

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

UNITED STATES OF AMERICA,

COMMONWEALTH OF
MASSACHUSETTS,

and

STATE OF WISCONSIN,

Plaintiffs,

v.

DAIRY FARMERS OF AMERICA, INC.

and

DEAN FOODS COMPANY,

Defendants.

ASSET PRESERVATION AND HOLD SEPARATE STIPULATION AND ORDER

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 Asset Preservation and Hold Separate Stipulation and Order (“Stipulation and Order”):

- A. “Acquirer” or “Acquirers” means the entity or entities to whom Defendants divest

any of the Divestiture Assets.

B. “DFA” means Defendant Dairy Farmers of America, Inc., a Kansas cooperative marketing association with its headquarters in Kansas City, Kansas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Dean” 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.

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. “De Pere Plant” means Dean’s dairy processing plant located at 3399 South Ridge Road, Ashwaubenon, Wisconsin 54115.

F. “Franklin Plant” means Dean’s dairy processing plant located at 1199 West Central Street, Franklin, Massachusetts 02038.

G. “Franklin Purchase Option” means Dean’s non-assignable option to purchase the real estate on which the Franklin Plant is located.

H. “Harvard Plant” means Dean’s dairy processing plant located at 6303, 6306, and 6313 Maxon Road, Harvard, Illinois 60033.

I. “Exclusive Territory” means (1) the states of Illinois, Wisconsin, and Indiana; and (2) the Upper Peninsula of Michigan.

J. “Non-Exclusive Territory” means (1) the states of Minnesota and Iowa; and (2) the Lower Peninsula of Michigan.

K. “Transitional Dean’s Brand License” means a non-exclusive, royalty-free, paid-up, irrevocable, nationwide license to use the “Dean’s” brand name (and all associated trademarks, service marks, and service names) for all products for two (2) years from the date that the De Pere Divestiture Assets are divested to an Acquirer.

L. “Dean’s Brand Licenses” means:

1. An exclusive (subject only to the rights of the Acquirer of the De Pere Divestiture Assets under the Transitional Dean’s Brand License, if applicable), royalty-free, paid-up, irrevocable, perpetual license to use the “Dean’s” brand name (and all associated trademarks, service marks, and service names) for all products in the Exclusive Territory; and

2. A non-exclusive, royalty-free, paid-up, irrevocable, perpetual license to use the “Dean’s” brand name (and all associated trademarks, service marks, and service names) for all products in the Non-Exclusive Territory.

M. “Transitional Dairy Pure Brand License” means a non-exclusive, royalty-free, paid-up, irrevocable, nationwide license to use the “Dairy Pure” brand name (and all associated trademarks, service marks, and service names) for all products for two (2) years from the date that the relevant Divestiture Assets are divested to an Acquirer.

N. “TruMoo Products” means all products sold by Dean under the TruMoo brand name at any time from January 1, 2019 to the date that the relevant Divestiture Assets are divested to an Acquirer.

O. “Transitional TruMoo Brand License” means a non-exclusive, royalty-free, paid-

up, irrevocable, nationwide license to use the “TruMoo” brand name (and all associated trademarks, service marks, and service names) for TruMoo Products for two (2) years from the date that the relevant Divestiture Assets are divested to an Acquirer.

P. “TruMoo IP” means all intellectual property, product formulas, technology, know-how, or other rights used in the manufacture or formulation of any TruMoo Products.

Q. “TruMoo IP License” means a non-exclusive, royalty-free, paid-up, irrevocable, perpetual, nationwide license to the TruMoo IP.

R. “Divestiture Assets” means the De Pere Divestiture Assets, the Franklin Divestiture Assets, and the Harvard Divestiture Assets.

S. “De Pere Divestiture Assets” means:

1. All of Defendants’ rights, title, and interests in the De Pere Plant and the ancillary facilities listed in Appendix A to the attached Proposed Final Judgment;
2. All tangible assets related to or used in connection with the processing, marketing, sale, or distribution of Fluid Milk and all other products by the De Pere Plant or the ancillary facilities listed in Appendix A to the attached Proposed Final Judgment, including, but not limited to: research and development activities; all manufacturing and processing equipment, quality assurance equipment, research and development equipment, machine assembly equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance

records; and all other records;

3. All intangible assets related to or used in connection with the processing, marketing, sale, or distribution of Fluid Milk and all other products by the De Pere Plant or the ancillary facilities listed in Appendix A to the attached Proposed Final Judgment, including, but not limited to: all patents; licenses and sublicenses; intellectual property (except the TruMoo IP); copyrights; trademarks, trade names, service marks, and service names (including the “Morning Glory” and “Farm Fresh” brand names and all associated trademarks, service marks, and service names), except the “Dean’s,” “Jilbert,” “Dairy Pure,” and “TruMoo” brand names; technical information; computer software and related documentation; customer relationships, agreements, and contracts (or portions of such relationships, agreements, and contracts that relate to the De Pere Plant or the ancillary facilities listed in Appendix A to the attached Proposed Final Judgment); know-how; 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 Dean provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts, including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments;

4. A Transitional TruMoo Brand License;
5. The Transitional Dean’s Brand License;
6. A TruMoo IP License; and
7. A Transitional Dairy Pure Brand License;

Provided, however, that the assets specified in Paragraphs II(S)(1)-(7) above do not include any rights, title, or interest in (i) Dean's corporate headquarters located at 2711 North Haskell Avenue, Dallas, Texas 75204 or (ii) Dean's dairy processing plant located at 1126 Kilburn Avenue, Rockford, Illinois 61101.

