchase raw milk from other sources other than
 14 DFA and thereby sidestep their -- I'll just leave
 15 it at that. They will be allowed to buy milk from
 16 other sources other than DFA and DMS.
 17 Q. And what is your objection to Dean
 18 Foods being allowed to buy milk from other sources
 19 other than DFA and DMS?
 20 A. DFA had negotiated sole-supply
 21 contracts with Dean Food and several other
 22 processing plants. When you say Dean Food, we

Page 93

1 Q. Do you recall if you invited him?
 2 A. No.
 3 MR. TOMPKINS: Okay. I don't have any
 4 further questions.
 5 THE REPORTER: Off the record?
 6 MR. HARDY: Yes.
 7 * * *
 8 (Off the record at 2:14 p.m.)
 9 * * *
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22

Page 126

1 Everett Lee Ramsburg c/o
 2 PEPPER HAMILTON LLP
 100 Market Street
 3 Suite 200
 Harrisburg, Pennsylvania 17108
 4 Case: Alice Allen v. DFA
 5 Date of deposition: 02/28/11
 6 Deponent: Everett Lee Ramsburg
 7 Please be advised that the transcript in the above
 8 referenced matter is now complete and ready for signature.
 9 The deponent may come to this office to sign the transcript,
 10 a copy may be purchased for the witness to review and sign,
 11 or the deponent and/or counsel may waive the option of signing.
 12 Please advise us of the option selected.
 13 Please forward the errata sheet and the original signed
 14 signature page to counsel noticing the deposition, noting the applicable
 15 time period allowed for such by the governing Rules of Procedure.
 16 If you have any questions, please do not hesitate to call our office at
 17 (202)-232-0646.
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 19 Sincerely,
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 2
 3 I, Debbie Leonard, Registered
 4 Diplomat Reporter, Certified Realtime Reporter,
 5 certify that the witness was duly sworn by me and
 6 that the deposition is a true record of the
 7 testimony given by the witness.
 8
 9
 10
 11
 12
 13 _____
 Debbie Leonard, RDR, CRR
 14
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 18 any means, unless under the direct control and/or
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 6 SIGNATURE PAGE
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 8 Case Name: Alice Allen v. DFA
 9 Witness Name: Everett Lee Ramsburg
 10 Deposition Date: 02/28/11
 11 I do hereby acknowledge that I have read
 12 and examined the foregoing pages
 13 of the transcript of my deposition and that:
 14 (Check appropriate box):
 15 () The same is a true, correct and
 16 complete transcription of the answers given by
 17 me to the questions therein recorded.
 18 () Except for the changes noted in the
 19 attached Errata Sheet, the same is a true,
 20 correct and complete transcription of the
 21 answers given by me to the questions therein
 22 recorded.

 DATE _____
 WITNESS SIGNATURE

Page 129

EXHIBIT 12

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

ALICE H. ALLEN AND LAURENCE E. ALLEN, a/b/a
Al-lens Farm, GARRET SITTS and RALPH SITTS,
JONATHAN HAAR and CLAUDIA HAAR, on behalf of
themselves and all others similarly situated,
Plaintiffs,

Docket No. 5:09-cv-00230

v.

DAIRY FARMERS OF AMERICA, INC.,
DAIRY MARKETING SERVICES, LLC,
and DEAN FOODS COMPANY,

Defendants.

Deposition Upon Oral Examination of:

David S. Rudd

Location: Nixon Peabody LLP
1100 Clinton Square
Rochester, New York 14604

Date: February 28, 2011

Time: 2:11 p.m.

Reported By: KIMBERLY A. BONSIGNORE

DIGITAL EVIDENCE GROUP
1299 Pennsylvania Ave, NW, Suite 1130E
Washington, DC 20004
(202) 232-0646

1 A. He probably -- he can't unless he bails
 2 out the co-op, but I'm sure there's other ones in that
 3 Champlain Valley on both sides, Vermont and New York.
 4 I mean, you asked me for a name. I probably shouldn't
 5 have gave you the name, but that's all right.
 6 Q. Well, I was excited to get it. You may
 7 not have been able to tell that, but I was happy to
 8 get it.
 9 Are you aware of any non-DFA, non-DMS
 10 million-pound-per-month dairies within 150 miles of
 11 East Greenbush, New York?
 12 A. No.
 13 Q. Are you aware of any million-pound
 14 producers, non-DFA, non-DMS, that are located within
 15 150 miles of either Franklin or West Lynn,
 16 Massachusetts?
 17 A. No.
 18 Q. Has DMS provided you with any documents
 19 that identify milk producers located out of Federal
 20 Order 1 who might ship to the East Greenbush, Franklin
 21 or West Lynn Dean Food plants?
 22 MR. KUNEY: Could I just have that read
 Page 90

