

Amended Milk Powder Lawsuit Alleges Fraudulent Criminal Activities by DairyAmerica

by Pete Hardin

Highlights of Fourth Amended Filing's Allegations Against DairyAmerica

- Sales documents hidden from California state auditors.
- Falsified weekly milk powder sales provided to USDA.
- Phony charges shown to Mexican government auditors.
- Sales prices falsified for DEIP export subsidies.
- DFA and LOL proposed as additional defendants.
- Restoring RICO (anti-Mafia) status for case sought. (RICO laws provide 3X damages, plus legal fees to successful civil plaintiffs).
- Proposed addition of California-based dairy producers as members of plaintiffs' class.

On February 10, 2017, plaintiffs' attorneys dropped a huge bombshell in the continuing legal matter that alleges mis-reporting of nonfat dry milk prices to government agencies by defendants DairyAmerica and California Dairies, Inc. (CDI).

This recent filing is just the latest set of charges in a long-running legal matter that dates back to March 2007, when *The Milkweed's* investigation into milk powder pricing revealed the milk powder mis-reporting scandal. Within a couple weeks, USDA launched an investigation into milk-powder price reporting. That government probe concluded DairyAmerica had falsely reported milk powder sales prices for several years. USDA's Agricultural Marketing Services branch estimated that the losses to U.S. dairy farmers (whose milk was pooled on federal milk orders) from the price mis-reporting totaled around \$50 million. That figure was widely panned at the time as unduly low. USDA's estimated \$50 million of lost producer income due to that mis-reporting DID NOT include additional values of Class I (fluid) and Class II (butter-powder) milk pooled in federal milk orders for the years during which the illegalities took place. (*The Milkweed's* estimate of lost federal milk order revenue for producers at that time was between \$500 million and \$1 billion. The publication continues to stand by that estimate.)

Something was obviously wrong in milk powder pricing in late 2006 and early 2007. But AMS overseers remained blissfully ignorant during the fourth quarter of 2006 and early 2007, as nonfat dry milk cash market prices and spot prices surged to nearly \$1.00/lb. over sales prices reported by DairyAmerica to USDA. Some dairy experts at USDA were aware of the milk powder pricing disconnect. USDA's weekly market analysis – Dairy Market News – puzzled over the wide variance between various measures of nonfat dry milk prices in January 2007.

AMS looked incompetent as the milk powder price mis-reporting mess unraveled. It was later revealed that USDA had failed to institute price-reporting rules for dairy commodities that were mandated by the 2002 federal farm law!

Former employees' Declarations are bases for amended filing

Plaintiffs' amended filing is heavily based upon sworn statements provided by two former DairyAmerica employees. One employee – whose name is redacted (blacked out) in the court documents – served as DairyAmerica's "Export Documentation Supervisor" from 2002 until her dismissal in 2009. (Her sworn Declaration, which appears as "Exhibit B" in the February 10, 2017 filing by plaintiffs' attorneys, is reprinted in full in this issue of *The Milkweed* – see page 7).

"Exhibit C" of that filing is a Declaration of Candice Bimemiller, who served as a Credit Manager at DairyAmerica from 2002 to 2009. Ms. Bimemiller's Declaration is not reprinted here.

In tandem, sworn Declarations submitted as Exhibits B and C in the February 10, 2017 amended filing point to a wide range of illegal activities conducted at DairyAmerica, under the direction of former CEO Rich Lewis. Those allegations include a wide variety of charges, which, if true, constitute likely serious, possibly criminal, violations of both state and federal laws.

Defendant DairyAmerica is a marketing-agency-in-common for dairy protein powders. Defendant CDI is a milk producer cooperative – the largest dairy co-op operating in California. Proposed additional defendants Dairy Farmers of America (DFA) and Land O'Lakes (LOL) operate as agricultural cooperatives. DFA and LOL were members of DairyAmerica from that entity's inception in the early 2000s. Both DFA and LOL quit DairyAmerica in 2007, once the price mis-reporting scandal was revealed. Sworn comments by another former DairyAmerica employee – ex-sales manager Doug White – have revealed that DairyAmerica's board of directors and key employees from member cooperatives were familiar with the price mis-reporting scheme(s). White's damning Declaration was printed in full in the October 2015 issue of *The Milkweed*.

