

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

STATE OF NEW YORK,

Plaintiff,

81 Civ. 1891(RO)

-against-

DAIRYLEA COOPERATIVE, INC.,

DELLWOOD FOODS, INC.,

GOLD MEDAL FARMS, INC.,

HYGRADE MILK & CREAM CO., INC.,

MANCHESTER CREAM COMPANY, INC.,

MEADOWBROOK FARMS, INC.,

MORRIS PARK FARMS, INC.,

PURETEST MILK CO., INC.,

BEYER FARMS, INC.,

TRI-EAGLE DAIRIES, INC.,

ELMHURST MILK AND CREAM COMPANY, INC.,

TIP TOP FARMS, INC.,

SIDNEY ADLER, JOHN CANCELLIERI,

SAL FASULO, MARTIN S. FROMM,

RALPH GAETA, CONSTANTINO GIL,

JOSEPH V. GIULIANO, GEORGE HOLSTEN,

GEORGE MAS, EMANUEL MESH, WILLIAM G.

MEYER, JESSE MICCIO, CARLOS RAMOS,

IRVING RAVENS, STEVEN SCHWARTZ,

WILLIAM SCHWARTZ, IRVING SEIDENBERG,

JIMMY STABILE, HERBERT E. WHITEHEAD,

JEROME ZELINSKY, MICHAEL BEYER,

Defendants.

FINAL JUDGMENT AND  
CONSENT DECREE AS TO  
DAIRYLEA COOPERATIVE,  
INC. AND SAL FASULO

-----x

WHEREAS, the plaintiff, the State of New York, by Attorney General Robert Abrams, has brought this action on behalf of all natural persons residing in the State of New York who have purchased milk sold or distributed by Dairylea Cooperative, Inc. (herein, "Dairylea") and others from 1967

to the present in Bronx, New York, Richmond, Kings, Queens, Nassau, Suffolk, Westchester, Rockland, Putnam and Orange counties and on behalf of all governmental entities as defined in the amended complaint that have purchased milk sold or distributed by Dairylea and others in those counties from 1967 to the present, seeking monetary and injunctive relief and penalties for violations of Title 15, United States Code, Section 1 and New York General Business Law Section 340; and

WHEREAS, defendants, Dairylea and Dairylea's employee, Salvatore Fasulo, without filing Answers to said complaint, desire to resolve all disputes arising from plaintiff's complaint herein; and

WHEREAS, plaintiff, the State of New York, has alleged that the allegations in the complaint apply to other processors and/or wholesalers of milk and to various retailers of milk, as well as to Dairylea;

NOW, THEREFORE, before any testimony has been taken herein, and without trial or adjudication of any issue of fact or law, and without this Final Judgment and Consent Decree constituting evidence against or admission by Dairylea with respect to any issue of fact or law herein, and upon the representations and annexed consent of the parties hereto;

It is Hereby Ordered, Adjudged and Decreed as

Follows:

I

Jurisdiction

This Court has jurisdiction over the subject matter of this action and of defendants Dairylea and its employee Salvatore Fasulo pursuant to Title 28, United States Code, Section 1337 and Title 15, United States Code, Sections 15, 15c and 26.

II

Definitions

As used in this Final Judgment and Consent Decree:

- A. "Dairylea Cooperative Inc." is a cooperative association incorporated under the membership corporation law of the State of New York in March, 1919 with its principal offices located at One Blue Hill Plaza, Pearl River, New York.
- B. "Milk" is pasteurized milk in fluid form that is fit for human consumption, including whole milk and other fluid milk products.
- C. "Whole milk" is whole homogenized fluid milk.
- D. "Other milk products" are 1%, 2%, skim and chocolate milk as distinguished from whole homogenized fluid milk.

- E. "Consumer products" are orange juice, ice cream, cheddar cheese, green cheese, cottage cheese, dips, sour cream, whole cream, half and half and other manufactured or processed products, as distinguished from whole milk and other milk products, produced or distributed by Dairylea.
- F. "Raw Milk" is fluid milk in the form in which it is delivered to Dairylea by its farmer-members.
- G. For purposes of this decree only, "market" means an 11-county region that includes Bronx, New York, Richmond, Kings, Queens, Nassau, Suffolk, Westchester, Rockland, Putnam and Orange counties.

### III

#### Applicability

The provisions of this Final Judgment and Consent Decree shall be applicable to Dairylea, its successors and assigns and its officers, directors, sales managers, sales persons and delivery persons, and persons having discretion as to milk pricing and customer selection within New York State and, where indicated, to Salvatore Fasulo.

