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18 **UNITED STATES DISTRICT COURT**  
19 **NORTHERN DISTRICT OF CALIFORNIA**  
20 **OAKLAND DIVISION**

21 MATTHEW EDWARDS, DANELL )  
22 TOMASELLA, JEFFREY ROBB, BOYS AND )  
23 GIRLS CLUB OF THE EAST VALLEY, )  
24 JONATHAN RIZZO, SCOTT COOK, KORY )  
25 PENTLAND, MARY ANDERSON, JULIE )  
26 EWALD, SCOTT WEBER, JENNIFER )  
27 CLITES, JOHN MURRAY, PAUL THACKER, )  
28 LORI CURTIS, SHEILA JACKSON, JOHN )  
PEYCHAL, KATHLEEN DAVIS, and )  
BRANDON STEELE, individually and on behalf )  
of all others similarly situated, )  
Plaintiffs, )

Case No. 3:11-CV-04766-JSW  
[consolidated with 11-CV-04791-JSW and  
11-CV-05253-JSW]  
CLASS ACTION  
**THIRD AMENDED CONSOLIDATED  
CLASS ACTION COMPLAINT**  
DEMAND FOR JURY TRIAL

v. )  
NATIONAL MILK PRODUCERS )  
FEDERATION, aka COOPERATIVES )  
WORKING TOGETHER; DAIRY FARMERS )  
OF AMERICA, INC.; LAND O’LAKES, INC.; )  
DAIRYLEA COOPERATIVE INC.; and AGRI- )  
MARK, INC., )  
Defendants. )

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1 Indirect purchaser plaintiffs Matthew Edwards, Danell Tomasella, Jeffrey Robb, Boys and  
 2 Girls Club of the East Valley, Jonathan Rizzo, Scott Cook, Kory Pentland, Mary Anderson, Julie  
 3 Ewald, Scott Weber, Jennifer Clites, John Murray, Paul Thacker, Lori Curtis, Sheila Jackson, John  
 4 Peychal, Kathleen Davis, and Brandon Steele (“Plaintiffs”)<sup>1</sup> bring this action on behalf of  
 5 themselves and all others similarly situated in the United States against Defendants National Milk  
 6 Producers Federation, aka Cooperatives Working Together; Dairy Farmers Of America, Inc.; Land  
 7 O’Lakes, Inc.; Dairylea Cooperative Inc.; and Agri-Mark, Inc. (collectively “Defendants”).  
 8 Plaintiffs, by and through their attorneys, based on their individual experiences, the investigation of  
 9 counsel and experts, and information and belief allege as follows:

### 10 I. NATURE OF THE CASE

11 1. Cooperatives Working Together (“CWT”) and its members have engaged in a  
 12 continuing contract, combination and conspiracy over the past eight years to limit the production of  
 13 raw farm milk through premature “herd retirements.” These herd retirements required participating  
 14 dairy farmers to destroy all of the dairy cows in all of their herds and, beginning on April 1, 2009,  
 15 agree not to reenter the dairy farming business for at least one year. The principle purpose and  
 16 effect of this contract, combination and conspiracy has been to reduce the supply of milk, eliminate  
 17 competition, and significantly reduce the number of dairy farmers competing in the market in order  
 18 to increase the price of raw farm milk. This then artificially inflated, and continues to artificially  
 19 inflate, the price of milk<sup>2</sup> and other fresh milk products, including cream, half & half, yogurt,  
 20 cottage cheese, cream cheese, and sour cream, purchased by consumers.

21 2. Founded in July of 2003, CWT is “a voluntary, producer-funded national program  
 22 developed by the National Milk Producers Federation (NMPF), to strengthen and stabilize milk  
 23  
 24

25 <sup>1</sup> This Consolidated Amended Class Action Complaint amends and combines (1) the Class Action  
 26 Complaint entitled *Boys and Girls Club et al. v. National Milk Producers Federation et al.*, Case  
 27 No. 11-CV-05253-JSW; (2) the Class Action Complaint entitled *Robb et al. v. National Milk*  
 28 *Producers Federation et al.*, Case No. 11-CV-04791-JSW; and (3) the First Amended Class Action  
 Complaint entitled *Edwards et al. v. National Milk Producers Federation et al.*, Case No. 11-CV-  
 04766-JSW.

<sup>2</sup> This refers to fluid as opposed to dry milk.

1 prices.” This was and continues to be CWT’s sole stated reason for existence. CWT involves  
2 “dairy producers in every state,” who are producing “almost 70% of the nation’s milk.”<sup>3</sup>

3 3. CWT’s individual producer and cooperative members finance CWT’s programs by  
4 paying assessments based on their productivity. As of July 07, 2010, as CWT was conducting its  
5 tenth and final herd retirement, members paid assessments of \$0.10 per hundredweight (cwt) of  
6 raw farm milk produced.<sup>4</sup>

7 4. Each member of CWT, including each defendant other than NMPF/CWT, agreed to  
8 and did in fact pay these assessments so that CWT in turn could pay some members of CWT to  
9 prematurely retire (slaughter) their entire herd, and agree to refrain from milk production for a  
10 certain time – the practical effect of which is permanent retirement as demonstrated by CWT’s  
11 surveys – in order to eliminate competition, significantly reduce the number of dairy farmers  
12 competing in the market, and “strengthen and stabilize” raw farm milk prices for all members of  
13 CWT. As a result, competition was eliminated, the supply of raw milk was restrained, and the  
14 over-order premium prices<sup>5</sup> increased to artificial, supracompetitive levels.

15 5. Indeed, CWT’s primary activity since inception has been to increase the profitability  
16 of dairy producers through coordinated herd retirements. Through this program, dairy producers  
17 can submit bids for the price at which they will sell their herd to slaughter prematurely. CWT  
18 provides a formula through which farmers can calculate their bids essentially based on subtracting  
19 the price the farmer can recoup by selling them at auction as slaughter cows from their market  
20 value as producing dairy cows, with CWT paying the difference.<sup>6</sup>

21 6. In order to participate in CWT’s herd retirement program, dairy producers were  
22 required to complete and execute the below “Dairy Herd Retirement Program Bid Form,” which, if  
23 accepted by CWT, became a contract that was binding on the dairy producer:  
24  
25

26 <sup>3</sup> [http://www.cwt.coop/about/about\\_what.html](http://www.cwt.coop/about/about_what.html).

27 <sup>4</sup> [http://www.agweb.com/assets/import/files/Herd-retirement-bids-accepted-070710\(1\).pdf](http://www.agweb.com/assets/import/files/Herd-retirement-bids-accepted-070710(1).pdf).

28 <sup>5</sup> “Over-order premium prices” or “over-order prices” refer to prices over and above the minimum prices set by applicable Federal Milk Marketing Orders.

<sup>6</sup> <http://www.cwt.coop/calculator/index.html>.

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Mail to: CWT Herd Retirement Program  
P.O. Box 41049  
Bethesda, MD 20824-1049

**2010 DAIRY HERD RETIREMENT PROGRAM BID FORM**

The undersigned milk producer ("Producer") hereby submits this "Bid for Commitment to Sell Dairy Herd" ("Bid") as part of the Cooperatives Working Together Program of the National Milk Producers Federation ("CWT").

- Bid Offer.** Producer hereby offers to sell Producer's entire dairy herd, including all milking cows and dry cows, in accordance with the terms and conditions set forth in this Bid. To be considered by the CWT, a completed and signed copy of this Bid must be mailed to CWT with a postmark on or before June 25, 2010. Producer may not revoke this Bid for a period of 120 days after June 25, 2010 (the "Offer Period").
- Producer Information.** (Please print or type.)

**NOTE:** Consistency of milk production throughout the Production Period is a factor in bid selection. A milk company printout verifying the Producer's monthly milk marketings during the "Production Period" for each farm in which Producer holds an interest must be submitted with this bid form.

Producer Name: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Dairy Name: \_\_\_\_\_ (if applicable) Cell Phone: \_\_\_\_\_  
 Address: \_\_\_\_\_ E-mail: \_\_\_\_\_

Name of Producer's Cooperative Marketing Organization or Milk Company: \_\_\_\_\_  
 Number of Cows as of May 1, 2010: Milking Cows \_\_\_\_\_ Dry Cows \_\_\_\_\_ Total Cows \_\_\_\_\_  
 Total Pounds of Milk Marketed (April 1, 2009 - March 31, 2010, (the "Production Period")): \_\_\_\_\_  
 Bid Price (per 100 pounds of Milk): \$ \_\_\_\_\_ /cwt - not to exceed \$3.75/cwt.

**NOTE:** Subject to the consistency of the bidder's milk production, bids will be accepted starting with the lowest bid received. Based on the program's goals for eliminating milk production and inherent budgetary considerations, there is no assurance that bids submitted at the maximum level of \$3.75/cwt. will be accepted.

- Producer Representations and Warranties.** Producer hereby represents and warrants to CWT that:
  - Producer has the full power and authority to execute and deliver this Bid and to consummate the transactions contemplated hereby, including the sale of Producer's entire dairy herd which means all of the producer's milking and dry cows and all of Producer's heifers that calve prior to CWT's farm audit (which cows and heifers are herein referred to collectively as "The Cows").
  - The execution and delivery of this Bid by Producer does not and will not violate the articles of incorporation, bylaws or other organizational documents applicable to Producer or any contract or other agreement to which Producer is a party.
  - Producer has not sold, leased, licensed, lent, exchanged or otherwise transferred any cows, other than for slaughter, after May 1, 2010.
  - Producer holds legal and beneficial title to The Cows.
  - The Bid includes all of The Cows in which Producer holds an interest at any location.
  - The Cows constitute a commercial dairy herd and are not cows that have been segregated from other cows due to lower production or illness (including, but not limited to cows in herd affected by brucellosis or tuberculosis) and including from cows in which Producer has an interest and which have been located to another farm.
  - Producer is a member of a farmers' cooperative association, a participant in a milk-marketing organization or an independent producer, in each case that has been a CWT member effective January 1, 2009.
- Acceptance.** CWT may accept this Bid at any time during the Offer Period by having an officer execute this Bid Form in the space provided below.
- Sale of Cows.** If this Bid is accepted by CWT, Producer shall be obligated to sell The Cows for slaughter. Producer shall be entitled to retain all proceeds from such sale of The Cows. Producer shall be responsible for marketing The Cows and negotiating the terms of such sale with a slaughterhouse. CWT shall have no responsibility for or liability under the agreement between Producer and the slaughterhouse. Producer shall brand or tag The Cows when and as directed by CWT and shall permit CWT or its agents to witness such branding or tagging. Producer shall maintain The Cows as prescribed in "Top 10 Considerations for Culling and Transporting Dairy Animals to a Packing or Processing Facility," available at [www.cwt.coop](http://www.cwt.coop), and milk all cows prior to their being transported. If any cow is non-ambulatory, too weak to transport, or rejected by the slaughterhouse for any reason, Producer shall dispose of such cow for slaughter by some other lawful means. This Bid is not conditioned on Producer receiving any minimum price or other terms for the sale of The Cows. Producer shall be required to sell The Cows not later than fifteen (15) days after completion of CWT's farm audit; however, CWT will grant a reasonable extension for dry cows that have been treated and are subject to a market withholding period. Promptly after sale of The Cows for slaughter, Producer shall provide CWT with documentation verifying such sale.
- Bid Payment.** After Producer sells all of The Cows and subject to the acceptable results of its audit, CWT shall pay Producer an amount (the "Bid Payment") equal to the Bid Price specified above multiplied by Producer's Verified Total Milk Volume for the period from April 1, 2009 through March 31, 2010, in two installments - 90% upon verification of sale of the cows; and 10% plus interest twelve months after completion of the audit provided that neither the Producer nor the dairy facility, whether owned or leased, have been involved in the production and marketing of milk during that twelve month period. Producer shall be responsible for all federal, state and local income and other taxes payable with respect to the Bid Payment and any amounts received by Producer in connection with the sale of The Cows.
- Information and Audit Rights.** Producer shall maintain complete and accurate records, including records with respect to the sale of The Cows. CWT and its agents and representatives shall have the right to visit Producer's properties to inspect The Cows and to review Producer's milk records in order to verify (a) the information provided by Producer and (b) the sale of all of The Cows to a slaughterhouse and to verify that neither Producer nor the dairy facility have been involved in the production and marketing of milk. Such inspections may include pregnancy testing of dry cows. Producer agrees to provide CWT with all information and documentation that CWT reasonably requests in connection with any such verification specified in this provision.
- Indemnification & Liquidated Damages.** Producer agrees to indemnify, defend and hold harmless CWT from any and all claims, liabilities, losses or damages asserted against or incurred by CWT arising out of or relating to (a) any misrepresentation by Producer under this Bid or (b) the sale of The Cows. If CWT accepts this Bid and Producer fails to perform, Producer shall pay CWT liquidated damages of \$1,000 or 3 cent/cwt based upon total pounds marketed during the "Production Period", whichever is greater, and will not be eligible to bid in future herd retirements.
- Governing Law; Dispute Resolution.** This Bid shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia, without regard to its conflict of law provisions. Any dispute, claim, demand or controversy arising out of or relating to this Bid or any action to enforce any term, provision or condition hereof shall be finally settled by binding arbitration administered in accordance with the terms set forth in the Bylaws of CWT.
- Certification.** Producer hereby certifies that the information provided by Producer pursuant to this Bid is true, complete and correct. Producer hereby certifies that Producer understands and accepts the payment provisions in Section 7. Payment above. CWT may, at its option, terminate this Bid at any time after its acceptance hereof, if CWT finds that Producer made any false statement or misrepresentation hereunder or changed the terms of this Bid or otherwise is in violation of the terms of this Bid.

Producer's signature: \_\_\_\_\_ Date: \_\_\_\_\_  
**NOTE:** An unsigned bid form will not be considered for selection.

