

JUDGE PAULEY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-against-

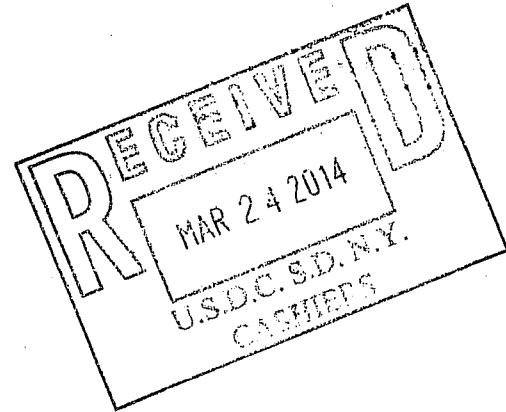
HUGH HENLEY, PRESTIGE PROTEINS,
PRESTIGE MILK PROTEINS, LLC, and
AGRI-DAIRY PRODUCTS, INC.,

Defendants.

14 Civ. ()

**COMPLAINT OF THE
UNITED STATES OF AMERICA**

Jury Trial Demanded



The United States of America, by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, files this Complaint against Hugh Henley, Prestige Proteins, Prestige Milk Proteins, LLC, and Agri-Dairy Products Inc., alleging as follows:

PRELIMINARY STATEMENT

1. This is a civil fraud action brought by the United States of America against Hugh Henley ("Henley"), his companies Prestige Proteins and Prestige Milk Proteins, LLC (collectively, "Prestige"), and Agri-Dairy Products, Inc. ("Agri-Dairy"), for defrauding the United States by making, and causing to be made, misrepresentations to the United States Department of Agriculture ("USDA") in connection with two 2009 bids to and purchases from the USDA, whereby defendants fraudulently acquired more than two million pounds of

subsidized dairy products, specifically nonfat dry milk ("NDM"), and unlawfully resold it at market prices for substantial profits. In May and November 2009, the USDA invited bids for the purchase of discounted NDM through a federal program that restricted the sale of NDM only to those who certified that they could and would domestically manufacture the NDM into a protein product called casein. Henley and Agri-Dairy agreed that Henley, in the name of Prestige, would submit false bids to the USDA to purchase the NDM, and Agri-Dairy would advance Henley the funds to pay for the NDM. Agri-Dairy would then sell the NDM at market prices, and Prestige and Agri-Dairy would split the net profits from the resale.

2. Accordingly, in response to each of the USDA's May and November 2009 invitations to submit competitive offers to purchase discounted NDM for the purpose of conversion to casein, Henley submitted false bids to the USDA and won the contracts each time. However, instead of converting the NDM into casein as required by the terms of the USDA's invitations and Prestige's bids, defendants carried out their agreement to defraud the United States and resold the NDM to Agri-Dairy's customers at market prices after each purchase. Further, because the USDA required a certification of conversion to casein within 15 days of conversion as a condition of the sales of NDM, Henley twice falsely certified that Prestige had, in fact, converted the NDM to casein, when it had not.

3. As a result of their fraudulent conspiracy, defendants made net profits of more than \$630,000 from their resale of the discounted NDM they had acquired from the USDA based upon false statements. Thereby, defendants took unlawful advantage of the federal Dairy Product Price Support Program, a program mandated by the Food, Conservation, and Energy Act of 2008, Pub. L. 110-246, June 18, 2008, 122 Stat. 1651, also known as the 2008 Farm Bill.

4. Defendants' misconduct constitutes violations of the False Claims Act, 31 U.S.C. §§ 3729 *et seq.*, and states common law claims of fraud, unjust enrichment, and conversion.

JURISDICTION AND VENUE

5. This Court has jurisdiction over claims brought under the False Claims Act pursuant to 31 U.S.C. § 3730(a) and 28 U.S.C. §§ 1331 and 1345.

6. Venue is proper in this District pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b), because Agri-Dairy is a New York corporation with headquarters in this district and because acts set out herein occurred in this district.

PARTIES

7. Plaintiff is the United States of America, on behalf of its agency the United States Department of Agriculture (the "USDA").