The original lawsuit against DairyAmerica *et al.* was filed in March 2009 – just before the presumed two-year statute of limitations would have expired. The lawsuit has dragged on interminably. Progress in the case by plaintiffs' attorneys was delayed for about three years, due to repeated false claims by DairyAmerica's lawyers that they were representing Doug White as a client.

Here's a summary of the specific allegations against the defendants:

Some sales documents hidden from CDFA auditors

According to the deposition by the former Export Document Supervisor:

"8. First, during the period 2001 through at least 2008, each and every week in which DairyAmerica reported prices from export sales of NFDm to the California Department of Food and Agriculture ("CDFA"), those figures were

fabricated by Richard Lewis and his staff and did not accurately reflect export sales transactions. Each and every week in which DairyAmerica reported prices from export sales to CDFA, DairyAmerica deliberately reported fabricated prices that were lower than the actual export prices that DairyAmerica charged foreign customers."

The Milkweed's analysis: The former Export Document Supervisor went on to explain how senior DairyAmerica staffers would regularly box up and physically remove invoices from the DairyAmerica's office several days before regularly scheduled, monthly visits from CDFA auditors. The removed invoices included higher-valued transactions, which DairyAmerica's management hid from state auditors. CDFA uses weekly sales prices for dairy commodities as the basis for calculating monthly class prices. Reporting falsely low prices would have resulted in California dairy producers receiving less income for their milk sales.

False weekly milk sales reported to USDA

According to the former Export Account Supervisor's sworn declaration:

"9. Second, during the period 2001 through at least 2008, each and every week in which DairyAmerica reported prices from export sales of NFDm to the National Agricultural Statistics Service ("NAS"), a division of the United States Department of Agriculture ("USDA"), those figures were fabricated by Richard Lewis and his staff and did not accurately reflect export sales transactions. Each and every week in which DairyAmerica reported prices from export sales to NASS, DairyAmerica deliberately reported fabricated prices that were lower than the actual export price that DairyAmerica charged foreign customers."

The Milkweed's analysis: Like CDFA, USDA's federal milk order program relies upon monthly averages of manufacturers' weekly reported sales prices of dairy commodities – including nonfat dry milk – to establish monthly class prices. Reporting falsely low prices to USDA resulted in lower farm milk prices received by dairy farmers. In USDA's federal milk order program, nonfat dry milk prices are a key element in calculating monthly Class IV (butter-powder) prices. But the Class IV prices ripple further: Class II prices (for cultured products – yogurt, sour cream, ice cream) are set by adding a \$.70/cwt. premium to Class IV prices. And for months when the advance Class IV price is higher than the Class III (cheese milk) price, the Class IV price becomes the base to which regional Class I differentials are added. In certain months of late 2006 and very early 2007, CME cash markets were dramatically higher than nonfat dry milk sales prices reported to USDA by DairyAmerica. With an average of 8.7 lbs. of nonfat dry milk per average hundredweight of farm milk, a 50-cent per pound under-reported value of nonfat dry milk sales prices would translate into a \$4.35/cwt. higher Class IV price. And that big boost would certainly have propelled monthly Class I prices above whatever base was provided by the Class III (cheese) milk price. (See sidebar for more details.)

Falsified invoices to Dairy Export Incentive Program

According to the former Export Account Supervisor's sworn testimony:

"10. Third, during the period 2001 through at least 2008, each and every instance in which DairyAmerica submitted applications to DEIP, DairyAmerica submitted applications containing prices that were fabricated by Richard Lewis and his staff. The fabricated prices submitted by DairyAmerica to DEIP were lower than the actual export prices that DairyAmerica charged foreign customers. DairyAmerica reported the lower fabricated prices for the purpose of qualifying for cash subsidies provided by DEIP.

