

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
<i>Plaintiff,</i>	)	
	)	
vs.	)	
	)	
<b>SUIZA FOODS CORPORATION</b>	)	Civil Action No.
	)	
<b>d/b/a Louis Trauth Dairy,</b>	)	
<b>Land O' Sun Dairy, and</b>	)	
<b>Flav-O-Rich Dairy, and</b>	)	
	)	
<b>BROUGHTON FOODS COMPANY,</b>	)	
	)	
<b>d/b/a Southern Belle Dairy</b>	)	
	)	
<i>Defendants.</i>	)	

**FOUNDATION DECLARATION OF JAMES K. FOSTER IN SUPPORT OF  
THE UNITED STATES' MOTION FOR A PRELIMINARY INJUNCTION**

I, James K. Foster, declare as follows:

1. I am one of the attorneys for the United States in this action. I have personal knowledge of the facts stated below, and would be competent to testify to them if called upon to do so.
2. Attached hereto as Exhibit 1 is a true and correct copy of a letter received from Paul Denis, Arnold & Porter, Suiza Counsel, to James K. Foster, Antitrust Division, dated February 3, 1999, agreeing to extend the expiration of the applicable HSR waiting period until March 19, 1999.
3. Attached hereto as Exhibit 2 is a true and correct copy of the

Declaration of Dr. Sheldon Kimmel, Economist, United States  
Department of Justice, Antitrust Division.

4. Attached hereto as Exhibits 3 and 4 are true and correct copies of excerpts from the case files for United States v. Flav-O-Rich, Inc., No. CR-92-42 (E.D. KY, Sept. 29, 1992). Exhibits 3 and 4 were obtained from old case files maintained by the Antitrust Division.
5. Attached hereto as Exhibits 5 and 6 are true and correct copies of excerpts from the case files for United States v. Flav-O-Rich, Inc., No. 1:92-CR-366-01-JTC (N.D. Ga., Dec. 29, 1992) and United States v. Flav-O-Rich, Inc., No. 1:92-CR-375-01-JTC (N.D. Ga., Dec. 29, 1992). Exhibits 5 and 6 were obtained from judgment and conviction files maintained by the Antitrust Division.
6. Attached hereto as Exhibits 7 and 9 are true and correct copies of excerpts from the case file for United States v. Southern Belle, No. 92-36 (E.D. KY, Nov. 16, 1992) obtained from the Court. Each excerpt comes from a certified copy from the Court.
7. Attached hereto as Exhibit 8 is a true and correct copy of a document received from Suiza Foods Corp. ("Suiza") as part of a Hart-Scott-Rodino filing ("Suiza H-S-R Filing"), on September 24, 1998. Exhibit 8 is Attachment 19 to the Suiza H-S-R Filing, Suiza's 1997 Annual Report.
8. Attached hereto as Exhibit 10 is a true and correct copy of documents

received from Suiza Foods Corp. (“Suiza”) as part of a Hart-Scott-Rodino filing (“Suiza H-S-R Filing”), on September 24, 1998. Included in Exhibit 10 are excerpts from the H-S-R form for the Suiza H-S-R Filing, and Attachment 9-1 to the Suiza H-S-R Filing.

9. Attached hereto as Exhibit 11 is a true and correct copy of documents received from Broughton Foods Co. (“Broughton”) as part of a Hart-Scott-Rodino filing (“Broughton H-S-R Filing”), on September 24, 1998. Included in Exhibit 11 are Attachment 4(a)(2) to the Broughton H-S-R Filing (Form 10-K, Mar. 31, 1998), and excerpts from the H-S-R form for the Broughton H-S-R Filing.
10. Attached hereto as Exhibit 12 is a true and correct copy of excerpts from an oral examination of a dairy firm conducted pursuant to 15 U.S.C. § 1312 (i) (“depositions”) taken during the Department of Justice’s investigation of this proposed transaction.
11. Attached hereto as Exhibit 13 is a summary chart based upon data submitted by Suiza and Broughton in response to the Department of Justice’s Request for Additional Information, specification five. The actual response to specification five from Suiza and Broughton is too voluminous to be examined conveniently. See, Declaration of Authentication of Government’s Exhibit, by Bichngoc V. Hoai.
12. Attached hereto as Exhibit 14 is a true and correct copy of a document received from Suiza during the Department of Justice’s investigation

of this proposed transaction. Exhibit 14 depicts Suiza's routes in Kentucky and Tennessee and the percentage of stops represented by school customers.

