

**STATE OF NEW YORK  
SUPREME COURT**

**COUNTY OF SENECA**

<b>Meadowsweet Dairy, LLC</b>	:	<b>Index No. 40558</b>
	:	
<b>and</b>	:	
	:	
<b>Steven and Barbara Smith</b>	:	
	:	
<b>Plaintiffs</b>	:	
	:	
<b>against</b>	:	
	:	
<b>Patrick Hooker, Commissioner</b>	:	
<b>Department of Agriculture and</b>	:	
<b>Markets of the State of New York</b>	:	
	:	
<b>and</b>	:	
	:	
<b>Will Francis, Director</b>	:	<b>Assigned Judge: Dennis F. Bender</b>
<b>Division of Milk Control and</b>	:	<b>JSC Acting</b>
<b>Dairy Services</b>	:	
	:	
<b>Defendants</b>	:	

**Affidavit of Barbara Smith**

County of Seneca :  
State of New York :

1. My husband and I, Plaintiff Steve Smith, reside at a dairy farm owned by them located at 2054 Smith Rd, Lodi, New York (the "farm"). Steve and I have 9 children, ranging in age from 8 to 27, six of whom reside with us at our farm.
2. Steve and I have been dairy farmers since 1995. From 1995 to March 2007 we sold milk to dairy processors, made yogurt with their milk and sold it through retail outlets and sold raw milk at our farm. During this time Steve and I had all the required permits from the State of New York: a milk dealer's

license, a grade A permit, a raw milk permit and a milk processing permit.

Therefore, we were inspected and regulated by Defendants.

3. On March 1, 2007, however, Plaintiff Meadowsweet Dairy, LLC (“Dairy LLC”) was duly formed in the State of New York as a limited liability company. Currently, the Dairy LLC has 121 members with an office and business located at 2054 Smith Rd, Lodi, New York. The only assets of the Dairy LLC are dairy cows that are used for the production of raw milk and raw milk products.
4. In March 2007, Steve and I relinquished all of our dairy permits and surrendered them to the State of New York. Since March 2007, Steve and I have become Operating Managers of the Dairy LLC and provide boarding services for the dairy cows owned by the Dairy LLC. The Dairy LLC’s cows are kept at our farm and we tend to, manage and take care of the cows on behalf of the Dairy LLC. The Dairy LLC’s cows produce raw milk, some of which is converted by us into raw milk yogurt, raw milk butter, raw milk cheese and raw milk buttermilk, none of which are pasteurized.
5. The Dairy LLC’s members want raw, unpasteurized milk and milk products from the dairy cows they own. The only people that have access to the raw milk and raw milk products produced by the Dairy LLC’s dairy cows are the Dairy LLC members and their respective families. Neither the Dairy LLC nor Steve or I “offer,” “distribute” or “otherwise make available” for sale to any member of the consuming public any of the raw milk or raw milk products that are produced by the Dairy LLC’s dairy cows.

6. The raw milk products produced by Steve and I have been tested for pathogens since at least 1998. During this time our milk and yogurt was always in compliance with New York State health standards for pathogens.
7. From March 2007 to October 2007, Steve and I and the Dairy LLC were inspected on almost a monthly basis by Defendants who would always ask for permission first before entering our property. Although we were not in possession of any permits during that time period, we allowed inspectors from Ag. and Mkts. onto our property to conduct routine inspections. Since that time, however, enforcement by Ag. and Mkts. of Plaintiffs has escalated.
8. On August 2007 Ag. and Mkts. levied a fine of \$1700 on Steve and I for minor inspection violations. The fine was based on evidence collected during inspections conducted since the time we relinquished our permits in March 2007.
9. In early October 2007, representatives from Ag. and Mkts. appeared at our farm and again asked permission to inspect, yet this time we refused the inspection. By this time, it was clear the inspections were conducted for the sole purpose of gathering evidence against us, and that the agency refused to believe that we were making raw milk and raw milk products that were available only to the Dairy LLC's members. Consequently, on October 11, 2007, Defendants executed a search warrant against us at our farm.
10. On October 11, 2007, representatives from Ag. and Mkts. inspected our farm pursuant to the warrant, seized 260 pounds and 7.5 gallons of raw milk buttermilk, raw milk, and raw milk yogurt, and issued to us "seizure form

S10409” that pertained to the seizure. These 260 pounds of raw milk products were manufactured by the Dairy LLC’s dairy cows.

11. On Friday, October 12, 2007, at 5:00 p.m., the Department faxed to our attorney a “Notice of Hearing” that was scheduled for October 23, 2007 to commence at 11 a.m. in Albany, NY. The Notice was issued to “show cause” why the 260 pounds of raw milk products “should not be destroyed or otherwise disposed of.”
12. The Department scheduled the hearing for that time and date even though we had not requested a hearing. We did not attend the October 23<sup>rd</sup> hearing because to do so would have been futile.
13. On October 31, 2007, a “Legal Assistant” of the Department sent a letter to the Dairy LLC and to us, alleging that we have been “selling, offering for sale, or otherwise making available raw milk for consumption by the consumers” in May, June and July 2007. The letter also indicated that additional administrative penalties in the amount of \$1,000 have been levied.
14. During November 2007, we attempted to make arrangements with Ag. and Mkts. for the destruction of the seized 260 pounds of raw milk products. However, Ag. and Mkts. refused to supervise the destruction unless we agreed to sign a statement waiving our right to a hearing. We declined so the seized product was in our cooler for another month.
15. On December 11, 2007, it was announced on an internet blog that we were going to file suit against Defendants. On December 13, 2007, we filed our complaint in this matter against Defendants. On that very same day,

- December 13, 2007, Defendants issued an administrative “show cause” complaint against us, scheduling a show cause hearing for January 17, 2008 to take evidence on why Defendants should not shut down the Dairy LLC and our farm.
16. The show cause notice alleges that we need a permit for our activity and that we are “selling, offering for sale or otherwise making available raw milk to members of the consuming public.” The show cause notice contains an “Exhibit A” which refers to samples of dairy products that were surreptitiously collected by Ag. and Mkts. from the private properties of other Dairy LLC members without a warrant. The show cause notice also alleges that Defendants will seek a civil penalty from us.
  17. In an obviously orchestrated effort to gather evidence in support of their show cause order, representatives from Ag. and Mkts. showed up at our farm on December 13<sup>th</sup> without a warrant allegedly to supervise the destruction of the seized products. They also demanded to inventory and photograph any new product of the Dairy LLC’s that had been manufactured since October 2007. We refused to allow the representatives of Ag. and Mkts. to take any photographs or collect any samples of the Dairy LLC’s product. Representatives of Ag. and Mkts. refused to leave our farm until they were finally escorted off the property by a Deputy from the Seneca County Sheriff’s office.
  18. I believe that the Department is in the process of obtaining a search warrant because this is what they did the last time we refused access to our property.

19. I believe that we will suffer irreparable harm if we have to attend the January 17, 2008 administrative hearing because the Department wishes to shut us down and prohibit us from engaging in what I believe is legal conduct.

FURTHER AFFIANT SAYETH NAUGHT

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Barbara Smith  
Personally, and as Operating Manager  
Meadowsweet Dairy LLC

Sworn and subscribed before me this \_\_\_\_\_ day of December, 2007.

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Notary Public