1 back. I'm sorry. I lost the question.
 2 Q. I'll ask it again. Has DMS provided you
 3 with any documents that describe non-DFA, non-DMS
 4 producers located outside of Federal Order 1 who are
 5 likely to be shipping milk to East Greenbush, New
 6 York, or Franklin, West Lynn, Massachusetts?
 7 A. No.
 8 Q. In paragraph 18 you say that there are
 9 approximately 20 billion pounds of milk pooled in
 10 Federal Order 1 each month; is that right?
 11 A. Yes, sir.
 12 Q. And of that 2 billion pounds, how much is
 13 processed as Class 1 fluid milk?
 14 A. Between 43 and 46 percent.
 15 Q. So that would be just under a billion
 16 pounds?
 17 A. Yes, sir.
 18 Q. And you're very precise about the 43 to 46
 19 percent. Where does that information come from?
 20 A. From the market administrator, Eric
 21 Rasmussen.
 22 Q. And is that a report you see?
 Page 91

1 A. Once a month.
 2 Q. And do you see it in your capacity --
 3 A. Dairy producer. Everybody that ships milk
 4 gets one of those market administrator's bulletins.
 5 Q. And the market administrator's bulletin
 6 tells you what the price is going to be?
 7 A. Was.
 8 Q. Was. It's a retrospective look at price?
 9 A. Yes, sir.
 10 Q. And on the -- you get two paychecks a
 11 month, right?
 12 A. Yes, sir.
 13 Q. And when do you get the first paycheck?
 14 A. The middle of the month is always for the
 15 last -- the final of the last month. So today was
 16 deposited into my bank account via what they call the
 17 advance for February.
 18 Q. And then the check you'll get on March
 19 15th --
 20 A. Will be the final for February.
 21 Q. And that reflects the true-up of your
 22 production and sale during the month of February?
 Page 92

1 A. Yes, sir.
 2 Q. And when in a month do you receive the
 3 market administrator's report?
 4 A. We just got -- it might have been last
 5 week we got December's. It's always like six weeks
 6 behind.
 7 Q. And when you get the market
 8 administrator's report for December, do you go back
 9 and compare what the market administrator says about
 10 pricing to your milk checks that you got in January?
 11 A. Yes.
 12 Q. Has there been any discussion within DFA
 13 about the additional time and resources that will need
 14 to be spent looking for new customers for the up to 60
 15 million pounds of milk that are covered by paragraph
 16 9.2 of the proposed Settlement Agreement?
 17 A. I haven't been privy to any discussions.
 18 Q. Have you received any documents in which
 19 the time and resources required to look for new
 20 markets for up to 60 million pounds of milk have been
 21 discussed?
 22 A. No.
 Page 93

1 CERTIFICATION
 2
 3 STATE OF NEW YORK:
 4
 5 COUNTY OF MONROE:
 6
 7 I, KIMBERLY A. BONSIGNORE, being a
 8 Freelance Court Reporter and Notary Public in and for
 9 Monroe County, New York, do hereby certify that I
 10 reported in machine shorthand the foregoing pages of
 11 the above-styled cause, and that they were prepared by
 12 computer-assisted transcription under my personal
 13 supervision and constitute a true and accurate record
 14 of the proceedings.
 15 I further certify that I am not an
 16 attorney or counsel of any parties, nor a relative or
 17 employee of any attorney or counsel connected with the
 18 action, nor financially interested in the action.
 19 WITNESS my hand in the City of Rochester,
 20 County of Monroe, State of New York.
 21 Kimberly Bonsignore
 22 Freelance Court Reporter and
 Notary Public No. 01B06032396 in
 and for Monroe County, New York
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 8 Case Name: Alice Allen v. DFA
 9 Witness Name: Rudd
 10 Deposition Date: 02/28/11
 11 I do hereby acknowledge that I have read
 12 and examined the foregoing pages
 13 of the transcript of my deposition and that:
 14 (Check appropriate box):
 15 () The same is a true, correct and
 16 complete transcription of the answers given by
 17 me to the questions therein recorded.
 18 () Except for the changes noted in the
 19 attached Errata Sheet, the same is a true,
 20 correct and complete transcription of the
 21 answers given by me to the questions therein
 22 recorded.