Injunction

Dairylea and Salvatore Fasulo are restrained and enjoined for a period of six years from the date of filing of this Final Judgment and Consent Decree from: .

- A. Directly or indirectly entering into, participating in, maintaining, furthering or enforcing any agreement, understanding or arrangement with any other persons, corporations, business entities or organizations to fix, stabilize, raise, maintain, or otherwise collectively determine any price, discount, or other term or condition for any sale, offer to sell, or contract concerning the wholesale or retail sale of milk in New York State.
- B. Directly or indirectly entering into, participating in, maintaining, furthering or enforcing any agreement, understanding or arrangement to allocate customers, territories or markets for the sale of milk in New York State.
- C. Nothing in this Final Judgment and Consent Decree shall be deemed to prevent Dairylea from performing those acts permitted to Dairylea under the statutes and judicial decisions of the State of New York and of the United States of America.

Distribution to Consumers

Dairylea agrees to create a fund ("the fund") to be available for distribution as set forth in the schedule below. From the fund distributions will be made as follows:

- A. Payments in the form of certified checks made payable to "In Re Milk Antitrust Litigation Settlement Fund" will be made as follows: \$25,000 on March 31, 1982; \$25,000 on March 31, 1983; \$25,000 on March 31, 1984; \$25,000 on March 31, 1985 and \$150,000 between March 31, 1986 and April 30, 1986.
- B. Cents-off coupons for milk and consumer products will be distributed in the market in the following manner:
  1. At intervals to be determined by Dairylea, in each of four successive years, beginning in the year commencing on the date of entry of this Final Judgment and Consent Decree, Dairylea will print, on a side panel of the containers of Dairylea milk, cents-off coupons, each of which may be redeemed by the purchaser, at the purchaser's option, for no less than 10¢ off the purchase price of Dairylea milk or for an equal or greater amount off

a Dairylea consumer product or products. The non-milk consumer product, and the redemption value of the coupon as to that product, may vary from time to time at the option of Dairylea.

2. Approximately two-thirds of such cents-off coupons shall be placed on half-gallon containers and approximately one-third shall be placed on quart containers, unless a different proportion is subsequently agreed to between the parties to this Consent Decree.
3. Six months from the commencement of distribution of cents-off coupons described above, and at the end of each subsequent six month period until the completion of the distribution, Dairylea will submit under oath an accounting to the Attorney General of the to-date costs to Dairylea pursuant to this agreement. Included in this accounting will be all costs actually incurred by Dairylea for producing, distributing and redeeming the cents-off coupons, including the total face value of the coupons actually redeemed and the predictable obligation of future redemptions, to be verified by actual Nielsen Clearing House Reports or Dairylea's actual experience

of coupon redemption in the course of distributions made pursuant to paragraph B of this section.

4. The mechanics of distribution and redemption of cents-off coupons shall be designed and scheduled in such a way that the total costs to Dairylea as described in paragraph B.3 of this section, shall be \$125,000 in the year ending one year from the date of entry of this Final Judgment and Consent Decree; \$175,000 in the year ending two years from the date of entry of this Final Judgment and Consent Decree; \$200,000 in the year ending three years from the date of entry of this Final Judgment and Consent Decree; and \$250,000 in the year ending four years from the date of entry of this Final Judgment and Consent Decree.
5. If at the end of any such year the actual cost to Dairylea, as described in paragraph B.3 of this section, of the coupon distribution has not reached the amount required pursuant to paragraph B.4 of this section, Dairylea shall issue cents-off coupons in the following year in an amount designed to



result in Dairylea having incurred, by the end of that following year, actual costs in the total amount required by paragraphs B.3 and B.4 of this section.

6. Dairylea's obligation to issue cents-off coupons pursuant to this agreement terminates upon Dairylea having incurred actual costs, as described in paragraph B.3 of this section, totalling \$750,000 in connection with the distribution of cents-off coupons pursuant to this Final Judgment and Consent Decree, even if that event occurs prior to four years from the date of entry of this Final Judgment and Consent Decree.
7. The fund referred to in the first two sentences of this Section shall be created by deducting from payments made by Dairylea to its farmer-members approximately one cent per hundred-weight on their annual production of Raw Milk.

