

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS**

FIRST IMPRESSIONS SALON, INC., *et al.*,

Plaintiffs,

v.

NATIONAL MILK PRODUCERS
FEDERATION, *et al.*,

Defendants.

Case No. 3:13-cv-00454 (NJR)(SCW)

**DEFENDANTS' JOINT ANSWER TO PLAINTIFFS'
THIRD AMENDED CONSOLIDATED CLASS ACTION COMPLAINT**

Defendants National Milk Producers Federation, aka Cooperatives Working Together, Dairy Farmers of America, Inc., Land O'Lakes, Inc., Dairy Lea Cooperative Inc., and Agri-Mark, Inc. (collectively, "Defendants") hereby make the following Answer and Affirmative and Separate Defenses to the Plaintiffs' Third Amended Consolidated Class Action Complaint (the "Third Amended Complaint").

I. NATURE OF THE CASE

1. The allegations of Paragraph 1 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 1.

2. Defendants admit that dairy farmers who are members of dairy cooperatives may market their milk through the cooperative to which they belong. With respect to the second sentence of Paragraph 2, Defendants admit that dairy cooperatives may arrange for the sale of their members' raw milk through the sale of raw milk or through the production of raw milk into manufactured dairy products. Defendants deny the remaining allegations of Paragraph 2.

3. Defendants admit that CWT was founded in July of 2003. Defendants admit that CWT's website included the quoted excerpts. Defendants deny the remaining allegations of Paragraph 3.

4. Defendants admit that, as of July 7, 2010, as CWT was conducting its tenth and final herd retirement, CWT's members paid assessments of \$0.10 per hundredweight (cwt) on their milk production through December 2010. Defendants deny the remaining allegations of Paragraph 4.

5. Defendants deny the allegations of Paragraph 5.

6. Defendants admit that CWT provided an optional formula that farmers could use if they decided to submit a bid for CWT funding, which essentially subtracted the farmer's estimate of the herd's value if sold for beef from the farmer's estimate of the herd's value as milking and dry cows. Defendants deny the remaining allegations of Paragraph 6.

7. The allegations of Paragraph 7 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants admit that farmers who wished to submit a bid to CWT's herd retirement program were required to complete and execute a bid form, which varied over the course of the program. Defendants admit that the "2010 Dairy Herd Retirement Program Bid Form" appended as Exhibit A to the Third Amended Complaint was one version of the bid form. Defendants deny the remaining allegations of Paragraph 7.

8. The allegations of Paragraph 8 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants admit that the 2010 herd retirement program bid form included the quoted excerpts, and deny the remaining allegations of Paragraph 8.

9. Defendants deny the allegations of Paragraph 9.

10. Defendants admit that the 2010 herd retirement program bid form included the quoted excerpt. Defendants deny the remaining allegations of Paragraph 10.

11. Defendants admit that, in 2009, the CWT program collected \$219 million from membership assessments and disbursed \$217 million to farmers pursuant to the herd retirement program. Defendants deny the remaining allegations of Paragraph 11.

12. The first sentence of Paragraph 12 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of that sentence. Defendants deny the remaining allegations of Paragraph 12.

13. The allegations of Paragraph 13 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 13.

14. Defendants admit that CWT financed ten rounds of voluntary herd retirements by farmers from 2003 to 2010, during which time CWT subsidized the marketing of over 500,000 cows for beef. Defendants also admit that CWT's website included the quoted excerpt. Defendants deny the remaining allegations of Paragraph 14.

15. The allegations of Paragraph 15 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 15.

16. The allegations of Paragraph 16 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 16.

17. Defendants admit that Plaintiffs have attempted to plead claims under Section 1 of

the Sherman Act (15 U.S.C. § 1), but deny the remaining allegations of Paragraph 17.

18. Defendants admit that Plaintiffs have requested injunctive relief, but deny the remaining allegations of Paragraph 18.

II. JURISDICTION AND VENUE

19. The allegations of Paragraph 19 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 19.

20. The allegations of Paragraph 20 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants admit that venue is proper in this district but lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 20 and therefore deny them.

21. The allegations of Paragraph 21 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants admit that this Court has personal jurisdiction over them but deny that they were engaged in an illegal scheme and supply-reduction conspiracy. Defendants lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 21 and therefore deny them.

22. Defendants lack knowledge or information sufficient to form a belief as to the truth of all of the allegations of the first, second, third, and fifth sentences of Paragraph 22 and therefore deny them. Defendants deny the allegations of the fourth sentence. With respect to the first and fifth sentences of Paragraph 22, Defendants admit that Plaintiffs purport to identify a “Class Period” but deny that this action may be maintained as a class action. The final sentence of Paragraph 22 alleges a legal conclusion to which no response is required. To the extent a response is required, Defendants admit that Plaintiffs purport to allege further jurisdictional

contacts later in the complaint. Defendants deny the remaining allegations of Paragraph 22.