 DATE WITNESS SIGNATURE
 Page 108

1 Rudd c/o
 2 Nixon Peabody LLP
 1100 Clinton Square
 3 Rochester, New York 14604-1792
 4 Case: Alice Allen v. DFA
 5 Date of deposition: 02/28/11
 6 Deponent: Rudd
 7 Please be advised that the transcript in the above
 8 referenced matter is now complete and ready for signature.
 9 The deponent may come to this office to sign the transcript,
 10 a copy may be purchased for the witness to review and sign,
 11 or the deponent and/or counsel may waive the option of signing.
 12 Please advise us of the option selected.
 13 Please forward the errata sheet and the original signed
 14 signature page to counsel noticing the deposition, noting the applicable
 15 time period allowed for such by the governing Rules of Procedure.
 16 If you have any questions, please do not hesitate to call our office at
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 9 Witness Name: Rudd
 10 Deposition Date: 02/28/11
 11 Page No. Line No. Change
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22 _____
 Signature Date
 Page 109

EXHIBIT 13

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF VERMONT

ALICE H. ALLEN AND LAURENCE E. ALLEN,)
d/b/a Al-lens Farm,)
GARRET SITTS and RALPH SITTS, and)
JONATHAN and CLAUDIA HAAR)
on behalf of themselves)
and all others similarly situated,)
)
Plaintiffs.)

v.)

Docket No. 5:09-cv-00230-cr

)
DAIRY FARMERS OF AMERICA, INC.,)
DAIRY MARKETING SERVICES, LLC, and)
DEAN FOODS COMPANY,)
)
Defendants.)

**PLAINTIFFS’ SUPPLEMENTAL OBJECTIONS AND RESPONSES TO
DEFENDANTS’ INTERROGATORY REQUESTS**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Plaintiffs Alice H. and Laurence E. Allen, d/b/a Al-lens Farm, Garret Sitts and Ralph Sitts and Jonathan and Claudia Haar (collectively “Plaintiffs”) submit their Objections and Responses.

Additional and ongoing discovery and investigation may disclose further information relevant to these Responses. Accordingly, Plaintiffs reserves the right to amend, alter, supplement, modify, or otherwise revise these Responses if, for any reason, such amendments, alterations, supplements, modifications, or revisions become appropriate or warranted.

GENERAL OBJECTIONS AND RESPONSES

Plaintiffs object to each and every Interrogatory on the basis of the following General Objections, which are incorporated into Plaintiffs’ responses to each Interrogatory below as if

The Sitts have been prevented from obtaining higher milk prices by Defendants' conspiracy.

Interrogatory No. 17

Identify and describe in detail all communications between you and any Defendant, alleged co-conspirator, or other person identified in the Complaints.

Response No. 17

Defendants have withdrawn this interrogatory and therefore it requires no response. *See* April 6, 2011 Letter from Carl Metz to Benjamin Brown.

Interrogatory No. 18

Identify and describe in detail the equitable relief sought in the Complaints and precisely how the requested relief will affect competition, including but not limited to (a) the agreement(s) sought to be declared null and void, (b) the agreements which you seek to enjoin Defendants or any other person from entering into, (c) the plants sought to be divested, (d) an accounting of DFA and DMS's books, and (e) a declaration that specific activities (identify and describe the details in full) of DFA and DMS are outside the scope of the Capper-Volstead immunity.

Response No. 18

Plaintiffs incorporate each of their General Objections as if fully set forth below. If properly counted, DFA/DMS's interrogatories exceed the number permitted by the Federal Rules.

Plaintiffs further object that the request invades the attorney work-product privilege in its request for information that supports any particular factual or legal contention because responding would only disclose counsel's opinions, impressions and analysis of the facts and law.

Plaintiffs additionally object to this interrogatory on the ground that it is compound and contains numerous subparts.

Plaintiffs incorporate herein the factual information provided to Defendants in Dairy Farmer Plaintiffs' Amended and Supplemental Response to All Defendants' Joint First Set of

Interrogatories (Dec. 3, 2009) filed in the *Southeastern Milk Litigation*, the Dairy Farmer Plaintiffs Response to Joint Defendants' Statement of Material Facts (Doc. No. 841) and Statement of Additional Material Facts filed in the *Southeastern Milk* litigation, the trial exhibits identified by the Plaintiffs in *Southeastern Milk*, the memorandum and reply memorandum in support of Plaintiffs' motion for class certification in this litigation- *Allen v. DFA*, Plaintiffs' Reply Memorandum in support of Preliminary Approval of the Dean Settlement, the two expert declarations by Dr. Rausser filed in support of the class certification motion in this litigation, and the expert declaration that will be filed by Dr. Gordon Rausser on July 19, 2011 in this matter, Written Responses of Dairy Farmers of America, Inc., Dairy Marketing Services, and Dairylea to Plaintiffs' Rule 30(b)(6) Deposition Topics and their exhibits, and all testimony and exhibits referenced in those pleadings. Plaintiffs reserve the right to supplement their Response to this interrogatory.

Plaintiffs further object to this interrogatory on the ground that it seeks an expert opinion and/or material that will be the subject of expert testimony that will be disclosed pursuant to the deadlines established by this Court and agreed to by the parties. Disclosure of that information now is not required by the Federal Rules or the schedule established by the Court.

Plaintiffs additionally object on the ground that the request calls for legal conclusions.

