

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

UNITED STATES OF AMERICA,
STATE of WISCONSIN,
STATE of ILLINOIS, and
STATE of MICHIGAN,

Plaintiffs,

v.

DEAN FOODS COMPANY,

Defendant.

Civil Action No. 2:10-cv-00059 (JPS)

STIPULATION

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I.

DEFINITIONS

As used in this Stipulation:

(A) “Acquirer” means the person or entity to whom Defendant divests the Divestiture Assets.

(B) “Dean Foods” means Defendant Dean Foods Company, a Delaware corporation with its headquarters in Dallas, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

(C) “Divestiture Assets” means the Waukesha Plant, as defined below, and all related assets for the Waukesha Plant (except for those specified in Section I(C)(3) below), including:

(1) All tangible assets that comprise the Waukesha Plant business, including all property and contract rights, research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, vehicles and other rolling stock, and other tangible property and all assets used in connection with the plant; all licenses, permits and authorizations issued by any governmental organization relating to the plant; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, relating to the plant, including agreements with suppliers and with distributors; all customer lists and related customer information, contracts, accounts (including accounts receivable), and credit records; and all repair and performance records and all other records relating to the plant; and

(2) All intangible assets used in the development, production, servicing, and sale of Fluid Milk and other dairy products for the Waukesha Plant, including, but not limited to, all patents, licenses and sublicenses, copyrights, trademarks, trade names (including the Golden Guernsey and La Vaca Bonita brands and all related materials), service marks, service names, and other intellectual property; technical information, computer software and related documentation; know-how and recipes; trade secrets; drawings, blueprints, designs, design protocols, specifications for materials, specifications for parts and

devices, safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information Defendant provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts relating to the Divestiture Assets, including, but not limited to, designs of experiments, and the results of successful and unsuccessful designs and experiments.

(3) The term “Divestiture Assets” does not include: (a) the right to purchase raw milk from Foremost Farms USA Cooperative for processing at the Waukesha Plant obtained under the Milk Supply Agreement entered into on April 1, 2009 between Foremost Farms USA Cooperative and GG Acquisition, LLC; (b) any ice cream mix filler equipment used at the Waukesha Plant or any other equipment at that Plant dedicated solely to the manufacturing of ice cream mix; or (c) the Dean and Farm Fresh brands and all related materials.

(D) “Fluid Milk” means raw milk that has been processed for human consumption as a beverage, but does not include organic milk, soy milk, extended shelf life milk, ultra-high temperature milk, or aseptic milk.

(E) “Plaintiff States” means the States of Wisconsin, Illinois, and Michigan.

(F) “School Milk” means Fluid Milk produced, marketed, distributed, or sold for use by schools.

(G) “Waukesha Plant” means Defendant’s dairy processing plant located at 2101 Delafield Street, Waukesha, Wisconsin 53188-2299.

II.

OBJECTIVES

The Final Judgment filed in this case is meant to ensure Defendant's prompt divestiture of the Divestiture Assets for the purpose of establishing a viable competitor in the sale of Fluid Milk and School Milk in order to remedy the effects that Plaintiffs allege would otherwise result from Defendant's acquisition of assets of the Consumer Products Division of Foremost Farms USA Cooperative. This Stipulation ensures, prior to such divestiture, that the Divestiture Assets will remain economically viable and will be able to be utilized effectively by an Acquirer to compete in the sale of Fluid Milk and School Milk.

III.

JURISDICTION AND VENUE

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the Eastern District of Wisconsin.

IV.

COMPLIANCE WITH AND ENTRY OF FINAL JUDGMENT

(A) The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the 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 and by filing that notice with the Court. Defendant agrees to arrange, at its expense, publication as quickly as possible of the newspaper notice required by the APPA. The publication shall be arranged no later than five (5) calendar days after Defendant's receipt from the United States of the text of the notice and the identity of the newspaper within which the publication shall be made. Defendant shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

(B) Defendant shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all of 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.

(C) This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(D) In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) 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.

(E) Defendant represents that the divestitures ordered in the proposed Final Judgment can and will be made, and that Defendant will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

V.

ASSET PRESERVATION PROVISIONS

Until the divestitures required by the Final Judgment have been accomplished:

(A) Defendant shall preserve, maintain, and continue to operate the Divestiture Assets so that the Divestiture Assets may be used by an Acquirer effectively to develop, produce, service, and sell Fluid Milk and other dairy products. Within twenty (20) days after the entry of the Stipulation, Defendant will inform Plaintiffs of the steps Defendant has taken to comply with this Stipulation. Defendant shall furnish to Plaintiffs periodic data and reports on an ongoing basis such that Plaintiffs are able to monitor the performance of the Divestiture Assets prior to divestiture. The United States in its sole discretion, after consultation with the Plaintiff States, shall determine the frequency and sufficiency of the data and reports.

(B) Defendant shall use all reasonable efforts to maintain and increase the sales and revenues of the products produced by the Divestiture Assets, and shall maintain at 2010 or previously approved levels for 2011, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the

Divestiture Assets; provided, however, that Defendant may discontinue intra-company sales from the Waukesha Plant to other entities or operations of Defendant.

(C) Defendant shall provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as an economically viable and competitive, ongoing business, consistent with the requirements of Section V(A).

(D) Defendant shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than its current capacity, and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

(E) Defendant shall not, except as part of a divestiture approved by the United States in its sole discretion, after consultation with the Plaintiff States, 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.

(F) Defendant shall use its best efforts to preserve the existing relationships with each of the Divestiture Assets' suppliers, customers, employees, distributors, and others having business relations with the Divestiture Assets, in the ordinary course of the Divestiture Assets' business and in accordance with past practice; provided, however, that Defendant may discontinue intra-company sales from the Waukesha Plant to other entities and operations of Defendant, and provided further that upon the sale of the Divestiture Assets, Defendant may discontinue intra-company sales to the Waukesha Plant from other entities or operations of Defendant.

(G) Defendant shall maintain, 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 Divestiture Assets.

(H) Defendant shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

(I) Defendant's employees with primary responsibility for the production, distribution, or sale of the products sold by the Divestiture Assets shall not be transferred or reassigned to other areas within the company except for transfer bids initiated by employees pursuant to Defendant's regular, established job posting policy. Defendant shall provide Plaintiffs with ten (10) calendar days notice of such transfer.

(J) Defendant shall appoint a person or persons to oversee the Divestiture Assets, and who will be responsible for Defendant's compliance with this section. This person shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of the Final Judgment. In the event such person is unable to perform his duties, Defendant shall appoint, subject to the approval of the United States in its sole discretion, after consultation with the Plaintiff States, a replacement within ten (10) working days. Should Defendant fail to appoint a replacement acceptable to the United States in its sole discretion, after consultation with the Plaintiff States, within this time period, the United States in its sole discretion, after consultation with the Plaintiff States, shall appoint a replacement.

(K) Defendant shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer acceptable to the United States in its sole discretion, after consultation with the Plaintiff States.

VI.

DURATION OF ASSET PRESERVATION OBLIGATIONS

Defendant's obligations under Section V of this Stipulation shall remain in effect until (1) consummation of the divestitures required by the proposed Final Judgment or (2) until further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, Defendant is released from all further obligations under this Stipulation.

Dated: March 29, 2011

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Respectfully submitted,

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