8. Defendant Hugh Henley was, at all relevant times, the President and owner of Prestige Proteins and Prestige Milk Proteins, LLC. Upon information and belief, he resides in Boca Raton, Florida. Upon information and belief, Henley mingled defendant Prestige Proteins and defendant Prestige Milk Proteins, LLC together, utilizing their corporate identities interchangeably.

9. Upon information and belief, defendant Prestige Proteins is an unregistered company owned and operated by Henley in the business of importing, distributing, and brokering dairy and protein products, with its headquarters located at 1101 S. Rogers Circle, Suite 1, Boca Raton, Florida.

10. Prestige Milk Proteins, LLC was, at all relevant times, a registered Wisconsin limited liability corporation in the business of importing and brokering the sale of dairy and

protein products, with its headquarters at 1101 S. Rogers Circle, Suite 1, Boca Raton, FL 33487, and its principal place of business at 6375 County Highway N., Arpin, WI 54410.

11. Defendant Agri-Dairy Products, Inc. is a registered New York corporation and has its principal place of business at 3020 Westchester Avenue, Purchase, New York 10577. Agri-Dairy is in the business of domestic distribution of dairy products.

FACTS

I. REGULATORY BACKGROUND

12. The USDA is responsible for administering the Dairy Product Price Support Program (“DPPSP”), which Congress mandated through the Food, Conservation, and Energy Act of 2008, Pub.L. 110-246, June 18, 2008, 122 Stat. 1651 (the “2008 Farm Bill”). The DPPSP and its predecessor programs were established to support prices for dairy farmers in order to assure a level of farm income sufficient to maintain production capacity, and in particular to assure an adequate supply of milk. Under the DPPSP, the USDA supports the price of cheddar cheese, butter and nonfat dry milk by providing a standing offer to purchase those products at set prices, so long as they are made from cows’ milk produced in the United States. Accordingly, at times, the USDA maintains surplus stocks of products purchased through the program.

13. Under the DPPSP’s general authority, and as specifically authorized by Section 105 of the Food Security Act of 1985, 7 U.S.C. § 1446c-2, the USDA Farm Service Agency’s Commodity Credit Corporation has authority to offer “surplus stocks of nonfat dry milk of not less than 1,000,000 pounds annually to individuals or entities on a bid basis.” 7 U.S.C. § 1446c-2(a). Under that provision, the USDA may accept bids at discounted prices “in order to promote the strengthening of the domestic casein industry[.]” *id.* § 1446c-2(b), but “shall take appropriate action to ensure that the nonfat dry milk sold . . . under this section is used only for the

manufacture of casein,” id. § 1446c-2(c). Casein is a type of protein that can be used in creating paint, glue, cheese, and protein supplements, among other products, and is commonly made from nonfat dry milk. Nearly all of the casein or caseinate used by manufacturers in the United States is imported.

14. Therefore, on certain occasions, the USDA has acquired surplus nonfat dry milk (“NDM”), and has issued invitations for competitive bids to purchase that NDM. The terms of the program, for the periods relevant herein, are detailed in USDA Announcement RSCS2, titled Sale of Nonfat Dry Milk for the Manufacture of Casein or Caseinate (hereinafter, the “NDM-to-Casein Program”). Among other restrictions discussed more fully below, the program restricted the sale of NDM to those who certified that the purchaser itself would use the product solely for the purpose of domestic conversion of the NDM into casein or caseinate within 90 days.

II. DEFENDANTS’ FRAUDULENT SCHEME TO MISAPPROPRIATE DAIRY PRODUCTS PURCHASED FROM THE USDA

15. Henley owns and manages numerous companies which import, distribute and broker the sale of dairy and protein products. Henley, through certain of his companies including Prestige Proteins and Prestige Milk Proteins, LLC, is an occasional supplier of dairy and protein products to Agri-Dairy.