Subject to these objections, Plaintiffs respond as follows. Plaintiffs contend that DFA and DMS should act in compliance with their own Antitrust Compliance Guidelines, the terms of the Consent Decrees to which they are subject and the requirements of the antitrust laws. Plaintiffs reserve the right to amend their request for equitable relief after all discovery is completed in this matter, including full discovery from experts. For examples, Plaintiffs reserve the right to elicit and consider the views of Defendants' experts during the discovery process, as

well as the Vermont Attorney General's Office, regarding the implications of particular equitable relief and modify the equitable relief sought, or the precise language of the proposed equitable relief. Based on the information currently available, Plaintiffs believe the following equitable relief is appropriate:

1. Defendants should be prohibited from coercing or threatening farmers to join DFA (or deliver milk to DFA) or other cooperatives, or supply milk through DMS.

2. Defendants should be prohibited from coercing or threatening farmers not to terminate their membership in DFA (or milk deliveries to DFA) or discontinuing the supply of milk through DMS, and from retaliating against farmers who elect to so terminate or discontinue supply. This should include, but not be limited to, requiring DFA/DMS's subsidiary Dairy One to provide a tamper proof sample upon request to farmers when their milk is tested so that the sample can be tested by an independent milk testing entity whose results must be accepted by DFA/DMS for all purposes.

3. Defendants should be prohibited from maintaining or entering into any agreement with another person, except an employee or milk hauler performing services for Defendant, that restricts in any way: (1) the solicitation by such other person of any member of Defendant or DMS supplier to terminate its membership and marketing agreement with the Defendants; or (ii) the territory in which such other person seeks to obtain supplies of milk.

4. Defendants should not discriminate or threaten to discriminate in any way against haulers or processors for transporting or processing non-DFA or non-DMS milk, or coerce or threaten haulers or processors to cause them to refrain from transporting or processing non-DFA or non-DMS milk.

5. Defendants should not enter into any agreements with another cooperative to prevent or restrict solicitation of (a) each others' members or (ii) producers located in any particular geographic region.

6. Defendants should not enter into any contract with a milk fluid bottler or other processor that requires or is designed to force the processor to purchase milk from DFA, DMS or a co-conspirator for a period greater than one year.

7. Defendants should not enter agreements with other cooperatives to fix pay prices to farmers.

8. DFA should be subject to an annual audit of its financial records by an independent auditor and the results of these annual audits should be reasonably available to DFA members, subject to any reasonable protections required by DFA to maintain the confidentiality of this information.

9. Such other equitable relief as the Court determines to be appropriate.

The anticompetitive nature and effects of the conduct that would be addressed by this relief are set forth in Plaintiffs' responses to interrogatories 1-4, 5 and 7. Moreover, in almost all instances this conduct is expressly prohibited in DFA's own Antitrust Compliance Guide (which is also applicable to DMS), as well as the Consent Decree, and DFA has stated that it is both its "core policy" and beneficial to competition to comply with these requirements. For example, DFA's Antitrust Compliance Guide states that "DFA's policy is to conduct its operations in strict compliance with all applicable federal, state, and local laws. This is a core policy of the company and it is critical that each and every one of us abide by it. In this regard, antitrust laws have been adopted by the federal and most state governments to preserve our free enterprise system. The antitrust laws were designed to assure competition on the merits among companies,

without artificial restraint through improper agreements or otherwise.” DMS-NE2009-091919. DFA has also stated that the antitrust laws “strive to preserve our free enterprise system by assuring competition on the merits of competing products without collusive agreements among competitors or artificial restraints on normal, health competition. DFA’s objective is to vigorously and effectively compete in the marketplace *within the spirit and letter of the law*. *Any departure from honest and fair competition is a violation of DFA rules and will not be sanctioned.*” DFA 01-1235289. Unfortunately, as the responses to Interrogatories 1-4 show, DFA and DMS have engaged in conspiratorial conduct that repeatedly violates its stated Antitrust Compliance Guide and professed principles. *See also* DFA Statement of Terms for the Merger of Associated Milk Producers, Inc., Mid-American Dairyman, Inc., Milk Marketing Inc. & Western Dairyman Cooperative, Inc. (professing commitment to comply with consent decree).

Plaintiffs do not seek an accounting or declaration. We do note, however, that the conspiracy described in the responses to Interrogatories 1-4 is not protected by the Capper-Volstead Act. By way of example, DFA’s own Antitrust Compliance Guide recognizes that “the Agricultural Exemptions from the antitrust laws are not absolute. ... First and foremost, they do not permit the cooperative to conspire with persons outside the cooperative, such as proprietary processors; second, they do not permit the cooperative to ‘monopolize’ or ‘attempt to monopolize’ through predatory or anticompetitive actions. Acts that might support a ‘monopolization’ claim include unjustifiable pricing to certain customers, boycotts, violence, coerced membership, and predatory refusals to deal with customers. ... Third, the Agricultural Exemptions protect only agreements among cooperatives relative to ‘marketing.’ While the precise scope of ‘marketing’ is unclear, you should be aware that the U.S. Department of Justice takes the view that cooperative compete with each other for members and that any agreement

among cooperatives to lessen this competition would not be exempt from antitrust challenge by the Antitrust Exemptions. Fourth, the Agricultural Exemptions do not apply to conduct prohibited by the consent decrees.” DMS-NE2009-091930. DFA/DMS also have not complied with the procedural requirements that are a precondition to invoking the Antitrust Exemption.