## VI Compliance

A. For purposes of determining or securing compliance with this Final Judgment and Consent Decree, and for no other purposes, duly authorized representatives of the

Attorney General of New York, for a period of six years from the date of entry to this Final Judgment and Consent Decree, shall be permitted upon reasonable notice and prior written request:

1. Reasonable access during Dairylea's normal business hours to relevant books, records, ledgers, memoranda and other records or documents in the possession or under the control of Dairylea relating to any of the matters contained in this Final Judgment and Consent Decree;
2. To interview, in the presence of counsel and during normal working hours, officers, directors, agents or employees of Dairylea on any matters relating to compliance with this Final Judgment and Consent Decree;
3. To require Dairylea to submit upon reasonable notice such verified written reports as may reasonably be requested with respect to the matters contained in this Final Judgment and Consent Decree, but such reports shall not without further agreement be required at lesser intervals than six months;

4. Provided, however, that Dairylea retains the right to object to any request made pursuant to paragraphs A.1, A.2 or A.3 of this section, within thirty (30) days after the receipt of that request, on the grounds that the request does not relate to the matters contained in this Final Judgment and Consent Decree, or is subject to the Attorney-Client privilege.

B. For the purposes of securing compliance with this Final Judgment and Consent Decree and for no other purposes Dairylea shall:

1. Furnish a copy of this Final Judgment and Consent Decree (exclusive of Section V) to each of Dairylea's officers, directors, sales managers, sales persons and delivery persons, and employees having discretion as to milk pricing or customer selection within New York State, within sixty (60) days after entry of this Final Judgment and Consent Decree;
2. Furnish a copy of this Final Judgment and Consent Decree (exclusive of Section V) to each successor to those persons described in paragraph B.1 of this section within thirty (30) days after each assumes such position,

for a period of six years from the date of entry of this Final Judgment and Consent Decree;

3. File with this Court and simultaneously serve upon the Attorney General, within ninety (90) days after the entry of this Final Judgment and Consent Decree an Affidavit as to the fact and manner of compliance with paragraph B.1 of this section;
4. Obtain from each person served with a copy of this Final Judgment and Consent Decree pursuant to paragraphs B.1 and B.2 of this section, a written statement evidencing such person's receipt of a copy of this Final Judgment and Consent Decree, to be retained by Dairylea in its files and available for review by the Attorney General and this Court for a period of six years after entry of this Final Judgment and Consent Decree;
5. Immediately remove from all statements of policy, shipping and routing memoranda, instructions and memoranda, if any exist, to defendant's officers, directors, sales managers, salespersons, delivery persons, and employees having any pricing or customer selection

discretion operating within New York,  
standards for the price to be charged by  
retail store customers of Dairylea to customers  
of such stores or any statement that has as  
its express or implied purpose an allocation  
of customers, territories or markets among  
Dairylea and other milk distributors in New  
York State.

C. Dairylea has already instituted and pursuant to  
this Decree shall continue to implement for a period of six  
years after entry of this Final Judgment and Consent Decree,  
a company-wide antitrust compliance program which includes:  
(1) the distribution, to each of Dairylea's officers, directors,  
sales managers, sales persons and employees having discretion  
as to milk pricing or customer selection within New York  
State, of an antitrust compliance manual which has been sub-  
mitted to the Attorney General setting forth the company's  
policy not to participate in any arrangement whatsoever  
that, directly or indirectly, fixes prices, allocates markets  
or customers, or otherwise violates the antitrust laws; (2)  
publication, for distribution together with the antitrust  
compliance manual, of a written admonition that any persons  
not adhering to this company policy shall be subject to  
disciplinary action up to and including termination of

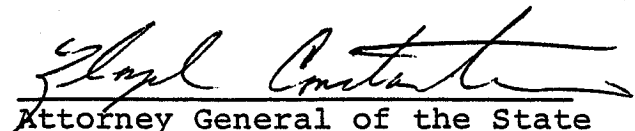
employment; (3) securing the attendance of all persons described in paragraph C(1) of this section at regular antitrust compliance sessions.

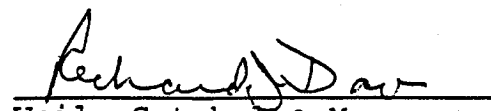
## VII

### Jurisdiction Retained

Jurisdiction shall be retained by this Court for a period of six years from the entry of this Final Judgment and Consent Decree for the purpose of enabling either party hereto to apply for such further orders and directions as may be necessary or appropriate for the construction or enforcement of this Final Judgment and Consent Decree, the ruling on any objection made pursuant to paragraph A.4 of Section VI hereof and the modification of any of the provisions hereof to the extent such modifications are permitted by law.

Dated: New York, New York  
May 28, 1981

  
\_\_\_\_\_  
Attorney General of the State  
of New York  
Attorneys for the State of  
New York

  
\_\_\_\_\_  
Weil, Gotshal & Manges  
Attorneys for Dairylea  
Cooperative, Inc.,  
767 Fifth Avenue  
New York, New York 10153  
(212) 310-8000

*Frederic P. Hafetz*

Goldman & Hafetz  
Attorneys for Salvatore Fasulo  
500 Fifth Avenue  
New York, New York 10153

SO ORDERED:

\_\_\_\_\_  
U.S.D.J.