The Milkweed's analysis: DEIP was a USDA program that subsidized exports of certain U.S.-produced dairy commodities. As the nation's major export agent for nonfat dry milk, DairyAmerica was certainly the major recipient of USDA subsidies paid for nonfat dry milk exports through DEIP. *The Milkweed* is not cognizant as to whether fraud committed against the United States government several years ago might be excused through an expired Statute of Limitations. The DEIP program itself expired several years ago, in the Congressional deal to create the latest farm bill. But the stench may linger on.

Lying to Mexican gov't auditors about milk powder surcharges

According to the former Export Account Supervisor's sworn statement:

"24. During the time I was employed at DairyAmerica, the government of Mexico purchased substantial quantities of NFDm from DairyAmerica. In 2003, the government of Mexico insisted that an audit be conducted of DairyAmerica's export sales.

"25. In anticipation of the arrival of auditors from the Mexican government, Richard Lewis instructed me to reconcile the two sets of figures contained in export documentation database that I operated: the fabricated export sales figures and the accurate export sales figures. Specifically, Richard Lewis instructed me to account for the discrepancy between the fabricated export sales figures and the accurate sales figures by inventing and adding a non-existent 'administrative fee' to each export sale listed in the database. Richard Lewis told me that I 'had to make the paperwork match.' As a result, in the export documentation database, I added a fake 'administrative fee' to each export transaction, so that each fabricated export sales figure plus the fake 'administrative fee' would equal the value of the accurate export sales figure. (Notably, this fake 'administrative fee' was invented and entirely unrelated to the one cent that DairyAmerica retained from each pound of NFDm sold.) Richard Lewis subsequently presented the modified documentation from the export database to the Mexican auditors and persuaded them that the discrepancy between the price charged to the Mexican government and the price reported to the USDA stemmed from an administrative fee – even though no such fee actually existed.

"26. In anticipation of the arrival of auditors from the Mexican government, Richard Lewis also instructed Frances Zapanta to add the fake administra-

Exhibit B

**Declaration by DairyAmerica's Former Export Account Manager
United States District Court — Eastern District of California, Fresno Division
Fourth Amended Filing — February 10, 2017**

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

GERALD CARLIN, JOHN RAHM, PAUL
ROZWADOWSKI and DIANA WOLFE,
individually and on behalf of themselves and
all others similarly situated,

Plaintiffs,

v.

DAIRYAMERICA, INC. and
CALIFORNIA DAIRIES, INC.,

Defendants.

Case No. 1:09 CV 00430-AWI (GSA)

CLASS ACTION

DECLARATION OF [REDACTED]

I, [REDACTED], declare as follows:

1. I have personal knowledge of all the facts stated herein.
2. From 2000 until 2009, I was employed at DairyAmerica, Inc. ("Dairy America").
3. From 2000 until 2002, I was employed as a staff accountant at Dairy America. From 2002 until 2009, I was employed as the Export Documentation Supervisor at Dairy America
4. From 2000 until 2008, I reported directly to Richard Lewis, who served as Chief Operating Officer and Chief Executive Officer of Dairy America, and Jean McAbee, who served as Controller of Dairy America. During my final year of employment at Dairy America, I reported to Annette Smith, Accounting Supervisor and Office Manager of Dairy America, and Steve Gulley, International Sales Manager at Dairy America.
5. While employed at Dairy America, I handled the billing for Dairy America's sales of nonfat dry milk ("NFDM") to the Commodity Credit Corporation and to foreign customers in the export market. My responsibilities included preparing and processing documentation necessary for sales to the Commodity Credit Corporation and to foreign customers in the export market; tracking and cataloguing the prices and volumes of export sales; and at times assisting with applications for subsidies under the Dairy Export Incentive Program ("DEIP").
6. For much of the time that I was employed at DairyAmerica, between five and six employees in the export department reported to me.