III. THE PARTIES

A. Plaintiffs

23. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of the Plaintiff First Impressions Salon, Inc.'s residence, corporate status, or operations and therefore deny them.

24. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 24 and therefore deny them. Defendants deny the remaining allegations of Paragraph 24.

25. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff Mattson's residence and therefore deny them. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of the second sentence of Paragraph 25 and therefore deny them. Defendants deny the remaining allegations of Paragraph 25.

26. This Court dismissed Belle Foods Trust as a Plaintiff in this action (ECF No. 250), and therefore no response to the allegations of Paragraph 26 is required.

27. This Court dismissed Belle Foods Trust as a Plaintiff in this action (ECF No. 250), and therefore no response to the allegations of Paragraph 26 is required.

28. Defendants deny the allegations of Paragraph 28.

29. Defendants admit that from time to time, DFA supplied raw milk to Yarnell's Ice Cream Company. Defendants otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations regarding the fact or source of Yarnell's purchases and therefore deny them. Defendants deny the remaining allegations of Paragraph 29.

30. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of the Plaintiff Piggly Wiggly Midwest LLC's residence, corporate status, or operations and therefore deny them.

31. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 31 and therefore deny them. Defendants deny the remaining allegations of Paragraph 31.

32. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of the Plaintiff KPH Healthcare Services, Inc. aka Kinney Drugs, Inc.'s residence, corporate status, or operations and therefore deny them.

33. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of the first sentence of Paragraph 33 and therefore deny them. Defendants deny the remaining allegations of Paragraph 33.

34. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34 and therefore deny them.

35. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 35 and therefore deny them.

36. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 36 and therefore deny them.

B. Defendants

37. Defendants admit that NMPF is a trade association that was established in 1916 and is based in Arlington, Virginia. Defendants admit that, as of 2011, NMPF had 31 member cooperatives whose membership included over 40,000 dairy producers making the majority of the nation's milk. Defendants admit the allegations of the third sentence of Paragraph 37. The

fourth sentence of Paragraph 37 contains a legal conclusion to which no response is required. To the extent a response is required, Defendants admit that NMPF manages Cooperatives Working Together, but deny the remaining allegations of that sentence. With respect to the allegations of the final sentence of Paragraph 37, Defendants lack knowledge or information sufficient to form a belief as to the source or truth of the allegations and therefore deny them. Defendants deny the remaining allegations of Paragraph 37.

38. Defendants admit that CWT's website contained the quoted excerpt. Defendants admit the allegations of the second sentence of Paragraph 38. Defendants deny that dairy farmers in almost every state participate in CWT, but admit that dairy farmers producing approximately two-thirds of the nation's milk participated in CWT. Defendants deny the allegations of the fourth sentence of Paragraph 38. Defendants admit the allegations of the fifth and sixth sentences of Paragraph 38. Defendants deny that dairy farmers in every state invest in CWT. Defendants deny the remaining allegations of Paragraph 38.

39. Defendants admit that DFA maintains its headquarters and principal place of business in Kansas City, Missouri. Defendants also admit that DFA is the largest dairy marketing cooperative in the United States, engages in the marketing and processing of raw milk, and causes its members' raw milk to be transported to processing plants. Defendants also admit that DFA has members in 48 states. Defendants admit that, in 2007, DFA had \$11.1 billion in revenue. Defendants also admit that DFA's Chairman of the Board, Randy Mooney, is also currently the Chairman of NMPF. Defendants admit that DFA was a member of CWT and that its farmer-members contributed dues to CWT. The allegations of the eighth and ninth sentences of Paragraph 39 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of those sentences. Defendants

admit that in 2014 DFA merged with Dairylea. Defendants deny the remaining allegations of Paragraph 39.

40. Defendants admit that LOL is the third largest dairy marketing cooperative in the nation and as of 2014 had approximately 3,500 producer members and 826 member cooperatives that together served over 300,000 producers. Defendants also admit that LOL maintains its primary place of business in Arden Hills, Minnesota, handles approximately 13 billion pounds of milk annually and does business in all 50 states. The third sentence of Paragraph 40 contains a legal conclusion to which no response is required. To the extent a response is required, Defendants admit that LOL handles, processes, prepares for market, and distributes milk produced by its members but deny the remaining allegations of that sentence. With respect to the fourth sentence of Paragraph 40, Defendants admit that LOL is and has been a member of CWT and that farmer-members of LOL contribute dues to CWT but deny the remaining allegations of that sentence. The allegations of the fifth and sixth sentences of Paragraph 40 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of those sentences. Defendants deny the remaining allegations of Paragraph 40.