**TO BE COMPLETED BY THE CWT:**  
 Accepted and agreed to by COOPERATIVES WORKING TOGETHER NATIONAL MILK PRODUCERS FEDERATION

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 James E. Tillison, Chief Operating Officer

7. Pursuant to the terms of the Dairy Herd Retirement Program Bid Form, participating dairy farmers must be members of CWT (either individually or as a member of a cooperative that is in turn a member of CWT) and agreed to sell for slaughter their "entire dairy herd which means all of the producer's milking and dry cows and all of Producer's heifers that calve prior to CWT's farm audit" even those too young to produce milk. To further satisfy the participants in the

1 conspiracy that the competing producer fully exited the business, the “entire herd” explicitly  
2 included “all of The Cows in which Producer holds an interest at any location.”

3 8. The payment to a retiring milk producer was calculated without regard to the  
4 number of cows slaughtered, but was focused solely on the amount of milk produced in the  
5 previous year – CWT calculated payments based on the amount of milk the retiring producer  
6 would not produce in the coming year. Indeed, CWT expressly denounced any responsibility or  
7 involvement whatsoever in the “marketing” of the cows for slaughter, and made clear that the price  
8 that the milk farmer received for slaughter of its cows had nothing to do with the payment from  
9 CWT: “[p]roducer shall be responsible for marketing The Cows and negotiating the terms of such  
10 sale with a slaughterhouse” and is “entitled to retain all proceeds from such sale.” Eligibility was  
11 expressly “not conditioned on Producer receiving any minimum price or other terms for the sale of  
12 The Cows.” In furtherance of “*the program’s goals for eliminating milk production*” (bold and  
13 italics in original), and to ensure that the effect of the program was not simply to weed out cows  
14 that would soon be sent to slaughter absent the program, eligibility was limited to “a commercial  
15 dairy herd and ... not cows that have been segregated ... due to lower production.”

16 9. CWT then reviewed and tentatively accepted bids subject to farm visits by CWT  
17 auditors who supervised the tagging of the herds for removal. The producers were then required to  
18 ship their cows and heifers for slaughter within 15 days after completion of the audit. CWT made  
19 payment within 30 days of receiving verification that all cows had gone to slaughter.<sup>7</sup>

20 10. As hereinafter alleged, beginning on or about April 1, 2009, persons participating in  
21 CWT’s herd retirement program were not only required to tender all of their dairy animals for  
22 slaughter but they were also required to withdraw entirely from dairy farming for at least one year.  
23 Thus, beginning on or about April 1, 2009 the terms of the Dairy Herd Retirement Program Bid  
24 Form that participating farmers were required to execute provided that payment by CWT for “herd  
25 retirements” was to be made by CWT “in two installments – 90% upon verification of sale of the  
26 cows and 10% plus interest twelve months after completion of the [CWT] audit provided that  
27 neither the Producer nor the dairy facility, whether owned or leased, have been involved in the

28 <sup>7</sup> [http://www.cwt.coop/action/action\\_herd\\_faqs.html#c](http://www.cwt.coop/action/action_herd_faqs.html#c).

1 production and marketing of milk during that twelve month period.” CWT made payment of the  
2 initial 90% due to the farmer within 30 days of receiving verification that all cows had gone to  
3 slaughter.<sup>8</sup>

4 11. The amount expended to fund the CWT Herd Retirement Program was enormous.  
5 In 2009, for example, CWT membership assessments generated \$219 million in revenues for CWT,  
6 which spent \$217 million on herd reductions.<sup>9</sup> Nearly the entire revenue of CWT was expended on  
7 “retiring herds” – that is, paying dairy farmers to cease competing – and thereby substantially  
8 constraining output, reducing the supply of raw milk, and eliminating dairy farmers from the  
9 market.

10 12. The herd retirement program can in no way be construed as pro-competitive. Had  
11 CWT not instigated the “herd retirement program,” individual dairy farmers would not have been  
12 inclined to prematurely retire their herds and effectively withdraw permanently from the  
13 production and sale of raw farm milk. The ultimate result of the CWT Program was to restrain the  
14 growth in the number of dairy herds to levels below the number of herds had the Program not been  
15 implemented.

16 13. The purpose and effect of the Defendants’ herd retirement program were to reduce  
17 the supply of raw farm milk in order to increase its price, which in turn increased the price paid by  
18 consumers for milk and other fresh milk products. Specifically, Defendants intended to and did in  
19 fact effectuate pre-production restraints on the output of milk, permanently eliminate competition  
20 in the supply of raw farm milk, significantly reduce the number of producers competing in the  
21 market for the production and sale of raw milk, reduce the supply of raw farm milk and thereby  
22 increase the over-order price of raw milk and milk products and artificially inflate the price paid by  
23 consumers.

24 14. By all accounts, the herd retirement program was a huge success for CWT and its  
25 members. CWT financed ten rounds of herd retirements from 2003 to 2010, during which CWT  
26 was responsible for removing over 500,000 cows from production, reducing the nation’s milk  
27

28 <sup>8</sup> [http://www.cwt.coop/action/action\\_herd\\_faqs.html#c](http://www.cwt.coop/action/action_herd_faqs.html#c).

<sup>9</sup> <http://www.cwt.coop/sites/default/files/pdf/CWT-Website-Financial-Report-2009.pdf>.



1 supply by approximately 10 billion pounds. According to studies commissioned by CWT from Dr.  
2 Scott Brown at the University of Missouri, the Herd Retirement Program resulted in a raw farm  
3 milk price increase of \$0.85/cwt by 2007 and \$1.75/cwt by 2010 – more than doubling the increase  
4 in the price of raw farm milk in the last three years of the program. By the end of the program in  
5 2010, it was responsible for a cumulative increase in milk price revenue of \$9.55 billion. Further,  
6 Dr. Brown’s studies indicate that “each herd retirement round has effects that extend forward years  
7 into the future,”<sup>10</sup> so that dairy farmers are still significantly profiting from previous herd  
8 retirements.<sup>11</sup>

9 15. By manipulating the supply of raw farm milk through herd retirement, price  
10 competition has been suppressed and prices have been supported at artificially high levels  
11 throughout the United States. As a result, indirect purchasers of milk and other fresh milk products  
12 have paid supracompetitive prices.

13 16. Accordingly, on behalf of themselves and all others similarly situated, Plaintiffs  
14 bring this suit for violation of state antitrust statutes and the common law of unjust enrichment.

## 15 II. JURISDICTION AND VENUE

16 17. This Court has jurisdiction over the instant matter pursuant 28 U.S.C. § 1332(d) and  
17 the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1711, *et seq.*, which vests original  
18 jurisdiction in the district courts of the United States for any multi-state class action where the  
19 aggregate amount in controversy exceeds \$5 million and where the citizenship of any member of  
20 the class of plaintiffs is different from that of any defendant. The \$5 million amount-in-  
21 controversy and diverse-citizenship requirements of CAFA are satisfied in this case.

22 18. Venue is appropriate in this district under 28 U.S.C. § 1391(b) and (c), because  
23 during the Class Period many of the Defendants transacted business, were found, or had agents in  
24

25 <sup>10</sup> [http://web.archive.org/web/20080301233800/http://www.cwt.coop/impact/impact\\_index.html](http://web.archive.org/web/20080301233800/http://www.cwt.coop/impact/impact_index.html).

26 <sup>11</sup> Relatedly, CWT also instituted a Reduced Production Marketing Program by which “dairy  
27 producers bid to be compensated for reducing their milk production.” The program was  
28 discontinued in September of 2004. CWT also operates an Export Assistance Program, which  
subsidizes exportation of dairy products to remove them from the U.S. market. Since the  
termination of its Herd Retirement Program in 2010, CWT has focused on the Export Assistance  
Program to reduce supply, drive up prices, and increase producer revenues.

1 this district and because a substantial portion of the affected interstate trade and commerce  
2 described below has been carried out in this district.

3 19. Intradistrict Assignment: Assignment to the San Francisco or Oakland division of  
4 this Court is proper because a substantial portion of the events giving rise to the claims occurred  
5 therein.

6 20. This Court has personal jurisdiction over each Defendant because, inter alia, each  
7 Defendant: (a) transacted business throughout the United States, including in this district;  
8 (b) participated in the sale and distribution of milk throughout the United States, including in this  
9 district; (c) had substantial contacts with the United States, including in this district; and/or (d) was  
10 engaged in an illegal scheme and supply-reduction conspiracy that was directed at and had the  
11 intended effect of causing injury to persons residing in, located in, or doing business throughout the  
12 United States, including in this district.

13 21. Indeed, more dairy cows are found on farms in California than in any other state. In  
14 2006, for example, 19.5% of milk cows were found on farms in California – more even than in  
15 Wisconsin.<sup>12</sup> And, in 2009, California produced more farm milk than any other state.<sup>13</sup>

16 22. Moreover, California produces more fresh milk products than other states. In 2008,  
17 California was the top producer of yogurt, and California along with New York were the top two  
18 producers of cottage cheese and sour cream.<sup>14</sup> Processors in California passed on the  
19 supracompetitive raw farm milk prices to retailers who in turn passed them on to consumers.

20 23. Further, more retail milk was sold in California during the Class Period than in any  
21 other state. For example, in January of 2006, 64,393,000 gallons of milk were sold in California,<sup>15</sup>  
22 which, using an 8.6 conversion to pounds factor, amounts to 553,780,000 pounds of milk, which is  
23 12% of the 4,754,000,000 pounds of milk sold during that same month period in the United  
24 States.<sup>16</sup> Further jurisdictional contacts are alleged below.

25  
26 <sup>12</sup> [http://future.aae.wisc.edu/data/annual\\_values/by\\_area/2501?tab=production](http://future.aae.wisc.edu/data/annual_values/by_area/2501?tab=production).

27 <sup>13</sup> [http://future.aae.wisc.edu/data/annual\\_values/by\\_area/99?tab=production](http://future.aae.wisc.edu/data/annual_values/by_area/99?tab=production).

28 <sup>14</sup> <http://future.aae.wisc.edu/tab/production.html#68>.

<sup>15</sup> [http://future.aae.wisc.edu/data/monthly\\_values/by\\_area/2120?tab=sales](http://future.aae.wisc.edu/data/monthly_values/by_area/2120?tab=sales).

<sup>16</sup> [http://future.aae.wisc.edu/data/monthly\\_values/by\\_area/2043?area=US](http://future.aae.wisc.edu/data/monthly_values/by_area/2043?area=US).

**III. THE PARTIES**

**A. Plaintiffs**

24. Plaintiff Matthew Edwards is a resident of San Francisco, California. Plaintiff purchased milk and other fresh milk products during the Class Period and was injured as a result of Defendants' illegal conduct.

25. Plaintiff Danell Tomasella is a resident of Plymouth, Massachusetts. Plaintiff purchased milk and other fresh milk products during the Class Period and was injured as a result of Defendants' illegal conduct.

26. Plaintiff Jeffrey Robb is a resident of Waukesha, Wisconsin. Plaintiff purchased milk and other fresh milk products during the Class Period and was injured as a result of Defendants' illegal conduct.

27. Plaintiff the Boys and Girls Club of the East Valley is a nonprofit located in Tempe, Arizona. It owns and operates the Mesa Arts Academy, which is a charter school that operates as a division of the Boys and Girls Club. The Boys and Girls Club purchased milk that it provided to its students during the Class Period and was injured as a result of Defendants' illegal conduct.

28. Plaintiff Jonathan Rizzo is a resident of Chandler, Arizona. Plaintiff purchased milk and other fresh milk products during the Class Period and was injured as a result.

29. Plaintiff Scott Cook is a resident of Junction City, Kansas. Plaintiff purchased milk and other fresh milk products during the Class Period and was injured as a result of Defendants' illegal conduct.

30. Plaintiff Kory Pentland is a resident of Lowell, Michigan. Plaintiff purchased milk and other fresh milk products during the Class Period and was injured as a result of Defendants' illegal conduct.

31. Plaintiff Mary Anderson is a resident of Omaha, Nebraska. Plaintiff purchased milk and other fresh milk products during the Class Period and was injured as a result of Defendants' illegal conduct.

1           32.       Plaintiff Julie Ewald is a resident of Las Vegas, Nevada. Plaintiff purchased milk  
2 and other fresh milk products during the Class Period and was injured as a result of Defendants'  
3 illegal conduct.

4           33.       Plaintiff Scott Weber is a resident of Bend, Oregon. Plaintiff purchased milk and  
5 other fresh milk products during the Class Period and was injured as a result.

6           34.       Plaintiff Jennifer Clites is a resident of Brookings, South Dakota. Plaintiff  
7 purchased milk and other fresh milk products during the Class Period and was injured as a result of  
8 Defendants' illegal conduct.

9           35.       Plaintiff John Murray is a resident of Burlington, Vermont. Plaintiff purchased milk  
10 and other fresh milk products during the Class Period and was injured as a result of Defendants'  
11 illegal conduct.

12          36.       Plaintiff Paul Thacker is a resident of Washington, D.C. Plaintiff purchased milk  
13 and other fresh milk products during the Class Period and was injured as a result of Defendants'  
14 illegal conduct.

15          37.       Plaintiff Sheila Jackson is a resident of Bradford, New Hampshire. Plaintiff  
16 purchased milk and other fresh milk products during the Class Period and was injured as a result of  
17 Defendants' illegal conduct.

18          38.       Plaintiff Lori Curtis is a resident of St. Louis, Missouri. Plaintiff purchased milk  
19 and other fresh milk products during the Class Period and was injured as a result of Defendants'  
20 illegal conduct.

21          39.       Plaintiff John Peychal is a resident of Sevierville, Tennessee. Plaintiff purchased  
22 milk and other fresh milk products during the Class Period and was injured as a result of  
23 Defendants' illegal conduct.