7. During the period 2001 through at least 2008, I witnessed Dairy America repeatedly engage in three kinds of fraudulent activity at the direction of Richard Lewis, Jean McAbee and other senior executives.
8. First, during the period 2001 through at least 2008, each and every week in which Dairy America reported prices from export sales of NFDM to the California Department of Food and Agriculture ("CDFA"), those figures were fabricated by Richard Lewis and his staff and did not accurately reflect export sales transactions. Each and every week in which Dairy America reported prices from export sales to CDFA, Dairy America deliberately reported fabricated prices that were lower than the actual export prices that Dairy America charged foreign customers.
9. Second, during the period 2001 through at least 2008, each and every week in which Dairy America reported prices from export sales of NFDM to the National Agricultural Statistics Service ("NASS"), a division of United States Department of Agriculture ("USDA"), those figures were fabricated by Richard Lewis and his staff and did not accurately reflect export sales transactions. Each and every week in which Dairy America reported prices from export sales to NASS, DairyAmerica deliberately reported fabricated prices that were lower than the actual export prices that Dairy America charged foreign customers.
10. Third, during the period 2001 through at least 2008, each and every instance in which DairyAmerica submitted applications to DEIP, DairyAmerica submitted applications containing prices that were fabricated by Richard Lewis and his staff. The fabricated prices submitted by Dairy America to DEIP were lower than the actual export prices that Dairy America charged foreign customers. Dairy America reported the lower fabricated prices for the purpose of qualifying for cash subsidies provided by DEIP.

11. In 2001, Richard Lewis and Jean McAbee instructed me to assemble an electronic export documentation database that would contain and track figures relating to export sales of NFDM.
12. This export documentation database included two sets of figures. The first set of figures would consist of accurate figures from the actual sale of NFDM in the export market to foreign customers. The second set of figures would consist of fabricated export sales figures that were created internally at Dairy America. As instructed by Richard Lewis and Jean McAbee, I assembled a database that contained both the accurate export figures charged to foreign customers and the fabricated export figures created internally at Dairy America.
13. I obtained the accurate export figures from contracts that were signed by foreign purchasers of NFDM. Dairy America's export broker, Fonterra Cooperative Group ("Fonterra"), would facilitate the sale of NFDM to for-

foreign customers. Whenever a foreign customer signed a contract to purchase NFDM from Dairy America, a Fonterra employee would send a copy of the contract to me. I would then input the accurate sales figures contained in those contracts into the export documentation database.

14. I obtained the fabricated export figures from invoices that were created internally at DairyAmerica. After a foreign customer entered into a contract to purchase NFDM, DairyAmerica's staff would create a corresponding invoice that contained lower prices than those contained in the contract signed by the foreign customer. That invoice, which contained entirely fabricated prices, would be provided to the processing plant that shipped out the NFDM to the foreign customer. Those processing plants belonged to the cooperative members of Dairy America, including California Dairies. Whenever an invoice was provided to the processing plant, a copy of that invoice was provided to me. I would regularly input the fabricated and artificially lower sales figures contained in such invoices into the export documentation database.

15. The fabricated figures contained in the invoices provided to processing plants were created by Richard Lewis and Dairy America employee Frances Zapanta. Those figures were also contained in pricing worksheets that were created by Richard Lewis and Frances Zapanta and stored in Dairy America's shared electronic files.

16. The accurate export sales figures contained in the export documentation database that I operated were never inputted into the Navision database maintained by Dairy America or into any other accounting or reporting database maintained by the company. By contrast, the fabricated export sales figures contained in the export documentation database that I operated were regularly inputted by other Dairy America employees into the Navision database and used for accounting and reporting purposes.

17. At the direction of Richard Lewis and Jean McAbee, Dairy America only reported the export sales figures contained in the Navision database to CDFA. As a result, during the period 2001 through at least 2008, DairyAmerica only reported fabricated, artificially-lower export sales figures to the CDFA. During that time period, the accurate export sales figures reflecting actual export transactions were never reported to CDFA.