41. Defendants admit that Dairylea was founded in 1907, but deny the remaining allegations of the first sentence of Paragraph 41. Defendants deny the allegations of the second sentence of Paragraph 41. With respect to the third sentence of Paragraph 41, Defendants admit that Dairylea had been a member of CWT and that farmer-members of Dairylea had contributed dues to CWT, but deny the remaining allegations of that sentence. The allegations of the fourth and fifth sentences of Paragraph 41 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of those

sentences. Defendants deny the remaining allegations of Paragraph 41. Defendants further state that Dairylea no longer exists.

42. Defendants admit that Agri-Mark is located in Waitsfield, Vermont and Andover, Massachusetts, and that it currently handles approximately 2.7 billion pounds of milk annually for about 1,100 producer-members. With respect to the second and third sentences of Paragraph 42, Defendants admit that Agri-Mark is and has been a member of CWT and that farmer-members of Agri-Mark contribute dues to CWT. The remaining allegations of the third sentence, and the allegations of the fourth sentence, of Paragraph 42 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny those allegations. Defendants deny the remaining allegations of Paragraph 42.

C. Unidentified Co-Conspirators

43. The allegations of Paragraph 43 state legal conclusions to which no answer is required. To the extent a response is required, Defendants deny the allegations of Paragraph 43.

44. The allegations of Paragraph 44 state legal conclusions to which no answer is required. To the extent a response is required, Defendants deny the allegations of Paragraph 44.

45. The allegations of Paragraph 45 state legal conclusions to which no answer is required. To the extent a response is required, Defendants deny the allegations of Paragraph 45.

46. The allegations of Paragraph 46 state legal conclusions to which no answer is required. To the extent a response is required, Defendants deny the allegations of Paragraph 46.

IV. FACTUAL ALLEGATIONS

47. Defendants admit that, through 2008, CWT's website included the quoted excerpts, but deny Plaintiffs' attempted characterization of those excerpts. Defendants deny the remaining allegations of Paragraph 47.

48. The allegations of Paragraph 48 contain legal arguments or conclusions to which no answer is required. To the extent a response is required, Defendants admit that NMPF's July 11, 2003 press release included the quoted excerpt. Defendants deny the remaining allegations of Paragraph 48.

49. Defendants admit that, on July 23, 2003, NMPF announced that CWT would begin accepting farmer bids for participation in the first herd retirement. Defendants also admit that CWT's website included the quoted excerpts. Defendants deny the remaining allegations of Paragraph 49.

50. Defendants admit that Plaintiffs are selectively quoting from—and attempting to characterize—an October 2, 2003 NMPF press release. Defendants also admit that CWT completed audits related to its herd retirement program by October 23, 2003. Defendants deny the remaining allegations of Paragraph 50.

51. Defendants admit that Plaintiffs are selectively quoting from—and attempting to characterize—an October 2, 2003 NMPF press release. Defendants deny the remaining allegations of Paragraph 51.

52. Defendants admit that the CWT website contained the quoted excerpt and chart. Defendants deny the remaining allegations of Paragraph 52.

53. Defendants admit that a January 20, 2004 CWT news release included the quoted excerpts without Plaintiffs' amendments. Defendants deny the remaining allegations of Paragraph 53.

54. Defendants admit that, on September 13, 2004, CWT announced a second herd retirement. Defendants also admit that a September 13, 2004 CWT news release included the quoted excerpt. Defendants deny the remaining allegations of Paragraph 54.

55. Defendants admit that, by November 17, 2004, CWT had accepted 378 bids from farmers seeking to sell their herds for beef, representing approximately 51,700 cows. Defendants deny the remaining allegations of Paragraph 55.

56. Defendants admit that the CWT website contained the quoted chart. Defendants deny the remaining allegations of Paragraph 56.

57. Defendants admit that a July 2005 CWT news release included the quoted excerpt: “[n]early three-quarters of the nation’s milk supply” was contributing to CWT. Defendants also admit that, on August 10, 2005, CWT issued a news release announcing a third herd retirement round. Defendants deny the remaining allegations of Paragraph 57.

58. Defendants admit that an August 10, 2005 CWT news release included the quoted excerpts. Defendants deny the remaining allegations of Paragraph 58.

59. Defendants admit that an August 10, 2005 CWT news release included the quoted excerpt. Defendants deny the remaining allegations of Paragraph 59.

60. The allegations of Paragraph 60 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants admit that, by September 2005, membership in CWT consisted of farmers who collectively represented 74% of the nation’s milk supply, with nearly 50 dairy cooperatives and more than 300 individual farmers voluntarily participating. With respect to the second sentence, Defendants admit that a September 12, 2005 CWT news release included the quoted excerpt. With respect to the fourth sentence, Defendants admit that the CWT website contained the quoted excerpt but deny Plaintiffs’ attempted characterization of that excerpt. Defendants deny the remaining allegations of Paragraph 60.

61. The allegations of Paragraph 61 contain legal arguments or conclusions to which

no response is required. To the extent a response is required, Defendants admit that, on December 5, 2005, CWT issued a news release containing the quoted excerpts. Defendants deny the remaining allegations of Paragraph 61.

