

# Huge New Cheddar Price Manipulation Antitrust Suit Filed vs. DFA

by Pete Hardin

NOTE TO READERS: The 55-page filing of this latest lawsuit against DFA is available at *The Milkweed's* Web site: [www.themilkweed.com](http://www.themilkweed.com)

Near the top of the home page, click the headline “Huge RICO Lawsuit against DFA’s Cheddar Price Manipulation” to access the complete pdf document.

For many years, the anti-competitive actions by Dairy Farmers of America have been characterized as “mafia-like.” But now those allegations are official: DFA has been recently named as defendant in a privately-filed “RICO” lawsuit. Federal RICO (an acronym derived from the Racketeer Influenced and Corrupt Organizations Act) laws are a special set of federal protections for persons and businesses that have been victimized by mafia-like conspiracies.

On April 9, 2010, a massive new lawsuit was filed against Dairy Farmers of America (DFA) by a trio of plaintiffs alleging that DFA engaged in a mafia-style conspiracy to manipulate cash Cheddar markets and related Class III (cheese milk) futures/options trading at the Chicago Mercantile Exchange (CME) during May-June 2004.

Defendants in this complaint include: DFA, Keller’s Creamery LLC, Gary Hanman (DFA’s President/CEO at the time of the alleged misdeeds), Gerald Bos (DFA’s Chief Financial Officer at the time), Frank Otis (Keller’s Creamery CEO at the time), and Glenn Millar (VP of Procurement & Operations for Keller’s Creamery at the time). All these parties were named by the federal Commodities Futures Trading Commission (CFTC) in a December 2008 Consent Decree involving these acknowledged CME Cheddar irregularities.

The lawsuit lists DFA as “... a serial antitrust defendant.” That’s a succinct summary of DFA’s extortionate behaviors over the years, as well as acknowl-

edging DFA’s role as a defendant in a numerous ongoing antitrust matters. Along with DFA, a DFA subsidiary – Keller’s Creamery, LLC – is named. In 2004, Keller’s Creamery operated as a self-standing entity, lacking the ostensible Capper-Volstead antitrust protections supposedly afforded to agricultural cooperatives. Thus, plaintiffs’ attorneys argue that DFA is stripped of any Capper-Volstead antitrust protections in this case, because the co-conspirator – Keller’s Creamery – was not a Capper-Volstead organization.

As basis for the legal complaint, plaintiff’s attorneys cite damning internal DFA documents from May-June 2004. These documents cite a cost-benefit analysis of financial outcome to the co-op if DFA were to engage in illegal manipulation of block Cheddar prices at the CME, while exiting an illegally large number of long, Class III futures contracts for June-August 2004. Such documents layout the illegal conspiracy.

The filing in the U.S. District Court for the Northern District of Illinois (Eastern Division) is based upon an infrequent, but powerful tool – RICO. These mafia-fighting legal tools were created so that plaintiffs could recover triple damages, plus legal fees, when federal courts determined that alleged damages were suffered as a result of mafia-type conspiracies.

The lawsuit was filed as a class action matter on behalf of three diverse plaintiffs – a dairy producer, a cheese distributor, and a cheese manufacturer. Because the lawsuit is a class action matter, additional plaintiffs will be sought if the court elevates the complaint to a full-blown case. The Chicago-based law firm Wolf Haldenstein Adler Freeman & Herz LLP is plaintiffs’ lead counsel.

## DFA has already admitted wrongdoing!

The lawsuit’s allegations dig deep into DFA’s internal records, citing conspiratorial deeds involving massive purchases of block Cheddar at the Chicago Mercantile Exchange (CME) in May-June 2004 as an effort by DFA to extricate itself from huge potential losses tied to an illegal, large number of long positions on Class III milk futures during the period June-August 2004. DFA’s strategy, detailed by internal company documents, involved purchasing as much block Cheddar as necessary, starting in late May 2004, to allow the co-op to get out of 15,000+ long Class III contract positions held for the June-August 2004 time frame. (Note: CME rules prohibit related entities from holding more than 1,500 such contracts for any single month. DFA’s long positions for Class III milk during June-August 2004 totaled more than 15,000!)

What’s absolutely hilarious about this lawsuit (unless your’re connected to DFA): DFA has already signed a consent agreement with the federal CFTC acknowledging many of these trading irregularities. DFA paid a \$12.15 million fine for trading illegalities that took place in Spring 2004. DFA’s defense will be hard to fabricate, given the fact that the co-op has already agreed to certain facts in this latest matter, in the settlement concocted with CFTC in mid-December 2008 (the waning weeks of the DFA-friendly George W. Bush administration).

## Summary of major elements in the complaint:

Here are the nuts-and-bolts allegations in this latest lawsuit against the nation’s largest dairy producers’ cooperative:

- \* In April-May 2004, DFA and Keller’s Creamery conspired to purchase CME milk futures contracts in excess of CME’s anti-manipulation limits.
- \* Defendants unlawfully and artificially inflated CME Class III milk futures contract prices.
- \* DFA’s purchases of block Cheddar at CME in May-June at a price of \$1.80 per pound, in volumes far above any commercial needs by DFA, constituted an illegal manipulation of cash Cheddar prices at CME to influence the resolution of DFA’s massive Class III contract holdings for June-August 2004.
- \* Employees of Keller’s Creamery – Glenn Millar and Frank Otis – are named in the complaint for their alleged role in detailing the scheme by which DFA flooded the block Cheddar market at \$1.80 per pound in May/June 2004, through heavy purchases of block Cheddar.
- \* Internal DFA documents detail a complex scheme used by DFA to extricate the co-op (including Keller’s Creamery’s Class III milk positions) from potential huge losses as a result of the 15,000+ “long” contracts held for Class III milk futures during June-August 2004: DFA bought all the Cheddar necessary – hundreds of 40,000-lb. carloads – to sustain block Cheddar prices at \$1.80 per pound until DFA exited all of those Class III milk contracts.