18. At the direction of Richard Lewis and Jean McAbee, Dairy America only reported the export sales figures contained in the Navision database to NASS. As a result, during the period 2001 through at least 2008, DairyAmerica only reported fabricated, artificially-lower export sales figures to NASS. During that time period, the accurate export sales figures reflecting actual export transactions were never reported to NASS.

19. At the direction of Richard Lewis and Jean McAbee, Dairy America only included the export sales figures contained in the Navision database when submitting applications for subsidies to DEIP. As a result, during the period 2001 through at least 2008, Dairy America only submitted fabricated, artificially-lower export sales figures when submitting applications to DEIP. During that time period, the accurate export sales figures reflecting actual export transactions were never included in applications to DEIP.

20. During the period 2001 through at least 2008, CDFA conducted monthly audits of Dairy America. Each month, CDFA would send auditors to the offices of Dairy America in Fresno, California. Part of the purpose of those audits was to ensure that Dairy America was reporting accurate information to CDFA each week and that Dairy America was complying with the CDFA's reporting instructions.

21. Each month during the period 2001 through at least 2008, approximately one week before CDFA auditors arrived at Dairy America's offices to conduct an audit, Jean McAbee and Annette Smith would gather boxes of accounting documents, including the invoices and contracts reflecting accurate export prices, and load them into a truck and drive them to an offsite storage facility. Each month, Jean McAbee and Annette Smith transported the accounting documents containing accurate export sales prices to an off-site storage facility so that CDFA auditors would not see or access those documents during their audits. By doing so, Jean McAbee and Annette Smith prevented the CDFA auditors from discovering the substantial discrepancy between the fabricated export sales prices reported to CDFA and the actual sales prices charged to foreign customers.

22. Each month during the period 2001 through at least 2008, Richard Lewis and Jean McAbee prohibited CDFA auditors from seeing or reviewing paper or electronic documents (including invoices and contracts) that contained the accurate export prices. Instead, the auditors from the CDFA were only permitted to review data from the Navision database and the invoices that were internally created at Dairy America, both of which only contained the fabricated export prices.

23. During the period 2001 through 2009, Richard Lewis and Jean McAbee instructed me to refrain from speaking to any CDFA auditors.

24. During the time I was employed at Dairy America, the government of Mexico purchased substantial quantities of NFDM from Dairy America. In 2003, the government of Mexico insisted that an audit be conducted of Dairy America's export sales.

25. In anticipation of the arrival of auditors from the Mexican government, Richard Lewis instructed me to reconcile the two sets of figures contained in the export documentation database that I operated: the fabricated export sales figures and the accurate export sales figure.

Specifically, Richard Lewis instructed me to account for the discrepancy between the fabricated export sales figures and the accurate export sales figures by inventing and adding a non-existent "administrative fee" to each export sale listed in the database. Richard Lewis told me that I "had to make the

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tive fee to certain pricing worksheets and entries in the Navision database.”

The Milkweed's analysis: Mexico is historically the United States' single largest export buyer of nonfat dry milk. Further, the Mexican government has historically been a heavy user of imported nonfat dry milk through a public nutrition program, the acronym for which is CONSUAPO. (Historically, the Mexican government has used milk processing plants on trailers to travel to out-of-the-way mountain villages, processing nonfat dry milk into beverage milk to boost local residents' nutrition and health. It is not known what legal recourse the Mexican government might have amid these allegations of pricing misrepresentations by DairyAmerica. At the very least, during these times of strained relations between Mexico and the United States, the revelation that Mexico's government was cheated and lied to by DairyAmerica will not sit comfortably south of the border. These historic misdeeds by DairyAmerica, when fathomed by the Mexican government, cannot boost the current sales climate for U.S. dairy commodities in Mexico.