T. "Franklin Divestiture Assets" means:

1. All of Defendants' rights, title, and interests in the Franklin Plant and the ancillary facilities listed in Appendix B to the attached Proposed Final Judgment, except the Franklin Purchase Option;

2. All tangible assets related to or used in connection with the processing, marketing, sale, or distribution of Fluid Milk and all other products by the Franklin Plant or the ancillary facilities listed in Appendix B to the attached Proposed Final Judgment, including, but not limited to: research and development activities; all manufacturing and processing equipment, quality assurance equipment, research and development equipment, machine assembly equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records;

3. All intangible assets related to or used in connection with the processing, marketing, sale, or distribution of Fluid Milk and all other products by the Franklin Plant or the ancillary facilities listed in Appendix B to the attached Proposed Final Judgment, including, but

not limited to: all patents; licenses and sublicenses; intellectual property (except the TruMoo IP); copyrights; trademarks, trade names, service marks, and service names (including the “Garelick Farms” brand name and all associated trademarks, service marks, and service names), except the “Dean’s,” “Dairy Pure,” and “TruMoo” brand names; technical information; computer software and related documentation; customer relationships, agreements, and contracts (or portions of such relationships, agreements, and contracts that relate to the Franklin Plant or the ancillary facilities listed in Appendix B to the attached Proposed Final Judgment); know-how; 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 Dean provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts, including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments;

4. A Transitional TruMoo Brand License;
5. A TruMoo IP License; and
6. A Transitional Dairy Pure Brand License;

Provided, however, that the assets specified in Paragraphs II(T)(1)-(6) above do not include any rights, title, or interest in Dean’s corporate headquarters located at 2711 North Haskell Avenue, Dallas, Texas 75204.

U. “Harvard Divestiture Assets” means:

1. All of Defendants’ rights, title, and interests in the Harvard Plant and the

ancillary facilities listed in Appendix C to the attached Proposed Final Judgment;

2. All tangible assets related to or used in connection with the processing, marketing, sale, or distribution of Fluid Milk and all other products by the Harvard Plant or the ancillary facilities listed in Appendix C to the attached Proposed Final Judgment, including, but not limited to: research and development activities; all manufacturing and processing equipment, quality assurance equipment, research and development equipment, machine assembly equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies, and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records;

3. All intangible assets related to or used in connection with the processing, marketing, sale, or distribution of Fluid Milk and all other products by the Harvard Plant or the ancillary facilities listed in Appendix C to the attached Proposed Final Judgment, including, but not limited to: all patents; licenses and sublicenses; intellectual property (except the TruMoo IP); copyrights; trademarks, trade names, service marks, and service names, except the “Dean’s,” “Dairy Pure,” and “TruMoo” brand names; technical information; computer software and related documentation; customer relationships, agreements, and contracts (or portions of such relationships, agreements, and contracts that relate to the Harvard plant or the ancillary facilities listed in Appendix C to the attached Proposed Final Judgment); know-how; 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 Dean provides to its own employees, customers, suppliers, agents, or licensees; and all research data concerning historic and current research and development efforts, including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments;

4. The Dean's Brand Licenses;
5. A Transitional TruMoo Brand License;
6. A TruMoo IP License; and
7. A Transitional Dairy Pure Brand License;

Provided, however, that the assets specified in Paragraphs II(U)(1)-(7) above do not include any rights, title, or interest in (i) Dean's corporate headquarters located at 2711 North Haskell Avenue, Dallas, Texas 75204 or (ii) Dean's dairy processing plant located at 1126 Kilburn Avenue, Rockford, Illinois 61101.

V. "Relevant Personnel" means all full-time, part-time, or contract personnel whose job responsibilities related in any way to the processing, marketing, sale, or distribution of Fluid Milk or any other products by the Divestiture Assets, at any time between July 1, 2019 and the date on which the Divestiture Assets are divested to Acquirer.

II. OBJECTIVES

The Final Judgment filed in this case is meant to ensure Defendants' prompt divestiture of the Divestiture Assets for the purpose of establishing one or more viable competitors in the

processing and sale of Fluid Milk in order to remedy the effects that the United States alleges would otherwise result from DFA's acquisition of certain assets from Dean. This Stipulation and Order ensures, prior to divestiture, that the Defendants will preserve and maintain the Divestiture Assets, that the Divestiture Assets will remain independent and ongoing business concerns that will remain uninfluenced by Defendants, and that the level of competition for the processing and sale of Fluid Milk that existed between Defendants prior to the Transaction is maintained during the pendency of the ordered divestiture of the Divestiture Assets.