That internal DFA document’s scenario is *exactly* what played out at CME and the related worlds of futures/options resolution and farm milk prices.

## Complaint alleges DFA personnel lied to CFTC investigators

According to the legal complaint filed against DFA, in late 2004, the CFTC started investigating Cheddar trading events during the Spring 2004. But the complaint alleges DFA personnel lied for two years to CFTC investigators about the co-op’s actions and motives. DFA told CFTC that it had purchased cheese on the CME “to meet the needs forecast by its sales projections.” Two years later, DFA belatedly admitted to CFTC, “... that from sometime in May 2004 forward, DFA’s primary reason for purchasing block cheese on the CME was to defend [the CME cheese] price at \$1.80.”

DFA further admitted to CFTC that DFA had inflated CME block Cheddar prices to protect “...the value of DFA’s existing inventories of physical Cheese and Class III milk futures contract positions.” That action is absolutely illegal.

Why CFTC took so long – until December 2008 – to conclude this matter probably rests with DFA-friendly Republicans who infested the highest levels of government in Washington, D.C. at that time. (Editor’s note: Late in 2004, at the time DFTC began investigating DFA’s misdeeds at the CME, then-U.S. Attorney General John Ashcroft was a close personal friend of then DFA President/CEO Gary Hanman. When DFA and CFTC “settled” the matter in mid-

## CWT Cheddar Export Assistance in 2004 Bailed Out DFA’s CME Manipulation

by John Bunting

On December 15, 2008 the Commodities Futures Trading Commission (CFTC) reached a settlement with Dairy Farmers of America (DFA) regarding DFA’s manipulation of the Chicago Mercantile Exchange (CME) for a period of time in 2004.

According to the settlement, DFA’s former Chief Executive Officer Gary Hanman and its former Chief Financial Officer Gerald Bos, in early 2004 purchased speculative June, July and August Class III milk futures.

Then, from May 21-June 23, 2004, DFA, Hanman, and Bos attempted to manipulate those Class III futures through the purchase of block cheddar on the CME spot market for \$1.80 per pound, according to the CFTC.

DFA has attempted to portray the action as assisting dairy farmers’ milk checks in a positive fashion. However, the facts show otherwise: DFA depooled a significant amount of Class III milk in several federal milk marketing orders during the time in question. In Northeast Federal Order One, 22% less milk was pooled as Class III in 2004 than had been pooled in 2003. The farmers never benefited.

Logically, one might think DFA got stuck with a lot of high-priced cheese. Not so. Cooperatives Working Together (CWT) rode to DFA’s rescue. Just before DFA had to dump a lot of the Cheddar, CWT raised its Cheddar export bonus from \$1.30 a pound to \$1.40.

CWT is National Milk Producers Federation’s in-house supply management program financed by dairy co-op members. CWT includes a program to subsidize the export of cheese and other U.S. dairy products to other countries.

CWT’s press releases from 2004 detailed how DFA received bonuses for the following Cheddar exports:

Date	Amount in Metric Tons	Amount in Pounds	Shipped To
7/20/2004	40	88,160	Netherlands
7/29/2004	200	440,800	Netherlands
7/29/2004	1,500	3,300,600	EU, Saudi Arabia, Egypt
8/9/2004	100	220,460	Algeria
9/21/2004	10	22,046	Israel

The total amounted to 4,070,506 pounds or about 102 CME carloads of Cheddar.

The U.S. International Trade Commission (ITC) trade database fails to offer proof of any delivery to the last three bonus packages. The ITC data show the price of cheese going to the Netherlands for the last six months of 2004 as \$0.83 per pound. Add CWT’s export bonus in that figure and DFA appears to have pocketed \$0.43 a pound over the purchase price on the CME.

Of course, there is no real transparency in the CWT program. Therefore questions, important questions, remain. Did DFA include CWT as a back-end conspirator in the disposal of Cheddar gained from CME Cheddar price manipulations?

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December 2008, DFA noted to farmer/members that the settlement was to end the bleeding of legal costs. Internally, DFA subsequently has portrayed the \$12.15 million CFTC penalty as a “cost of doing business” which netted the cop’s farmer/members a far bigger payout through higher milk prices.)

### **Plaintiffs:**

The initial filing against DFA lists three diverse plaintiffs:

**Indriolo Distributors, Inc.** is a cheese distributor based in Warrensville Heights, Ohio. The firm purchases wholesale volumes of block and shredded cheese.

**Knutsen’s, Inc.** is a Wisconsin corporation based in Ridgeland. The plaintiff is a dairy farmer that also traded CME Class III milk futures during the class period. This plaintiff was financially damaged by incurring high settlement costs on “short” Class III milk futures during the period in question.

**Valley Gold, LLC** is a California-based firm based in Gustine. The lawsuit contends that Valley Gold was damaged in its property because it paid artificially high prices to purchase raw milk from California dairies during the period in questions. The lawsuit contends: “... Valley Gold’s contracts included contracts that were priced “basis” (or based on) the CME Cheese Spot Call price and contracts that were subject to the California minimum price formula for milk, one component of which was the CME spot cheese price.”

DFA faces roughly a half dozen lawsuits involving CME Cheddar spot market illegalities during the Spring 2004. This latest complaint–alleging mafia–style conspiracy with triple damages sought–cannot be discounted.