Interrogatory No. 19

Identify and describe in detail all communications you have had, or of which you are aware, with any person relating to any investigation of raw Grade A milk or processed Grade A milk prices, purchases, or sales prior to the filing of the Complaints.

Response No. 19

Defendants have withdrawn this interrogatory and therefore it requires no response. *See* April 6, 2011 Letter from Carl Metz to Benjamin Brown.

Interrogatory No. 20

Identify any person who sells Grade A milk to a plant (or processes their own Grade A milk for sale) without the use or assistance of any intermediary such as a cooperative, marketing service, or other entity.

Response No. 20

Defendants have withdrawn this interrogatory and therefore it requires no response. *See* April 6, 2011 Letter from Carl Metz to Benjamin Brown.

EXHIBIT 14

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

- - - - - X

ALICE H. ALLEN AND LAURENCE E. ALLEN, d/b/a
Al-lens Farm, VINCE NEVILLE, GARRET SITTS and
RALPH SITTS, JONATHAN AND CLAUDIA HAAR, and
DONNA HALL on behalf of themselves and all
others similarly situated,

Plaintiffs,

Docket No. 09-cv-00230-cr

-against-

DAIRY FARMERS OF AMERICA, INC., DAIRY MARKETING
SERVICES, LLC, and DEAN FOODS COMPANY,

Defendants.

- - - - - X

APRIL 25, 2012

9:42 A.M. - 3:03 P.M.

EXAMINATION BEFORE TRIAL of the Plaintiff,
RICHARD SWANTAK, held at 677 Broadway, 10th
Floor, Albany, New York before Christy Rockower,
a Court Reporter and Notary Public in and for
the State of New York.

- - - - - X

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1726 M Street NW, Suite 1010
Washington, DC 20036
(202) 232-0646

1 privy to? In other words, some of the --
 2 did George explain to you that some of the
 3 answers that were required required
 4 references to evidence that you haven't
 5 seen?
 6 A Yes.
 7 Q But you hadn't actually seen the whole
 8 document put together until Monday in
 9 written form; right?
 10 A Exactly.
 11 Q Did you review those portions of the
 12 interrogatories that referred to you
 13 specifically, though?
 14 A Yes.
 15 MR.METZ: Objection. Vague
 16 as to the time frame.
 17 BY MR. BROWN:
 18 Q And did you -- in fact, did you review the
 19 whole document?
 20 A I did as much as I could roughly
 21 comprehend.
 22 Q Did you see anything in there that was

Page 202

1 inaccurate or incomplete?
 2 A No.
 3 Q And you signed a verification earlier
 4 today of these interrogatory responses; is
 5 that right?
 6 A Yes.
 7 Q And you read through it first and -- is
 8 that right?
 9 A Yes.
 10 Q And you were comfortable with signing it
 11 after understanding what it represented?
 12 A Yes.
 13 Q Did you feel like your lawyers did a fair
 14 job of reflecting the answers you gave in
 15 the written version of these interrogatory
 16 answers?
 17 MR.METZ: Objection to the
 18 form.
 19 A Yes.
 20 Q You were asked whether you'd sign the
 21 protective order earlier in this case. Do
 22 you remember that question?

Page 203

1 A Yes.
 2 Q I think what you testified was that you
 3 thought you had, but you weren't sure; is
 4 that right?
 5 A That's correct.
 6 Q Is it the case, though, that anything
 7 you've learned pursuant to your
 8 involvement in this case, you kept
 9 confidential?
 10 A Yes.
 11 MR.BROWN: And I will
 12 proffer that my understanding is he
 13 has signed the protective order, but
 14 I will offer now if you would like
 15 him to sign another Exhibit A.
 16 MR. METZ: I'd rather --
 17 MR. BROWN: I can do it,
 18 hand it to you.
 19 MR.METZ: That's not
 20 necessary. But if you signed a copy
 21 of the protective order, we'd be
 22 entitled to a copy of that.