16. Prior to his false bids to the USDA in 2009 described below, Henley had sought and been denied contracts to purchase discounted NDM from the USDA in connection with the NDM-to-Casein Program. In one such instance, in 2006, Henley made a bid to the USDA, upon its public invitation for offers in connection with the NDM-to-Casein Program. In connection with his 2006 bid, Henley informed the USDA that he had leased a processing facility in Arpin, Wisconsin and that he could and would convert the NDM into casein at that location. Henley also certified that a USDA field test had been successfully conducted at the Arpin facility. Upon

information and belief, at that time, Henley had leased a processing facility in Arpin, Wisconsin. However, no field test was ever conducted related to that facility's capacity to convert NDM to casein, and no USDA personnel ever visited the plant. The USDA did not award Henley a contract in connection with the NDM-to-Casein program in 2006.

17. By at least Spring of 2009, Henley's Arpin, Wisconsin processing plant was not operational for the conversion of NDM to casein.

A. DEFENDANTS' FIRST FALSE BID TO THE USDA AND FRAUDULENT PURCHASE AND RESALE OF NONFAT DRY MILK

18. On May 29, 2009, the USDA announced RSCS2-Invitation 3 ("RSCS2-003"), which invited competitive offers for the purchase of up to 1,000,000 pounds of NDM in connection with the NDM-to-Casein Program in accordance with specifications provided by USDA Announcement RSCS2. In addition to requiring conversion into casein or caseinate, RSCS2 required that the bidder warrant (1) that conversion of the purchased NDM would be completed no later than 90 days after the date of the purchase; (2) that the NDM would not be used, distributed, or resold for any other purpose; (3) that a field test would be conducted at the facility where the recipient intended to convert the NDM into casein or caseinate prior to the offer or within 60 days of acquiring the contract; and (4) that the conversion would occur in a facility located in the United States that is owned by the successful bidder.

19. Furthermore, RSCS2 required that the successful bidder submit a performance report to the USDA within 15 days of completing the conversion of the purchased NDM into casein or caseinate. The performance report had to include such information as the amount of NDM received, the amount of NDM used in the conversion process, the date the casein or caseinate was shipped, and to whom it was shipped. An officer of the company also had to certify that the report contained no false statements in accordance with 15 U.S.C. § 714m(a).

20. Henley received notification of RSCS2-003 on or about the date it was announced, May 29, 2009. Upon information and belief, Agri-Dairy received the notification on or about that date as well.

21. Shortly thereafter, Henley and Agri-Dairy's President engaged in a telephone conversation in which they agreed that Henley would present an offer to the USDA in response to RSCS2-003, and therein falsely state that the offer to purchase the NDM was on behalf of Prestige, for the sole purpose of conversion to casein in the defunct Arpin plant. In fact, defendants planned that Agri-Dairy would resell the NDM at market prices and reap a profit for Prestige and Agri-Dairy.

22. Because Henley did not have the funds to purchase the NDM being offered through RSCS2-003, Henley and Agri-Dairy's President agreed that Agri-Dairy would wire money to Henley to advance the purchase price for the NDM. During their telephone conversation, Henley and Agri-Dairy's President also agreed to split the net profits resulting from Agri-Dairy's resale of the NDM, between Henley and Prestige on the one hand, and Agri-Dairy on the other.

23. In accordance with that plan, on June 1, 2009, Henley submitted a USDA Sales Offer Form, by which he offered \$0.47 cents per pound for one million pounds of NDM on behalf of Prestige, and provided the address of the Arpin plant as the location where the NDM would be converted to casein. Therein, Henley made the "certifications, warranties, and representations as set forth in th[e] invitation," which included the statement that "[s]ubject to the terms and conditions of this invitation, Announcement RSCS2, the undersigned offers to purchase CCC-owned Nonfat Dry Milk (NDM) at the price quoted below and manufacture the NDM, in the plant named in this offer into edible dry casein or edible dry caseinate, or edible dry

milk protein isolate 90% or higher, hereinafter . . . referred to as 'dry product.'" That statement was false because, among others things, neither Henley nor Prestige intended to, nor had the ability to, convert the NDM into casein domestically.

24. Henley further falsely certified in his June 1, 2009 sales offer form that the Arpin plant had completed a USDA field test. In fact, no field test had been performed by any USDA official. In addition, Henley falsely certified that the defunct Arpin plant had an "existing monthly capacity . . . to manufacture NDM into dry product [i.e. casein]" of "700,000 pounds of NDM."