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 [redacted]. Defendants waive service of summons of the Complaint.

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) ("APPA"), 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 on Defendants and by filing that notice with the Court. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which will be drafted by the United States in its sole discretion. The publication must be arranged no later than three (3) business days after Defendants' receipt from the United States of the text of the notice and the

identity of the newspaper or newspapers within which the publication must be made. Defendants must 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(s) within which the notice was published.

B. Defendants must abide by and comply with the provisions of the proposed Final Judgment, pending the Court's entry of the proposed Final Judgment, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and must, from the date of the signing of this Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States will have the full rights and enforcement powers set forth in the proposed Final Judgment as though the same were in full force and effect as the final order of the Court.

C. Defendants must not consummate the transaction sought to be enjoined by the Complaint filed in this action before the Court has signed this Stipulation and Order.

D. This Stipulation and Order applies with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. If (1) the United States has withdrawn its consent, as provided in Paragraph IV(A) above, or (2) the proposed Final Judgment is not entered, 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 Order, and the making of this Stipulation and Order will be without prejudice to any party in this or any other proceeding.

F. Defendants represent that the divestiture(s) ordered by the proposed Final Judgment can and will be made and that Defendants will not later raise a 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 AND HOLD SEPARATE PROVISIONS

Until the divestiture(s) required by the proposed Final Judgment have been accomplished:

A. Defendants must preserve, maintain, and continue to operate the De Pere Divestiture Assets, the Franklin Divestiture Assets, and the Harvard Divestiture Assets each as an independent, ongoing, and competitive business, with management, sales and operations of such assets held entirely separate, distinct and apart from those of Defendants' other operations. Defendants must not coordinate their production, marketing, or terms of sale of any products with those produced by or sold by the Divestiture Assets. Within twenty (20) days after the entry of the Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Stipulation and Order.

B. Defendants must take all steps necessary to ensure that (1) each set of Divestiture Assets will be maintained and operated as an independent, ongoing, and active competitor in the processing and sale of Fluid Milk; (2) management of the Divestiture Assets will not be influenced by Defendants; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning production, distribution or sales of products by the Divestiture Assets will be kept separate and apart from Defendants' other operations.

C. Defendants must maintain at 2020 or previously approved levels for 2021, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Divestiture Assets.

D. Defendants must provide sufficient working capital and lines and sources of credit to continue to maintain each set of Divestiture Assets as a competitive, ongoing business, consistent with the requirements of Paragraphs V(A) and V(B).

E. Defendants must take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than their current capacity and sales, and must maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

F. Defendants must not, except as part of a divestiture approved by the United 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.

G. Defendants must 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 for each set of the Divestiture Assets.

H. Defendants must take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

I. Defendants must maintain the working conditions, staffing levels, and work force training and expertise associated with each set of Divestiture Assets. Relevant Personnel must not be transferred or reassigned except for transfer bids initiated by individuals pursuant to Defendants' regular, established job posting policy. Defendants must provide the United States

with ten (10) calendar days' notice of the transfer of Relevant Personnel. Upon objection by the United States to such transfer, Relevant Personnel may not be transferred or reassigned.

Defendants must use all reasonable efforts, including by providing financial incentives, to encourage Relevant Personnel to continue in the positions held as of the date of the signing of this Stipulation and Order by the United States and Defendants; however, financial incentives may not be structured so as to disincentivize individuals from accepting employment with an Acquirer.

J. Defendants must appoint a person or persons, subject to the United States' approval in its sole discretion, to oversee each set of Divestiture Assets and who will be responsible for Defendants' compliance with this Section. These persons will have complete managerial responsibility for each set of Divestiture Assets, respectively, for the duration of this Stipulation and Order, subject to the provisions of the proposed Final Judgment. In the event any such person is unable to perform his or her duties, Defendants must appoint, subject to the approval of the United States in its sole discretion, a replacement within ten (10) working days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States will appoint a replacement.

K. Defendants must take no action that would interfere with the ability of any trustee appointed pursuant to the proposed Final Judgment to complete the divestitures pursuant to the proposed Final Judgment to an Acquirer or Acquirers acceptable to the United States.

VI. DURATION OF ASSET PRESERVATION AND HOLD SEPARATE OBLIGATIONS

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

Dated: May 1, 2020

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

FOR DEFENDANT
DAIRY FARMERS OF AMERICA, INC.

/s/
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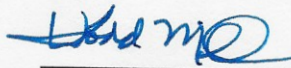
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Respectfully submitted,

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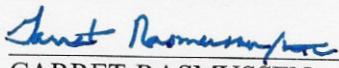
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Dated: May 1, 2020

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

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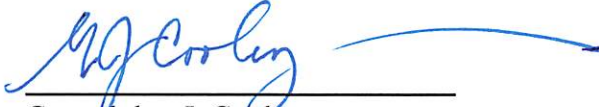
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ORDER

IT IS SO ORDERED by the Court, this ____ day of _____, _____.

United States District Judge