Page 204

1 MR.BROWN: We'll make sure
 2 you get a copy of the signed
 3 version.
 4 BY MR. BROWN:
 5 Q Is it the case, generally, that when
 6 farmers get together, they sometimes talk
 7 about the price of milk?
 8 A That's usually a topic.
 9 Q If there were some party -- be it a co-op
 10 or a processor -- that was offering
 11 substantially more for raw milk in your
 12 area, do you think you would hear about
 13 it?
 14 MR.METZ: Objection.
 15 A Yes.
 16 MR.METZ: Calls for
 17 speculation.
 18
 19 BY MR. BROWN:
 20 Q Over the last --
 21 Well, let me ask it this way.
 22 When the representative of Dean came

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1 through recently and started making noise
 2 about offering more money for milk, was
 3 there chatter about that among farmers in
 4 your area?
 5 A Yes.
 6 Q How many other times in the last ten years
 7 do you recall that kind of chatter
 8 happening?
 9 MR.METZ: Objection to the
 10 form.
 11 A Zero.
 12 Q As part of contemplating the effect of
 13 this lawsuit on DFA members, have you
 14 given any thought or had any conversations
 15 with counsel -- and I want to be careful
 16 here. I don't want to ask about any
 17 specifics of those conversations.
 18 MR. METZ: In fact, let me
 19 strike that and let me ask this
 20 question a different way.
 21 BY MR. METZ:
 22 Q As part of your involvement in this
 Page 206

1 lawsuit, have you given any thought to
 2 whether members of DFA, if this lawsuit is
 3 successful, will end up with more money in
 4 their pockets versus less money in their
 5 pockets?
 6 A Yes, I have. On a very short term it will
 7 still be -- they will end up, maybe, with
 8 more money in their pockets in the short
 9 term and more on the long. That's my
 10 feel.
 11 MR.BROWN: I'd like to mark
 12 an exhibit. I apologize for only
 13 having one copy of this. I did not
 14 intend to mark an exhibit today, but
 15 you can review it. It is the
 16 Plaintiff's Revised And Amended
 17 Supplemental Objections And
 18 Responses To Defendants'
 19 Interrogatory Requests.
 20 Specifically, it is the document
 21 that details the injunctive relief.
 22 MR. METZ: It's in
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1 Exhibit 2.
 2 MR.BROWN: Is it in
 3 Exhibit 2? Okay.
 4 MR.METZ: I believe you're
 5 probably picking up on page 268.
 6 MR.BROWN: You are correct
 7 about that.
 8 MR.METZ: No. It's 271,
 9 more or less.
 10 MR.BROWN: 271.
 11 BY MR. BROWN:
 12 Q Can you, please, flip to page 271 in
 13 Exhibit 2.
 14 I'd like you to take a moment to read
 15 through the enumerated portions of page
 16 271 and 272, and let me know when you've
 17 had a chance to read that.
 18 A (Witness perusing document.)
 19 Okay.
 20 Q Do you recall reviewing those pages?
 21 They may not have been -- you may not have
 22 reviewed those pages as part of this
 Page 208

1 document, but do you remember reviewing
 2 those representations about what
 3 plaintiffs would be seeking in the
 4 injunctive relief in this case prior to
 5 today's deposition?
 6 Well, let me ask it this way: Do you
 7 remember discussing and considering the
 8 injunctive relief that we, the plaintiffs,
 9 would be seeking in this case, were it to
 10 go to trial?
 11 A Yes.
 12 Q And did you satisfy yourself that this
 13 injunctive relieve being sought in the
 14 case would be in the best interest of DFA
 15 and DMS members?
 16 A Yes. I feel it's best for everybody.
 17 Q Throughout this deposition, you kept
 18 referring to things that you'd learned in
 19 the interrogatory responses. Do you
 20 remember that?
 21 A Yes.
 22 Q But you also reviewed a copy of the
 Page 209

1 complaint in this case before this
 2 deposition; right?
 3 You can stop reading that.
 4 So what I'm asking is: You received a
 5 copy of the complaint in this case; is
 6 that right?
 7 A I believe so.
 8 Q And you received a copy of this complaint
 9 a while ago, and did you read it then?
 10 A You're talking a couple of weeks ago or
 11 so?
 12 Q I don't know the exact date. It's up to
 13 you to testify.
 14 A Yes.
 15 Q Some of the -- is it true that some of the
 16 stuff that you learned about the dairy
 17 industry, you learned from reading the
 18 complaint?
 19 MR. METZ: Objection to
 20 form.
 21 A Is it true that I learned some stuff
 22 about -- yes.