24          40.       Plaintiff Kathleen Davis is a resident of Andersonville, Tennessee. Plaintiff  
25 purchased milk and other fresh milk products during the Class Period and was injured as a result of  
26 Defendants' illegal conduct.

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1           41.       Plaintiff Brandon Steele is a resident of Beckley, West Virginia. Plaintiff purchased  
2 milk and other fresh milk products during the Class Period and was injured as a result of  
3 Defendants' illegal conduct.

4       **B.       Defendants**

5           42.       Defendant National Milk Producers Federation ("NMPF") is a trade association that  
6 was established in 1916 and is based in Arlington, Virginia. The members of NMPF's 31  
7 cooperatives, over 40,000 dairy producers, make the majority of the nation's milk. NMPF  
8 "promote[s] the economic well-being of dairy producers and their cooperatives through  
9 coordinated industry efforts."<sup>17</sup> NMPF manages Cooperatives Working Together, the primary  
10 purpose of which was to effectuate pre-production output restraints with respect to raw milk,  
11 reducing supply and eliminating competition, and thereby strengthening and stabilizing raw farm  
12 milk prices through nationally orchestrated herd retirements. According to NMPF, the "dairy  
13 farmer cooperative associations of the National Milk Producers Federation (NMPF) represent two-  
14 thirds of the nation's 60,000 commercial dairy farmers, including a large share of California milk  
15 producers."

16           43.       Defendant Cooperatives Working Together ("CWT") "is a voluntary, producer-  
17 funded national program developed by NMPF, to strengthen and stabilize milk prices." While it is  
18 a separately funded program, CWT is organized within the existing operating structure of NMPF.  
19 Dairy farmers in every state, producing almost 70% of the nation's milk, participate in CWT.  
20 These producers are either members of the 35 cooperative members of CWT, or one of over 130  
21 independent dairy farmers who are members of CWT. The CWT Committee establishes policies  
22 and oversees CWT's programs and activities. The CWT Committee consists of the NMPF Board  
23 of Directors, representatives from participating cooperatives that are not members of NMPF, and  
24 representatives for independent producer members of CWT.<sup>18</sup> CWT's website indicates that dairy  
25 farmers in every state invest in CWT. A major member of CWT is DFA, which has 332 member  
26 dairies in California, Nevada and Arizona.

27 \_\_\_\_\_  
<sup>17</sup> <http://www.nmpf.org/>.

28 <sup>18</sup> [http://www.cwt.coop/about/about\\_what.html](http://www.cwt.coop/about/about_what.html); [http://www.cwt.coop/cwt\\_faqs.html](http://www.cwt.coop/cwt_faqs.html).

1           44. Defendant Dairy Farmers of America, Inc. (“DFA”) has its headquarters and  
2 principal place of business in Kansas City, Missouri. It is the largest dairy farmer cooperative in  
3 the country and is a vertically integrated cooperative that not only engages in the production of raw  
4 milk, but also hauls, processes, bottles, and distributes raw milk. DFA has nearly 16,000 members  
5 in 48 states responsible for over 1.8 million cows.<sup>19</sup> In 2007, DFA was the 29th largest private  
6 company in the United States with \$11.1 billion in revenue.<sup>20</sup> DFA’s Chairman of the Board,  
7 Randy Mooney, is also the Chairman of NMPF. Twelve of DFA’s executives are on NMPF’s  
8 Board of Directors, which also places them on the CWT Committee. DFA is and has been a  
9 contributing member of CWT. As such it has agreed to and in fact paid assessments of \$0.10 per  
10 hundredweight (cwt) of milk produced to CWT in order to finance pre-production output restraints,  
11 reduce supply, eliminate competition and thereby illegally strengthen and stabilize milk prices  
12 through nationally orchestrated herd retirements. DFA has 332 member dairies in California,  
13 Nevada and Arizona.

14           45. Defendant Land O’Lakes, Inc. is the second largest cooperative in the nation with  
15 3,200 producer members and 1,000 member cooperatives comprised of over 300,000 producers.  
16 Located in Arden Hills, Minnesota, Land O’Lakes handles 12 billion pounds of milk annually and  
17 does business in all 50 states.<sup>21</sup> Land O’Lakes is a vertically integrated cooperative that not only  
18 engages in the production of raw milk, but also hauls, processes, bottles, and distributes raw milk.  
19 Land O’Lakes is and has been a contributing member of CWT. As such it has agreed to and in fact  
20 paid assessments of \$0.10 per hundredweight (cwt) of milk produced to CWT in order to finance  
21 pre-production output restraints, reduce supply, eliminate competition and thereby illegally  
22 strengthen and stabilize milk prices through nationally orchestrated herd retirements. Land  
23 O’Lakes runs a processing plant in Tulare, California, which is “among the largest and most  
24 productive dairy plants in the nation ... process[ing] more than 10-million pounds of milk from  
25 229 local producer-members every day.”<sup>22</sup>

26 \_\_\_\_\_  
27 <sup>19</sup> <http://www.dfamilk.com/>.

<sup>20</sup> [http://money.cnn.com/galleries/2008/fortune/0805/gallery.private\\_companies.fortune/29.html](http://money.cnn.com/galleries/2008/fortune/0805/gallery.private_companies.fortune/29.html).

<sup>21</sup> <http://www.landolakesinc.com/company/default.aspx>.

<sup>22</sup> <http://www.villageprofile.com/california/tulare/05/topic.html>.

1           46. Defendant Dairylea Cooperative Inc. was founded in 1907 and is headquartered in  
2 Syracuse, New York. It is the fifth largest U.S. dairy cooperative with over 2,000 members and  
3 selling more than 6 billion pounds of milk annually.<sup>23</sup> Dairylea is and has been a contributing  
4 member of CWT. As such it has agreed to and in fact paid assessments of \$0.10 per  
5 hundredweight (cwt) of milk produced to CWT in order to finance pre-production output restraints,  
6 reduce supply, eliminate competition and thereby illegally strengthen and stabilize milk prices  
7 through nationally orchestrated herd retirements.

8           47. Defendant Agri-Mark, Inc. is located in Lawrence, Massachusetts, and markets  
9 more than 300 million gallons of milk each year for more than 1,300 producer members.<sup>24</sup> Agri-  
10 Mark is and has been a contributing member of CWT. As such it has agreed to and in fact paid  
11 assessments of \$0.10 per hundredweight (cwt) of milk produced to CWT in order to finance pre-  
12 production output restraints, reduce supply, eliminate competition and thereby illegally strengthen  
13 and stabilize milk prices through nationally orchestrated herd retirements.

14 **C. Unidentified Co-Conspirators**

15           48. Various other persons, firms, and corporations, not named as Defendants in this  
16 Complaint, have participated as co-conspirators with Defendants in the violations alleged herein,  
17 and aided, abetted and performed acts and made statements in furtherance of the conspiracy.

18           49. The true names and capacities, whether individual, corporate, associate, or  
19 representative is unknown to Plaintiffs at this time. Plaintiffs will amend this Complaint to allege  
20 the true names and capacities of additional co-conspirators as their identities become known  
21 through discovery.

22           50. At all relevant times, milk producers, milk trade groups, and others, referred to  
23 herein as “co-conspirators,” as well as other various persons, companies, and corporations, the  
24 identities of which are presently unknown, willingly conspired with Defendants in their unlawful  
25 restraint of trade as described herein.

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<sup>23</sup> <http://www.dairylea.com/>.

<sup>24</sup> <http://www.agrimark.net/public/ourcoop.php>.

1           51.       The acts alleged herein that were done by each of the co-conspirators were fully  
2 authorized by each of those co-conspirators, or ordered, or committed by duly authorized officers,  
3 managers, agents, employees or representatives of each co-conspirator while actively engaged in  
4 the management, direction, or control of its affairs.

5   **IV.      FACTUAL ALLEGATIONS**

6   **A.      Defendants Combined to Effectuate Pre-production Output Restraints, Artificially**  
7           **Reduce Supply, Eliminate Competition, Significantly Reduce the Number of Dairy**  
8           **Producers Competing in the Market and Thereby Reduce Milk Production and**  
9           **Increase Prices Through Premature Herd Retirement.**

10          52.       CWT used its website, newsletters, and Defendant members to actively recruit milk  
11 producers throughout the United States to fund the herd retirement program. Through press  
12 releases, which were contemporaneously posted to CWT’s website, and newsletters, which  
13 incorporated information from the press releases and were also contemporaneously posted to  
14 CWT’s website, NMPF and CWT communicated with their fellow cartel members. These  
15 communications allowed for the success of the scheme at issue. In fact, through 2008, CWT’s  
16 website stated: “It is vital that CWT members see their investment at work. Review our  
17 informative newsletters to learn more about CWT.”<sup>25</sup> The website also explained that members  
18 can “track CWT creation, implementation, and impact through past press releases.”<sup>26</sup> Members  
19 were able through the website and newsletters to proactively keep track of the impact that the CWT  
20 herd retirements were having on the price of milk.

21   **1.      The 2003 herd reduction reduces output.<sup>27</sup>**

22          53.       In a July 11, 2003, press release, the National Milk Producers Federation announced  
23 that the “dairy industry’s new voluntary, producer-funded program to strengthen farm milk prices  
24 will begin this summer, following action this week by the National Milk Producers Federation  
25 Board at their summer meeting in Washington, DC. ‘Now that we’ve reached the critical mass  
26 needed to move forward with this innovative program, Cooperatives Working Together, we are  
eager to finalize specific program details and implement the plan as quickly as possible,’ said Jerry

27 <sup>25</sup> [http://web.archive.org/web/20040218150134/http://cwt.coop/about/about\\_newsletters.html](http://web.archive.org/web/20040218150134/http://cwt.coop/about/about_newsletters.html).  
28 <sup>26</sup> [http://www.cwt.coop/about/about\\_news\\_releases.html](http://www.cwt.coop/about/about_news_releases.html).  
<sup>27</sup> [http://www.cwt.coop/about/about\\_news\\_releases2003.html](http://www.cwt.coop/about/about_news_releases2003.html).



1 Kozak, NMPF President and CEO. Participating producers will begin their investment by  
2 contributing the 5 cents per hundredweight assessment on their July milk. These contributions will  
3 be used to implement a multi-dimensional program to reduce milk supplies by 1.2 billion pounds  
4 over a 12-month period.” Members of CWT were required to financially contribute to the herd  
5 retirement program. Without this mandatory assessment from a substantial number of members,  
6 such as the Defendants, CWT and its members would not have been successful in effectuating  
7 preproduction restraints, artificially limiting supply, eliminating competition and thereby raising  
8 milk prices to supracompetitive levels.

9 54. On July 23, 2003, NMPF announced that CWT would begin accepting farmer bids  
10 for participation in the first herd retirement. These bids stipulate how much each producer would  
11 accept to sell every milking cow he owned or controlled, with the amount of payment being a  
12 function of the amount of milk that the farmer’s herd produced the previous year (and unrelated to  
13 the number of cows being sold to slaughter). Rather than assisting to market the farmers’ produce,  
14 CWT would be paying farmers not to produce anything at all. By September 16, 2003, “2,038 bids  
15 were submitted for the herd retirement program (under which a producer will be paid for selling  
16 his/her herd of milk cows)” and “approximately 33,000 cows will be culled due to the herd  
17 retirement program ... which will reduce the nation’s milk output by 580 million pounds.”  
18 According to CWT, the producer must agree to sell “all cows in which producer has an ownership  
19 interest, regardless of where the cows are located” even if the producer owns multiple dairies.<sup>28</sup> As  
20 discussed herein, as demonstrated by CWT’s survey the effect of the program was to eliminate  
21 smaller farmers from the dairy business, while increasing the profits of agribusiness giants.

22 55. In an October 2, 2003, press release, NMPF explained that “[i]n order to ensure the  
23 integrity of the herd retirement process, those farms whose bids have been tentatively accepted are  
24 now being contacted by CWT field auditors shortly before the auditors visit the farms. That  
25 process will continue until all the farms have been audited, and the herds have been tagged for  
26 removal. To date, nearly half the 300 farms have been audited, and are now being liquidated.” By  
27 October 23, 2003, those audits were complete. In that same press release, Jerry Kozak, NMPF

28 <sup>28</sup> [http://www.cwt.coop/action/action\\_herd\\_faqs.html](http://www.cwt.coop/action/action_herd_faqs.html).

1 President and CEO, stated: “We’ve moved very quickly to reduce milk supplies – which is what  
2 CWT is all about.”

3 56. The national scope of the herd retirements is evidenced in the following chart:<sup>29</sup>

4

5 **2003 CWT Herd Retirement**

6

|                | Region I     | Region II    | Region III    | Region IV     | Region V      | Total         |
|----------------|--------------|--------------|---------------|---------------|---------------|---------------|
| Total Bids     | 350          | 338          | 707           | 360           | 283           | 2038          |
| Accepted Bids  | 40           | 32           | 141           | 54            | 32            | 299           |
| Pounds of Milk | 54.6 Million | 59.1 Million | 111.6 Million | 146.6 Million | 237.3 Million | 609.2 million |
| Number of Cows | 2,848        | 3,342        | 6,463         | 8,190         | 11,881        | 32,724        |
| Average Bid    | \$3.86       | \$4.00       | \$3.94        | \$4.08        | \$4.20        | \$4.02        |

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2. **The 2004 reduction of output.**<sup>30</sup>

57. According to a January 20, 2004, press release, “After six months of operation, the dairy industry’s historic self-help program, Cooperatives Working Together, has already had a sizeable impact on dairy producer prices. According to new analysis released by the National Milk Producers Federation, CWT will ultimately return nearly 60 cents per hundredweight for America’s dairy farmers through this fall.”