62. Defendants admit that, on September 26, 2006, CWT issued a news release containing the quoted excerpts. Defendants deny the remaining allegations of Paragraph 62.

63. The allegations of Paragraph 63 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants admit that, on September 26, 2006, CWT issued a news release containing the quoted excerpts. Defendants deny the remaining allegations of Paragraph 63.

64. The allegations of Paragraph 64 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants admit that, on February 6, 2007, CWT issued a news release announcing a fourth herd retirement. Defendants deny the remaining allegations of Paragraph 64.

65. Defendants admit that, on March 15, 2007, CWT issued a news release containing the quoted excerpts. Defendants also admit that by June 6, 2007, the fourth herd retirement was finished. Defendants deny the remaining allegations of Paragraph 65.

66. Defendants admit that, in September 2007, CWT's website included the quoted excerpt. Defendants deny the remaining allegations of Paragraph 66.

67. Defendants admit that on September 20, 2007, CWT issued a news release that referred to a study by Dr. Scott Brown relating to CWT's 2007 herd retirement and export assistance programs. Defendants deny the remaining allegations of Paragraph 67.

68. The allegations of Paragraph 68 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants admit that, on

September 20, 2007, CWT issued a news release containing the quoted excerpts. Defendants deny the remaining allegations of Paragraph 68.

69. Defendants admit that in June 2008, the CWT Committee endorsed a continuation of the program, at the membership assessment level of 10 cents per hundredweight, through calendar year 2009.

70. Defendants admit that, on June 3, 2008, CWT issued a news release announcing its fifth herd retirement. Defendants admit that CWT's Winter 2008 newsletter contained the statement excerpted in the second sentence of Paragraph 70. Defendants deny the remaining allegations of Paragraph 70.

71. Defendants admit that by September 15, 2008, CWT completed the farm audits of its fifth herd retirement round and that during that round CWT subsidized the marketing of about 24,860 cows for beef. Defendants deny the remaining allegations of Paragraph 71.

72. Defendants admit that on October 31, 2008, CWT issued a news release that referred to a study by Dr. Scott Brown relating to CWT's herd retirement program in June 2008 and CWT's export assistance program activities during the first nine months of 2008. Defendants also admit that that news release contained the quoted excerpt. Defendants deny the remaining allegations of Paragraph 72.

73. The allegations of Paragraph 73 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants admit that, on October 24, 2008, CWT issued a news release announcing its sixth herd retirement. Defendants also admit that CWT's October 24, 2008 news release included the quoted excerpts. Defendants deny the remaining allegations of Paragraph 73.

74. The allegations of Paragraph 74 contain legal arguments or conclusions to which

no response is required. To the extent a response is required, Defendants admit that, by December 10, 2008, CWT had accepted 184 bids in its second 2008 herd retirement. Defendants deny the remaining allegations of Paragraph 74.

75. Defendants admit that the CWT website contained the quoted chart. Defendants deny the remaining allegations of Paragraph 75.

76. The allegations of Paragraph 76 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants admit that the two images in Paragraph 76 are excerpts from a presentation at an October 29, 2008 “Town Hall Meeting.” Defendants deny the remaining allegations of Paragraph 76.

77. The allegations of Paragraph 77 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 77.

78. The allegations of Paragraph 78 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants admit that, on April 1, 2009, CWT issued a news release announcing its seventh herd retirement. Defendants admit that the April 1, 2009 news release contained the quoted excerpt from Mr. Kozak. Defendants deny the remaining allegations of Paragraph 78.

79. Defendants admit that by May 13, 2009, CWT had accepted 388 voluntary bids from farmers to sell cows for beef. Defendants deny the remaining allegations of Paragraph 79.

80. Defendants admit that by July 2, 2009, CWT completed the farm audits of its seventh herd retirement round, subsidizing the marketing for beef of 367 herds in 41 states. Defendants admit that a July 2, 2009 CWT news release included the quoted excerpt. Defendants deny the remaining allegations of Paragraph 80.

81. Defendants admit that, on July 10, 2009, CWT issued a news release announcing its eighth herd retirement. Defendants admit that the news release contained the quoted excerpt. Defendants deny the remaining allegations of Paragraph 81.

82. Defendants admit that by September 24, 2009, CWT completed the farm audits of its eighth herd retirement round. Defendants deny the remaining allegations of Paragraph 82.

83. Defendants admit that, on October 1, 2009, CWT issued a news release announcing its ninth herd retirement. Defendants admit that the news release contained the quoted excerpt. Defendants deny the remaining allegations of Paragraph 83.

84. The allegations of Paragraph 84 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants admit that by October 27, 2009, CWT accepted 154 voluntary bids in the fourth herd retirement it had conducted in the last 12 months. Defendants also admit that, on October 27, 2009, CWT issued a news release containing the quoted excerpts. Defendants deny the remaining allegations of Paragraph 84.

