

**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.)	
)	

FINAL JUDGMENT

WHEREAS, plaintiffs, the United States of America and the Commonwealth of Kentucky, and defendant Dairy Farmers of America, Inc. (“DFA”), by their respective attorneys, have consented to the entry of this Final Judgment without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, the United States of America and the Commonwealth of Kentucky have concluded, after due investigation and careful consideration of the relevant circumstances, including the claims asserted in the Amended Complaint, and the legal and factual defenses thereto, that the public interest is served by entering into a Stipulation, to avoid the uncertainties of litigation and to assure that the benefits of this Final Judgment are obtained;

AND WHEREAS, DFA agrees that venue and jurisdiction are proper in this Court;

AND WHEREAS, DFA agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, the essence of this Final Judgment is the prompt and certain divestiture of the Divestiture Assets by DFA;

AND WHEREAS, DFA, despite its belief that it has good defenses to the claims asserted against it in the Amended Complaint, has nevertheless agreed to enter into this Final Judgment to avoid further expense, inconvenience, the uncertainties of litigation, and the distraction of burdensome and protracted litigation, and thereby to put to rest this controversy with respect to the United States of America and the Commonwealth of Kentucky;

AND WHEREAS, DFA, the United States of America, and the Commonwealth of Kentucky desire to resolve disputes between them concerning DFA's acquisition of a partial interest in Southern Belle Dairy Co., LLC, without further Court proceedings except as set out below;

AND WHEREAS, DFA has entered into a written agreement with AFLP to facilitate the resolution of this matter;

AND WHEREAS, DFA has represented to the United States that the divestitures required below can and will be made and that DFA will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against DFA under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18), and under the provisions of K.R.S. § 367.110 et seq, but, by virtue of this Final Judgment, DFA has not and does not admit either the allegations set forth in the Complaint or any liability or wrongdoing.

II. DEFINITIONS

As used in this Final Judgment:

- A. “Acquirer” means the entity or entities to whom DFA or the trustee divest the Divestiture Assets.
- B. “AFLP” means the Allen Family Limited Partnership, managed by Robert Allen.
- C. “DFA” means Dairy Farmers of America, Inc., a Kansas corporation with its headquarters in Kansas City, Missouri, its successors and assigns, its subsidiaries and divisions, and their directors, officers, managers, agents, and employees.
- D. “Divestiture Assets” means any and all of DFA’s interests in the Southern Belle Dairy including DFA’s Series A Preferred Capital Interest and Series B Preferred Capital Interest, and any and all lines of credit or other loans that Mid-Am has extended to the Southern Belle Dairy, and any interest in the Southern Belle Dairy acquired from AFLP.
- E. “Mid-Am” means Mid-Am Capital LLC, a subsidiary of DFA and a Delaware limited liability company with its headquarters in Kansas City, Missouri, its successors and assigns, its subsidiaries and divisions, and their directors, officers, managers, agents, and

employees.

F. “Southern Belle Dairy” means the Southern Belle Dairy Co., LLC, a Delaware limited liability company that owns and operates a milk processing plant located in Pulaski County, Kentucky, and all related assets, including all rights and interests in it, including all property and contract rights, all existing inventory, accounts receivable, pertinent correspondence and files, customer lists, all related customer information, advertising materials, contracts or other relationships with suppliers, customers and distributors, any rights, contracts and licenses involving intellectual property, trademarks, tradenames or brands, computers and other physical assets and equipment used for production at, distribution from, or associated with, that plant or any of its distribution branches and locations.

G. “Stipulation” means the Stipulation signed by the United States, the Commonwealth of Kentucky, and DFA in this matter.

III. APPLICABILITY

A. This Final Judgment applies to DFA, as defined above, and to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. DFA shall require, as a condition of the sale or other disposition of all or substantially all of DFA’s assets or of lesser business units that include the Divestiture Assets, that the purchaser agrees to be bound by the provisions of this Final Judgment. DFA need not, however, obtain such an agreement from the Acquirer of the Divestiture Assets.