58. The first round of herd retirements was so successful at effectuating preproduction output restraints, reducing supply, eliminating competition and thereby raising milk prices that on September 13, 2004, NMPF announced a second round of herd retirement: “Starting October 1<sup>st</sup>, 2004, CWT will begin accepting bids from dairy farmers willing to sell their entire milking herds

<sup>29</sup> Regions I, II, III, IV, and V were renamed Northeast, Southeast, Midwest, Southwest, and West. See <http://www.cwt.coop/sites/default/files/pdf/past-herd-retirements-110810.pdf>.

<sup>30</sup> [http://www.cwt.coop/about/about\\_news\\_releases2004.html](http://www.cwt.coop/about/about_news_releases2004.html).

1 to CWT. The bidding window will be open through October, 29<sup>th</sup>, after which CWT staff will  
 2 review the bids submitted. Producers who wish to bid must be paying the five cent per  
 3 hundredweight CWT membership assessment, either through their cooperative, or directly. CWT  
 4 also announced today that it has received a number of additional participation commitments  
 5 recently, bringing the total percentage of milk production contributing to the program to 70.1% of  
 6 the nation's milk supply."

7 59. By November 17, 2004, CWT accepted 378 bids from farmers seeking to retire their  
 8 milking herds, representing approximately 51,700 cows. "Those retirements will remove 931  
 9 million pounds of milk, or 0.55% of the nation's supply, helping to stabilize farm-level prices that  
 10 have been declining in recent months." As intended, this caused the over-order price of raw milk,  
 11 and fluid milk and other fresh milk products, to rise above competitive levels.

12 60. The across-the-country impact of this program is evidenced by the following chart:

13

14 **2004 CWT Herd Retirement**

15

|                | Region I     | Region II    | Region III    | Region IV     | Region V      | Total         |
|----------------|--------------|--------------|---------------|---------------|---------------|---------------|
| Total Bids     | 97           | 134          | 261           | 134           | 110           | 736           |
| Accepted Bids  | 53           | 39           | 150           | 72            | 49            | 363           |
| Pounds of Milk | 68.9 Million | 62.1 Million | 141.9 Million | 284.0 Million | 351.5 Million | 908.4 million |
| Number of Cows | 3,871        | 4,066        | 8,479         | 16,184        | 17,878        | 50,478        |
| Average Bid    | \$5.32       | \$4.76       | \$5.22        | \$5.47        | \$5.42        | \$5.24        |



1           **3.     The 2005 reduction in output.**<sup>31</sup>

2           61.     On March 9, 2005, Mr. Kozak stated, “With nearly two years history behind us, we  
3 can say without equivocation that CWT is having a positive impact on the lives of all dairy farmers  
4 in this country.”

5           62.     By July 2005, “[n]early three-quarters of the nation’s milk supply” was contributing  
6 to CWT. During that same time period, CWT determined that its funds would be “primarily  
7 devoted to the retirement program,” and on August 10, 2005, announced a third herd retirement  
8 round.

9           63.     CWT explained that the “first two programs reduced cow numbers by more than  
10 83,000, representing reduced milk production equivalent to 1.6 billion pounds. Since CWT began  
11 operations in the summer of 2003, dairy prices have been at or above historical averages,  
12 preserving millions of dollars in income for dairy farmers.” However, “[i]n recent months, cow  
13 numbers have climbed up, along with milk output per cow, and that combination doesn’t bode well  
14 for future milk prices.... The CWT management committee, in looking at all of the economic  
15 indicators that we track, has decided that we need to proceed now to keep production from  
16 swamping demand and bringing prices down to unacceptably low levels. CWT estimates that there  
17 will be approximately 70,000 cows in this third retirement program to reach its goal of reducing  
18 future milk output by 1.9 billion pounds.” Despite the market’s inclination to naturally correct the  
19 price of milk, Defendants continued their efforts to artificially force the over-order price of milk  
20 upward by restraining the supply through additional herd retirements.

21           64.     “Based on our feedback from those whose bids we have accepted previously, we  
22 know that most producers view the decision to sell their herds through CWT as a long-term  
23 commitment which results in them exiting the business permanently,’ said Walt Wosje, Chief  
24 Operating Officer of CWT.” According to a survey conducted by CWT, only 12% of those retiring  
25 their herds through the CWT program planned on engaging in dairy farming again. Indeed, as  
26 discussed below, in later, progressively larger herd retirement rounds, CWT sought to even further  
27

28           <sup>31</sup> [http://www.cwt.coop/about/about\\_news\\_releases2005.html](http://www.cwt.coop/about/about_news_releases2005.html).

1 reduce the percentage of dairy farmers reentering the market by adding the requirement that  
2 farmers retiring herds through the program not engage in any milk production for at least one year.

3 65. By September 2005, membership in CWT reached 74% of the nation's milk supply,  
4 with nearly 50 dairy cooperatives and more than 300 individual farmers. CWT reiterated that since  
5 it "started operations in July 2003, farm-level milk prices have been consistently above historic  
6 averages." In other words, CWT had been successful in artificially raising the over-order price of  
7 milk.

8 66. To obstruct the market's inclination to return to competitively priced milk,  
9 Defendants continued their herd retirements to intentionally restrain supply, eliminate competition,  
10 and thereby inflate over-order milk prices. On September 28, 2005, CWT announced "that it has  
11 tentatively accepted 448 bids from farmers to retire their milking herds. There will be  
12 approximately 66,000 cows removed, thereby eliminating 1.2 billion pounds of milk, or 0.7% of  
13 the nation's annual supply."

14 67. On December 5, 2005, Mr. Kozak explained that "[c]ow numbers and production  
15 per cow were both on the rise. Experience tells us that can be a formula for dramatic milk price  
16 drops. That's why we initiated this most recent herd retirement .... We are pleased with the size  
17 program we were able to execute. This is our biggest retirement to date."

18 **4. In 2006 CWT boasts of the price effects of its first three rounds of reductions.**<sup>32</sup>

19 68. On September 26, 2006, CWT announced that an "independent economic analysis  
20 of the impact of Cooperatives Working Together has found that the historic dairy self-help program  
21 has raised farmers' prices by at least 40 cents per hundredweight since it began operations in 2003.  
22 The analysis was performed by Dr. Scott Brown of the University of Missouri, a nationally known  
23 farm policy expert who is often called on by the U.S. Congress to assess agricultural economic  
24 issues. Brown examined the impact of CWT's three herd retirements, plus its ongoing export  
25 assistance program, while also taking into consideration other factors affecting the dairy supply in  
26 2003-2006, such as the relative shortage of Canadian dairy replacements. His analysis showed that  
27

28 <sup>32</sup> [http://www.cwt.coop/about/about\\_news\\_releases2006.html](http://www.cwt.coop/about/about_news_releases2006.html).

1 CWT alone was responsible for a minimum 40 cent average increase in prices from 2004-06, apart  
2 from the other factors affecting the market.”

3 69. Dr. Brown stated, “At the start of CWT, I was skeptical about the long-term effects  
4 that CWT would have on dairy farmers’ prices, but the evidence is clear that this program has  
5 raised the price that all farmers have received since it first began removing cows at the end of  
6 2003.” According to his evaluation, the “cumulative impact of CWT from the start of 2004  
7 through the first half of 2006 is \$1.97 billion in additional producer revenue,” as “the milk price  
8 impact has grown with each herd retirement program” and with the “normal attrition of cows in a  
9 herd [being] taken into consideration in determining the effect on milk production in the years  
10 following a herd removal.” Mr. Kozak concluded that even though CWT has “seen both rising and  
11 falling prices since 2003, there is no question that prices overall are better because of CWT.” As  
12 Dr. Brown’s study indicated, without the anticompetitive conspiracy orchestrated and funded by  
13 Defendants, the over-order price of raw milk, and fluid milk and other fresh milk products, would  
14 have been lower.

15 **5. The 2007 reduction in output.**<sup>33</sup>

16 70. On February 6, 2007, CWT announced a fourth herd retirement, because, according  
17 to Mr. Kozak, “[a]ll of the economic indicators and benchmarks that we monitor in order to guide  
18 CWT’s decisions show that now is the appropriate time for us to initiate this herd retirement  
19 program.” Yet again, just as the market was naturally correcting the price of milk, Defendants took  
20 anti-competitive measures and instituted another supply restraint through a fourth herd retirement.

21 71. On March 15, 2007, CWT announced that it was “tentatively accepting 343 bids  
22 from 39 states, representing 54,000 cows which produced 1.03 billion pounds of milk” in the  
23 previous year. CWT explained the logistics: “Beginning the week of March 19<sup>th</sup>, CWT auditors  
24 will begin visiting those farms to check their milk production records, inspect the herds, and tag  
25 each of the cows for slaughter.”

26 72. CWT further explained that this retirement “will remove more than one billion  
27 pounds of milk, or 0.6% of the nation’s dairy supply, in an effort to help strengthen and stabilize

28 <sup>33</sup> [http://www.cwt.coop/about/about\\_news\\_releases2007.html](http://www.cwt.coop/about/about_news_releases2007.html).

1 farm-level milk prices. USDA projects a 2.3 billion pound increase in milk production for 2007  
2 and this action by CWT effectively reduces that projection by 45 percent.” By June 6, 2007, the  
3 fourth round was complete. Defendants had yet again effectively blocked the natural downward  
4 shift in milk prices.

5 73. Knowing that the price of milk would eventually decline again, and recognizing that  
6 the herd retirements were very effective at eliminating competition and artificially inflating the  
7 price of milk, Defendants committed to sticking with the program. In September 2007, “Kozak  
8 said that even with the record high farm prices of this summer, ‘producers recognize that we will  
9 need CWT in the future to help stabilize prices. The track record of the past four years shows what  
10 we can accomplish with this unique program when our industry works together.’”

11 74. On September 20, 2007, CWT released the results of further economic analysis by  
12 Dr. Brown. He evaluated the impact of CWT’s 2007 herd retirement, and its export assistance  
13 program activities during the first half of 2007, in addition to reviewing the effects of CWT’s past  
14 activities. Dr. Brown’s analysis showed that CWT’s programs helped raise farm-level milk prices  
15 by 75 cents per hundredweight this year, up from 67 cents in 2006, 42 cents in 2005, 18 cents in  
16 2004, and 5 cents in the brief time it operated in 2003.

17 75. Dr. Brown stated, “CWT has had a growing influence on the financial returns of  
18 dairy farmers. My economic models account for the variety of supply and demand factors  
19 affecting prices, including the fact that in response to CWT, some producers have added cows and  
20 produced more milk.” He continued, “[w]hen you separate out all the other factors affecting milk  
21 production, the fact remains that CWT has boosted the milk check of each farmer by 75 cents per  
22 hundredweight this year.” According to his assessment, U.S. dairy cow numbers were a net 66,000  
23 head fewer than they would have been without CWT’s ongoing activities. While purportedly  
24 increasing the “check of each farmer,” Defendants had – even as early as 2007 – prior to the most  
25 aggressive rounds of herd retirements – eliminated over one thousand four hundred dairy farmers  
26 from the market and caused Plaintiffs to pay higher prices for milk and other fresh milk products.

1           **6. The two rounds of reductions in 2008 – time to trim output and raise prices.**<sup>34</sup>

2           76. In June 2008, the CWT Committee endorsed a continuation of the program, at the  
3 membership assessment level of 10 cents per hundredweight, through calendar year 2009.

4           77. On June 3, 2008, CWT announced its fifth herd retirement. Mr. Kozak explained,  
5 “All of the economic indicators and benchmarks that guide CWT’s decisions, including farmers’  
6 cost of production, show that now is the appropriate time for us to initiate this herd retirement.” In  
7 a 2008 newsletter, CWT explained that “[d]airy farmers need to remember that CWT is a national  
8 program. Therefore, the benchmarks it monitors must be *national* benchmarks. Some regions of  
9 the country may be squeezed before other regions, but overall the benchmarks will tell CWT when  
10 to execute a herd retirement so to strengthen and stabilize dairy farmer milk prices.<sup>35</sup>

11           78. By September 15, 2008, CWT completed the farm audits of its fifth herd retirement  
12 round, resulting in the removal of 24,860 cows representing 436 million pounds of milk.

13           79. This prompted another economic analysis from Dr. Brown, who noted that his  
14 economic models account for the variety of supply and demand factors affecting farm-level milk  
15 prices, including the fact that in response to CWT, some producers have added cows and produced  
16 more milk. He concluded, “When you separate out all the other factors affecting milk production,  
17 the fact remains that CWT has boosted the milk check of each farmer by 71 cents per  
18 hundredweight this year.”

19           80. In 2008, the prices of milk were on a downward trend, and the Defendants took  
20 additional, aggressive action to reduce output, eliminate competition, and to control and increase  
21 over-order prices. On October 24, 2008, CWT announced its sixth herd retirement. “As farm-level  
22 milk prices drop to their lowest level in 18 months, CWT officials said it was time the program  
23 offered its members another opportunity to retire their herds to trim overall national milk  
24 production, and strengthen prices going into 2009.” Farmers in 40 states submitted a total of 471  
25 herd retirement bids in late November to CWT. According to the press release, “Kozak noted that  
26 although the costs of dairy feed and diesel fuel have dropped, milk prices have fallen faster.”

27 \_\_\_\_\_  
28 <sup>34</sup> [http://www.cwt.coop/about/about\\_news\\_releases2008.html](http://www.cwt.coop/about/about_news_releases2008.html).

<sup>35</sup> [http://www.cwt.coop/about/about\\_newsletters2008.html](http://www.cwt.coop/about/about_newsletters2008.html).



1           81. By December 10, 2008, CWT had accepted 184 bids in its second 2008 herd  
2 retirement, and by February 2009, CWT had eliminated another 61,078 cows, 186 dairy farms, and  
3 1.2 billion pounds of raw farm milk from the market. The success of this second 2008 herd  
4 retirement proved that CWT's aggressive action would enable Defendants to continue to artificially  
5 inflate the price of raw milk, fluid milk and other fresh milk products, the over-order price of  
6 which had been artificially enhanced through output restraints and elimination of competition  
7 effectuated by Defendants' concerted action.

