

**STATE OF NEW YORK
SUPREME COURT**

COUNTY OF SENECA

Meadowsweet Dairy, LLC	:	Index No. 40558
	:	
and	:	
	:	
Steven and Barbara Smith	:	
	:	
Plaintiffs	:	
	:	
against	:	
	:	
Patrick Hooker, Commissioner Department of Agriculture and Markets of the State of New York	:	Affirmation of Barbara Smith In Support of Motion for Preliminary Injunction and in Rebuttal of Will Francis
	:	
and	:	
	:	
Will Francis, Director Division of Milk Control and Dairy Services	:	Assigned Judge: Dennis F. Bender JSC Acting
	:	
Defendants	:	

**STATE OF NEW YORK :
COUNTY OF SENECA :**

I, Barbara Smith, being duly sworn, do hereby make the following statements based on my personal knowledge, belief and understanding.

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 ("the LLC") was duly formed in the State of New York as a limited liability company. Currently, the LLC has 121 members with an office and business located at 2054 Smith Rd, Lodi, New York. The only assets of the 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 LLC and provide boarding services for the dairy cows owned by the LLC. The LLC's cows are kept at our farm and we tend to, manage and take care of the cows on behalf of the LLC. The 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 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 LLC's dairy cows are the LLC members and their respective families. Neither the 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 LLC's dairy cows.

6. Each member of the LLC pays an initial fee of \$50 to become a member. Once they become a member, each member contributes additional capital on a quarterly basis to the LLC. Each member receives an equity share in the LLC based on the amount of capital contributions they make to the LLC.
7. The capital contributions, both the initial and the quarterly, paid by each member are allocated by the LLC toward the activities described in paragraph 4 of this Affirmation, to wit: Steve and I provide boarding services for the dairy cows owned by the LLC which are kept at our farm; we tend to, manage and take care of the cows on behalf of the LLC; and the LLC's cows produce raw milk, some of which is converted by Steve and I into raw milk yogurt, raw milk butter, raw milk cheese and raw milk buttermilk, none of which are pasteurized.
8. Members of the LLC receive their proportionate share of the equity of the LLC in the form of raw milk and raw dairy products. There is no sale or purchase of raw milk or dairy products by LLC members.
9. The LLC does not make its raw milk or raw dairy products available to any person except for LLC members. The LLC operates strictly in private and does not injure or impact the public's health, safety or welfare.
10. 1 NYCRR § 2.2(bb) defines "*milk plant*" as "any place, premises or establishment engaged solely or predominately in the receipt of prepasteurized milk. . . ." Neither Steve or I nor the LLC receives prepasteurized milk from anyone or anything. Steve and I do not even own

- any dairy cows. The LLC's dairy cows produce all of the LLC's own milk and the LLC does not receive any prepasteurized milk from anyone or anything.
11. 1 NYCRR § 2.2(mm) defines "*prepasteurized milk*" as "the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, goats or sheep which is to be pasteurized prior to being processed into milk." Steve and I do not pasteurize any milk. In addition, the LLC does not pasteurize any of the milk produced by its dairy cows.
 12. Steve and I and the LLC are not "milk plants."
 13. 1 NYCRR § 2.2 (y) defines "milk" as "food that meets the definition for milk provided for in section 17.18 of this Title which has been pasteurized."
 14. None of the milk produced by the LLC's dairy cows is pasteurized.
 15. 1 NYCRR § 2.2 (pp) defines "raw milk" as the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows, goats or sheep which will not be pasteurized prior to being sold or offered for sale to consumers."
 16. Steve and I and the LLC do not sell or offer for sale (or otherwise make available) any raw milk or raw dairy products to any consumer.
 17. The only raw milk or raw dairy products that Steve or I or the LLC make available to anyone is to the LLC members, and even then it is in the form of an equity distribution commensurate with each LLC members' proportionate share of their capital contribution.
 18. Agriculture and Markets Law Section 199 provides, in part, that adulteration and misbranding applies only to "the manufacture, production, processing,

packing, transportation, exposure, offer, possession, and holding of any such article for sale.”

19. Steve and I and the LLC do not sell anything to anybody.
20. The conduct that Steve and I and the LLC are engaged in is purely private conduct that does not injure the public’s health, safety or welfare.
21. Mr. Francis in his affidavit does not identify what injury the public will suffer if Steve, I and the LLC is not subject to New York’s Agriculture and Markets Law.
22. There is no relationship between the conduct of Steve, I and the LLC and the public’s health, safety or welfare.

FURTHER AFFIANT SAYETH NAUGHT

Barbara Smith
Affiant

Sworn and subscribed before me this _____ day of January, 2008.

Notary public