UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
COMMONWEALTH OF MASSACHUSETTS,	)	
	)	
and	)	
	)	
STATE OF WISCONSIN	)	
Plaintiffs,	)	
	)	No: 1:20-cv-02658
	)	
v.	)	
	)	
DAIRY FARMERS OF AMERICA	)	Judge Gary S. Feinerman
	)	
and	)	
	)	
DEAN FOODS COMPANY,	)	
	)	
Defendants.	)	
	)	

DECLARATION OF JERRY STURGILL

1. I am a Managing Director of the investment bank, Capstone Headwaters, LLC. I submit this declaration pursuant to 28 U.S.C. § 1746 in support of the motion of Dairy Farmers of America, Inc. ("DFA") under Section V.G of the Final Judgment to allow DFA to retain the "Franklin Divestiture Assets". I have over 30 years of experience working with food and beverage companies.

2. On July 24, 2020, the Court appointed me to serve as Divestiture Trustee to oversee the divestitures by DFA of certain assets it acquired from Dean Foods Company. My appointment, after being extended once pursuant to the terms of the Final Judgment, expired on November 27, 2020.

3. DFA was required to divest certain assets pursuant to the settlement of an antitrust enforcement action brought by the Antitrust Division of the United States Department of Justice (the "Antitrust Division"). The terms of the settlement are embodied in a Final Judgment entered by the Court on October 6, 2020.

4. The Final Judgment required DFA to divest three dairy processing plants and assets related to those plants. The three plants are the "Harvard Plant," located in Harvard, Illinois, the "De Pere Plant," located in Ashwaubenon, Wisconsin, and the "Franklin Plant," located in Franklin, Massachusetts. The three plants were held separate from DFA following the acquisition and during the time of my appointment as Divestiture Trustee pursuant to a stipulation and order of the Court.

5. Under the Final Judgment, DFA initially had the ability to divest three plants itself. DFA tried but was unsuccessful in divesting the three plants. When DFA was unable to accomplish the divestitures within the time period prescribed in the Final Judgment, the Antitrust Division exercised its option under the Final Judgment to seek the appointment of a Divestiture Trustee to take over responsibilities for the sale of the three plants, and moved the Court on July 16, 2020 for an order appointing me as Divestiture Trustee. The Court granted the motion on July 24, 2020.

6. Following my appointment, I worked diligently to sell the Harvard, De Pere, and Franklin Plants. With the assistance of an investment banking team at Capstone Headwaters and Holland & Knight as my legal counsel, I undertook an organized and compressed solicitation and sales process under which I developed a list of 68 potential purchasers for the assets, provided each a package of solicitation materials, established ground rules for the submission of offers, and then engaged extensively with interested purchasers with an eye toward entering into

definitive agreements for the sale of the assets before my term expired on November 27, 2020 (as extended by the Antitrust Division under Section V.G of the Final Judgment). I submitted a report to the Court on September 22, 2020 (Docket No. 45-48) explaining the sales process.

7. This process has succeeded with respect to the Harvard Plant and the De Pere Plant and, pursuant to Section VI.A of the Final Judgment, I notified the Antitrust Division of the completion of a definitive agreement for the sale of those two plants on November 27, 2020.

8. With respect to the Franklin Plant, however, I was unable in the time allotted to find a potential purchaser capable of operating the plant in competition with DFA and acceptable to the Antitrust Division. The current condition of the fluid milk market contributed to my inability to accomplish the divestiture of the Franklin Plant during my time as Divestiture Trustee. Demand for fluid milk has declined in recent years, the industry has suffered multiple high-profile bankruptcies in the last year, and the pandemic has only increased pressure on dairy processors. In addition to these market challenges, the Franklin Plant lost customers because of operational changes made under prior ownership and has been particularly distressed. The plant has been significantly unprofitable for years and any purchaser would need to commit to funding the ongoing losses and substantial capital expenditures while turning around the plant's operations. The potential for a sale was also handicapped because DFA does not currently have the ability to convey the land on which the Franklin Plant sits. Currently, DFA purports to have an option to purchase the land that it can exercise in approximately two years. However, even if DFA currently holds the option, the terms of the option do not appear to allow DFA to assign it to a purchaser of the Franklin Plant (or to anyone else). The situation is further complicated by the fact that the owner of the land on which the Franklin Plant sits challenged the assignment of the option from Dean Foods to DFA in the Dean Foods' bankruptcy proceeding, and the

bankruptcy court has not yet resolved the challenge. To address the problem of the option not being assignable by DFA in connection with a sale, and assuming resolution of the challenge in the bankruptcy court, the Antitrust Division provided in the Final Judgment that DFA must exercise its option to purchase the land for the benefit of any buyer of the Franklin Plant. But because this option is not currently available and exercisable, the issues relating to the real property upon which the plant resides remain unresolved and an impediment to the process for selling the Franklin Plant.

9. At the conclusion of the solicitation and sale process for the Franklin Plant described in paragraph 6 above, I had received only a single proposal, from a joint venture between International Ice Cream Corporation (IICC) – the parent company of New England Ice Cream, a distributor that currently is a customer of the Franklin Plant – and an investment firm called the Raptor Group. In the process of performing due diligence on these parties, while impressed with the distribution capabilities of New England Ice Cream, I was not satisfied that either party had the operational background or capability to operate a large-scale fluid milk processing plant, particularly one in the condition of the Franklin Plant. Based on my experience assisting food and beverage companies with their capital needs and having been a turnaround CEO, I know that turning around the Franklin Plant will require specific expertise and a good plan. I was not convinced that IICC/Raptor had either. When I shared my candid reactions with IICC/Raptor, their responses did not resolve my concerns. My deep concerns about the ability of IICC/Raptor to manage the Franklin Plant operations going forward were confirmed by my further due diligence.

10. After determining that the IICC/Raptor offer was not workable, I then reached out to companies with deep financial and operational histories with large-scale fluid milk operations

and was able to attract four additional firms to visit the Franklin Plant and engage in initial due diligence and discussion toward a potential acquisition. After receiving written indications of interest from all four firms, I arranged for them to engage in discussions as a group to form a potential consortium to undertake the acquisition and turnaround of the Franklin Plant. While this group possessed the experience and capabilities necessary to turn around the Franklin Plant and fulfill the purposes of the Final Judgment, I and the potential buyers were confronted with the shortness of time until the expiration of my term on November 27 to complete a complicated transaction and successful divestiture of the Franklin Plant at a time when the plant was struggling financially. When it became clear that it would not be possible to complete a deal before the expiration of my term as the Court's Divestiture Trustee, I decided that the sale process should not continue to delay a turnaround of the Franklin Plant operations by DFA, perpetuate the uncertainty of the Franklin Plant employees about future ownership, or risk an outright failure of the plant to continue to operate.

11. I advised the Antitrust Division on November 10, 2020 of my conclusion and recommended that the Franklin Plant be returned to DFA as soon as possible in order for it to take steps to stabilize and improve operations there. The Antitrust Division accepted my recommendation on November 13.

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

December 3, 2020

Jerry Sturgill