13. Attached hereto as Exhibit 15 is a true and correct copy of an excerpt from the Kentucky School Community Nutrition Free/Reduced Report for October 1998. Exhibit 15 was obtained from the Kentucky Department of Education, Division of School and Community Nutrition and is referenced in the Declaration of Paul McElwain.
14. Attached hereto as Exhibit 16 is a true and correct copy of a document obtained from the United States Department of Agriculture ("USDA") during the Department of Justice's investigation of this proposed transaction. Exhibit 16 is a letter from Joseph L. Ruby, Wiley, Rein & Fielding, Broughton Counsel, to George A. Braley, USDA, dated May 26, 1998.
15. Attached hereto as Exhibit 17 is a true and correct copy of a document obtained from the USDA during the Department of Justice's investigation of this proposed transaction. Exhibit 17 is a letter from Steven S. Diamond and Matthew W. Garber, Arnold & Porter, Broughton Counsel, to George A. Braley, USDA, dated July 16, 1998.
16. Attached hereto as Exhibit 18 is a true and correct copy of the Declaration of Martin Shearer, V.P., General Manager - Southern Belle, Broughton Foods Company, filed in support of Southern Belle

Dairy v. USDA (E.D. KY, Aug. 19, 1998), obtained from the USDA during the Department of Justice's investigation of this proposed transaction.

17. Attached hereto as Exhibit 19 is a true and correct copy of the article, *Dairies to Pay Schools \$11.2 Million; 3 Firms Settle Bid-Rigging Case*, by Mark Schaver that appeared in The Courier-Journal of Louisville, Kentucky on June 16, 1995, and obtained from Westlaw at 1995 WL 2323161 during the Department of Justice's investigation of this proposed transaction.
18. Attached hereto as Exhibit 20 is a true and correct copy of the Affidavit of Eloise Strum Stalnaker of Broughton Foods Company, dated December 29, 1995, received from Broughton in response to the Department of Justice's Request for Additional Information and filed in Ohio v. Louis Trauth Dairy Inc., No. C-1-93-553 (W.D. Ohio).
19. Attached hereto as Exhibit 21 is a true and correct copy of excerpts from a document obtained from the USDA during the Department of Justice's investigation of this proposed transaction. Exhibit 21 includes statements from the transcript of a meeting with USDA, made by Joseph Ruby, Broughton Counsel, and Martin Shearer, Head of Broughton Foods - Southern Belle operations, on January 15, 1998.
20. Attached hereto as Exhibit 22 is a true and correct copy of a document obtained from the USDA during the Department of Justice's

investigation of this proposed transaction. Exhibit 22 is a letter from Joseph L. Ruby, Wiley, Rein & Fielding, Broughton Counsel, to Yvette Jackson, USDA, dated January 23, 1998.

21. Attached hereto as Exhibit 23 and 24 are true and correct copies of documents received from Suiza in response to the Department of Justice's Request for Additional Information. Exhibit 23 and 24 are letters from Guy Warner, Sales Manager, to school boards of education, one dated June 12, 1997 from PET, Land-O-Sun Dairies, Inc. and one dated July 21, 1995 from Flav-O-Rich, Inc.
22. Attached hereto as Exhibit 25 is a true and correct copy of excerpts from an oral examination of Mr. Tracy Noll, Suiza Exec. V.P., Corporate Development, conducted pursuant to 15 U.S.C. § 1312 (i) ("depositions") taken on March 5, 1999, during the Department of Justice's investigation of this proposed transaction.
23. Attached hereto as Exhibits 26-46 are declarations obtained from school districts located in Kentucky during the Department of Justice's investigation of this proposed transaction.
24. Attached hereto as Exhibit 47 is the declaration of Paul McElwain, Division Director, Kentucky Department of Education, Division of School and Community Nutrition, obtained during the Department of Justice's investigation of this proposed transaction.
25. Attached hereto as Exhibit 48 is the declaration of Ronald Vogel,

Associate Deputy Administrator for Special Nutrition Programs for the Food and Nutrition Service of the USDA obtained during the Department of Justice's investigation of this proposed transaction.

26. Attached hereto as Exhibits 49-51, 53, 54, 56-58, 61 and 64 are declarations from dairy distributors located in Kentucky obtained during the Department of Justice's investigation of this proposed transaction.
27. Attached hereto as Exhibits 52 and 55 are declarations from food service companies located in Kentucky obtained during the Department of Justice's investigation of this proposed transaction.
28. Attached hereto as Exhibits 59, 60, 62, 63 and 65 are declarations from dairy firms. These declarations were obtained during the Department of Justice's investigation of this proposed transaction.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17<sup>th</sup> day of March, 1999, at Washington, DC.

\_\_\_\_\_/s/\_\_\_\_\_  
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James K. Foster  
Antitrust Division  
UNITED STATES DEPARTMENT  
OF JUSTICE  
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(202) 307-0001