25. On June 4, 2009, the USDA approved Henley's June 1, 2009 bid and awarded Prestige Proteins contract number SDEM00200, by which Prestige Proteins could purchase 1,000,017 pounds of NDM at \$0.47 cents per pound, for a total price of \$470,007.99. At that time, the market price of NDM was approximately \$0.83 cents per pound.

26. As previously agreed by Henley and Agri-Dairy, in order to pay the USDA for the NDM, Agri-Dairy then wire transferred \$470,007.99 to a bank account in the name of Prestige on or about June 5, 2009. Henley paid the USDA for the contract with Agri-Dairy's funds.

27. Agri-Dairy documented the purchase in a June 5, 2009 purchase order numbered 5835, which set forth that the company had purchased 1,000,006.56 [sic] pounds of nonfat dry milk from Prestige for the price of \$0.47 per pound. The purchase order included the typewritten notation "Commission – Hugh Henley – 50%."

28. In addition, Henley provided Agri-Dairy with an invoice dated June 5, 2009, in connection with purchase order number 5835. The invoice stated that Agri-Dairy was being charged \$470,007.99 for 1,000,017 pounds of "unrestricted nonfat dry milk powder" at the price of \$0.47 per pound. Prior to Henley providing the invoice, Agri-Dairy's President had instructed

Henley to include the term "unrestricted" on the invoice. Upon information and belief, Agri-Dairy's President did so in order to protect Agri-Dairy from the consequences of its participation in the fraudulent scheme.

29. On October 5, 2009, Henley executed a certification to the USDA falsely stating that all of the NDM purchased from the USDA pursuant to the June 4, 2009 contract award had been converted to casein at the Arpin facility. In particular, Henley's October 5, 2009 certification, entitled Dry Product Performance Report, stated that Prestige had received 1,000,017 pounds of NDM from the USDA pursuant to RSCS2-003 and converted it into 251,875 pounds of edible dry caseinate at the Arpin facility. Henley expressly certified that his statement was "executed with full knowledge of the provision of 15 U.S.C. 714m(a), for making any statement knowing it to be false, for the purpose of influencing in any way the action of the United States Department of Agriculture."

30. On October 8, 2009, Henley faxed the October 5, 2009 certification to the USDA. His fax cover sheet included additional false statements. In particular, the fax cover letter signed by Henley as President of Prestige Proteins stated, among other things: "This is the final report and all of the product has been completely converted. Could you please forward this form to the responsible officer at the USDA?" Henley's cover letter also asked whether the USDA would "be offering any more Non Fat Dry Milk for conversion under the RSCS2 program."

31. Henley's October 5, 2009 certification and October 8, 2009 letter to the USDA were false in that neither Henley nor Prestige had converted any of the NDM purchased under RSCS2-003 into casein. Instead, further to Henley and Agri-Dairy's agreement, Agri-Dairy resold the NDM to its customers at market prices. In a January 7, 2010 invoice, with the description, "Commission from SDEM00200," Henley sought from Agri-Dairy his \$188,448.93

half-share of the net profits from the resale of the NDM purchased from the USDA on or about June 4, 2009. Agri-Dairy wired that amount to a Prestige bank account on or about January 7, 2010. Agri-Dairy likewise retained net profits of \$188,448.93 from its resale of the NDM.

B. DEFENDANTS' SECOND FALSE BID TO THE USDA AND FRAUDULENT PURCHASE AND RESALE OF NONFAT DRY MILK

32. On November 17, 2009, the USDA again issued an invitation, numbered RSCS2-004, inviting competitive offers for the purchase of discounted NDM in connection with the NDM-to-Casein program under RSCS2 and containing the identical restrictions and requirements as the May 29, 2009 invitation. Henley learned of the RSCS2-004 invitation on or about November 17, 2009. Upon information and belief, Agri-Dairy learned of it at or about that time as well.