8           82. As with each of CWT's herd retirements, this one impacted all regions of the U.S.

## 2008-2 Herd Retirement Results

| Region        | Total Cows    | Total Milk (Million lbs.) | Dairies    | Bred Heifers | Bid Price per cwt. |
|---------------|---------------|---------------------------|------------|--------------|--------------------|
| Northeast     | 2,295         | 43.7                      | 22         | 25           | \$6.47             |
| Southeast     | 3,750         | 65.4                      | 28         | 58           | \$6.48             |
| Midwest       | 3,290         | 64.4                      | 48         | 37           | \$6.20             |
| Southwest     | 17,522        | 304.6                     | 39         | 641          | \$6.36             |
| West          | 23,773        | 497.9                     | 49         | 459          | \$6.87             |
| <b>Totals</b> | <b>50,630</b> | <b>976.0</b>              | <b>186</b> | <b>1,220</b> | <b>\$6.49</b>      |



22           83. The unlawful agreement and conspiracy among Defendants is evidenced by the  
23 presentation made by NMPF's COO at an October 29, 2008 "Town Hall Meeting" where he  
24 explained the logistics and benefits of the retirement program before concluding that "continued  
25 operation of the CWT program is essential for producers to continue to receive benefits from the  
26 program":

## 2<sup>nd</sup> 2008 Herd Retirement

- Announced October 24<sup>th</sup>
  - Press Release and news conference
  - E-mail and mailing to cooperative members
  - Mailing to individual producer members
  - Postcard announcement to all producers
- Must be CWT Member as of January 2008
- Bred Heifer Option included
- All forms and information on website, [www.cwt.coop](http://www.cwt.coop)



## 2<sup>nd</sup> 2008 Herd Retirement Timeline

- ✓ October 24, 2008 > Bid process opens
- ✓ November 24, 2008 > Postmark deadline for submitting bids
- ✓ Nov. 25 – Dec. 5, 2008 > Independent audit firm bid analysis
- ✓ December 8-10, 2008 > Bids reviewed, final selection by CWT staff
- ✓ December 15, 2008 > Farm audits begin
- ✓ January 12, 2009 > All bidders receive notification



1           **7. The three rounds of herd reductions in 2009 methodically reduced supply,**  
2           **eliminated competition and thereby raised prices.**<sup>36</sup>

3           84. On February 11, 2009, CWT's members approved a change in program policy that  
4 required all members whose bids were accepted in future herd retirement programs to agree to  
5 cease dairy production for one year.

6           85. By February 17, 2009, CWT completed the farm audits of its sixth herd retirement  
7 round, removing 50,630 cows that produced almost one billion pounds of raw farm milk.

8           86. On April 1, 2009, CWT announced its seventh herd retirement. Mr. Kozak stated,  
9 "We all recognize that 2009 is shaping up to be among the toughest years on record for dairy  
10 farmers, but CWT will help shorten the price plunge farmers are facing, and speed the recovery."  
11 This would be another opportunity for Defendants to block the downward trend of milk prices by  
12 restraining supply, significantly reducing the number of dairy producers competing in the market  
13 and otherwise eliminating competition.

14           87. By May 13, 2009, CWT had accepted 388 bids representing 102,898 cows and 2  
15 billion pounds of farm milk production capacity, representing the largest single herd retirement  
16 carried out in the six-year history of CWT. Mr. Kozak explained, "Those that took advantage of  
17 CWT's offer to retire their herds will aid others still wanting to farm by reducing the amount of  
18 milk coming to market and strengthening prices going forward."

19           88. By July 2, 2009, CWT completed the farm audits of its seventh herd retirement  
20 round, removing 367 herds in 41 states, comprised of nearly 101,000 cows that produced 1.96  
21 billion pounds of farm milk. "The national dairy herd will be noticeably smaller this summer as a  
22 result of CWT," said Jim Tillison, Chief Operating Officer of CWT.

23           89. On July 10, 2009, CWT announced that it would conduct its eighth herd retirement.  
24 "Carrying out a second herd retirement right on the heels of the largest-ever herd retirement should  
25 give us a double-barreled attack on milk production in a very short period of time, resulting in a  
26 farm level price recovery several months sooner than would otherwise occur," Kozak said.

27  
28 <sup>36</sup> [http://www.cwt.coop/about/about\\_news\\_releases2009.html](http://www.cwt.coop/about/about_news_releases2009.html).

1           90.       By September 24, 2009, CWT finished the farm audits for its eighth herd retirement,  
2 removing 74,114 cows that produced 1.5 billion pounds of farm milk.

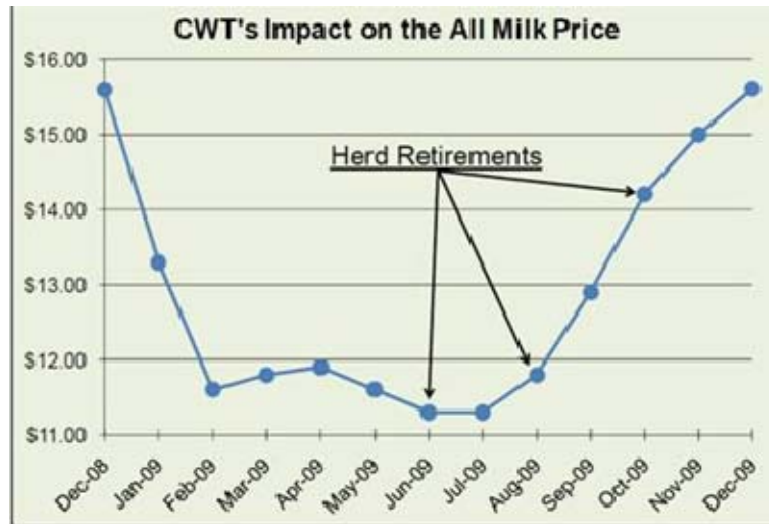
3           91.       On October 1, 2009, CWT announced its ninth herd retirement. “This third herd  
4 retirement of 2009, along with a stabilizing global economy, should further accelerate the recovery  
5 in dairy farmers’ prices,” said Mr. Kozak.

6           92.       Defendants continued to conspire to significantly reduce the supply of milk,  
7 significantly reduce the number of dairy farmers competing in the market, eliminate competition  
8 and thereby hike over-order prices to a supracompetitive level despite an economic downturn. By  
9 October 27, 2009, CWT accepted 154 bids in the fourth herd retirement it had conducted in the last  
10 12 months, representing 26,412 cows and 517 million pounds of farm milk. “Coming into 2009,  
11 CWT’s economists estimated that we would need to remove between five and six billion pounds of  
12 milk, the production of approximately 250,000 cows, through herd retirements,” said Mr. Kozak.  
13 “We are pleased that the participation in this third herd retirement of 2009 has brought us to our  
14 goal of aligning supply with demand, and hastening the recovery of farm-level milk prices that  
15 plunged because of the global recession.” Said Mr. Kozak, “We felt it was important to help milk  
16 prices continue to strengthen by conducting another herd retirement as soon as we completed farms  
17 audits for the previous round.”

18           93.       In November 2009, Dr. Brown provided another economic evaluation of CWT’s  
19 herd retirement program. His “analysis showed that the combined effect of CWT’s cow-removal  
20 programs, as well as its export assistance program, helped raise farm-level milk prices by \$1.54 per  
21 hundredweight this year, and added \$2.4 billion to farm-level milk receipts in a year when dairy  
22 income is expected to shrink by more than \$10 billion because of the global recession.” He  
23 explained that his econometric model “allows for the effects of the CWT to be separated from  
24 everything else that has occurred in the industry during the operation of CWT.”<sup>37</sup>

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28 <sup>37</sup> <http://www.cwt.coop/sites/default/files/pdf/ScottBrownCWTNovember2009.pdf>.

94. This chart shows the impact of CWT's three 2009 herd retirements on prices:



\*December 2009 All Milk price is an estimate.

CWT explains that these herd retirements were “made possible by the financial commitment of tens of thousands of dairy farmers” who “have in just a matter of months moved milk prices for all producers back to where they were a year ago.”<sup>38</sup>

95. According to the analysis of Dr. Brown, milk prices in 2009 “would have averaged \$1.66 less had the CWT program not been in business – actively removing cows and, thus, reducing milk production in a timely manner.”<sup>39</sup>

96. Moreover, the only way in which the herd retirement program could be effective was with the organized conspiracy of the Defendant members of CWT; individual producers could not effectuate the intended raw milk reduction alone. “67% represents the minimum level of participation [of milk cooperatives and producers in the U.S.] CWT needed to reach. However, to maximize the effectiveness of CWT’s programs in 2009 and 2010 that number needs to grow.” (Emphasis in original.) In 2009, “CWT reached that goal, thanks to the 35 dairy cooperatives and nearly 400 individual dairy farmers making the investment that gives CWT the resources necessary to achieve its milk reduction goals.” Without the “investment” of the \$0.10 per hundredweight (cwt) of raw milk produced by each Defendant member of CWT and the agreement to use that

<sup>38</sup> <http://www.cwt.coop/sites/default/files/newsletters/CWTNewsDecember2009.pdf>.

<sup>39</sup> <http://www.cwt.coop/sites/default/files/newsletters/CWTNewsJune2010.pdf>.

1 funding for herd retirements to restrain the supply of raw milk produced, Defendants would not  
2 have been able to accomplish their goal to “strengthen and stabilize milk prices.”<sup>40</sup>

3 **8. The 2010 herd reduction again boosts prices above the free market.**<sup>41</sup>

4 97. On May 27, 2010, CWT announced its tenth herd retirement. Said Mr. Kozak, “It is  
5 our belief that a herd retirement at this time will add to the positive momentum already building  
6 and should result in speeding up the milk price recovery already in progress.”

7 98. By July 7, 2010, CWT accepted 194 bids on what would be its last herd retirement,  
8 representing 34,442 cows and 653,893,409 pounds of farm milk.

9 99. In total, CWT was responsible for removing 506,921 cows from production and for  
10 eliminating 2,802 dairy farms from the market, resulting in the removal of 9.672 billion pounds of  
11 farm milk as summarized in the following chart.<sup>42</sup> Moreover, the chart indicates that some of the  
12 2,802 dairy farms that were eliminated were smaller farms, because the average retired herd size  
13 was 181 (and larger U.S. dairy farms can have up to 5,000 cows or more).

14

15 **Summary of Herd Retirements**

| Herd Retirement | Farms Accepted | Cows Removed   | Pounds of Milk Removed (billion lbs.) | Average Herd Size |
|-----------------|----------------|----------------|---------------------------------------|-------------------|
| 2003            | 299            | 32,724         | 0.609                                 | 109               |
| 2004            | 363            | 50,478         | 0.903                                 | 139               |
| 2005            | 442            | 64,069         | 1.174                                 | 145               |
| 2007            | 333            | 52,783         | 1.001                                 | 159               |
| 2008-1          | 201            | 24,585         | 0.432                                 | 122               |
| 2008-2          | 186            | 50,630         | 0.973                                 | 272               |
| 2009-1          | 367            | 101,040        | 1.960                                 | 275               |
| 2009-2          | 274            | 74,113         | 1.523                                 | 270               |
| 2009-3          | 150            | 25,340         | 0.505                                 | 169               |
| 2010            | 187            | 31,159         | 0.584                                 | 167               |
| <b>Total</b>    | <b>2,802</b>   | <b>506,921</b> | <b>9.672</b>                          | <b>181</b>        |

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24 100. On October 26, 2010, CWT voted to focus the program exclusively on building  
25 export markets and no longer fund herd retirement. The refocused program was to be funded at  
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27 <sup>40</sup> [http://www.cwt.coop/about/about\\_what.html](http://www.cwt.coop/about/about_what.html).

28 <sup>41</sup> [http://www.cwt.coop/about/about\\_news\\_releases2010.html](http://www.cwt.coop/about/about_news_releases2010.html).

<sup>42</sup> <http://www.cwt.coop/sites/default/files/pdf/past-herd-retirements-110810.pdf>.

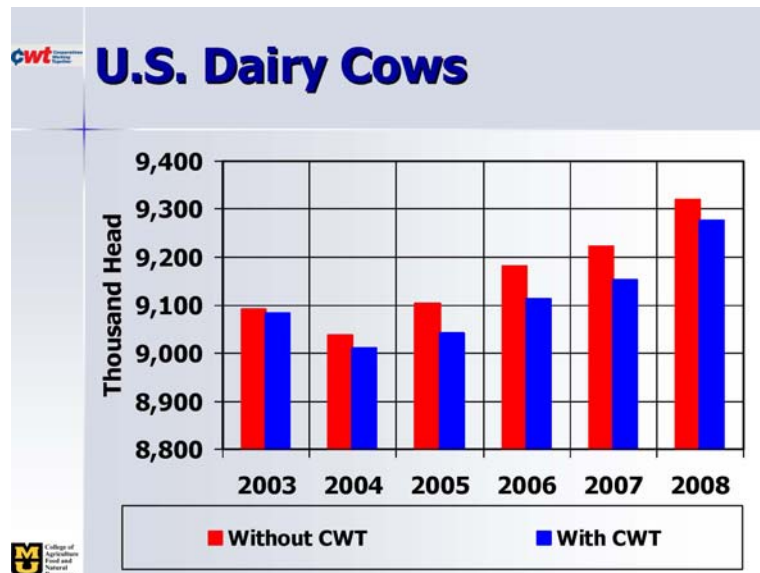
1 two instead of ten cents per hundredweight. Mr. Kozak claimed that the herd retirement program  
 2 “has reached a point of diminishing returns, where there were a declining number of member farms  
 3 that were expecting to use CWT as a means to liquidate their herds.”

