

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA )  
ex rel. THOMAS J. MILLER, )  
ATTORNEY GENERAL OF IOWA, )  
99AG25112 )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
WELLS DAIRY, INC., )  
 )  
Defendant. )

EQUITY NO. \_\_\_\_\_

AGREEMENT TO  
CONSENT JUDGMENT

CE 000 38663

CLERK DISTRICT COURT  
JAN 19 11 51 AM  
POLK COUNTY IOWA

COMES NOW the Plaintiff the State of Iowa, by William L. Brauch, Special Assistant Attorney General, and Defendant Wells Dairy, Inc., pursuant to Iowa R. Civ. P. 226, and state as follows:

1. The Plaintiff, State of Iowa ex rel. Thomas J. Miller, has authority to initiate this action pursuant to Iowa Code chapter 553 and Iowa Code § 714.16.
2. The Court has jurisdiction over the parties and the subject matter to enter this Consent Judgment.
3. At all times relevant to this action, Defendant Wells Dairy, Inc., was an Iowa corporation conducting business in Iowa as a producer and seller of dairy products.
4. Although Defendant denies each of the allegations in the State's Petition, Defendant is willing to agree to the entry of

the Consent Judgment.

5. This stipulation shall not be construed as, or be evidence of, admissions by the Defendant of any violations of any state or federal law.

6. It is in the public interest and mutual interest of these parties to expeditiously resolve the matters raised in the Plaintiff's Petition in the manner provided in the attached Consent Judgment.

7. The parties whose signatures are penned to this agreement freely and voluntarily agree to the terms, findings and orders of the attached Consent Judgment.

8. The attached Consent Judgment fully and accurately represents the agreement between the parties hereto and no other agreements or promises exist.

9. The attached Consent Judgment is to be entered, effective and binding on the parties agreeing thereto upon the filing of this agreement and attached Consent Judgment with the Clerk of the Polk County District Court.

10. Defendant waives personal service of the Consent Judgment and of the original notice and copy of the petition in this action.

WHEREFORE the parties hereby make and consent to this agreement.

*William L. Brauch*

WILLIAM L. BRAUCH PK1000017  
Special Assistant Attorney General  
Counsel for the State of Iowa

Executed before the undersigned Notary Public on this 11<sup>th</sup> day of August, 1999 by William L. Brauch.

*Marilyn W. Rand*  
Notary Public in and for the State  
of Iowa



*Fred Wells*

Fred Wells  
(Print Name)

In his corporate capacity as  
President of Defendant  
Wells Dairy, Inc.  
and on behalf of Wells Dairy, Inc.

Executed before the undersigned Notary Public on this 28<sup>th</sup> day of July, 1999 by Kim A. WILKENS.

*Kim A. Wilkens*  
Notary Public in and for the State  
of IOWA.



IN THE IOWA DISTRICT COURT FOR POLK COUNTY

---

STATE OF IOWA	)	
ex rel. THOMAS J. MILLER,	)	
ATTORNEY GENERAL OF IOWA,	)	EQUITY NO. _____
99AG25112	)	
	)	
Plaintiff,	)	
	)	CONSENT JUDGMENT
v.	)	
	)	
WELLS DAIRY, INC.,	)	
	)	
Defendant.	)	
	)	

---

This Court, recognizing that the Plaintiff, by William L. Brauch, Special Assistant Attorney General, and Defendant Wells Dairy, Inc., represented by Steven J. Rosenbaum, have consented to the entry of this judgment finds as follows:

1. The Court has jurisdiction over the parties and the subject matter of this litigation.
2. Venue is proper in Polk County.
3. Plaintiff commenced this action by filing suit on \_\_\_\_\_, 1999, in this Court alleging violations of the Iowa Competition Law, Iowa Code chapter 553, and the Iowa Consumer Fraud Act, Iowa Code § 714.16.
4. Plaintiff is the State of Iowa, ex rel. Thomas J. Miller, the duly elected Attorney General of Iowa.

5. Defendant Wells Dairy, Inc. is an Iowa corporation headquartered at LeMars, Iowa.

6. During the period covered by the State's Petition, Wells Dairy, Inc. was engaged in the sale and distribution of dairy products throughout the United States, including the State of Iowa.