33. Between November 17 and 25, 2009, Henley and Agri-Dairy's President again spoke by telephone and agreed that they would carry out the same procedure by which they had acquired the NDM from the USDA in June 2009. In particular, Henley and Agri-Dairy agreed that Henley would make an offer to the USDA in response to RSCS2-004 on behalf of Prestige, Agri-Dairy would advance Prestige the funds to pay the USDA, Agri-Dairy would resell the NDM at market prices, and Prestige and Agri-Dairy would split the net profits.

34. In furtherance of the conspiracy, on November 25, 2009, Henley executed and submitted a Sales Offer Form to the USDA, by which Prestige offered \$0.71 cents per pound for one million pounds of NDM. On that form, Henley provided the address of the Arpin plant as the location where the NDM would be converted to casein.

35. In his November 25, 2009 offer, Henley on behalf of Prestige made the "certifications, warranties, and representations as set forth in this invitation," which included the statement that "[s]ubject to the terms and conditions of this invitation, Announcement RSCS2,

the undersigned offers to purchase CCC-owned Nonfat Dry Milk (NDM) at the price quoted below and manufacture the NDM, in the plant named in this offer into edible dry casein or edible dry caseinate, or edible dry milk protein isolate 90% or higher, hereinafter . . . referred to as 'dry product.'" That statement was false, because, among other things, neither Henley nor Prestige intended to, or had the ability to, convert the NDM into casein domestically.

36. Henley further falsely certified in his November 25, 2009 sales offer form that the Arpin plant had completed a USDA field test. In fact, no field test had been performed by any USDA official. In addition, Henley falsely certified that the defunct Arpin plant had an "existing monthly capacity . . . to manufacture NDM into dry product [i.e. casein]" of "700,000 pounds of NDM."

37. On December 3, 2009, the USDA awarded Prestige Proteins contract number SDEM00205, which allowed Prestige to purchase 1,000,086 pounds of NDM at \$0.71 cents per pound, for a total price of \$710,061.06. The market price for NDM at that time was approximately \$1.28 per pound.

38. As previously agreed by Henley and Agri-Dairy, in order to pay the USDA for the NDM, Agri-Dairy wire transferred \$710,061.06 to a bank account in the name of Prestige on or about December 4, 2009. Henley then paid the USDA with Agri-Dairy's funds.

39. Agri-Dairy documented that purchase in a December 4, 2009 purchase order numbered 7001, which set forth that the company had purchased the NDM from Prestige for the price of \$0.71 per pound. The purchase order included the handwritten notation "Split profits w/ Hugh Henley."

40. In addition, Henley provided Agri-Dairy with an invoice dated December 4, 2009, referencing purchase order number 7001. The invoice stated that Agri-Dairy was being charged

\$710,061.06 for 1,000,086 pounds of “unrestricted nonfat dry milk powder” at the price of \$0.71 per pound. Henley included the term “unrestricted” on the invoice in accordance with his prior communications with Agri-Dairy’s President.

41. On March 9, 2010, Henley executed a certification to the USDA falsely stating that all the NDM purchased from the USDA pursuant to the December 3, 2009 contract award had been converted to casein at the Arpin facility. In particular, Henley’s March 9, 2010 certification, entitled Dry Product Performance Report, stated that Prestige Proteins had received 1,000,086 pounds of NDM from the USDA pursuant to RSCS2-004 and converted it into 240,962 pounds of edible dry caseinate at the Arpin facility.

42. In his March 9, 2010 report, Henley expressly certified that his statement was “executed with full knowledge of the provision of 15 U.S.C. 714m(a), for making any statement knowing it to be false, for the purpose of influencing in any way the action of the United States Department of Agriculture.” In the March 12, 2010 fax cover to the March 9, 2010 certification, Henley stated that Prestige was thereafter “withdrawing from the RSCS2 program. At this present time we cannot manufacture casein and caseinates economically in the United States.”