ROBERT ABRAMS  
Attorney General

STATE OF NEW YORK  
DEPARTMENT OF LAW  
TWO WORLD TRADE CENTER  
NEW YORK, N.Y. 10047  
TELEPHONE 488-7404

LLOYD CONSTANTINE  
Assistant Attorney General  
In Charge  
Antitrust Bureau

May 28, 1981

Re: People of the State of New York  
v. Dairylea Cooperative, Inc.  
Bronx County Indictment No. 976/1981  
-----

Richard J. Davis, Esq.  
Weil, Gotshal & Manges  
767 Fifth Avenue  
New York, New York 10153

Dear Mr. Davis:

This letter is being written to confirm the agreement entered into between this office and your client, Dairylea Cooperative, Inc. ("Dairylea"), named as a defendant in the above-captioned case.

It is agreed, on the understandings set forth below, that your client will cooperate fully with this office in connection with this office's investigation of antitrust violations in the milk industry in the State of New York ("the investigation"). This cooperation will include the following:

A. Dairylea will furnish this office with a list of its employees, their job titles and locations. Dairylea will adopt a strong corporate policy that all persons employed by Dairylea as of the date of signing of this agreement, including Salvatore Fasulo, whom this office desires to question, must cooperate with this office in the investigation. It is understood that this cooperation may, in this office's discretion, include interviews by attorneys and investigators of this office, testimony before any grand jury before which this office is presenting evidence, and testimony at any trial, civil or criminal, which may result from the investigation, including the trial of the above-captioned case.



To: Richard J. Davis, Esq.

-2-

May 28, 1981

B. Dairylea will enforce its corporate policy of cooperation with this office, described in paragraph A, above, with appropriate disciplinary action, up to and including termination of employment, against any employee who refuses to cooperate with this office.

C. It is understood and agreed that the cooperation described in paragraph B, above, will not include disclosure by any employee of or attorney for Dairylea of the subject matter or content of any conversations, meetings or correspondence between the attorneys for Dairylea and any attorneys for 1) other defendants in People of the State of New York v. Dairylea Cooperative, Inc., et al., Bronx County Indictment No. 976/1981; 2) other defendants in State of New York v. Dairylea Cooperative, Inc., et al., 81 Civ. 1891, S.D.N.Y., filed April 1, 1981; or 3) other possible targets of the investigation.

It is understood that this office agrees to the following:

This office will consent to the dismissal with prejudice of Bronx County Indictment No. 976/1981, as against Dairylea and its employee, Salvatore Fasulo, and neither Dairylea nor any officer or person employed by Dairylea as of the date of this agreement will be otherwise criminally prosecuted, or civilly sued, by the State or the People of New York, for any transaction which has occurred prior to the date of the signing of this agreement, revealed during the course of the investigation. This agreement shall not be interpreted to preclude prosecution of any so immunized officer or employee of Dairylea for perjury or contempt, and this office will be free to prosecute any officer or employee of Dairylea who refuses to cooperate with this office in the investigation in accordance with the agreements set forth in this letter.

To: Richard J. Davis, Esq.

-3-

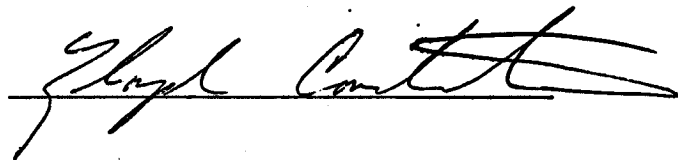
May 28, 1981

Any other promises, agreements and conditions entered into by the parties shall be in the form of written agreements.


Very truly yours,

ROBERT ABRAMS  
Attorney General of the  
State of New York

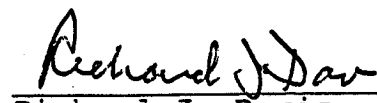
By:



AGREED AND CONSENTED TO:

  
Clyde E. Rutherford  
President  
Dairylea Cooperative, Inc.