85. Defendants admit that, on November 17, 2009, CWT issued a news release containing the quoted excerpts. Defendants deny the remaining allegations of Paragraph 85.

86. Defendants admit that, in December 2009, CWT issued a newsletter containing the excerpted chart and statements. Defendants deny the remaining allegations of Paragraph 86.

87. Defendants admit that the June 2010 newsletter contained the quoted excerpt. Defendants deny the remaining allegations of Paragraph 87.

88. Defendants admit that, on May 27, 2010, CWT issued a news release announcing its tenth herd retirement. Defendants admit that the news release contained the quoted excerpt. Defendants deny the remaining allegations of Paragraph 88.

89. Defendants admit that by July 7, 2010, CWT had accepted 194 voluntary bids

from farmers to sell cows for beef, in what would be its last herd retirement. Defendants deny the remaining allegations of Paragraph 89.

90. Defendants admit that CWT subsidized the voluntary marketing by farmers of about 506,921 cows for beef. Defendants admit that the chart in Paragraph 90 was posted on the CWT website. Defendants deny the remaining allegations of Paragraph 90.

91. Defendants admit that on October 26, 2010, CWT voted to focus the program exclusively on building export markets and to no longer fund herd retirements. At this time, the CWT Committee decided to reduce the monthly assessments from 10 cents to 2 cents per hundredweight of raw milk. Defendants admit that CWT issued a news release containing the quoted excerpt. Defendants deny the remaining allegations of Paragraph 91.

92. Defendants admit that NMPF issued a news release on June 8, 2011. Defendants deny the remaining allegations of Paragraph 92.

93. Defendants deny the allegations of Paragraph 93.

94. Defendants admit that a 2008 report by Dr. Scott Brown contained the quoted excerpt and chart. Defendants deny the remaining allegations of Paragraph 94.

95. Defendants admit that a 2008 report by Dr. Scott Brown contained the excerpted chart. Defendants deny the remaining allegations of Paragraph 95.

96. Defendants admit that a 2008 report by Dr. Scott Brown contained the excerpted slide. Defendants deny the remaining allegations of Paragraph 96.

97. Defendants admit Dr. Brown issued a report in January 2011. Defendants deny the remaining allegations of Paragraph 97.

98. Defendants admit that the quoted excerpt was included in a 2008 Town Hall Presentation, but deny that the quoted excerpt related to the January 2011 report. Defendants

deny the remaining allegations of Paragraph 98.

99. Defendants admit that Dr. Brown's January 2011 report included the excerpted chart. Defendants admit that CWT's website included the quoted excerpt. Defendants deny the remaining allegations in Paragraph 99.

100. Defendants deny the allegations of Paragraph 100.

101. Defendants deny the allegations of Paragraph 101.

102. Defendants deny that Dr. Brown's final January 2011 report included the excerpted chart. Defendants deny the remaining allegations in Paragraph 102.

103. Defendants deny the allegations of Paragraph 103.

104. The allegations of Paragraph 104 contain legal arguments or conclusions to which no answer is required. To the extent a response is required, Defendants admit that the Federal Milk Marketing Orders generally classify raw milk into four categories and that those categories of raw milk are subject to price regulation, and Defendants deny the remaining allegations of Paragraph 104.

105. The allegations of Paragraph 105 contain legal arguments or conclusions to which no answer is required. To the extent a response is required, Defendants admit that dairy products are often described in four categories corresponding to the classification scheme of the Federal Milk Marketing Orders; admit that under that scheme Class I generally represents beverage milk products, Class II generally represents soft manufactured products, such as yogurt, ice cream, cream products, and cottage cheese, Class III generally represents cheese and its byproducts, and Class IV generally represents butter, non-fat dry milk, and other related products derived from bulk cream or skim milk; and Defendants deny the remaining allegations of Paragraph 105.

106. The allegations of Paragraph 106 contain legal arguments or conclusions to which

no answer is required. To the extent a response is required, Defendants admit that the Federal Milk Marketing Orders use formulas to calculate regulated prices for each class of raw milk; admit that at certain times the regulated prices were determined in part by surveys conducted by the National Agricultural Statistics Service; and deny the remaining allegations of Paragraph 106.

107. The allegations of Paragraph 107 contain legal arguments or conclusions to which no answer is required. To the extent a response is required, Defendants deny the allegations of Paragraph 107.

108. The allegations of Paragraph 108 contain legal arguments or conclusions to which no answer is required. To the extent a response is required, Defendants deny the allegations of Paragraph 108.

109. The allegations of Paragraph 109 contain legal arguments or conclusions to which no answer is required. To the extent a response is required, Defendants deny the allegations of Paragraph 109.

110. The allegations of Paragraph 110 contain legal arguments or conclusions to which no answer is required. To the extent a response is required, Defendants deny the allegations of Paragraph 110.