43. Henley’s March 9, 2010 certification to the USDA was false in that neither Henley nor Prestige had converted any of the NDM purchased under RSCS2-004 into casein or caseinate. Instead, further to Henley and Agri-Dairy’s agreement, Agri-Dairy had resold the NDM to its customers at market prices. In an April 23, 2010 invoice to Agri-Dairy from Prestige Milk Proteins LLC, bearing the description “Commission for SDEM00205,” Henley sought \$127,814.85 from Agri-Dairy, representing his half-share of net profits from the resale of the NDM purchased from the USDA on December 3, 2009. By a check dated April 29, 2010, Agri-

Dairy paid \$127,814.85 to Prestige Milk Proteins, LLC. Agri-Dairy also retained \$127,814.85, its half-share of the net profits from the resale of the NDM.

44. Defendants knew or recklessly disregarded that they were making or causing to be made false claims and statements to the United States in connection with a federal program. Defendants' agreement to make or cause to be made false statements to the United States in order to receive approval of bids for the purchase of subsidized, restricted dairy products caused defendants to unlawfully acquire benefits to which they were not entitled, and consequently allowed them to improperly garner more than \$630,000 in net profits on the resale of those USDA products.

FIRST CLAIM

Violations of the False Claims Act (31 U.S.C. § 3729(a)(1)(A)) Causing False Claims to Be Presented for Approval

45. The United States incorporates by reference each of the preceding paragraphs as if fully set forth herein.

46. As set forth above, defendants knowingly or with deliberate ignorance or reckless disregard for the truth, presented, or caused to be presented, to an officer, employee or agent of the United States false or fraudulent claims for approval by the USDA of a bid to purchase subsidized Non Fat Dry Milk through a federal program.

47. Among other falsities, the claims were false or fraudulent because they falsely certified to the USDA that the NDM would be used by defendant Prestige Proteins solely for conversion to casein, when defendants Henley and Prestige never intended to, and did not, convert the NDM to casein, but instead resold the NDM through defendant Agri-Dairy for a profit.

48. The United States approved contract awards for the benefit of Prestige Proteins, and made sales of subsidized products thereto in June and December, 2009, because of the false or fraudulent claims presented or caused to be presented by defendants.

49. By reason of defendants' false claims, the United States has been damaged in a substantial amount to be determined at trial.

SECOND CLAIM

Violations of the False Claims Act (31 U.S.C. § 3729(a)(1)(B)) Use of False Statements

50. The United States incorporates by reference paragraphs 1 through 44 as if fully set forth herein.

51. As set forth above, defendants knowingly or with deliberate ignorance or reckless disregard of the truth made, used, or caused to be made or used, false records or statements material to false or fraudulent claims in order to receive NDM from the USDA at a price well below its market value.

52. Specifically, defendants made, or caused to be made, false records and statements in order to receive approval to purchase discounted NDM from the USDA. On two occasions, defendants Henley and Prestige Proteins falsely stated in offers made to the USDA that the NDM was being sought for purchase solely for the purpose of domestic conversion of the NDM into casein by Prestige Proteins. Furthermore, on two occasions, defendants Henley and Prestige Proteins falsely stated that all of the NDM received from the USDA had in fact been converted to casein at Henley's Arpin plant when, in fact, it had been picked up by Agri-Dairy and resold in its same NDM form on the dairy product market. In addition, Henley and Prestige falsely stated to the USDA on two occasions that a field test of the facility in Arpin, Wisconsin had been

performed by a USDA official as required by the USDA sales contract, but a field test had never been conducted.

53. Agri-Dairy caused these material false statements by agreeing with Henley and Prestige to falsely bid on the NDM, have Agri-Dairy advance the funds to purchase the discounted NDM from the USDA, and resell the NDM to Agri-Dairy customers at market prices in order to allow defendants to profit from the scheme, and ultimately by carrying out that scheme.

54. The United States awarded the June 4 and December 3, 2009 contracts for the sale of the NDM to Henley and Prestige Proteins because of the acts and conduct of defendants.

55. By reason of defendants' false statements and false claims, the United States has been damaged in a substantial amount to be determined at trial.

THIRD CLAIM

Violations of the False Claims Act (31 U.S.C. § 3729(a)(1)(C))

Conspiracy to Violate 31 U.S.C. §3729(a)(1)(A) and/or (a)(1)(B)

56. The United States incorporates by reference paragraphs 1 through 44 as if fully set forth herein.

57. As set forth above, defendants knowingly or with deliberate ignorance or reckless disregard for the truth, made, used, and caused to be made and used, false records and statements material to false or fraudulent claims in connection with the June 4 and December 3, 2009 contract awards of discounted NDM to Prestige Proteins by the USDA.