APPROVED:

  
Richard J. Davis, Esq.  
Weil, Gotshal & Manges  
Attorneys for Dairylea

# WEIL, GOTSHAL & MANGES

767 FIFTH AVENUE - NEW YORK, N. Y. 10153

(212) 310-8000

TELECOPIER: (212) 752-3976

CABLE: WEGOMA

TELEX: ITT 424281, ITT 423144

WRITER'S DIRECT LINE

(212) 310-8860

HORACE S. MANGES  
COUNSEL

WASHINGTON OFFICE

NANCY L. BUC  
RESIDENT PARTNER

MAX D. PAGLIN  
WASHINGTON COUNSEL

1101 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D. C. 20036  
TELEPHONE: (212) 431-6620  
(202) 857-0141  
TELECOPIER: (202) 857-0194

JESSE D. WOLFF  
ARTHUR M. KREIDMANN  
ROBERT TODD LANG  
IRA M. MILLSTEIN  
PHILIP T. KAPLAN  
HARVEY R. MILLER  
MARTIN J. RABINOWITZ  
MICHAEL K. STANTON  
ARTHUR P. JACOBS  
IRVING SCHER  
STEPHEN E. JACOBS  
GERALD S. BACKMAN  
PETER GRUENBERGER  
CARL D. LOBELL  
CHARLES A. GOLDSTEIN  
LEO L. SCHMOLKA  
A. PAUL VICTOR  
ALAN B. MILLER  
GORDON D. HENDERSON  
STEPHEN H. COOPER  
RONALD F. DAITZ  
MICHAEL D. HESS  
STUART M. ROSEN  
MARK A. VOGEL  
STUART D. AMES  
JOSEPH W. GELB  
SAMUEL H. LAITMAN

MARTIN B. AMDUR  
DENNIS J. BLOCK  
MARK A. JACOBY  
PETER D. STANDISH  
ROBERT G. SUGARMAN  
JOEL B. HARRIS  
ALEX E. WEINBERG  
JOHN R. WING  
RICHARD J. DAVIS  
KEVIN P. HUGHES  
ALAN A. LASCHER  
LAWRENCE J. LIPSON  
MARVIN E. JACOB  
CARL D. BELLOWES  
ALAN J. WEINSCHER  
JAMES W. QUINN  
DAVID P. STONE  
SALEM M. KATSH  
RICHARD P. KRASNOW  
CARLYN S. MCCAFFREY  
BRUCE R. ZIRINSKY  
RICHARD L. CHADAKOFF  
SIMEON GOLD  
KENNETH H. HEITNER  
R. BRUCE RICH  
JEFFREY J. WEINBERG  
JOHN M. LEWIS, P. C.

May 28, 1981

Lloyd Constantine, Esq.  
Assistant Attorney General in Charge  
Antitrust Bureau  
Office of the Attorney General  
State of New York  
Department of Law  
Two World Trade Center  
New York, NY 10047

Re: Dairylea Cooperative, Inc.

Dear Mr. Constantine:

This letter is being written to confirm certain understandings, representations and agreements between your office and Dairylea Cooperative, Inc. ("Dairylea") in connection with the resolution, settlement and disposition as between Dairylea and the State of New York, of the case People of the State of New York v. Dairylea Cooperative, Inc., et al., Bronx County Indictment No. 976/1981 ("the criminal case"), and the case State of New York v. Dairylea Cooperative, Inc., et al., 81 Civ. 1891, S.D.N.Y., filed April 1, 1981 ("the parens patriae case"). The terms of the resolution of the criminal case are set forth in a written Letter Agreement dated May 28, 1981, signed by both parties ("the Letter Agreement"); the terms of the settlement and disposition of the parens patriae case are set forth in the Consent Decree signed by both parties on May 28, 1981 ("the Consent Decree") and submitted to the Court for approval.

Lloyd Constantine, Esq.

May 28, 1981

-2-

A. Section V.B.7 of the Consent Decree refers to the creation, by Dairylea, of a fund ("the fund") from which distributions are to be made pursuant to the provisions of that Section. It is understood that, at current levels of membership and production, the sum of money to be deducted by Dairylea from payments to its farmer-members will equal approximately one cent per hundredweight of their annual production. It is understood that the levels of production of raw milk by the farmer-members of Dairylea may fluctuate or vary from year to year, and that the deduction shall in any event be sufficient to enable Dairylea to meet its obligations set forth in Section V of the Consent Decree as they mature.

B. Section V.B. of the Consent Decree sets forth a system of distributing cents-off coupons to purchasers of Dairylea milk, and specifies Dairylea's obligations with respect to incurring actual costs, in each of four successive years, in implementing the cents-off coupon program. It is understood that these actual costs shall include: the monies lost which would otherwise have accrued to Dairylea by Dairylea's having sold the milk carton side panel space to some other person or entity (to the extent the total amount of such monies do not exceed \$75,000 over the four years of this program); the cost of new printing plates, design and graphics, and printing of the coupons themselves; the face value of the coupons actually redeemed and the predictable obligation of future coupon redemptions; costs of handling of the coupons by the retail stores, Nielsen Clearing House, and Dairylea; and any other costs agreed upon by Dairylea and the Attorney General. You have represented that your office will take upon itself the burden of defending the legality of this coupon distribution and redemption program.