7. Plaintiff alleged in its Petition that Defendant and others entered into and engaged in a combination and conspiracy to suppress and eliminate competition by fixing prices, rigging bids, and allocating customers with respect to public and private school contracts for the sale of dairy products in Lyon, Sioux, O'Brien, and Osceola Counties in Iowa and, thus, violated the Iowa Competition Law, Iowa Code § 553.4; and the Iowa Consumer Fraud Act, Iowa Code § 714.16(2)(a).

8. Defendant denies the State's allegations but agrees to entry of this Consent Judgment in order to settle Plaintiff's allegations that Defendant violated the above-cited laws regarding the public and private schools in the four counties cited in above paragraph 7.

9. Defendant has waived any statute of limitations defenses available to it in this action under Iowa Code chapter 553.

10. It is in the public interest that permanent injunctive relief be issued herein to protect the people of the State of

Iowa from any further losses from any similar conduct by the Defendant in Iowa in the future.

11. Plaintiff's request for injunctive relief in the State of Iowa has not been presented to, or denied by, any other judge of a state or federal district court.

**WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:**

A. Defendant Wells Dairy, Inc., and its employees, agents, wholly or partially owned divisions, affiliates, subsidiaries, successors & assigns and all other persons acting in concert with or participating with Defendant, who have actual or constructive notice of this order, are hereby permanently RESTRAINED and ENJOINED from any matter combining, aiding, or engaging in unreasonable restraints of trade in the sale of products to public school districts or private schools in the State of Iowa. This permanent injunction is issued pursuant to the authority of this Court under Iowa Code §§ 553.12 and 714.16(7).

B. Defendant Wells Dairy, Inc. shall pay restitution to Plaintiff within three working days after the entry of this Consent Judgment on behalf of Iowa public and private schools in the counties of Lyon, Sioux, O'Brien, and Osceola, Iowa (listed in attached exhibit 1) as follows:

1) \$108,000.00 for distribution to public schools in the

above counties; and,

2) \$ 33,480.00 for distribution to private schools in the above counties.

These payments are based upon and reflect the full amount of damages resulting from the suspected violations of the above-noted state antitrust and consumer protection laws regarding the public and private schools in the counties of Lyon, Sioux, O'Brien, and Osceola, Iowa. Plaintiff is acting as representative of the public schools in the affected counties and will distribute funds to those public schools in consultation with the Iowa Department of Education. Unless otherwise agreed by Defendant, no distribution shall be made of any portion of the \$ 33,480.00 to a private school until Defendant has been provided with a Power of Attorney executed by a representative of that school. In the event a Power of Attorney is not executed by a particular private school within 90 days of the date of the filing of this Consent Judgment, the sum for that particular school shall be returned by Plaintiff to Defendant within 30 days of Defendants request to Plaintiff. In the event a public or private school listed in Exhibit 1 is no longer in existence, the sum for that particular school shall be retained by Plaintiff and used for public education or enforcement relating to Iowa

consumer fraud or competition laws. This restitution order is issued pursuant to the authority of this Court under Iowa Code §§ 553.12 and 714.16(7).

C. Defendant Wells Dairy, Inc. shall pay attorney fees to Plaintiff on or before the date of the filing of this Consent Judgment in the sum of \$20,000.00, pursuant to the authority of this Court under Iowa Code § 714.16(7), or to be used by the State for competition law enforcement purposes pursuant to Senate File 468, section 1, paragraph 3, 1999 Iowa Acts, at the discretion of the Attorney General of Iowa.

D. For and in consideration of Defendant's agreement to make the payments set forth above, plaintiff, on behalf of the State of Iowa, and all of its departments, agencies, institutions, public school districts, and political subdivisions (collectively the "releasers"), does hereby release and further discharge and hold harmless Defendant, and its present, past and future officers, directors, attorneys, insurers, principals, agents, servants, representatives, employees, shareholders, subsidiaries, affiliates, partners, predecessors, successors, and assigns, of and from all past, present and future claims and/or causes of action of any kind, whether grounded in state or federal antitrust law or other statutory or common law, whether



civil or criminal, including any claim for damages, declaratory relief, injunctive relief, attorneys fees, costs, penalties or other expenses, relating to the purchase, attempted purchase or possible purchase of any product from Defendant by any Iowa public school district (wherever located) on or prior to the date hereof. This release, discharge and hold harmless includes all claims and/or causes of action that were known, were suspected possibly to exist, or reasonably could have been known, by any of the releasors at any time up to and including the date hereof.

