

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF TEXAS  
LUBBOCK DIVISION

HEIN HETTINGA AND ELLEN )  
HETTINGA d/b/a SARAH FARMS, )

CIVIL CASE NO.

--PLAINTIFFS, )

v. )

MIKE JOHANNNS, )  
SECRETARY OF AGRICULTURE, )  
UNITED STATES DEPARTMENT )  
OF AGRICULTURE, )

--DEFENDANT. )

**DECLARATION OF HEIN HETTINGA**

My name is Hein Hettinga. This Declaration is based upon my personal knowledge and belief and is provided in support of Plaintiffs' Motion For Preliminary Injunction. I am competent to testify about the statements and information in this Declaration if called upon to do so.

1. My wife and I are the owners and sole proprietors of Sarah Farms. We are residents of Bailey County, Texas.

2. Sarah Farms began operations in 1994 and has continuously operated as a producer-handler since inception. The success and financial viability of Sarah Farms is the direct result of my hard work and sacrifice and the hard work and sacrifices made by other members of my family.

3. When I began Sarah Farms, I consulted with the then market administrator of the marketing order in the State of Arizona. He assured me that as long as I controlled all aspects of my milk production and milk processing, Sarah Farms would be a producer-

handler under the Federal Milk Marketing System and that Congress had directed the United States Department of Agriculture ("USDA") to exempt producer-handlers from the minimum pricing and pooling regulations of the federal orders.

4. This was later confirmed when USDA issued its initial order reform decision that stated Congress did not intend that producer-handlers be regulated.

5. As a producer-handler, Sarah Farms is self-sufficient. We do not purchase any of our milk supply. Instead, all of the milk that we use at Sarah Farms is produced from our own herds and bottled in our own plant.

6. Under the terms of the federal milk order regulations, my wife and I assume the full risk of both being the owners of our farm and the owners of our plant.

7. Sarah Farms is a vertically integrated farming and processing operation. In other words, each element of the dairy farming operation is synchronized with the processing, marketing, and transportation of milk which is ultimately delivered to the customers of Sarah Farms.

8. Sarah Farms sells in excess of 3,000,000 pounds of Class I milk per month in Order 131 and will be immediately and irreparably harmed if the Final Order announced by the USDA on February 24, 2006 is implemented on April 1, 2006.

9. The new regulations will force Sarah Farms to abandon the business model in which I invested substantial financial resources and many long hours over the past decade. The new regulations will cause immediate changes to the operation of Sarah Farms and will force a fundamental restructuring of the business, which cannot be repaired even by a later decision striking down these new limitations.

10. Sarah Farms business model depends upon its regulatory status as a producer-handler. The effect of the final rule will be to "tax" Sarah Farms by forcing it to pay substantial money into a "pool" to be divided among our competitors who have never contributed one dime to our business. My estimate is that it will cost Sarah Farms hundreds of thousands per month and millions of dollars per year for this ongoing and confiscatory "tax". This expenditure of money was never factored into our business plan

or operations, and will disrupt the way in which Sarah Farms operates on a day-to-day basis.

11. USDA has attempted to justify this new rule in part by stating that Sarah Farms undercuts the market for bottled milk and that Sarah Farms can somehow increase market share and obtain new customers at will. This is simply wrong. In the milk business, customers change from one supplier to another all the time for all kinds of reasons, including pricing. One customer of Sarah Farms, the Basha's supermarkets in Tucson, stopped buying milk from Sarah Farms and began obtaining milk from a regulated handler because the regulated handler offered a lower price. Milk buyers look for high quality, good service, and competitive prices. At any time, any one or any combination of these factors might cause a customer to switch suppliers.

12. USDA's proposed new regulations are causing immediate and irreparable harm to Sarah Farms. A potential customer, a nationwide retailer, has informed us that they will not purchase milk from Sarah Farms due to the uncertainty of Sarah Farms' operations under the new USDA regulations. Moreover, Sarah Farms has not been able to obtain new customers or expand its customer base since the decision was announced by USDA in December of 2005. This decision has put a cloud over my business, and Sarah Farms has been under attack from competitors in the marketplace, including Shamrock Foods—the largest independent milk distributor in Arizona and supermarket chains Kroger and Safeway who both own large captive, milk bottling plants in Arizona. Sarah Farms is one of four processors of milk in Arizona and has the smallest milk processing factory in the market.

13. Absent an injunction, Sarah Farms will be unable to pursue any new or expanded business opportunities for the foreseeable future. If the USDA regulations are ultimately ruled illegal, the loss of these markets and customers by Sarah Farms cannot be recovered.

14. If the new regulations take effect on April 1, 2006, Sarah Farms will begin incurring monetary obligations to the federal milk pool. These obligations will require

Sarah Farms to charge our customers an additional approximately twenty cents per gallon to cover this new obligation. Beginning with milk sold on April 1, 2006, Sarah Farms may have to invoice customers an additional amount under the assumption that USDA will revoke our right to operate as a producer-handler under its anti-competitive rules. We have no guarantee that our customers would accept a price increase or that the market can bear increased prices. In some cases, Sarah Farms has longer term contracts under which Sarah Farms must supply milk at a certain price. Sarah Farms will either have to renegotiate these deals or will suffer a direct loss based upon these sales. The probability is that Sarah Farms will realize decreased sales because we will have to increase prices. Of course, that it exactly what our competitors wanted; less competition and increased consumer prices.

15. Because prices for milk will increase, the public will be harmed by paying significantly more for its milk.

16. Several of our key and senior employees have expressed their concerns about the impact of the new regulations on the continuing viability of our business. They have asked questions such as, "Will Sarah Farms be around?" and, "Will Sarah Farms have to close shop?" While my staff and I have attempted to reassure our employees about their jobs, this uncertainty continues. Sarah Farms is faced with the risk of trained and skilled employees leaving their positions out of their concerns for their family's financial well being.

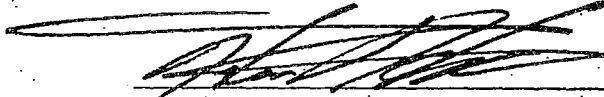
17. Some of my customers may choose to find alternate suppliers because they fear Sarah Farms may not be able to provide the same level of service that we have historically provided our customers. As I mentioned above, many of our competitors are utilizing the new USDA regulations to suggest to our customer base that Sarah Farms will be unable to compete in the marketplace and that our future viability is questionable. One of Sarah Farms' largest grocery customers has been approached by other bottlers who have suggested that the new regulations will force Sarah Farms out of business.

18. My bankers have also expressed concerns to me about the value of the business and the creditworthiness of the business in light of the new regulations.

19. Sarah Farms produces and bottles only milk that is free of artificial growth hormones (rBST). Milk free from rBST is more valuable because there is a niche market of customers who will pay a premium for milk free from added hormones. Under the proposed regulations, to maintain economic viability and to compete in the marketplace, Sarah Farms may have to purchase milk from other milk producers or cooperatives. In such instances, Sarah Farms may not be able to guarantee that the milk it receives is free of rBST or may have to pay a premium for such rBST free certified milk. These costs could not be reimbursed should the regulations ultimately be overturned.

20. The only reason that Sarah Farms has succeeded is through my hard work, seven days a week, 52 weeks a year, as well as the same effort by members of my family. I am constantly on the road, either at the farms, the processing plant, or calling on customers. Sharing my hard earned money with other dairy farmers who did not work for it is both unfair and anti-competitive.

Executed under penalty of perjury this 13<sup>th</sup> day of March, 2006.



Hein Hettinga