58. Henley, on behalf of Prestige, agreed with Agri-Dairy to make false statements, or cause false statements to be made, material to the presentation of false claims, and to present or cause false claims to be presented to the United States.

59. Defendants committed overt acts in furtherance of their agreement to make or cause false statements to be made material to false claims, and to present or cause false claims to be presented to the United States, as well as committed overt acts in furtherance of concealing the fraud. These acts included making, and causing to be made, false bids to the USDA on June 1, 2009, and November 25, 2009, sending and receiving wire transfers to advance the payments from Agri-Dairy to Prestige in order that Prestige would be able to acquire the NDM from the USDA, and reselling the NDM through Agri-Dairy and collecting the net profits therefrom to split between Prestige and Agri-Dairy.

60. The United States awarded the June 4, 2009 and December 3, 2009 contracts for the sale of the NDM to Prestige Proteins because of the acts of defendants.

61. By reason of defendants' conspiracy to make, use, or cause to be made or used, false statements and to present false claims, the United States has been damaged in a substantial amount to be determined at trial.

FOURTH CLAIM

Common Law Fraud

Against Defendants Hugh Henley, Prestige Proteins, and Prestige Milk Proteins LLC

62. The United States incorporates by reference paragraphs 1 through 44 as if fully set forth herein.

63. As set forth above, defendants knowingly or with deliberate ignorance or reckless disregard for the truth made, used, and/or caused to be made and used, false records and statements material to false or fraudulent claims in connection with the USDA's May and November 2009 invitations to make competitive offers for the subsidized purchase of NDM for the sole purpose of domestic conversion to casein, and the respective, subsequent June and December 2009 contract awards to Prestige Proteins.

64. Defendants Henley and Prestige Proteins made and used false records and statements in connection with the June and December 2009 offers that Prestige Proteins submitted to the USDA in order to purchase subsidized NDM, in that they falsely stated to the USDA that the NDM would be used by Prestige Proteins for the sole purpose of conversion of the NDM into casein, that the NDM would be processed into casein at the Arpin, Wisconsin facility, and that the facility in Arpin, Wisconsin was inspected by the USDA in a field test. Subsequently, Henley and Prestige Proteins also made false statements to the USDA that the purchased NDM had, in fact, been converted to casein, in accordance with federal requirements, when it had not.

65. The United States awarded contracts for the sale of subsidized NDM to Prestige Proteins in reliance upon the misrepresentations made by defendants Henley and Prestige.

66. By reason of defendants Henley's and Prestige's false statements, the United States has been damaged in a substantial amount to be determined at trial.

FIFTH CLAIM

Civil Conspiracy to Defraud

67. The United States incorporates by reference paragraphs 1 through 44 as if fully set forth herein.

68. As set forth above, defendants knowingly or with deliberate ignorance or reckless disregard for the truth made, used, and/or caused to be made and used, false records and statements material to false or fraudulent claims in connection with the USDA's May and November, 2009 invitations to make competitive offers for the respective, subsidized purchase of NDM for the sole purpose of domestic conversion to casein, and the subsequent June 4, 2009 and December 3, 2009 contract awards to Henley and Prestige Proteins.

69. Henley and Prestige, on the one hand, and Agri-Dairy, on the other, knowingly entered into an agreement to make misrepresentations to the United States in order to unlawfully acquire contracts to purchase subsidized goods, and unlawfully resell those goods at market prices for a profit.

70. Defendants committed overt acts in furtherance of their agreement to make or cause false statements to be made that were material to false claims, and to present or cause false claims to be presented to the United States, as well as committed overt acts in furtherance of concealing the fraud. Those acts included making and causing to be made false bids to the USDA on June 1 and November 25, 2009, sending and receiving wire transfers to advance the payment from Agri-Dairy to Prestige in order that Prestige would be able to acquire the NDM from the USDA, reselling the NDM through Agri-Dairy, and collecting the net profits from that resale to split between Prestige and Agri-Dairy.