C. Section V.B. of the Consent Decree refers to the distribution of cents-off coupons for milk and consumer milk products to be distributed in the market, as the market is defined in the Consent Decree. It is understood that approximately 75% of the cents-off coupons will be placed on containers of milk designed to be distributed in those areas presently serviced by the Woodside Plant, and approximately 25% of the cents-off coupons will be placed on containers designed to be distributed in the remainder of the market.

Lloyd Constantine, Esq.

May 28, 1981

-3-

D. Section V.B.4 of the Consent Decree requires Dairylea to design and schedule the coupon distribution program in such a way as to incur actual costs (as defined in paragraph V.B.3 of the Consent Decree and by paragraph B of this agreement) of a certain fixed amount in each of four successive years. It is understood that, recognizing the lack of prior experience with this form of program, but based upon information presently available to Dairylea relating to the actual costs listed in paragraph B of this letter, including Nielsen Clearing House Reports of redemption experience in other coupon distribution programs, Dairylea will initially issue approximately one million coupons for each \$56,000 of obligation. These coupons will be issued in batches, or "runs," of approximately one million coupons per run, at intervals calculated to permit Dairylea to evaluate its actual redemption experience. It is understood that this program has certain novel features, and that the number of coupons issued by Dairylea will be adjusted to reflect the actual experience of redemption of the cents-off coupons.

E. A copy of a sample form of coupon to be distributed pursuant to the provisions of Section V.B. of the Consent Decree is attached as Exhibit 1 to this letter. It is understood that the coupons to be distributed will conform in basic design to the sample depicted in Exhibit 1. Further, it is understood that there may be variations in the presentation of the material contained in the pictorial portion of the coupons and that the size of the print contained in the exhibit does not necessarily reflect the actual size of the print on the coupons. All coupons will be submitted to your office for approval before being issued.

F. You have stated that it is the position of your office that the resolution, settlement and disposition of the criminal case and the parens patriae case pursuant to the terms of the Letter Agreement and the Consent Decree will be of significant assistance to your office in its continued investigation of possible antitrust violations in the milk industry in the State of New York ("the investigation") and will also have a significant salutary effect upon

Lloyd Constantine, Esq.

May 28, 1981

-4-

competition in the milk industry in the State of New York. You have stated that it is the position of your office that, while the issue of Dairylea's licenses is a matter clearly committed to the jurisdiction of the New York State Department of Agriculture and Markets, it would be inconsistent with the significant pro-competitive provisions in the Consent Decree and Letter Agreement and the consumer discount provisions of the Consent Decree for Dairylea to suffer adverse licensing consequences as a result of the Attorney General's investigation.

You have agreed to make your position in this regard known to the Department of Agriculture and Markets by sending the letter attached as Exhibit 2 of this letter when requested to do so by Dairylea, while recognizing that licensing is a matter clearly committed to that Department's discretion.

G. It is understood that prior to any distribution of coupons pursuant to Section V.B. of the Consent Decree, your office will formally advise the appropriate officials of the Department of Agriculture and Markets, that the Consent Decree, once reduced to a final judgment, does not contemplate or necessitate any violation of Article 21 or Article 21-A of the New York State Agriculture and Markets Law.

H. We have discussed the possibility that some of the potential members of the governmental class on behalf of which your office has brought suit in the parens patriae case may choose to opt out of that case. It is understood and agreed that, in that event, the terms set forth in Section V.A. of the Consent Decree will be appropriately renegotiated, and that Dairylea will be under no obligation to make the payments scheduled in Section V.A. of the Consent Decree until an Amended Decree has been agreed upon by your office and Dairylea and approved by the Court. In the event that no Amended Decree can be agreed upon, it is understood that the governmental class allegations of the complaint in the parens patriae case will be revived and that that case will be pursued by your office.

Lloyd Constantine, Esq.

May 28, 1981

-5-

I. It is understood that Dairyalea will not increase its prices of products in order to offset the 10¢ discount allowed by the coupons distributed pursuant to Section V.B. of the Consent Decree. It is also understood that Dairyalea may adjust its prices pursuant to lawful business considerations so as to pursue its goal of long term profitable operations.

Please indicate your agreement with the statements contained in this letter by signing where indicated below.