4 101. In a June 8, 2011, press release, NMPF noted that the CWT program no longer  
 5 funds herd retirements or cow removals, and will focus exclusively on assisting member  
 6 organizations with dairy exports, assuming it could obtain commitment by mid-November of a  
 7 70% membership participation level.<sup>43</sup>

#### 8 **B. Defendants’ Conspiracy Raises Milk Prices Throughout the Class Period**

9 102. As a direct result of the Defendants’ and co-conspirators’ reduction in output of  
 10 farm milk and the elimination of thousands of competitors from the market, over-order milk prices  
 11 throughout the Class Period were supracompetitively higher than they would have been with  
 12 competition.

13 103. In a 2008 report, Dr. Brown illustrated the effect of herd retirement on “U.S. Dairy  
 14 Cows” in an analysis that “allows for the effects of the CWT to be separated from everything else  
 15 that has occurred in the industry during the operation of the CWT program”:



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25 104. Dr. Brown then summarized the effect of CWT’s program, funded by Defendants,  
 26 on increasing the “US All Milk Price”:  
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28 <sup>43</sup> [http://www.cwt.coop/about/about\\_news\\_releases.html](http://www.cwt.coop/about/about_news_releases.html).

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## Effect of the CWT Program on the US All Milk Price \*

| Year                         | 2003          | 2004          | 2005          | 2006          | 2007          | 2008 *        |
|------------------------------|---------------|---------------|---------------|---------------|---------------|---------------|
| US All Milk Price            | \$12.55       | \$16.13       | \$15.19       | \$12.90       | \$19.13       | \$19.08       |
| CWT Herd Retirement Impact   | \$0.05        | \$0.16        | \$0.44        | \$0.55        | \$0.62        | \$0.57        |
| CWT Export Assistance Impact | NA            | \$0.01        | \$0.01        | \$0.09        | \$0.16        | \$0.14        |
| <b>TOTAL CWT Impact</b>      | <b>\$0.05</b> | <b>\$0.17</b> | <b>\$0.45</b> | <b>\$0.64</b> | <b>\$0.77</b> | <b>\$0.71</b> |



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12 105. Dr. Brown concluded his 2008 report by describing the success of the CWT  
13 program, funded by Defendants:

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## CWT Summary Points

- **2008 Bottom Line:**
  - CWT will increase producers' milk prices by \$0.71 per cwt
  - The herd retirement program added \$0.57 per cwt to milk prices and the export assistance program added \$0.14 per cwt
- **On Average Over the 2004 to 2008 Period:**
  - CWT will increase producers' milk prices by \$0.55 per cwt
  - The herd retirement program added \$0.47 per cwt to milk prices and the export assistance program added \$0.08 per cwt
- The CWT program has generated an additional \$4.6 billion in milk market receipts at a program cost of \$0.3 billion
- Continued operation of the CWT program is essential for producers to continue receive benefits from the program



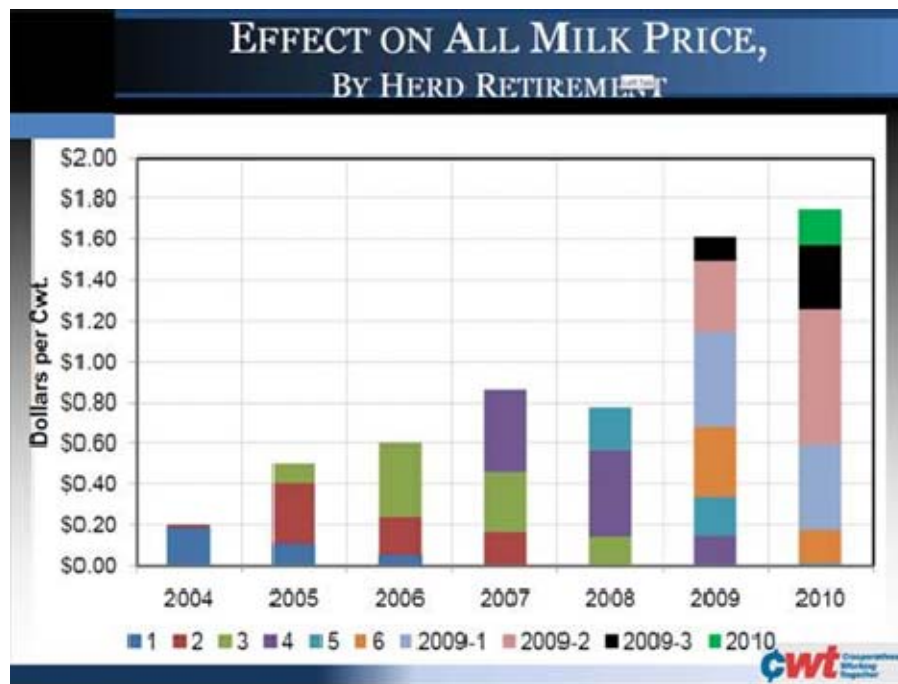
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1 106. In Dr. Brown's January 2011 Report, entitled "The Economic Effects of the CWT  
2 Program," he analyzed the cumulative effect of the ten herd retirements.<sup>44</sup>

3 107. Again, his analysis "allowed for the effects of the CWT to be separated from  
4 everything else that has occurred in the industry during the operation of the CWT program."<sup>45</sup>

5 108. First, Dr. Brown analyzed the impact CWT's herd retirements have had on farm  
6 milk prices each year since its inception. CWT states, "The beauty of CWT herd retirements is that  
7 the impact of each herd retirement lasts several years. Each herd retirement completed builds on  
8 and adds to those that have been carried out before."



20 109. In the above chart, each color represents the effect of a herd retirement on farm milk  
21 prices. There were ten rounds of herd retirements and so ten colors in the chart. The blue  
22 represents the effects of the first herd retirement, which occurred in 2003 and affected prices in  
23 2004 through 2006. The red represents the effects of the second herd retirement, which occurred in  
24 2004 and affected prices in 2004 through 2007. The green represents the effects of the third herd  
25 retirement, which occurred in 2005 and affected prices in 2005 through 2008, and so on. Thus, the  
26 later herd retirements are likely still to be affecting prices through to the present, especially after

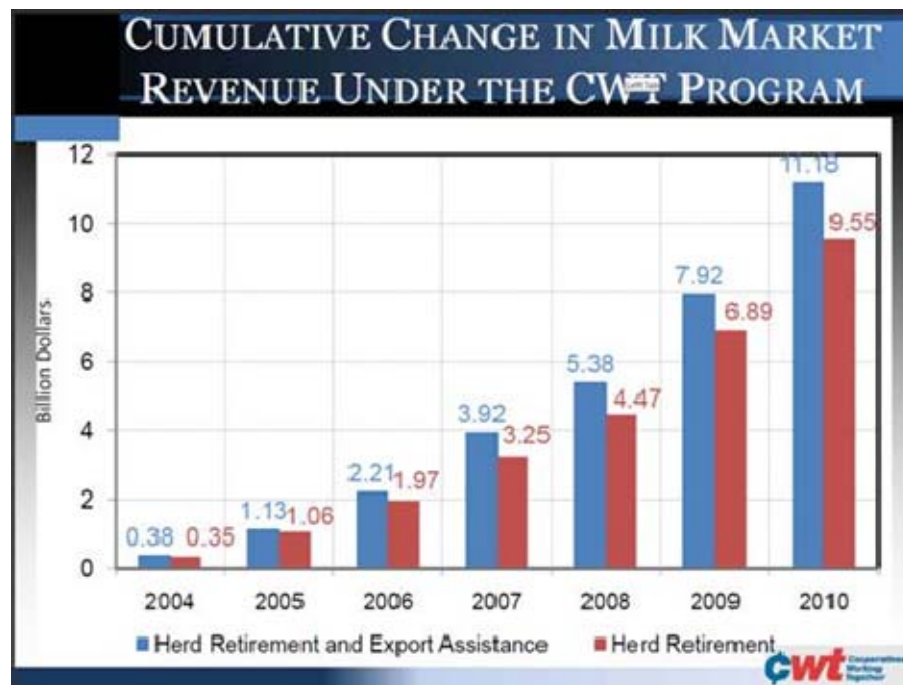
27 <sup>44</sup> <http://www.cwt.coop/sites/default/files/pdf/Economic-Effects-of-CWT-January-2011.pdf>.

28 <sup>45</sup> 2008 CWT Town Hall Meeting Presentation.

1 the addition – in advance of the four record-breaking 2009 herd reductions – of the policy  
 2 restraining farmers from reentering the dairy farming business for at least one year after they  
 3 accepted a CWT payment in exchange for retiring their entire herd.

4 110. The chart also shows that the total increase in farm milk price in 2004 due to herd  
 5 retirement was \$0.20 per cwt. The cumulative continuing impact of the subsequent herd retirement  
 6 rounds was \$0.50 per cwt in 2005; \$0.60 per cwt in 2006; \$0.86 per cwt in 2007; \$0.78 per cwt in  
 7 2008; \$1.61 per cwt in 2009; and \$1.75 per cwt in 2010.

8 111. Another chart from Dr. Brown’s analysis shows the cumulative impact on producer  
 9 revenue that the ten herd retirements have had:

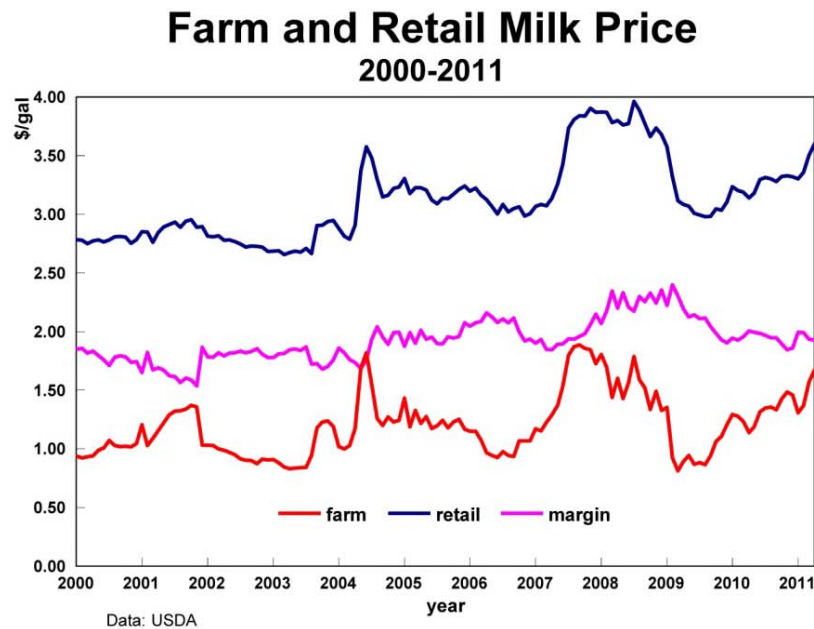


21 112. This chart shows that as of 2010, CWT’s restraints on milk production in the form  
 22 of premature herd retirements had increased cumulative farm milk price revenues by over  
 23 \$9 billion.

24 113. Moreover, CWT’s impact on farm milk prices affects retail milk prices, as “[r]etail  
 25 prices roughly track farm prices.”<sup>46</sup> Jim Dunn, Professor of Agricultural Economics at  
 26 Pennsylvania State University, explains that “retail prices do fall with farm prices, as well as  
 27

28 <sup>46</sup> <http://www.modbee.com/2010/10/23/1396934/got-retail-milk-price-basics.html>.

1 rise.”<sup>47</sup> In his July 2011 report entitled “Dairy Outlook,” he graphs the direct relationship between  
 2 farm and retail milk prices:<sup>48</sup>



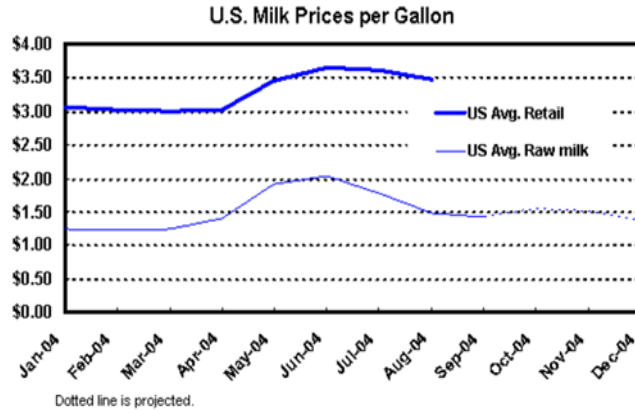
14 114. From the above chart, it is plain to see that retail milk prices closely follow farm  
 15 milk prices over time. Thus, by manipulating the supply of farm milk through herd retirement,  
 16 price competition has been suppressed and, as a result, indirect purchasers of milk and fresh milk  
 17 products have paid supracompetitive prices. Milk demand is highly price inelastic. Therefore a  
 18 decrease in raw milk supply can cause – and as shown by Dr. Brown’s analysis, has caused – a  
 19 substantial increase in price due to a lack of suitable alternatives. Because milk demand is  
 20 inelastic, prices rose and revenues were higher for remaining producers as a result of the herd  
 21 retirement program.

22 115. Jerry Kozak, President and CEO of NMPF, recognized in an August 2004  
 23 newsletter that CWT’s supply-reducing measures at the farm milk level had an almost immediate  
 24 effect on retail prices. CWT’s own newsletter included the following chart, which shows that  
 25 average retail prices tracked average raw milk prices:<sup>49</sup>

27 <sup>47</sup> <http://www.agweb.com/news/news.aspx?ArticleId=305612>.

28 <sup>48</sup> <http://dairyoutlook.aers.psu.edu/reports/DairyOutlookjul11.pdf>.

<sup>49</sup> [http://ems-mx4.sradev.com/CWT/about/newsletters/cwt\\_newsletter\\_082004.htm](http://ems-mx4.sradev.com/CWT/about/newsletters/cwt_newsletter_082004.htm).