E. Plaintiff acknowledges that by agreeing to this Consent Judgment, Defendant is not acknowledging any liability to Plaintiff or any public or private school and is not acknowledging any violation of any state or federal civil or criminal statute or regulation. The parties agree that this Consent Judgment should not be construed in any proceeding as an admission of liability or violation of any statute or regulation.

F. This Consent Judgment sets forth the entire agreement between the parties with respect to the subject matter and replaces any prior written or oral agreements between the parties with respect to this subject matter.

G. This Consent Judgment shall be interpreted according to the laws of the United States of America and of the State of

Iowa.

H. The Court reserves jurisdiction over this action in order to take any further action deemed necessary to enforce this judgment and to award the Plaintiff judgment for any costs, including attorneys fees, it incurs in the event of noncompliance by Defendant. Such costs may include court costs in excess of those authorized by paragraph C, above.

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
\_\_\_\_\_, JUDGE  
Iowa District Court  
Fifth Judicial District

Copies to:

FOR PLAINTIFF:

William L. Brauch PK1000017  
Special Assistant Attorney General  
Consumer Protection Division  
Hoover Building, 2nd Floor  
Des Moines, IA 50319

DEFENDANT:

Steven J. Rosenbaum  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 7566  
Washington, D.C. 20044-7566

Exhibit 1

IOWA PUBLIC AND PRIVATE SCHOOLS  
LYON, SIOUX, O'BRIEN, AND OSCEOLA COUNTIES

PUBLIC SCHOOLS

Boyden-Hull  
Central Lyon  
George  
Hartley-Melvin-Sanborn  
Little Rock  
Moc-Floyd Valley  
Rock Valley  
Sheldon  
Sibley-Ocheyedan  
Sioux Center  
South O'Brien  
West Lyon  
West Sioux

NONPUBLIC SCHOOLS

Inwood Christian  
Sanborn Christian  
Sheldon Christian School  
Zion-St. John Lutheran School  
St. Patrick's School, Sheldon  
Ocheyedan Christian School  
Hospers Christian School  
Hull Christian School  
Ireton Christian School  
Netherlands Reformed Christian  
Orange City Christian School  
Rock Valley Christian School.  
Sioux Center Christian School  
St. Mary's Catholic School  
Granville Catholic  
St. Anthony's Ctr, Spalding  
Unity Christian High School  
Western Christian High School

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EQUITY NO. CE00038663

CONSENT JUDGMENT

FILED  
1999 APR 12 AM 9:10  
POLK COUNTY IOWA  
CLERK DISTRICT COURT

This Court, recognizing that the Plaintiff, by William L. Brauch, Special Assistant Attorney General, and Defendant Wells Dairy, Inc., represented by Steven J. Rosenbaum, have consented to the entry of this judgment finds as follows:

1. The Court has jurisdiction over the parties and the subject matter of this litigation.
2. Venue is proper in Polk County.
3. Plaintiff commenced this action by filing suit on \_\_\_\_\_, 1999, in this Court alleging violations of the Iowa Competition Law, Iowa Code chapter 553, and the Iowa Consumer Fraud Act, Iowa Code § 714.16.
4. Plaintiff is the State of Iowa, ex rel. Thomas J. Miller, the duly elected Attorney General of Iowa.

5. Defendant Wells Dairy, Inc. is an Iowa corporation headquartered at LeMars, Iowa.

6. During the period covered by the State's Petition, Wells Dairy, Inc. was engaged in the sale and distribution of dairy products throughout the United States, including the State of Iowa.