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1 Q So throughout the deposition when you'd
 2 say, you know, you'd say "I learned this
 3 through reading the interrogatory
 4 responses," did you mean that you learned
 5 it just through reading the interrogatory
 6 responses, or you learned it through
 7 reading the interrogatory responses and
 8 also reading the complaint?
 9 MR.METZ: Objection to the
 10 form.
 11 A I learned it from both the interrogatory
 12 responses and the complaint.
 13 Q When you were talking with counsel about
 14 the papers that you should produce in this
 15 case, were you also instructed to produce
 16 any other papers that might be relevant to
 17 the lawsuit?
 18 A I was trying to -- I'm not sure. There
 19 might be something else, but I got them
 20 everything they needed -- the milk checks
 21 and the statistics from '02.
 22 MR. BROWN: I will, then,

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1 proffer to counsel that to the
 2 extent there was any ambiguity about
 3 whether he was going to produce
 4 other relevant documents, we will
 5 explore that issue with Rich and see
 6 if there are additional relevant
 7 documents.
 8 MR.METZ: Okay.
 9 BY MR. BROWN:
 10 Q Along those same lines, do you remember
 11 having a conversation with counsel
 12 about --
 13 A Excuse me. There is something else -- the
 14 deeds to my property. Yes. I sent them
 15 along, so I need those back too. That
 16 was -- I thought was something else.
 17 Q Do you remember counsel asking you whether
 18 you kept materials on your computer? Do
 19 you remember having that conversation?
 20 A Yes.
 21 Q And do you remember whether counsel asked
 22 you whether there's relevant stuff on your

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1 computer? Do you remember that
 2 conversation?
 3 A I think George might have, you know, but
 4 the only thing I can remember is Garret
 5 had contacted me, maybe, in November or
 6 whenever. You know, a long time ago.
 7 Q Do you remember that we asked you to look
 8 for stuff on your computer and that -- and
 9 whether you reported back anything that
 10 was relevant?
 11 MR.METZ: Objection to the
 12 form of the question.
 13 A I don't think there was anything there.
 14 Yeah, probably asked, but I didn't --
 15 Q To the best of your knowledge, have you
 16 produced every document that you were able
 17 to find that is responsive to the request
 18 that has been issued in this lawsuit?
 19 A Yes.
 20 MR.BROWN: That being said,
 21 Counsel, I will proffer that I'm
 22 going to revisit this issue to make

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1 It changes all the time. That's a pretty
 2 good figure, 12. I did read that two or
 3 three times. If you got the right --
 4 where it's going to work for the farmer,
 5 for the co-op, should you go longer, but
 6 really, that figure is not a bad figure.
 7 That milk price changes so fast, that's my
 8 experience. Yep.
 9 Q So that's the right length of contract, in
 10 your judgement; right?
 11 A That appears to be okay.
 12 Q And that would be the same for Land O'
 13 Lakes and St. Alban's and Dairylea;
 14 correct?
 15 A Yes.
 16 Q And if those co-ops have farmer board of
 17 directors that disagree with you, they
 18 should be prohibited from disagreeing with
 19 you?
 20 A They shouldn't be prohibited from
 21 disagreeing with me, no.
 22 Q They should be prohibited, though, from
 Page 226

1 having contracts that are longer than the
 2 time period Richard Swantak thinks they
 3 should be?
 4 A They shouldn't enter into more than 12
 5 months, because they will get caught and
 6 then they can't budge, and maybe they
 7 could have got a lot better price down the
 8 road or something -- the co-op itself --
 9 if they go someplace else or something or
 10 get a different figure from the bottling
 11 plant.
 12 MR. METZ: I have no further
 13 questions. Thank you for your time
 14 today.
 15 THE WITNESS: Okay. You're
 16 welcome.
 17 THE VIDEOGRAPHER: The time
 18 is three minutes after 3. We are
 19 off the record.
 20 (Whereupon, the Deposition
 21 of RICHARD SWANTAK concluded at 3:03
 22 P.M.)
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1 REPORTER'S CERTIFICATE
 2
 3 I, CHRISTY ROCKOWER, a Court Reporter
 4 and Notary Public in and for the State of New
 5 York, do hereby certify that I recorded
 6 stenographically the proceedings herein at the
 7 time and place noted in the heading hereof, and
 8 that the foregoing transcript is true and
 9 accurate to the best of my knowledge, skill and
 10 ability.
 11 IN WITNESS WHEREOF, I have hereunto
 12 set my hand.
 13
 14
 15
 16
 17
 18
 19
 20 CHRISTY ROCKOWER
 21
 22
 Page 228

1 Richard Swantak c/o
 2 Cohen Milstein Sellers & Toll, PLLC
 3 1100 New York Avenue, N.W.
 4 Suite 500, West Tower
 5 Washington, D.C. 20005
 6
 7 Case: Alice Allen v. DFA
 8 Date of deposition: 04/25/12
 9 Deponent: Richard Swantak
 10
 11 Please be advised that the transcript in the above
 12 referenced matter is now complete and ready for signature.
 13 The deponent may come to this office to sign the transcript,
 14 a copy may be purchased for the witness to review and sign,
 15 or the deponent and/or counsel may waive the option of signing.
 16 Please advise us of the option selected.
 17 Please forward the errata sheet and the original signed
 18 signature page to counsel noticing the deposition, noting the applicable
 19 time period allowed for such by the governing Rules of Procedure.
 20 If you have any questions, please do not hesitate to call our office at
 21 (202)-232-0646.
 22
 Sincerely,
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 Copyright 2012 Digital Evidence Group
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EXHIBIT 15