116. Prices have been supported at artificially high levels throughout the United States. The minimum pricing of nearly all of the farm milk produced in the United States is regulated by milk marketing orders. Currently ten federal milk marketing orders (FMMOs) regulate the sale of 70 percent of all milk produced in the country. California, which operates its own marketing order, regulates the sale of another 19 percent of the country’s milk. Most of the remainder is regulated by other state marketing orders (Maine, Montana, Nevada, Virginia), and a small portion is not regulated by any marketing order. However, prices of raw farm milk over such minimums – called “over-order” prices – are not subjected to such regulation.

117. The federal milk marketing orders set the minimum prices that processors must pay for Grade A milk according to its end-use. “Each month, federal orders set the minimum prices for milk used in cheese, and milk used in butter and dry milk according to formulae that take into account the wholesale prices of these products. The minimum price for milk used in fluid products (Class I) in each order is set as a fixed differential over the manufacturing-use minimum prices.”<sup>50</sup> Minimum prices for soft dairy products are similarly determined as a mark-up over the minimum prices for milk in cheese and butter. California and the other states use similar formulae to set minimum prices.

118. These orders protect farmers from too-rapidly falling prices by setting a minimum price that processors must pay for raw farm milk. However, the orders set no maximum; market forces, such as reductions in supply, can and do increase the price of raw farm milk well above the

<sup>50</sup> [http://aic.ucdavis.edu/research1/DairyEncyclopedia\\_policy.pdf](http://aic.ucdavis.edu/research1/DairyEncyclopedia_policy.pdf).

1 floor set forth in the federal milk marketing order. The “over-order” price of milk is unregulated  
2 and determined solely by market forces, without regard to any federal milk pricing regulation. To  
3 be clear, the artificially inflated over-order prices received by Defendants were never approved by  
4 the USDA.

5 119. Thus, the farm milk price and all milk price used throughout this Complaint do not  
6 refer to the regulated minimum price but the over-order milk price actually received by  
7 Defendants. Indeed, the all milk price referenced in Dr. Brown’s reports will typically be higher  
8 than the milk marketing order due to the over-order premium.<sup>51</sup>

9 120. The CWT herd retirement program reduced the supply and thereby raised the over-  
10 order price of raw farm milk, thus raising the price of the key input into a broad range of dairy  
11 products. The reduced supply and higher over-order prices of raw farm milk resulted in higher  
12 wholesale and retail prices of milk and other fresh milk products, which harmed retail indirect  
13 purchasers of those products, such as Plaintiffs. Consumers of milk and other fresh milk products  
14 paid higher prices for dairy products than they would have paid had CWT not enacted its herd  
15 retirement program.

16 **C. Defendants Are Not Entitled to the Limited Protections of the Capper-Volstead Act**

17 121. CWT blatantly restricted farm milk production to increase farm milk prices because  
18 it purported to enjoy antitrust immunity under the Capper-Volstead Act. According to its website,  
19 “CWT is, in effect, a federation of cooperatives and producers formed in accordance with the  
20 Capper-Volstead Act and acting in association for the specific purpose of achieving strong and  
21 stable milk prices.”<sup>52</sup>

22 122. But the activities by CWT and its members to restrain the supply of farm milk are  
23 outside of the protections of the Capper-Volstead Act. The plain language of the Capper Volstead  
24 Act does not provide immunity for production restraints. Indeed, as NMPF, established in 1916,  
25 and CWT must be well aware, the Department of Justice, Federal Trade Commission, and United  
26 States Department of Agriculture have long interpreted Capper-Volstead not to apply to production

27 <sup>51</sup> See Andrew M. Novakovic, Changes in the Farm Price of Milk Over the Last 100 Years, Cornell  
28 Program on Dairy Markets & Policy, Brfg. Paper Number 09-1, at 2 (Aug. 2009).

<sup>52</sup> [http://www.cwt.coop/cwt\\_faqs.html](http://www.cwt.coop/cwt_faqs.html).

1 restraints. The USDA has recognized in various published documents that it is illegal for  
2 cooperatives to restrain members' production. Cooperatives were developed to assist producers in  
3 marketing the available supply of agricultural products, not to limit supply. Congress did not grant  
4 the cooperatives the power to restrict supply. The herd retirements orchestrated by CWT and its  
5 members went beyond merely setting the price for raw milk, but instead sought to restrain the  
6 supply of raw milk, eliminate competition and thereby artificially inflate the over-order prices of  
7 raw milk. CWT, and its members, therefore, are not entitled to the protections of the Capper-  
8 Volstead Act.

9 123. In addition, the activities of CWT and its members, including Defendants, as  
10 described herein, were anticompetitive and predatory. CWT performed no activities that promoted  
11 market efficiency and had no legitimate business justification for its existence. CWT did not  
12 collectively process, prepare for market, handle, or market any of the products of its members as  
13 required by the Capper Volstead Act. As described herein, Defendants' collusive plan to  
14 orchestrate premature herd retirements and eliminate competing producers from the market was  
15 predatory and not protected under the Capper Volstead Act. Among the over twenty eight hundred  
16 (2,800) dairy farms removed from the market are those who explain they had intended to reenter  
17 the dairy business but were prevented from doing so after participating in the CWT herd retirement  
18 program:

19 [M]y co-op convinced me to go in the 'buyout' last summer promising  
20 me we could start milking our young fresh heifers when they first calf.  
21 But they denied me the ability to restart stating they had too much  
22 production. Now we will probably lose our farm because they will not  
23 take the milk and they have purchased all the competing creamer[ie]s  
24 in our area. I needlessly slaughter[ed] my families' life work. They  
25 seem to favor the big 'sweat shop' dairies in favor of us small guys.  
26 By the way my Bank took all the proceeds from the slaughter and the  
27 CWT money, we were left with nothing but an empty dairy.  
28

1 Thus, not only did CWT and its members orchestrate the removal of over 2,800 dairy farms from  
2 the market, but they also intended to and did in fact prevent dairy farmers who wanted to reenter  
3 the dairy farming business from doing so to reduce supply, eliminate competition, and drive up  
4 over-order raw farm milk prices.

5 124. Moreover, the limited protections of Capper-Volstead are not even available unless  
6 the organization engaging in the coordinated efforts is exclusively made up of protected entities.  
7 The exemption afforded by the Capper Volstead Act extends specifically to “farmers [and]  
8 dairymen” not to large, vertically integrated processors which are also engaged in production, such  
9 as Defendants Dairy Farmers of America and Land O’Lakes. Accordingly, CWT and its members  
10 do not enjoy the limited immunities of Capper-Volstead and neither does NMPF for having created  
11 and conspired with a non-exempt entity.

12 125. Further, Capper-Volstead requires that protected cooperatives be “operated for the  
13 mutual benefit of the members thereof,” and limits the immunity provided by the Act to  
14 cooperatives that afford equal corporate suffrage rights to its members, providing “that no member  
15 of the association is allowed more than one vote because of the amount of stock or membership  
16 capital he may own therein.” NMPF, which contains numerous cooperatives that are not members  
17 of CWT, retains ultimate authority over CWT operations. Per its bylaws, CWT is subject to the  
18 general supervision and direction of the NMPF, and NMPF has retained the power to amend  
19 CWT’s bylaws, which are part of NMPF’s bylaws. Moreover, CWT’s organizational structure  
20 vests automatic, *ex officio* representation on the CWT committee with NMPF’s Board of Directors,  
21 who are not all CWT members.<sup>53</sup> These circumstances defeat the equality of corporate suffrage  
22 that members of CWT are entitled to, effectively defeating the one-member-one-vote condition of  
23 Capper Volstead immunity. Moreover, the fact that such non-members have influence over the

24 <sup>53</sup> [http://www.cwt.coop/sites/default/files/pdf/cwt\\_by\\_laws.pdf](http://www.cwt.coop/sites/default/files/pdf/cwt_by_laws.pdf). In particular, seven out of forty  
25 NMPF Board of Directors members and one out of seven NMPF Officers are not affiliated with a  
26 CWT member cooperative. The seven directors from non-CWT organizations are: (1) Steve  
27 Schlangen, Associated Milk Producers Inc.; (2) Ed Welch, Associated Milk Producers Inc.;  
28 (3) Tim den Dulk, Continental Dairy Products, Inc.; (4) Randy Geiger, Manitowoc Milk Producers  
Coop.; (5) Albert Knegendorf, Ellsworth Cooperative Creamery; (6) Dennis Donahue, Manitowoc  
Milk Producers Coop.; and (7) Brad Bouma, Select Milk Producers. The officer from a non-CWT  
organization is Assistant Treasurer Mike McCloskey, Select Milk Producers, Inc.  
<http://www.nmpf.org/about-nmpf/board-of-directors>.

1 direction of CWT, without paying dues and while benefitting from the herd retirements' industry-  
 2 wide effect, puts the conduct of the Defendants outside of the immunity afforded by the statute. Per  
 3 CWT bylaws, there are at least eight policy-setting CWT Committee members who represent dairy  
 4 cooperatives that are not themselves members of CWT, but still materially benefit from CWT  
 5 policies despite not paying dues. This conflict of interest makes plain that CWT is not operated for  
 6 the mutual benefit of its members but for the benefit of interested and involved non-members as  
 7 well. Thus, CWT does not qualify as a Capper-Volstead entity.

8 126. For all of the above reasons, the Capper Volstead's limited protection from antitrust  
 9 liability does not apply to Defendants.

#### 10 V. CLASS ACTION ALLEGATIONS

11 127. Plaintiffs bring this action on behalf of themselves and all persons similarly situated  
 12 pursuant to Rule 23 of the Federal Rules of Civil Procedure and/or respective state statute(s), on  
 13 behalf of all members of the following classes (collectively, the "State Classes"):

- 14 (a) **Arizona**: All consumers who, from 2003 to the present, indirectly  
 15 purchased milk and/or other fresh milk products (including cream, half &  
 16 half, yogurt, cottage cheese, cream cheese, and/or sour cream) for their own  
 17 use and not for resale.
- 18 (b) **California**: All consumers who, from 2003 to the present, indirectly  
 19 purchased milk and/or other fresh milk products (including cream, half &  
 20 half, yogurt, cottage cheese, cream cheese, and/or sour cream) for their own  
 21 use and not for resale.
- 22 (c) **District of Columbia**: All consumers who, from 2003 to the present,  
 23 indirectly purchased milk and/or other fresh milk products (including cream,  
 24 half & half, yogurt, cottage cheese, cream cheese, and/or sour cream) for  
 25 their own use and not for resale.
- 26 (d) **Kansas**: All consumers who, from 2003 to the present, indirectly purchased  
 27 milk and/or other fresh milk products (including cream, half & half, yogurt,  
 28



1 cottage cheese, cream cheese, and/or sour cream) for their own use and not  
2 for resale.

3 (e) **Massachusetts**: All consumers who, from 2003 to the present, indirectly  
4 purchased milk and/or other fresh milk products (including cream, half &  
5 half, yogurt, cottage cheese, cream cheese, and/or sour cream) for their own  
6 use and not for resale.

7 (f) **Michigan**: All consumers who, from 2003 to the present, indirectly  
8 purchased milk and/or other fresh milk products (including cream, half &  
9 half, yogurt, cottage cheese, cream cheese, and/or sour cream) for their own  
10 use and not for resale.

11 (g) **Missouri**: All persons who purchased for their own use and not for resale  
12 milk and/or fresh milk products (including cream, half & half, yogurt,  
13 cottage cheese, cream cheese, and sour cream) from 2004 through to the  
14 present.

15 (h) **Nebraska**: All consumers who, from 2003 to the present, indirectly  
16 purchased milk and/or other fresh milk products (including cream, half &  
17 half, yogurt, cottage cheese, cream cheese, and/or sour cream) for their own  
18 use and not for resale.

19 (i) **Nevada**: All consumers who, from 2003 to the present, indirectly purchased  
20 milk and/or other fresh milk products (including cream, half & half, yogurt,  
21 cottage cheese, cream cheese, and/or sour cream) for their own use and not  
22 for resale.

23 (j) **New Hampshire**: All consumers who, from 2003 to the present, indirectly  
24 purchased milk and/or other fresh milk products (including cream, half &  
25 half, yogurt, cottage cheese, cream cheese, and/or sour cream) for their own  
26 use and not for resale.

27 (k) **Oregon**: All consumers who, from 2003 to the present, indirectly purchased  
28 milk and/or other fresh milk products (including cream, half & half, yogurt,

1 cottage cheese, cream cheese, and/or sour cream) for their own use and not  
2 for resale.

3 (l) **South Dakota**: All consumers who, from 2003 to the present, indirectly  
4 purchased milk and/or other fresh milk products (including cream, half &  
5 half, yogurt, cottage cheese, cream cheese, and/or sour cream) for their own  
6 use and not for resale.

7 (m) **Tennessee**: All consumers who, from 2003 to the present, indirectly  
8 purchased milk and/or other fresh milk products (including cream, half &  
9 half, yogurt, cottage cheese, cream cheese, and/or sour cream) for their own  
10 use and not for resale.

11 (n) **Vermont**: All consumers who, from 2003 to the present, indirectly  
12 purchased milk and/or other fresh milk products (including cream, half &  
13 half, yogurt, cottage cheese, cream cheese, and/or sour cream) for their own  
14 use and not for resale.

15 (o) **West Virginia**: All consumers who, from 2003 to the present, indirectly  
16 purchased milk and/or other fresh milk products (including cream, half &  
17 half, yogurt, cottage cheese, cream cheese, and/or sour cream) for their own  
18 use and not for resale.

19 (p) **Wisconsin**: All consumers who, from 2003 to the present, indirectly  
20 purchased milk and/or other fresh milk products (including cream, half &  
21 half, yogurt, cottage cheese, cream cheese, and/or sour cream) for their own  
22 use and not for resale.