111. Defendants deny the allegations of Paragraph 111.

112. Defendants lack knowledge or information sufficient to form a belief as to the accuracy of the quotation attributed to Dr. Brown and therefore deny it. Defendants deny the remaining allegations in Paragraph 112.

113. Defendants deny the allegations of Paragraph 113.

114. Defendants deny the allegations of Paragraph 114.

115. Defendants admit that they are exempt from the antitrust laws under the Capper-Volstead Act, and that the Capper-Volstead Act contains the language selectively quoted by Plaintiffs, but otherwise respond that the allegations of Paragraph 115 contain legal arguments or conclusions to which no answer is required. To the extent a response is required, Defendants deny the remaining allegations of Paragraph 115.

116. Defendants admit that in accordance with the Capper-Volstead Act, they are entitled to engage in certain conduct that is immune from the antitrust laws, but otherwise respond that the allegations of Paragraph 116 contain legal arguments or conclusions to which no answer is required. To the extent a response is required, Defendants deny the remaining allegations of Paragraph 116.

117. The allegations of Paragraph 117 contain legal arguments or conclusions to which no answer is required. To the extent a response is required, Defendants deny the allegations of Paragraph 117.

118. The allegations of Paragraph 118 contain legal arguments or conclusions to which no answer is required. To the extent a response is required, Defendants admit that the Capper-Volstead Act contains the language selectively quoted by Plaintiffs, and deny the remaining allegations of Paragraph 118.

119. The allegations of Paragraph 119 contain legal arguments or conclusions to which no answer is required. To the extent a response is required, Defendants deny the allegations of Paragraph 119.

120. The allegations of Paragraph 120 contain legal arguments or conclusions to which no answer is required. To the extent a response is required, Defendants deny the allegations of Paragraph 120.

121. The allegations of Paragraph 121 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 121.

122. The allegations of Paragraph 122 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 122.

123. The allegations of Paragraph 123 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 123.

124. The allegations of the first sentence of Paragraph 124 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of that sentence. With respect to the second sentence of Paragraph 124, Defendants admit that CWT's current bylaws are part of NMPF's bylaws but deny any remaining allegations of that sentence. With respect to the third sentence of Paragraph 124, Defendants admit that the directors of NMPF are members of the CWT Committee but deny any remaining allegations of that sentence. With respect to footnote 38, Defendants admit that only the first and second listed individuals currently are members of the NMPF Board of Directors, but deny the remaining allegations of that footnote. The remaining allegations of Paragraph 124 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the remaining allegations of Paragraph 124.

125. The allegations of Paragraph 125 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 125.

126. The allegations of the first sentence of Paragraph 126 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants admit that the Capper-Volstead Act contains the language selectively quoted by Plaintiffs, but deny the remaining allegations of that sentence. The allegations of the second sentence of Paragraph 126 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of that sentence. With respect to the third sentence of Paragraph 126, Defendants admit that CWT's current bylaws are part of NMPF's bylaws but deny any remaining allegations of that sentence. With respect to the fourth sentence of Paragraph 126, Defendants admit that the directors of NMPF are members of the CWT Committee but deny any remaining allegations of that sentence. With respect to footnote 40, Defendants admit that only the first and second listed individuals currently are members of the NMPF Board of Directors, but deny the remaining allegations of that footnote. The remaining allegations of Paragraph 126 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the remaining allegations of Paragraph 126.

127. The allegations of Paragraph 127 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants admit that they meet the antitrust exemption requirements of the Capper-Volstead Act, and deny the remaining allegations of Paragraph 127.

128. The allegations of Paragraph 128 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 128.

V. CLASS ACTION ALLEGATIONS

129. The allegations of Paragraph 129 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants admit that Plaintiffs purport to bring a class action under the cited provisions of the Federal Rules of Civil Procedure and seek to represent the proposed classes that Plaintiffs purport to define in the Paragraph, but deny that a class action may be properly maintained and deny that any purported class has been properly defined. Defendant deny any remaining allegations of Paragraph 129.

130. Defendants admit that Plaintiffs purport to exclude the individuals and entities identified in Paragraph 130, but deny that a class action may be properly maintained and deny that any purported class has been properly defined. The remaining allegations contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants Defendant deny any remaining allegations of Paragraph 130.

131. The allegations of Paragraph 131 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 131. Defendants further deny that any proposed class is eligible for certification.

132. The allegations of Paragraph 132 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 132. Defendants further deny that any proposed class is eligible for certification.

133. The allegations of Paragraph 133 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 133. Defendants further deny that any proposed class is eligible for certification.

134. The allegations of Paragraph 134, including its subparts, contain legal arguments or conclusions to which no response is required. To the extent a response is required,

Defendants deny the allegations of Paragraph 134, including its subparts. Defendants further deny that any proposed class is eligible for certification.

135. The allegations of Paragraph 135 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 135. Defendants further deny that any proposed class is eligible for certification.