7. Plaintiff alleged in its Petition that Defendant and others entered into and engaged in a combination and conspiracy to suppress and eliminate competition by fixing prices, rigging bids, and allocating customers with respect to public and private school contracts for the sale of dairy products in Lyon, Sioux, O'Brien, and Osceola Counties in Iowa and, thus, violated the Iowa Competition Law, Iowa Code § 553.4; and the Iowa Consumer Fraud Act, Iowa Code § 714.16(2)(a).

8. Defendant denies the State's allegations but agrees to entry of this Consent Judgment in order to settle Plaintiff's allegations that Defendant violated the above-cited laws regarding the public and private schools in the four counties cited in above paragraph 7.

9. Defendant has waived any statute of limitations defenses available to it in this action under Iowa Code chapter 553.

10. It is in the public interest that permanent injunctive relief be issued herein to protect the people of the State of

Iowa from any further losses from any similar conduct by the Defendant in Iowa in the future.

11. Plaintiff's request for injunctive relief in the State of Iowa has not been presented to, or denied by, any other judge of a state or federal district court.

**WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:**

A. Defendant Wells Dairy, Inc., and its employees, agents, wholly or partially owned divisions, affiliates, subsidiaries, successors & assigns and all other persons acting in concert with or participating with Defendant, who have actual or constructive notice of this order, are hereby permanently RESTRAINED and ENJOINED from any matter combining, aiding, or engaging in unreasonable restraints of trade in the sale of products to public school districts or private schools in the State of Iowa. This permanent injunction is issued pursuant to the authority of this Court under Iowa Code §§ 553.12 and 714.16(7).

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D. For and in consideration of Defendant's agreement to make the payments set forth above, plaintiff, on behalf of the State of Iowa, and all of its departments, agencies, institutions, public school districts, and political subdivisions (collectively the "releasers"), does hereby release and further discharge and hold harmless Defendant, and its present, past and future officers, directors, attorneys, insurers, principals, agents, servants, representatives, employees, shareholders, subsidiaries, affiliates, partners, predecessors, successors, and assigns, of and from all past, present and future claims and/or causes of action of any kind, whether grounded in state or federal antitrust law or other statutory or common law, whether



civil or criminal, including any claim for damages, declaratory relief, injunctive relief, attorneys fees, costs, penalties or other expenses, relating to the purchase, attempted purchase or possible purchase of any product from Defendant by any Iowa public school district (wherever located) on or prior to the date hereof. This release, discharge and hold harmless includes all claims and/or causes of action that were known, were suspected possibly to exist, or reasonably could have been known, by any of the releasors at any time up to and including the date hereof.

E. Plaintiff acknowledges that by agreeing to this Consent Judgment, Defendant is not acknowledging any liability to Plaintiff or any public or private school and is not acknowledging any violation of any state or federal civil or criminal statute or regulation. The parties agree that this Consent Judgment should not be construed in any proceeding as an admission of liability or violation of any statute or regulation.

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Iowa.

H. The Court reserves jurisdiction over this action in order to take any further action deemed necessary to enforce this judgment and to award the Plaintiff judgment for any costs, including attorneys fees, it incurs in the event of noncompliance by Defendant. Such costs may include court costs in excess of those authorized by paragraph C, above.

IT IS SO ORDERED this 12<sup>th</sup> day of August, 1999.

Inda D. Jode  
Fifth, JUDGE  
Iowa District Court  
Fifth Judicial District

Copies to:

FOR PLAINTIFF:

William L. Brauch PK1000017  
Special Assistant Attorney General  
Consumer Protection Division  
Hoover Building, 2nd Floor  
Des Moines, IA 50319

DEFENDANT:

Steven J. Rosenbaum  
Covington & Burling  
1201 Pennsylvania Avenue, N.W.  
P.O. Box 7566  
Washington, D.C. 20044-7566

Copies served - 8-12-99  
on all parties William L. Brauch

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LYON, SIOUX, O'BRIEN, AND OSCEOLA COUNTIES

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Sioux Center  
South O'Brien  
West Lyon  
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Hull Christian School  
Ireton Christian School  
Netherlands Reformed Christian  
Orange City Christian School  
Rock Valley Christian School  
Sioux Center Christian School  
St. Mary's Catholic School  
Granville Catholic  
St. Anthony's Ctr, Spalding  
Unity Christian High School  
Western Christian High School