

**STATE OF NEW YORK  
SUPREME COURT**

**ALBANY COUNTY**

<b>Meadowsweet Dairy, LLC</b>	:	<b>Index No. 2277/08</b>
	:	
<b>and</b>	:	
	:	
<b>Steven and Barbara Smith</b>	:	
	:	
<b>Plaintiffs</b>	:	
	:	
<b>against</b>	:	
	:	
<b>Patrick Hooker, Commissioner Department of Agriculture and Markets of the State of New York</b>	:	<b>PLAINTIFFS' REPLY TO DEFENDANTS' COUNTERCLAIMS</b>
	:	
<b>and</b>	:	
	:	
<b>Will Francis, Director Division of Milk Control and Dairy Services</b>	:	<b>Assigned Judge: Hon. John Egan</b>
	:	
<b>Defendants</b>	:	

Plaintiffs hereby submit their response to the counterclaims presented by Defendants in their Answer to the Plaintiffs' complaint:

1. Plaintiff Meadowsweet Dairy, LLC ("Meadowsweet") denies the allegations contained in paragraph 64 of Defendants' Answer. Meadowsweet does not sell, offer for sale or otherwise make available any raw milk or raw dairy products to any member of the consuming public. The only people that have access to Meadowsweet's raw milk and raw dairy products are Meadowsweet's members, but those members do not buy or purchase any of that milk or those products from Meadowsweet.
2. Meadowsweet states that 1 NYCRR Section 2.3(b)(1) speaks for itself but is mischaracterized by Defendants in their Answer. Meadowsweet further states that 1 NYCRR Section 2.3(b)(1) does not use the word "firm;" it is not a "dairy farm" as that

term is defined by 1 NYCRR Section 2.2(h); it does not sell anything to anybody, and; it does not manufacture or produce pasteurized milk or pasteurized milk products. In all other respects, Meadowsweet denies the allegations contained in paragraph 65 of Defendants' Answer.

3. Meadowsweet admits that it has not applied for and does not hold a raw milk permit but denies that it needs one because it is not regulated by 1 NYCRR Section 2.3(b)(1). In all other respects, Meadowsweet denies the allegations contained in paragraph 66 of Defendants' Answer.

4. Meadowsweet denies the allegations contained in paragraph 67 of Defendants' Answer. In addition, Meadowsweet denies it is regulated by 1 NYCRR Section 2.3(b)(1).

5. Meadowsweet can neither admit nor deny the allegations contained in paragraph 68 of Defendants' Answer because they do not make sense. In all other respects, Meadowsweet denies the allegations contained in paragraph 68 of Defendants' Answer.

6. Meadowsweet states that A&ML section 199-a(1) speaks for itself but is mischaracterized by Defendants in their Answer. Specifically, A&ML section 199-a(1) does not use the word "firm." In all other respects, Meadowsweet denies the allegations contained in paragraph 69 of Defendants' Answer.

7. Meadowsweet states that 1 NYCRR Section 2.3(b)(1) speaks for itself but is mischaracterized by Defendants in their Answer. Specifically, 1 NYCRR Section 2.3(b)(1) does not use the word "firm." In all other respects, Meadowsweet denies the allegations contained in paragraph 70 of Defendants' Answer.

8. Meadowsweet states that 1 NYCRR Section 2.3(b)(1)(ii) speaks for itself but is mischaracterized by Defendants in their Answer. Specifically, 1 NYCRR Section 2.3(b)(1)(ii) does not use the word “firm.” In all other respects, Meadowsweet denies the allegations contained in paragraph 71 of Defendants’ Answer.

9. Meadowsweet denies the allegations contained in paragraph 72 of Defendants’ Answer because it is not regulated by either A&ML section 199-a(1), 1 NYCRR Section 2.3(b)(1), 1 NYCRR Section 2.3(b)(1)(ii), or A&ML section 200(3). In all other respects, Meadowsweet denies the allegations contained in paragraph 72 of Defendants’ Answer.

10. Plaintiffs Steve and Barbara Smith deny the allegations contained in paragraph 73 of Defendants’ Answer because they do not own or operate a “milk plant” as that term is defined by 1 NYCRR 2.2(bb) and they do not sell or offer for sale raw milk products to Meadowsweet’s members.

11. Plaintiffs Steve and Barbara Smith state that A&ML Sections 199-a(1) and 201(7) speak for themselves. Plaintiffs Steve and Barbara Smith further state that these Sections apply only to pasteurized milk and since they do not pasteurize their milk those Sections do not apply to them. In all other respects, Plaintiffs Steve and Barbara Smith deny the allegations contained in paragraph 74 of Defendants’ Answer.

12. Plaintiffs Steve and Barbara Smith state that the Standards of Identify contained in Titles 7 and 21 of the Code of Federal Regulations and incorporated by 1 NYCRR section 17.18(a) speak for themselves. Plaintiffs Steve and Barbara Smith further state that these standards of identify apply only to pasteurized milk and since they do not pasteurize their milk, Titles 7 and 21 and 1 NYCRR 17.18(a) do not apply to them. In all

other respects, Plaintiffs Steve and Barbara Smith deny the allegations contained in paragraph 75 of Defendants' Answer.

13. Plaintiffs Steve and Barbara Smith admit that they manufacture and produce only raw milk and raw dairy products. In all other respects, Plaintiffs Steve and Barbara Smith deny the allegations contained in paragraph 76 of Defendants' Answer.

14. Plaintiffs Steve and Barbara Smith admit that they manufacture and produce raw milk and raw dairy products. Further, Plaintiffs Steve and Barbara Smith state that A&ML Sections 199-a(1) and 201(7) apply only to pasteurized milk, and since they manufacture and produce only raw milk and raw dairy products these Sections do not apply to them. In all other respects, Plaintiffs Steve and Barbara Smith deny the allegations contained in paragraph 77 of Defendants' Answer.

WHEREFORE, Plaintiffs request the following relief on Defendants' counterclaims:

- 1.) That Defendants' counter claims be dismissed in their entirety;
- 2.) That Plaintiffs be awarded costs and attorneys fees;
- 3.) That the Court grant Plaintiffs all other necessary and appropriate relief.

Respectfully submitted,

LANE, ALTON & HORST LLC

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by regular U.S. mail, postage prepaid, on this 16<sup>th</sup> day of May, 2008, to the following:

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

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