136. The allegations of Paragraph 136 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 136. Defendants further deny that any proposed class is eligible for certification.

137. The allegations of Paragraph 137 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 137. Defendants further deny that any proposed class is eligible for certification.

138. The allegations of Paragraph 138 contain legal arguments or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 138. Defendants further deny that any proposed class is eligible for certification.

VI. ANTITRUST INJURY

139. Defendants deny the allegations of Paragraph 139.

VI. CLAIM FOR RELIEF

VIOLATION OF SHERMAN ACT § 1

140. Defendants incorporate by reference as if fully stated herein their responses to Paragraphs 1 through 139 of the Third Amended Complaint.

141. Defendants deny the allegations of Paragraph 141.

142. Defendants deny the allegations of Paragraph 142.

143. The allegations of Paragraph 143, including its subparts, contain legal arguments

or conclusions to which no response is required. To the extent a response is required, Defendants deny the allegations of Paragraph 143, including its subparts.

144. Defendants deny the allegations of Paragraph 144.

145. Defendants deny the allegations of Paragraph 145.

146. Defendants deny the allegations of Paragraph 146.

VIII. PRAYER FOR RELIEF

Defendants deny all allegations in the Third Amended Complaint that are not specifically admitted herein and deny that Plaintiffs are entitled to any of the relief requested.

RESERVATION OF RIGHT TO AMEND

Defendants reserve the right to amend their Answer and their right to assert additional affirmative defenses that may be pertinent to Plaintiffs' claims when the precise nature of those claims is ascertained through discovery and based on facts developed as this matter progresses. In stating any affirmative defenses, Defendants do not concede that they have the burden of proof on any of the defenses and denials.

AFFIRMATIVE DEFENSES

1. Plaintiffs fail in whole or in part to state a claim upon which relief could be granted.
2. Plaintiffs' claims are barred, in whole or in part, by the Capper-Volstead Act, 7 U.S.C. §§ 291-292.
3. Plaintiffs' claims are barred, in whole or in part, by Section 6 of the Clayton Act, 15 U.S.C. § 17.
4. Plaintiffs' claims are barred, in whole or in part, by 7 U.S.C. § 292's grant of exclusive or primary jurisdiction to the United States Secretary of Agriculture.

5. Plaintiffs' claims are barred, in whole or in part, by the Agricultural Cooperative Marketing Act, 7 U.S.C. § 455.

6. Plaintiffs' claims are barred, in whole or in part, by the Agricultural Marketing Act of 1929, 12 U.S.C. § 1141(a).

7. In addition to being barred by the above-referenced federal statutes, Plaintiffs' claims are barred, in whole or in part, by state statutory laws that legalize the conduct alleged.

8. Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitations and/or laches.

9. Plaintiffs' claims are barred, in whole or in part, by the doctrines of waiver, estoppel and other equitable defenses.

10. To the extent Plaintiffs claim that Defendants fraudulently concealed any actions, Plaintiffs have failed to allege this fraud with the required particularity.

11. Plaintiffs' claims are barred, in whole or in part, because at all relevant times Defendants believed in good faith that the Defendants and the members of CWT were all farmers, producers, cooperatives, or marketing agencies in common. If, for some technical reason, Defendants were mistaken in any of such beliefs, they are not liable by reasons of such mistake(s).

12. Plaintiffs lack standing, including antitrust standing, to bring some or all of their claims.

13. Plaintiffs have failed to plead the alleged conspiracy with the required level of specificity or particularity.

14. Plaintiffs' claims are barred, in whole or in part, because their claims are governed by the rule of reason, and Plaintiffs have not alleged and cannot prove the elements of

a rule of reason claim.

15. Plaintiffs' claims are barred, in whole or in part, because the pro-competitive benefits of the conduct alleged by Plaintiffs outweighs any alleged anti-competitive effects.

16. Plaintiffs' claims are barred, in whole or in part, because any conduct engaged in by Defendants was reasonable and based on independent legitimate business and economic justifications.

17. Plaintiffs did not suffer antitrust injury as a result of the conduct alleged herein.

18. Plaintiffs have not suffered any damages as a result of the conduct alleged herein.

19. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs have failed plausibly to allege relevant product and geographic markets with the required specificity.

20. Plaintiffs' claims are barred because Plaintiffs have not sustained any injury or damages actually and proximately caused by any act or omission by the Defendants.

21. Plaintiffs' damages claims are barred in whole or in part because the damages they seek are speculative and uncertain, and because determining whether, or to what extent, Plaintiffs were damaged is impossible.

22. Plaintiffs' claims are barred, in whole or in part, because of the *Copperweld* doctrine.

23. Plaintiffs' claims are barred, in whole or in part, because of the filed-rate doctrine.

24. Plaintiffs' claims are barred, in whole or in part, by the state action doctrine.

25. To the extent any recovery by Plaintiffs would subject Defendants to multiple or duplicative recovery, such recovery would violate Defendants' rights under the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

26. Any alleged damages or injuries were caused by superseding and/or intervening

cause(s) and/or the conduct of third parties for whom Defendants are not responsible.