23 Excluded from the State Classes are (1) Defendants and their co-conspirators; (2) any entity in  
24 which Defendants have a controlling interest; (3) Defendants' officers, directors, and employees;  
25 (4) Defendants' legal representatives, successors, and assigns; (5) governmental entities; and (6)  
26 the Court to which this case is assigned. The proposed State Classes are both ascertainable and  
27 share a well-defined community of interest in common questions of law and fact. Furthermore,  
28

1 this action satisfies the numerosity, commonality, typicality, adequacy, predominance and  
2 superiority requirements. The relevant market is the market in the United States for milk and other  
3 fresh milk products.

4 128. Plaintiffs do not know the exact number of Class members at the present time.  
5 However, due to the nature of the trade and commerce involved, there are many thousands of class  
6 members, geographically dispersed throughout the nation such that joinder of all Class members is  
7 impracticable. Included in each state class are consumers, school districts and any end payor who  
8 purchased milk and who did not resell that milk.

9 129. The common legal and factual questions, which do not vary from Class member to  
10 Class member, and which may be determined without reference to individual circumstances of any  
11 Class member include, but are not limited to, the following:

- 12 (a) Whether Defendants and their co-conspirators engaged in a contract,  
13 combination or conspiracy to raise, stabilize, fix and/or maintain prices of farm milk  
14 sold in the U.S. by restricting farm milk production through herd retirements;
- 15 (b) The duration and extent of the alleged contract, combination or conspiracy;
- 16 (c) Whether Defendants and their co-conspirators were participants in the  
17 contract, combination or conspiracy alleged herein;
- 18 (d) The effect of the contract, combination or conspiracy on the prices of milk  
19 and fresh milk products in the United States during the Class Period;
- 20 (e) Whether the conduct of Defendants and their co-conspirators caused injury  
21 to Plaintiffs and other members of the State Classes;
- 22 (f) Whether the alleged contract, combination or conspiracy violated state  
23 antitrust statutes; and
- 24 (g) Whether the alleged conduct violated the common law of unjust enrichment.

25 130. Questions of law and fact common to members of the State Classes predominate  
26 over any questions which may affect only individual members.

27 131. Plaintiffs' claims are typical of the claims of the Class, and Plaintiffs will fairly and  
28 adequately protect the interests of the State Classes. Plaintiffs' interests are not antagonistic to the

1 claims of the other Class members, and there are no material conflicts with any other member of  
2 the State Classes that would make class certification inappropriate. Plaintiffs have retained  
3 competent counsel experienced in complex antitrust and consumer protection class action litigation  
4 and will prosecute this action vigorously.

5 132. A class action is superior to other available methods for the fair and efficient  
6 adjudication of this controversy because individual litigation of the claims of all Class members is  
7 impracticable. Even if every Class member could afford individual litigation, the court system  
8 could not. It would be unduly burdensome on the courts if individual litigation of numerous cases  
9 would proceed. By contrast, the conduct of this action as a class action, with respect to some or all  
10 of the issues presented in this Complaint, presents fewer management difficulties, conserves the  
11 resources of the parties and of the court system, and protects the rights of each Class member.

12 133. Prosecution of separate actions by individual Class members would create the risk  
13 of inconsistent or varying adjudications, establishing incompatible standards of conduct for  
14 Defendants, and would magnify the delay and expense to all parties and to the court system  
15 resulting from multiple trials of the same complex factual issues.

16 134. Whatever difficulties may exist in the management of the class action will be  
17 greatly outweighed by the benefits of the class action procedure, including, but not limited to,  
18 providing Class members with a method for the redress of claims that may not otherwise warrant  
19 individual litigation.

## 20 VI. ANTITRUST INJURY

21 135. The effect of Defendants' conduct as described herein has been to artificially inflate  
22 the prices of milk in the United States. By manipulating the supply of farm milk through herd  
23 retirement, price competition has been suppressed and prices have been supported at artificially  
24 high levels throughout the United States, and, as a result, end purchasers of milk and milk products  
25 have paid supracompetitive prices.

## 26 VII. DELAYED DISCOVERY, FRAUDULENT CONCEALMENT AND TOLLING

27 136. Throughout the Class Period, Defendants and their co-conspirators engaged in a  
28 successful, illegal price-fixing and supply control conspiracy that was self-concealing. Defendants

1 effectively, affirmatively, and fraudulently concealed their unlawful combination, conspiracy, and  
2 acts in furtherance thereof from Plaintiffs and the members of the Classes. Defendants effectuated  
3 their concealment by, among other things, falsely claiming that their activities were cloaked under  
4 the protections of the Capper-Volstead Act. Until shortly before the initial complaint was filed in  
5 September 2011, Plaintiffs were not aware of their injury, Defendants' anticompetitive conduct, or  
6 that CWT could not invoke Capper-Volstead's limited protections for the reasons discussed herein.

7 137. Plaintiffs did not know nor could they have known that the prices for milk and other  
8 fresh milk products were artificially inflated and maintained by virtue of Defendants' illegal price-  
9 fixing and supply control conspiracy, and that Plaintiffs and members of the Classes were paying  
10 higher prices.

11 138. Plaintiffs have exercised due diligence by promptly investigating the facts giving  
12 rise to the claims asserted herein upon having reasonable suspicion of the existence of Defendants'  
13 conspiracy.

14 139. As a result of Defendants' fraudulent concealment of their conspiracy, the running  
15 of any statute of limitations has been tolled with respect to any claims that Plaintiffs and the Class  
16 members have as a result of the anticompetitive conduct alleged in this Complaint.

17 **VIII. CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **VIOLATION OF STATE ANTITRUST AND RESTRAINT OF TRADE LAWS**

20 140. Plaintiffs incorporate and reallege, as though fully set forth herein, each of the  
21 paragraphs set forth above.

22 141. In response to market conditions, and in an effort to supracompetitively inflate the  
23 prices of farm milk, beginning in 2003, and continuing thereafter through 2010, the Defendants and  
24 their co-conspirators engaged in a continuing contract, combination and conspiracy in restraint of  
25 interstate trade and commerce, which had the purpose and effect of fixing, raising, maintaining  
26 and/or stabilizing the prices of milk at artificially high, non-competitive levels in the United States.

1           142. The aforesaid contract, combination and conspiracy between and among the  
2 Defendants and their co-conspirators was furthered and effectuated, among other ways, by the  
3 following acts:

4           (a) Prior to the Class Period, raw milk over-order prices could not be maintained  
5 due to a fluctuating imbalance of supply over demand – after spurts of high  
6 prices, producers would add more production capacity and prices would fall  
7 again.

8           (b) Against this backdrop, the Defendants acted in concert with competitors,  
9 with and through CWT and other trade groups, and with non-producer  
10 conspirators, and contracted, conspired, and combined to effectuate a  
11 substantial reduction of the production of raw farm milk and to eliminate  
12 thousands of otherwise competing dairy farms from the market, which  
13 caused substantial supracompetitive increases in over-order prices of raw  
14 milk, and ultimately fluid milk and other fresh milk products purchased by  
15 consumers.

16           (c) Defendants conspired to, and contributed financially towards a plan to,  
17 substantially reduce farm milk production through ten phases of herd  
18 retirements, which removed over 500,000 cows from production, eliminated  
19 2,802 dairy farms from the market, and reduced the nation's milk supply by  
20 over 9.672 billion pounds. These actions were extraordinary, non-  
21 competitive, and contrary to economic fundamentals.

22           (d) To maintain their overarching conspiracy to restrain output and production,  
23 to significantly reduce the number of dairy producers competing in the  
24 market, to eliminate competition, and to thereby supracompetitively raise the  
25 price of milk and other fresh milk products, Defendants took significant  
26 steps throughout 2003 to 2010, which resulted in supracompetitive prices for  
27 milk and other fresh milk products throughout the Class Period.

1           143. The conspiracy had its intended effect, as Defendants benefitted from their  
2 limitations on production as described herein.

3           144. For the purposes of effectuating the aforesaid contract, combination and conspiracy,  
4 the Defendants and their co-conspirators:

5                   (a) Agreed among themselves to fix, raise, maintain and/or stabilize the prices  
6 of farm milk in the United States;

7                   (b) Agreed among themselves to restrict the supply of farm milk by  
8 implementing and coordinating herd retirements; and

9                   (c) Agreed among themselves to implement supracompetitive increases in the  
10 prices of farm milk in the United States.

11           145. As a result of Defendants' unlawful conduct, Plaintiffs and the other members of the  
12 State Classes have been injured in their business and property in that they have paid more for milk  
13 and/or other fresh milk products than they otherwise would have paid in the absence of  
14 Defendants' unlawful conduct.

15           146. By reason of the foregoing, Defendants have violated Arizona Revised Statutes  
16 §§ 44-1401, *et seq.*

17           147. By reason of the foregoing, Defendants have violated California Business and  
18 Professions Code §§ 16720, *et seq.*

19           148. By reason of the foregoing, Defendants have violated District of Columbia Code  
20 Annotated §§ 28-4501, *et seq.*

21           149. By reason of the foregoing, Defendants have violated Kansas Statutes Annotated  
22 §§ 50-101, *et seq.*

23           150. By reason of the foregoing, Defendants have violated Massachusetts General Law  
24 Annotated chapter 93A, *et seq.*<sup>54</sup>

25           151. By reason of the foregoing, Defendants have violated Michigan Compiled Laws  
26 Annotated §§ 445.771, *et seq.*

27 \_\_\_\_\_  
28 <sup>54</sup> A demand letter was sent under Massachusetts General Law Annotated chapter 93A, *et seq.*, and  
having received no response, an amendment adding claims under that law is now made.

1 152. By reason of the foregoing, Defendants have violated Missouri Annotated Statutes.  
2 §§ 407.145, 407.020 and Missouri Code of Regulations Annotated tit.15, § 60-8.020(1).

3 153. By reason of the foregoing, Defendants have violated Nebraska Revised Statutes  
4 §§ 59-801, *et seq.*, and §§ 59-1602, *et seq.*

5 154. By reason of the foregoing, Defendants have violated Nevada Revised Statutes  
6 Annotated §§ 598A.010, *et seq.*

7 155. By reason of the foregoing, Defendants have violated New Hampshire Revised  
8 Statutes §§ 356:1, *et seq.*

9 156. By reason of the foregoing, Defendants have violated Oregon Revised Statutes  
10 §§ 646.705, *et seq.*

11 157. By reason of the foregoing, Defendants have violated South Dakota Codified Laws  
12 §§ 37-1-3.1, *et seq.*

13 158. By reason of the foregoing, Defendants have violated Tennessee Code Annotated  
14 §§ 47-25-101, *et seq.*

15 159. By reason of the foregoing, Defendants have violated Vermont Stat. Ann. 9  
16 §§ 2451, *et seq.*

17 160. By reason of the foregoing, Defendants have violated West Virginia Code §§ 47-18-  
18 1, *et seq.*

19 161. By reason of the foregoing, Defendants have violated Wisconsin Statutes §§ 133.01,  
20 *et seq.*

21 **SECOND CAUSE OF ACTION**

22 **UNJUST ENRICHMENT**

23 **VIOLATION OF STATE UNJUST ENRICHMENT COMMON LAWS**

24 162. Plaintiffs incorporate and reallege, as though fully set forth herein, each of the  
25 paragraphs set forth above.

26 163. To the detriment of Plaintiffs and Class members, Defendants have been and  
27 continue to be unjustly enriched as a result of the unlawful and/or wrongful conduct alleged herein.  
28 Defendants have unjustly benefited by receiving higher prices for farm milk, which higher prices



1 were passed along to consumers purchasing milk and other fresh milk products, than would have  
2 been possible absent the unlawful and/or wrongful conduct. Between the parties, it would be  
3 unjust for Defendants to retain the benefits attained by their actions.

4 164. By reason of the foregoing, Defendants have violated common law of unjust  
5 enrichment of the states of Arizona, California, District of Columbia, Kansas, Massachusetts,  
6 Michigan, Missouri, Nebraska, Nevada, New Hampshire, Oregon, South Dakota, Tennessee,  
7 Vermont, West Virginia, and Wisconsin.

8 165. Accordingly, Plaintiffs and Class members seek full restitution of Defendants'  
9 enrichment, benefits and ill-gotten gains acquired as a result of the unlawful and/or wrongful  
10 conduct alleged herein.

11 **IX. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs and Class members pray for relief as set forth below:

13 A. Certification of the action as a Class Action pursuant to Federal Rule of Civil  
14 Procedure 23, and appointment of Plaintiffs as Class Representatives and their counsel of record as  
15 Class Counsel;

16 B. A declaration that Defendants' conduct constituted an unlawful restraint of trade in  
17 violation of the state statutes alleged herein and that Defendants are liable for the conduct or  
18 damage inflicted by any other co-conspirator;

19 C. Restitution and/or damages to Class members for their purchases of milk and/or  
20 fresh milk products at inflated prices;

21 D. Actual damages, statutory damages, punitive or treble damages, and such other  
22 relief as provided by the statutes cited herein;

23 E. Pre-judgment and post-judgment interest on such monetary relief;

24 F. Equitable relief in the form of restitution and/or disgorgement of all unlawful or  
25 illegal profits received by Defendants as a result of the anticompetitive conduct alleged in herein;

26 G. The costs of bringing this suit, including reasonable attorneys' fees; and

27 H. All other relief to which Plaintiffs and Class members may be entitled at law or in  
28 equity.

**X. DEMAND FOR JURY TRIAL**

Plaintiffs on behalf of themselves and all others similarly situated hereby request a jury trial on any and all claims so triable.

DATED: December 3, 2014

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*Attorneys for Plaintiffs and the Proposed Classes*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 3, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses registered, as denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ Elaine T. Byszewski  
ELAINE T. BYSZEWSKI

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