Very truly yours,

WEIL, GOTSHAL & MANGES

By Richard J. Davis  
Richard J. Davis

AGREED AND CONSENTED TO:

Lloyd Constantine  
Lloyd Constantine  
Assistant Attorney General in  
Charge of Antitrust Bureau

# EXHIBIT 1

Actual size of 1/2 gallon side panel

10¢
10¢
10¢
10¢

10¢ off one carton

any Dairylea milk

[whole milk 1%

2% skim]

STORE COUPON

GROCER: Dairylea Cooperative, Inc., will reimburse you in the amount of \_\_\_\_\_ plus 7¢ handling, when you mail this coupon to Dairylea Cooperative, Inc., P.O. Box 1769, Clinton, Iowa 52734, provided you and your customer have complied with the terms of this offer. Any other application by you constitutes fraud. Void when presented by outside agency, broker or institutional user, or where prohibited, taxed or otherwise restricted. Your customer must pay any sales tax. Invoices showing your purchase or sufficient stock to cover coupons presented for redemption must be shown on request. Limit one \_\_\_\_\_, Cash value 1/20¢ or 1¢. Offer expires \_\_\_\_\_.

15¢
15¢
15¢

15¢ off one container

any size Dairylea

consumer product

STORE COUPON

These coupons issued pursuant to Consent Decree dated \_\_\_\_\_ entered into between Dairylea and Attorney General Robert Abrams in settlement of State of New York v. Dairylea, S.D.N.Y. 81 Civ. 1891

Pictorial portion  
of coupon



Legend required  
by law



Pictorial portion  
of coupon







STATE OF NEW YORK  
DEPARTMENT OF LAW  
TWO WORLD TRADE CENTER  
NEW YORK, N.Y. 10047  
TELEPHONE:

ROBERT ABRAMS  
Attorney General

May 28, 1981

Re: New York State Attorney General  
Investigation of the Milk Industry  
-----

Hon. J. Roger Barber, Commissioner  
Department of Agriculture and Markets  
State of New York  
Building 8  
The State Campus  
Albany, New York 12235

Dear Commissioner Barber:

As you are aware, this office, with the assistance of your Department, is conducting an investigation of possible anti-trust violations in the dairy industry in the State of New York ("the investigation"). In the course of the investigation which has not yet been completed, this office has already brought two cases, People of the State of New York v. Dairylea Cooperative, Inc., et al., Bronx County Indictment No. 976/1981 ("the criminal case"), and State of New York v. Dairylea Cooperative, Inc., et al., 81 Civ. 1891, S.D.N.Y., filed April 1, 1981 ("the parens patriae case").

These cases, as between Dairylea Cooperative, Inc. ("Dairylea") and the State of New York, have been fully disposed of, settled and resolved. The terms of the resolution of the criminal case are set forth in a Letter Agreement dated May , 1981, signed by both parties ("the Letter Agreement"); the terms of the settlement and disposition of the parens patriae case are set forth in a Consent Decree signed by both parties on May , 1981 ("the Consent Decree") and submitted to the Court for approval. Included in the Letter Agreement and the Consent Decree, the texts of which are attached, are provisions for full cooperation in this office's continuing investigation, on the part of Dairylea, its officers and employees, as well as provisions for payment of money and for full compliance with the antitrust laws.

To: Hon. J. Roger Barber, Commissioner  
Re: Investigation of Milk Industry

May 28, 1981

-----2

The consent decree, which includes provisions for wide distribution of "cents-off" coupons on Dairylea milk containers, does not contemplate or necessitate any violation of Article 21 or Article 21-A of the New York State Agriculture and Markets Law. Thomas Conway, your counsel, was consulted prior to formulation of this position.

This office strongly believes that the prompt resolution, settlement and disposition of the criminal case and the parens patriae case pursuant to the terms of the Letter Agreement and the Consent Decree will be of significant assistance in the continued investigation and will also have a significant salutary effect upon competition in the dairy industry in the State of New York.

I fully recognize that licensing is a matter clearly committed by law to the jurisdiction of your Department. I would, however, strongly recommend that the disposition described above not result in any adverse impact on Dairylea's licenses. I believe that the compliance, cooperation, monitoring and consumer discount aspects of the decree and agreement will help assure full and open competition in New York's milk industry. I also believe that Dairylea's willingness to promptly resolve these matters and to commit itself to an early, affirmative formal program of compliance merit particular recognition.

It is my expectation in writing to you at this time that Dairylea will comply thoroughly with the terms of the Consent Decree. If that expectation proves erroneous, I will of course advise you promptly.

Your consideration of this matter is appreciated.