27. Plaintiffs' claims are precluded, in whole or in part, and under the doctrines of claim preclusion and/or issue preclusion, by other actions which assert the same claims.

28. Plaintiffs are not entitled to injunctive relief because Plaintiffs have not alleged and cannot demonstrate irreparable harm and/or the absence of any adequate remedy at law.

29. Plaintiffs' claims are barred by the *Illinois Brick* rule regarding indirect purchasers. Plaintiffs' claims, which allege that Defendants conspired to raise the prices of raw milk, butter, and cheese, are precluded in whole or in part because Plaintiffs are not direct purchasers of raw milk, butter, or cheese. Under the rule of *Illinois Brick v. Illinois*, 431 U.S. 720 (1977), indirect purchasers have no actionable antitrust claims.

30. Plaintiffs' Third Amended Complaint is not appropriate for certification as a class action because it fails to meet the prerequisites of Rules 23(a) and (b) of the Federal Rules of Civil Procedure.

Dated: October 19, 2016

By: /s/ Jill M. O'Toole
Jill M. O'Toole (admitted *pro hac vice*)
Email: jotoole@goodwin.com
SHIPMAN & GOODWIN LLP
One Constitution Plaza
Hartford, CT 06103
Telephone: (860) 251-5000
Fax: (860) 251-5218

Diane C. Polletta (admitted *pro hac vice*)
300 Atlantic Street, Third Floor
Stamford, CT 06901
Telephone: (203) 324-8100
Facsimile: (203) 324-8199
dpolletta@goodwin.com

Attorney for Defendant Agri-Mark, Inc.

By: /s/ Nathan P. Eimer (with consent)

Nathan P. Eimer
Email: neimer@eimerstahl.com
Scott C. Solberg
Email: ssolberg@eimerstahl.com
Daniel D. Birk
Email: dbirk@eimerstahl.com
Benjamin E. Waldin
Email: bwaldin@eimerstahl.com
EIMER STAHL LLP
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604
Telephone: (312) 660-7600
Fax: (312) 692-1718

John E. Galvin, Esq.
Bart C. Sullivan, Esq.
FOX GALVIN LLC
One South Memorial Drive, 12th Floor
St. Louis, MO 63102
Telephone: (314) 588-7000
Fax: (314) 588-1965
Email: jgalvin@foxgalvin.com
Email: bsullivan@foxgalvin.com

Attorneys for Defendant Land O'Lakes, Inc.

By: /s/ Steven R. Kuney (with consent)
Steven R. Kuney (admitted *pro hac vice*)
Email: skuney@wc.com
Carl R. Metz (admitted *pro hac vice*)
Email: cmetz@wc.com
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
Telephone: (202) 434-5843
Fax: (202) 434-5029

By: /s/ W. Todd Miller (with consent)
W. Todd Miller (admitted *pro hac vice*)
Email: tmiller@bakerandmiller.com
Amber L. McDonald (admitted *pro hac vice*)
Email: amcdonald@bakerandmiller.com
Ishai Mooreville (admitted *pro hac vice*)
Email: imooreville@bakerandmiller.com
Lucy S. Clippinger (admitted *pro hac vice*)
Email: lclippinger@bakerandmiller.com
BAKER & MILLER PLLC

2401 Pennsylvania Avenue, N.W.
Suite 300
Washington, DC 20037
Telephone: (202) 663-7820
Fax: (202) 663-7849

Christopher W. Byron
Email: cwb@bcpklaw.com
Byron Carlson Petri & Kalb, LLC
411 St. Louis Street
Edwardsville, IL 62025
Telephone: (618) 655-0600
Fax: (618) 655-4004

*Attorneys for Defendants Dairy Farmers of
America, Inc.*

By: /s/ Kenneth P. Ewing (with consent)
Kenneth P. Ewing (admitted *pro hac vice*)
Email: kewing@steptoe.com
John J. Kavanagh (admitted *pro hac vice*)
Email: jkavanagh@steptoe.com
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, NW
Washington, DC 20036
Telephone: (202) 429-3000
Fax: (202) 429-3902

*Attorneys for Defendants National Milk
Producers Federation and Cooperatives
Working Together*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 19, 2016, I electronically filed the foregoing Defendants' Joint Answer to Plaintiffs' Third Amended Consolidated Class Action Complaint with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants registered to receive service in this case.

/s/ Jill M. O'Toole

Jill M. O'Toole (admitted *pro hac vice*)

Email: jotoole@goodwin.com

SHIPMAN & GOODWIN LLP

One Constitution Plaza

Hartford, CT 06103

Telephone: (860) 251-5000

Fax: (860) 251-5218