IV. DIVESTITURES

A. DFA is ordered and directed, within five days after notice of the entry of this Final Judgment by the Court, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States in its sole discretion, after consultation with the Commonwealth of Kentucky. The United States, in its sole discretion, after consultation with the Commonwealth of Kentucky, may agree to an extension of this time period for any divestiture of up to thirty additional calendar days. DFA agrees to use its best efforts to divest the Divestiture Assets as expeditiously as possible.

B. DFA shall also use commercially reasonable efforts to cause AFLP to divest its interests in the Southern Belle Dairy to an acquirer acceptable to the United States in its sole discretion, after consultation with the Commonwealth of Kentucky.

C. In accomplishing the divestitures ordered by this Final Judgment, DFA promptly shall make known to one or more potential purchasers the availability of the Divestiture Assets. DFA shall inform any potentially qualified purchaser making inquiry regarding a possible purchase of the Divestiture Assets that such assets are being offered for sale.

D. DFA shall use commercially reasonable efforts to cause to be furnished to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets and the Southern Belle Dairy customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or attorney work-product doctrine. DFA shall make available such information to the United States and the Commonwealth of Kentucky at the same time that such information is

made available to any other person.

E. DFA shall use commercially reasonable efforts to obtain permission for prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the physical facilities of the Southern Belle Dairy; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. DFA shall use commercially reasonable efforts to cause to be provided to the Acquirer and the United States information relating to the personnel involved in the operation of the Southern Belle Dairy to enable the Acquirer to make offers of employment. DFA shall not interfere with any negotiations by the Acquirer to employ any employee whose primary responsibility is the production, sale, marketing, or distribution of products from the Southern Belle Dairy.

G. DFA shall not take any action that will impede in any way the operation of the Southern Belle Dairy or the divestiture of the Divestiture Assets.

H. Unless the United States, in its sole discretion, after consultation with the Commonwealth of Kentucky, otherwise consents in writing, the divestiture pursuant to Section IV, or by trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, after consultation with the Commonwealth of Kentucky, that the Southern Belle Dairy will be a viable, ongoing dairy. The divestiture, whether pursuant to Section IV or Section

V of this Final Judgment,

- (1) shall be made to an Acquirer that, in the United States' sole judgment, after consultation with the Commonwealth of Kentucky, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in school and fluid milk markets in Kentucky and Tennessee; and
- (2) shall be accomplished so as to satisfy the United States, in its sole discretion, after consultation with the Commonwealth of Kentucky, that none of the terms of any agreement between an Acquirer and DFA give DFA the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

V. APPOINTMENT OF TRUSTEE

A. If DFA has not divested the Divestiture Assets within the time period specified in Section IV(A), DFA shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States (after consultation with the Commonwealth of Kentucky) at such price and on such terms as are then obtainable upon reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V(D) of this Final Judgment, the trustee may hire at the cost and expense of DFA any investment bankers, attorneys, or other agents, who shall be solely accountable to the trustee, reasonably

necessary in the trustee's judgment to assist in the divestiture.

C. DFA shall not object to a sale by the trustee on any ground other than the trustee's malfeasance. Any such objections by DFA must be conveyed in writing to the United States and the trustee within ten calendar days after the trustee has provided the notice required under Section VI.

D. The trustee shall serve at the cost and expense of DFA, on such terms and conditions as the United States approves, after consultation with the Commonwealth of Kentucky, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to DFA and the trust shall then be terminated. The compensation of the trustee and any professionals and agents retained by the trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

E. DFA shall use its best efforts to assist the trustee in accomplishing the required divestiture. While the trustee shall have the right to sell the Divestiture Assets, DFA shall use commercially reasonable efforts to cause AFLP to divest its interests in the Southern Belle Dairy to an acquirer acceptable to the United States in its sole discretion, after consultation with the Commonwealth of Kentucky. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books,

records, and facilities of the business to be divested, and DFA shall develop financial and other information relevant to such business as the trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. DFA shall take no action to interfere with or to impede the trustee's accomplishment of the divestiture.