Very truly yours,



ROBERT ABRAMS

# WEIL, GOTSHAL & MANGES

767 FIFTH AVENUE - NEW YORK, N. Y. 10153

(212) 310-8000

TELECOPIER: (212) 752-3976

CABLE: WEGOMA

TELEX: ITT 424281, ITT 423144

WRITER'S DIRECT LINE

(212) 310-8860

HORACE S. MANGES  
COUNSEL

WASHINGTON OFFICE

NANCY L. BUC  
RESIDENT PARTNER

MAX D. PAGLIN  
WASHINGTON COUNSEL

1101 CONNECTICUT AVENUE, N.W.  
WASHINGTON, D. C. 20036  
TELEPHONE: (212) 431-6820  
(202) 857-0141  
TELECOPIER: (202) 857-0194

May 29, 1981

MESSE D. WOLFF  
ARTHUR M. KREIDMANN  
ROBERT TODD LANG  
IRA M. MILLSTEIN  
PHILIP T. KAPLAN  
HARVEY R. MILLER  
MARTIN J. RABINOWITZ  
MICHAEL K. STANTON  
ARTHUR P. JACOBS  
IRVING SCHER  
STEPHEN E. JACOBS  
GERALD S. BACKMAN  
PETER GRUENBERGER  
CARL D. LOBELL  
CHARLES A. GOLDSTEIN  
LEO L. SCHMOLKA  
A. PAUL VICTOR  
ALAN B. MILLER  
GORDON D. HENDERSON  
STEPHEN H. COOPER  
RONALD F. DAITZ  
MICHAEL D. HESS  
STUART M. ROSEN  
MARK A. VOGEL  
STUART D. AMES  
JOSEPH W. GELB  
SAMUEL H. LAITMAN

MARTIN B. AMOUR  
DENNIS J. BLOCK  
MARK A. JACOBY  
PETER D. STANDISH  
ROBERT G. SUGARMAN  
JOEL B. HARRIS  
ALEX E. WEINBERG  
JOHN R. WING  
RICHARD J. DAVIS  
KEVIN P. HUGHES  
ALAN A. LASCHER  
LAWRENCE J. LIPSON  
MARVIN E. JACOB  
CARL D. BELLOWS  
ALAN J. WEINSCHER  
JAMES W. QUINN  
DAVID P. STONE  
SALEM M. KATSH  
RICHARD P. KRASNOW  
CARLYN S. MCCAFFREY  
BRUCE R. ZIRINSKY  
RICHARD L. CHADAKOFF  
SIMEON GOLD  
KENNETH H. HEITNER  
R. BRUCE RICH  
JEFFREY J. WEINBERG  
JOHN M. LEWIS, P. C.

Lloyd Constantine, Esq.  
Assistant Attorney General in Charge  
Antitrust Bureau  
Office of the Attorney General  
State of New York  
Department of Law  
Two World Trade Center  
New York, New York 10047

Dear Mr. Constantine:

This letter is being written to reflect certain understandings that Dairylea Cooperative, Inc., ("Dairylea") has in connection with the resolution, settlement and disposition of the State of New York v. Dairylea Cooperative, Inc. et al., 81 Civ. 1891, S.D.N.Y.

We have discussed the possibility that other defendants in the criminal case and in the parens patriae case, as well as other companies or individuals who may be later named as defendants in those cases or other, similar, cases filed by your office, may seek to settle those cases by some agreement with your office. You have represented to Dairylea that Dairylea has received special consideration in this settlement because of its prompt settlement of and cooperation in this matter. You have also advised us that any such settlement with other parties will not be made by your office on terms more favorable to those parties than the terms negotiated with Dairylea and embodied in the Letter Agreement dated May 28, 1981 and the Consent Decree to be filed on May 29, 1981.

Lloyd Constantine, Esq.

- 2 -

May 28, 1981

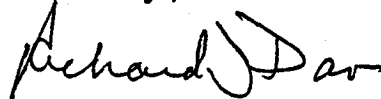
Section V.B. of the Consent Decree and Section B. of the Letter Agreement refer to the actual costs to Dairyalea in connection with the cents-off coupons. In addition to the face value of the coupons actually redeemed and the predictable obligation of future coupon redemptions, the present costs of the other items are:

1. Lost advertising income from side panels - \$5,000 per month.
2. Handling of coupons - 9¢ a coupon.
3. Plates, design, graphics, and printing - average of \$1,000 per month.

These costs, of course, could change over time.

Section B. of the Letter Agreement refers to the fact that you have represented that your office will take upon itself the burden of defending the legality of the coupon distribution and redemption program. It is our understanding that if your office, for any reason, should not do so, any costs incurred by Dairyalea in defending the program would be a cost to it under Section V.B. of the Consent Decree and Section B of the Letter Agreement.

Sincerely,



Richard J. Davis

RJD:jr