DFA & LOL proposed as additional defendants

The Milkweed's analysis: Currently, DairyAmerica and CDI are the only defendants in the milk powder case. CDI is the biggest producer of nonfat dry milk in the United States, and is DairyAmerica's single biggest member. However, plaintiffs now seek to add new defendants — DFA and LOL. Those co-ops were members of DairyAmerica up until sometime shortly after the March 2007 investigative report in *The Milkweed*, after which DFA and LOL promptly bailed out.

However, those two cooperatives were DairyAmerica members during much of the period when the alleged misdeeds occurred. It is logical to assume that all DairyAmerica members during the period that the documented and alleged illegalities were committed may be liable for their fair share of the ultimate reckoning of civil penalties, if any.

California dairy producers proposed as members of plaintiffs' class

The Milkweed's analysis: The amended filing proposed adding California dairy producers who shipped milk priced by CDFA during the period in question — presumably from 2001 at least through 2007. If the illegal behaviors alleged by former employees' Declarations contained in this latest amended filing are substantiated, California dairy producers were obviously cheated out of milk income by DairyAmerica's actions. Besides the fact that California is the nation's single largest milk-producing state, CDFA uses nonfat dry milk price quotes in its monthly prices for several other classifications of farm milk use.

Back to RICO and triple damages???

The Milkweed's analysis: Federal anti-mafia statutes were hatched in the late 1960s under the “Racketeer Influenced and Corrupt Organizations” or RICO Act. Those laws sought to give both private and government lawyers a major tool to combat extortion and conspiracies — TRIPLE DAMAGES AND PAYMENT OF PLAINTIFFS' LEGAL FEES! While the RICO statutes were originally intended to fight mafia misdeeds, that body of law has been extended to other illegal conspiracies. RICO charges entail a highly-complex set of federal laws, which are seldom invoked. Earlier in the milk powder case, presiding federal judge Anthony W. Ishii had allowed RICO statutes to be invoked. But the judge later reversed himself.

Triple damages and legal fees???. If RICO claims in this case were allowed and substantiated, the penalties for defendants could total in the hundreds of millions of dollars ... or more.

Declaration by DairyAmerica's Former Export Account Manager, con't

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paperwork match." As a result, in the export documentation database, I added a fake "administrative fee" to each export transaction, so that each fabricated export sales figure plus the fake "administrative fee" would equal the value of the accurate export sales figure. (Notably, this fake "administrative fee" was invented and entirely unrelated to the one cent that Dairy America retained from each pound of NFDM sold.) Richard Lewis subsequently presented the modified documentation from the export database to the Mexican auditors and persuaded them that the discrepancy between the price charged to the Mexican government and the price reported to the USDA stemmed from an administrative fee - even though no such fee actually existed.

26. In anticipation of the arrival of auditors from the Mexican government, Richard Lewis also instructed Frances Zapanta to add the fake administrative fee to certain pricing worksheets and entries in the Navision database.

27. When DairyAmerica exported NFDM, most foreign governments required that DairyAmerica produce a Certificate of Origin that identified where the NFDM was manufactured. To be acceptable and valid, the Certificate of Origin had to be stamped with a seal from a local Chamber of Commerce. To avoid making regular visits to the local Chamber of Commerce in order to purchase and obtain Certificate of Origin seals, Annette Smith instructed a friend to create four stamps that replicated the Chamber of Commerce seal. Dairy America's staff were subsequently instructed to use the unauthorized replica of the Chamber of Commerce stamps in order to imprint the seal on Certificate of Origin documents, rather than correctly purchase and obtain the seal from the local Chamber of Commerce.

28. In 2009, approximately six months after the filing of the above-cap-

When Dairy Farmers Sue Dairy Co-ops???

by Pete Hardin

Intelligent and knowledgeable dairy industry folks are responding to news of the latest events in the milk powder mis-reporting case with the following legitimate question:

What is gained when dairy farmers sue their own co-ops???
Won't the co-ops just bleed members' milk checks to pay off possible legal obligations?

That's also a relevant question on the East Coast, where *The Milkweed* has heard barnyard chatter that DFA is determined to extract the \$50 million total antitrust settlement out of the milk checks of producers in the region.