F. After its appointment, the trustee shall file monthly reports with the United States, the Commonwealth of Kentucky, DFA, and the Court setting forth the trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court and DFA's copy of the reports shall have such confidential information redacted. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the trustee has not accomplished such divestiture within six months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestiture, (2) the reasons, in the trustee's judgment, why the required divestiture has not been accomplished, and (3) the trustee's recommendations. To the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report

to the United States and the Commonwealth of Kentucky who shall have the right to make additional recommendations consistent with the purpose of the trust. The trustee shall at the same time furnish the report to DFA, but with all confidential information redacted. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

H. If necessary in the trustee's judgment to divest the Divestiture Assets, DFA shall use its best efforts to assist the trustee in dissolving the Southern Belle Dairy under Delaware Statute 6 Del. C. § 18-802, or such other applicable statutes and laws.

VI. NOTICE OF PROPOSED DIVESTITURES

A. Within two business days following execution of a definitive divestiture agreement, DFA or the trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States and the Commonwealth of Kentucky of the proposed divestiture required by Sections IV or V of this Final Judgment. If the trustee is responsible, it shall similarly notify DFA. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen calendar days of receipt by the United States of such notice, the United States may request from DFA, the proposed Acquirer, any other third party, or the trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer,

and any other potential Acquirer. DFA and the trustee shall furnish any additional information requested within fifteen calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty calendar days after receipt of the notice or within twenty calendar days after the United States has been provided the additional information requested from DFA, the proposed Acquirer, any third party, and the trustee, whichever is later, the United States shall provide written notice to DFA and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to DFA's limited right to object to the sale under Section V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, the divestiture proposed under Sections IV or Section V shall not be consummated. Upon objection by DFA under Section V(C), the divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. FINANCING

DFA shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. SUPPLY CONTRACTS

DFA shall not require the Acquirer to enter into a supply contract for raw milk with DFA as a condition for the sale of the Divestiture Assets.

IX. AFFIDAVITS

A. Within twenty calendar days of DFA's signing the Stipulation, and every thirty calendar days thereafter until the divestiture has been completed under Sections IV or V, DFA shall deliver to the United States an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts DFA has taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by DFA, including limitation on information, shall be made within fourteen calendar days of receipt of such affidavit.

B. Within twenty calendar days of DFA's signing the Stipulation, DFA shall deliver to the United States an affidavit that describes in reasonable detail all actions DFA has taken and all steps DFA has implemented on an ongoing basis to comply with the Stipulation. DFA shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in DFA's earlier affidavits filed pursuant to this section within fifteen calendar days after the change is implemented.

C. DFA shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestiture has been completed.

X. COMPLIANCE INSPECTION

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice or the Commonwealth of Kentucky, including consultants and other persons retained by either of them, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General for Kentucky, and on reasonable notice to DFA, be permitted:

- (1) access during DFA's office hours to inspect and copy, or at plaintiffs' option, to require DFA provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of DFA, relating to any matters contained in this Final Judgment; and
- (2) to interview, either informally or on the record, DFA's officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by DFA.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division or the Attorney General for Kentucky, DFA shall submit written reports and interrogatory responses, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States or the Commonwealth of Kentucky to any person other than an

authorized representative of the executive branch of the United States or the Commonwealth of Kentucky, except in the course of legal proceedings to which at least one of the plaintiffs is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by DFA to the plaintiffs, DFA represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and DFA marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then the plaintiffs shall give DFA ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. REACQUISITION OF THE DIVESTITURE ASSETS

Other than acquiring AFLP's interests in the Southern Belle Dairy for resale to the Acquirer, DFA may not directly or indirectly reacquire in whole or in part the Divestiture Assets or any interest in the Southern Belle Dairy during the term of this Final Judgment without the prior written approval of the United States. Unless the United States otherwise agrees in writing, DFA will urge any partnership, joint venture, limited liability company, or other firm in which it has an equity interest, not to acquire the Divestiture Assets or any interest in Southern Belle Dairy during the term of this Final Judgment; such urging shall include, among other things, voting its interest, if applicable, against such an acquisition.

XII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XIV. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures
of Antitrust Procedures and Penalties
Act, 15 U.S.C. § 16

United States District Judge