

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION

_____)	
UNITED STATES OF AMERICA, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.: 6:03-206-KSF
)	
DAIRY FARMERS OF AMERICA, INC.,)	
)	
Defendant.)	
_____)	

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. This Court has jurisdiction over the subject matter of this action and of the parties hereto, and venue of this action is proper in the Eastern District of Kentucky.
2. The parties stipulate that a proposed Final Judgment in the form attached as Exhibit A may be entered by this Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant Dairy Farmers of America, Inc. ("DFA") and by filing that notice with this Court. Terms used in this Stipulation have the meaning as defined in the proposed Final Judgment.

3. DFA shall abide by and comply with the provisions of the proposed Final Judgment, pending the Final Judgment's entry by this Court, or until expiration of time for all appeals of any Court ruling denying entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties.

5. In the event the United States has withdrawn its consent or the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Until DFA or a trustee appointed pursuant to the proposed Final Judgment has divested the Divestiture Assets as required by the Final Judgment

- a. Within twenty calendar days after signing this Stipulation, DFA shall inform the United States of the steps taken to comply with the Stipulation and shall use commercially reasonable efforts to cause to be furnished to the United States and to the Commonwealth of Kentucky sufficient and periodic data and reports on an ongoing basis such that the plaintiffs are able to monitor the performance of the

Southern Belle Dairy prior to divestiture. The United States, in its sole discretion, after consultation with the Commonwealth of Kentucky, shall determine the frequency and sufficiency of the data and reports.

- b. DFA shall, except as is necessary to carry out its obligations under this Stipulation and the proposed Final Judgment, or to comply with other legal obligations, take commercially reasonable steps necessary to ensure that the Southern Belle Dairy will be maintained and operated as an ongoing and economically viable milk processing plant. DFA shall not cause the wasting or deterioration of the Southern Belle Dairy, nor cause the Southern Belle Dairy to be operated in a manner inconsistent with applicable laws, nor sell, transfer, encumber, or otherwise impair the viability or marketability of the Southern Belle Dairy. DFA shall use commercially reasonable efforts to preserve the Southern Belle Dairy's existing relationships with suppliers, customers, employees, and others having business relations with the Southern Belle Dairy. DFA shall use commercially reasonable efforts to keep the organization and properties of the Southern Belle Dairy intact, including current business operations, physical facilities, and working conditions.
- c. DFA shall take commercially reasonable steps necessary to ensure that the Southern Belle Dairy is fully maintained in operable condition at no less than current capacity, and shall maintain and adhere to normal product and service improvement, upgrade, repair, and maintenance schedules for the Southern Belle

Dairy.

- d. DFA shall not, except as part of a divestiture approved by the United States after consultation with the Commonwealth of Kentucky, in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets or any assets of the Southern Belle Dairy.
- e. DFA shall use commercially reasonable efforts to cause to be maintained, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of the Southern Belle Dairy.
- f. Except in the ordinary course of business or as is otherwise consistent with this Stipulation, DFA shall not hire and shall use commercially reasonable efforts to prevent the transfer, termination, or reduction of the salary agreements of any employee whose primary responsibilities relate to the Southern Belle Dairy.
- g. DFA shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.
- h. DFA represents that the divestiture in the proposed Final Judgment can and will be made, and that DFA will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking this Court to modify any of the provisions contained therein.

- i. DFA shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture required by the Final Judgment to an Acquirer acceptable to the United States.

7. No part of the negotiation, execution, or performance of this Stipulation and the Final Judgment, including anything contained or incorporated therein, shall be deemed or constitute any type of admission or concession of liability or wrongdoing on the part of DFA.

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Dated: May 15, 2006.

CERTIFICATE OF SERVICE

This certifies that I caused a true and correct copy of the foregoing Stipulation to be served on

October 2, 2006, in the manner indicated:

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