71. The United States awarded the June 4, 2009 and December 3, 2009 contracts for the sale of the NDM to Henley and Prestige because of the acts of defendants.

72. By reason of defendants' conspiracy to make, use, or cause to be made or used, false statements and present false claims, the United States has been damaged in a substantial amount to be determined at trial.

SIXTH CLAIM

Unjust Enrichment

73. The United States incorporates by reference paragraphs 1 through 44 as if fully set forth herein.

74. Defendants have been unjustly enriched through their distribution and resale of substantially subsidized goods that the USDA only allowed access to on the express promise that those goods would be converted and would not be resold on the market in their purchased form.

75. Defendants made false and fraudulent statements in order to acquire discounted NDM from the USDA and each made substantial profits from the misappropriation of that NDM by its resale at market prices. Therefore, Defendants were unjustly enriched because they garnered profits on goods that they would not have been able to acquire absent their fraud.

76. Accordingly, the circumstances of defendants' acquisition of the subsidized NDM in June and December, 2009, are such that, in equity and good conscience, defendants should have to pay the higher value of either the fair market value at the time of sale or the actual amount of profits they made from their unlawful sale of the NDM.

SEVENTH CLAIM

Conversion

77. The United States incorporates by reference paragraphs 1 through 44 as if fully set forth herein.

78. The United States seeks relief against defendants to recover USDA property wrongfully taken by defendants based upon false or fraudulent statements.

79. As set forth above, defendants knowingly or with deliberate ignorance or reckless disregard for the truth, made, used, and caused to be made and used, false records and statements material to false or fraudulent claims in connection with defendants' receipt of NDM from the USDA for conversion into casein.

80. In making the false or fraudulent claims, defendants knowingly or with deliberate ignorance or reckless disregard for the truth, obtained government property under false pretenses

such that defendants' conversion of Government property interfered with the intended use of the NDM for casein production.

81. By reason of defendants' conversion of Government property, the United States has been damaged in a substantial amount to be determined at trial.

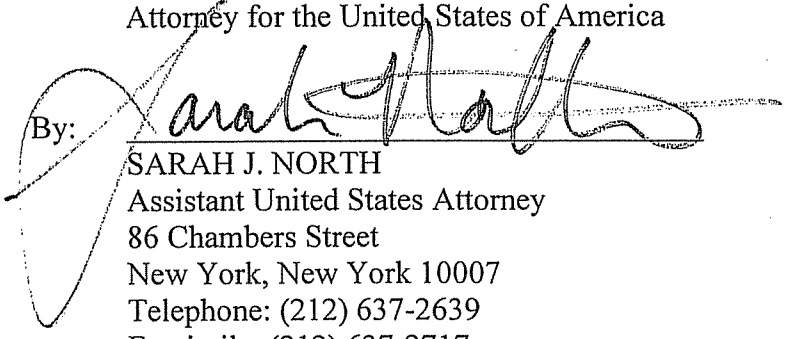
WHEREFORE, plaintiff, the United States, request that judgment be entered in its favor against defendants as follows:

- a) On Counts One, Two, and Three as to all defendants (False Claims Act), judgment for the Government, treble the Government's damages, and civil penalties of \$11,000, or the maximum amount allowed by law, for each violation;
- b) On Count Four as to defendants Hugh Henley, Prestige Proteins, and Prestige Milk Proteins, LLC (Common Law Fraud), judgment for the Government and compensatory damages making the Government whole for past and future losses;
- c) On Count Five as to all defendants (Civil Conspiracy to Defraud), judgment for the Government and compensatory damages making the Government whole for past and future losses;
- d) On Count Six as to all defendants (Unjust Enrichment), judgment for the Government and compensatory damages making the Government whole for past and future losses;
- e) On Count Seven as to all defendants (Conversion), judgment for the Government and compensatory damages making the Government whole for past and future losses;
- f) For an award of costs pursuant to 31 U.S.C. § 3729(a); and
- g) For an award of any such further relief as is proper.

Dated: New York, New York
March 24, 2014

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By:



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