What is gained? At some point, clearly illegal behaviors by dairy co-ops must be called into question. Continued cheating of dairy farmers' legitimate milk income must be curtailed, and the offenders punished in a way that discourages future cheating. DairyAmerica has limited financial assets. But the class action complaint against DairyAmerica is filed in such a fashion that all of the defendants are ultimately responsible for paying up any financial judgments against them. That was the attraction of plaintiffs' attorneys earlier adding CDI as a defendant. CDI's assets are rumored to total over one billion dollars.

Ultimately, directors of agricultural cooperatives are legally responsible for the actions and obligations of those co-ops. In the event of severe adverse financial determinations against DairyAmerica and other co-op defendants were to come down in the milk powder mis-reporting case, perhaps lawsuits against the co-ops' directors by co-op members would be in order. Maybe that's the only way to get the attention of the overstuffed, fancy-pants, professional per-diem collectors that over-populate most major dairy cooperatives' boards of directors.

Spring 2006: DairyAmerica Really Went Wrong

Whatever mis-reporting DairyAmerica may have conducted prior to summer 2006 was penny-ante, compared to what occurred during the second half of 2006 and first couple months of 2007.

In spring 2006, DairyAmerica totally misjudged emerging, tighter global dairy market trends for nonfat dry milk. At that time, U.S. co-ops were sitting on a lot of milk powder inventories, but world markets were constricting fast. Since New Zealand's Fonterra co-op was DairyAmerica's exclusive export marketer, DairyAmerica wasn't up to speed on evolving, tighter global dairy protein powder supplies. In spring 2006, DairyAmerica signed an export contract to sell nonfat dry milk to Fonterra at a fixed price for most of the next year.

July 2006 brought intense heat to California, reducing both milk production and nonfat solids content of milk. California is the largest nonfat dry milk producing state in the United States. That heat wave, coupled with resumption of big exports to Fonterra, dramatically tightened U.S. milk powder supplies. By September 2006, DairyAmerica was defaulting on contracts to U.S. milk powder buyers, while simultaneously charging higher prices to “spot buyers.” But DairyAmerica kept reporting lowball milk powder sales prices to USDA.

So DairyAmerica lied about sales prices. However, at this point, DairyAmerica's lies to USDA and California dairy officials were not mere pennies, but a handful of quarters, dimes and nickels. At the worst, at the very end of 2006, the “spot price” for nonfat dry milk was nearly \$1.00/lb. higher than DairyAmerica's sales prices reported to USDA.

USDA rules specified that contract sales over 30 days couldn't be included in price reporting. But DairyAmerica had committed to sell Fonterra hundreds of millions of pounds of nonfat dry milk at fixed prices through sometime in the first half of 2007!

Fonterra's North American division reported a spectacular, **52% net profit** on sales for the fiscal year that included the second half of 2006 and 2007's first quarter.

U.S. dairy farmers — both those whose milk is regulated by federal milk orders and California's state milk order — lost untold hundreds of millions of dollars in milk check revenue due to DairyAmerica's milk powder mis-reporting during the second half of 2006 and 2007's first couple months.

52% net profit???. That single fact — that DairyAmerica's sole export customer enjoyed astronomical profits during the period of time when DairyAmerica's price mis-reporting took place — basically tells the whole story.

tioned lawsuit, I was terminated from my employment at Dairy America. My termination was surprising to me, as I had consistently received very positive reviews for my work. For example, in the most recent review immediately prior to my termination, I received a review score of 56 out of 60 - an excellent figure.

29. I believe that I and several of my employees were terminated from our employment at Dairy America so that the company could conceal knowledge of its fraudulent activities. I believe concealing such information was important to Dairy America after the USDA launched an investigation into Dairy America's misreporting and after the filing of the above captioned lawsuit. On more than one occasion, Annette Smith and Steve Gulley expressed anger with me when they learned that I was tracking the course of the lawsuit, and I was terminated soon after.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Executed on 08/21/2016.