

**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	:	
	:	
and	:	
	:	
Will Francis, Director	:	Assigned Judge: Dennis F. Bender
Division of Milk Control and	:	JSC Acting
Dairy Services	:	
	:	
Defendants	:	

AFFIDAVIT OF PLAINTIFFS' ATTORNEY DAVID G. COX

State of Ohio :
County of Franklin :

I, David G. Cox, being duly sworn and under oath, do hereby make the following statements to the best of my ability, understanding and knowledge.

1. I am one of the attorneys that represent the Plaintiffs in this matter.
2. Plaintiffs Steve and Barbara Smith (the "Smiths") are husband and wife and they reside at a dairy farm located at 2054 Smith Rd, Lodi, New York. They have nine children ranging in age from 8 to 27, and six of their children still live with them at the farm.

3. From 1995 to 2007 the Smiths operated their dairy farm in accordance with applicable law and in accordance with all permits issued to them by the Department of Agriculture and Markets (the "Department").
4. However, the Smiths found that the Department's regulations were too burdensome and made it impossible for them to be financially viable, so in March 2007 they relinquished the last of their permits to the Department and formed Plaintiff Meadowsweet Dairy LLC (the "LLC"), a limited liability company that was duly formed in the State of New York in March 2007.
5. The Smiths are Operating Managers of the LLC and the LLC also includes 121 other members.
6. The LLC owns dairy cows which produce milk and other dairy products. The Smiths tend to, manage and otherwise handle the herd of dairy cows owned by the LLC. The Smiths also produce other dairy products from the milk produced by the LLC's cows, such as yogurt, keifer, butter milk and butter.
7. The LLC, the Smiths and the LLC's members have decided to opt out of the government sanctioned dairy food system and have decided to produce their own dairy products at their own expense for their own benefit.
8. All of the dairy products produced by the LLC's cows are consumed by the members of the LLC only. Nobody else receives any of the products produced by the LLC's cows.
9. Because the products are consumed only by the LLC's members, none of the products are "sold, offered for sale or otherwise made available" to any members of the consuming public.

10. Since March 2007 when they relinquished their permits, the Smiths and the LLC have been subjected to escalated enforcement activity by the Department of Agriculture and Markets.

11. For example, since August 2007 they have been subjected to a search warrant, served with a seizure order whereby 260 pounds of LLC product was seized, they were forced to destroy all of the 260 pounds of LLC product, they have been inspected, they have been the recipient of an administrative complaint seeking to shut them down and impose civil penalties, they have been subjected to another search warrant and they have received two letters assessing at least \$2,700 in administrative penalties.

12. On December 13, 2007, the Smiths and the LLC filed a complaint in declaratory judgment with this Court, seeking, in part, declarations that they are engaged in private conduct that does not impact the health, safety or welfare of any of the citizens of the State of New York and thus are not subject to regulation by the Department.

13. As recently as December 19, 2007, the Smiths and the LLC were served with a search warrant that is “continuing in nature” and does not end. The Smiths and the LLC are now subject to search and seizure at the whim of the Department.

14. The Smiths and the LLC are subject to immediate and irreparable harm because they run the risk of losing any product that is manufactured by the LLC’s cows, having their house searched at any time, and having their personal belongings seized at any time.

15. If the LLC members are members of the “consuming public” then so too is any person who attends a neighborhood pot luck dinner party and all of the food brought by all of the neighbors would be subject to regulation by the State of New York.

16. If the LLC members are members of the “consuming public” then so too is any employee of a corporation that eats at a employee cafeteria salad bar, where the food is grown by the corporation for the benefit of the corporation’s employees, and all of the food grown by the corporation would be subject to regulation by the State of New York.

17. If the LLC members are members of the “consuming public” then so too is any member of a Moose or Elk’s Lodge and all of the food brought onto the premises of such Lodge by any of its members would be subject to regulation by the State of New York.

18. If the LLC members are members of the “consuming public” then so too is any church member of a church that holds a pot luck dinner party and all of the food brought to the church by its members would be subject to regulation by the State of New York.

19. Government does not have the authority to regulate in matters of private affairs involving private conduct that does not adversely impact the public’s health, safety or welfare.

20. People all over the United States are opting out of the government sanctioned food supply system, for whatever reason, and they have the fundamental right to do so. The Smiths and the LLC have decided to exercise their fundamental right to opt out of the government sanctioned food system.

21. The Smiths and the LLC do not have an administrative remedy available to them because the Department, via the administrative complaint issued to Plaintiffs on December 14, 2007, has taken the position that they have jurisdiction over the Plaintiffs.

22. The LLC and the Smiths need a temporary restraining order to prevent the Department from conducting inspections, seizing dairy products, searching homes and residences, and taking administrative, civil or criminal enforcement action.

FURTHER AFFIANT SAYETH NAUGHT

David G. Cox
Counsel for Plaintiffs

Signed and sworn before me in my presence this 20th day of December, 2007.

Notary Public

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by regular U.S. mail, postage prepaid, on this 21st day of December, 2007, to the following:

Larry A. Swartz
Associate Attorney
State of New York
Department of Agriculture and Markets
10B Airline Drive
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Attorney for Defendants

Sam C. Bonney