**REBUTTAL DECLARATION OF
GORDON RAUSSER, Ph.D.
REGARDING CLASS CERTIFICATION**

In the matter of

Allen v. Dairy Farmers of America, et al.
USDC, District of Vermont
Case No. 5:09-cv-00230-cr

HIGHLY CONFIDENTIAL
Pursuant to Protective Order

June 13, 2011

2. Dr. Kalt exaggerates variation in prices using univariate, rather than multivariate, analysis

118. In his Figure S.4, Dr. Kalt presents a scatter plot of mailbox prices paid to farmers in Order 1. Based on these visual observations, Dr. Kalt concludes that “the prices received by proposed class member farmers are subject to substantial dispersion.”²⁴⁰ He quotes the range of variation from highest to lowest reported price as \$5 to \$6 per hundredweight. By its very nature, the range is a statistic that captures the *maximum* variation, rather than attempting to measure the *typical* variation. The scatter plot in S.4 also emphasizes extreme variation as the eye is drawn to the height of the band of prices presented. Taking Dr. Kalt’s Figure S.4 and calculating the CV once more shows that the variation in prices is minimal, even without accounting for any observable variables affecting price. I have calculated the CV for each month in the data and presented the results in Exhibit 14: the monthly CV is never greater than 9%. Again with reference to typical price variation found in the academic literature, this variation is extremely small, even before any attempt has been made to explain it using standard econometric techniques.

119. Dr. Kalt makes no attempt to account for the variation in prices displayed here, despite the fact that the vast majority of such variation can be successfully explained using a *multivariate* regression analysis. Economists routinely use multivariate regression analysis to account for the multiple factors that drive prices. Although this methodology is commonly applied in antitrust analyses,²⁴¹ Dr. Kalt largely ignores it.²⁴² Instead, the analysis he presents in Figure S.4 is *univariate*, in that it presents prices against only one dimension; in this case, time. This presentation gives the appearance of considerable unexplained variation merely because it

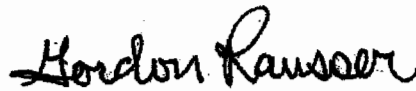
²⁴⁰ Kalt Expert Report, at p. 7.

²⁴¹ For an explanation of the utilization of multiple regressions in antitrust analysis, *see* Rubinfeld, Daniel L., “Reference Guide on Multiple Regression,” *Reference Manual on Scientific Evidence*, 2nd ed., 2000, pp.179–227, at p. 182.

²⁴² Kalt reports the results of an ANOVA analysis which is similar to a multivariate regression analysis, but he uses a pricing model with no foundation as shall be discussed in Section IV.C.2.

geographic benchmarks assure that such a calculation can reliably be performed. Finally, Dr. Kalt's assertions that the alleged actions by the cooperative managers are in some way irrational is economically unsound. The compensation incentives of cooperative managers and their desire to grow and stabilize their own market share are entirely consistent with their alleged misconduct.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge. Executed on June 13, 2011, in Emeryville, California.

A handwritten signature in cursive script that reads "Gordon Rausser". The signature is written in black ink and is positioned above a horizontal line.

Gordon Rausser, Ph.D.

EXHIBIT 16

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

ALICE H. ALLEN AND LAURENCE E. ALLEN,)
et al.,)

Plaintiffs,)

v.)

Docket No. 5:09-cv-00230-cr

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

Defendants.)

DECLARATION OF JONATHAN HAAR

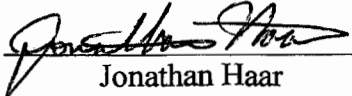
Pursuant to 28 U.S.C. § 1746, I, Jonathan Haar, declare under penalty of perjury that the following facts are true and correct to the best of my knowledge and belief:

1. I am a person over eighteen (18) years of age and I have personal knowledge of the facts stated in this declaration.

2. Regarding defendants' declarants, I respect these farmers as colleagues and recognize their efforts on their farms and for their organizations. I do not question their honesty or the genuineness of their views as expressed in their declarations.

3. However, since DFA and DMS have chosen not to open the record of the case and to keep the vast majority of the evidence confidential, the declarants' opinions are uninformed by this evidence. In addition, the objectivity of the declarants that are board members or delegates is tainted by their positions and the biased and incomplete information they have received from the management of DFA and DMS.

I declare under penalty of perjury under the laws of the United States and the State of New York that the foregoing is true and correct and that this declaration was executed in Madison County, New York on May 31, 2012.


Jonathan Haar