JOHN DUBROCK	X	
Plaintiff	X	IN THE CIRCUIT COURT OF
vs	X	BALDWIN COUNTY, ALABAMA
BORDEN'S DAIRY, a division of THE BORDEN COMPANY	X	AT LAW NO. 5794
	X	
Defendant	X	

-1-

The plaintiff claims of the defendant the sum of Nine Thousand Five Hundred Dollars ($9,500.00) damages for the conversion by them on August 21, 1963, of the following personal property, to-wit:

A milk base of the gallonage of Fifty-three (53) gallons of milk per day, deliverable in Baldwin County, Alabama, to a tank truck of the said defendant for drayage by the said defendant to the Pensacola, Florida plant of the said defendant.

-2-

Plaintiff claims of the defendant the sum of Nine Thousand Five Hundred Dollars ($9,500.00) for the conversion by the defendant of the following personal property, to-wit: a milk base of Fifty-three (53) gallons per day, deliverable in Baldwin County, Alabama, to a tank truck operated by the defendant for transportation of said milk to the Pensacola, Florida plant of the said defendant.

Plaintiff avers that said conversion by the said defendant of the milk base aforesaid was the denial by the said defendant of the plaintiff's right to sell said milk base for a valuable consideration as noted by the said defendant through its agent, servant, officer, or employee, on August 21, 1963, as set out in a letter from the said defendant's agent, servant or employee to said plaintiff's attorney.

THOMPSON & WHITE

BY: C. LeRoy Thompson
Attorneys for plaintiff

FILED
OCT 8 1963
ALICE I. DUCK, CLERK REGISTER

JOHN DUBROCK	X	
Plaintiff	X	IN THE CIRCUIT COURT OF
vs	X	BALDWIN COUNTY, ALABAMA
BORDEN'S DAIRY, a division of the BORDEN COMPANY	X	AT LAW NO._____
	X	
Defendant	X	

Comes the plaintiff in the above styled cause and propounds the following interrogatories to the defendant's agent, servant or employee, Lamar Garrett:

1. Are you Lamar Garrett?

2. Are you branch manager of the Pensacola plant?

3. How long have you been employed in that plant as manager?

4. Do you know John DuBrock, the plaintiff in this cause?

5. How long have you known the plaintiff?

6. Do you know whether or not he had a milk base with Borden's?

7. Was this milk base with the Borden Pensacola plant?

8. Did you keep the milk base for Borden's Dairy in Pensacola?

9. What was the amount of the plaintiff's milk base in December, 1960; July, 1961; July, 1962; and July, 1963?

10. When was the last time your company sent the amount of the milk base to the plaintiff?

11. State the amount of the base on that date and attach a copy of the form used to notify the producer.

12. Calculate the percentage of milk that the producer was entitled to furnish as a milk base under the Alabama-Florida compact during the months of July and August, 1963.

13. Is the percentage alloted the plaintiff herein under which Alabama-Florida milk compact as it existed during the month of August, 1963, a percentage of the milk which the Pensacola branch of the Borden Company sells in Alabama?

14. Do you have access to the records of the Borden Company showing the gallonage of milk purchased from the plaintiff at his address in Baldwin County, Alabama, for defendant, the Pensacola, Florida branch?

15. If your answer is "yes", state the gallonage purchased from the plaintiff for said Pensacola branch for each month during the twelve months preceding September, 1963.

16. State the milk base alloted by the said defendant to John DuBrock, plaintiff in this cause for the year September 1, 1962, to September 1, 1963.

17. State the name of any producer who was alloted since August 21, 1963, additional milk base.

18. State the amount of additional milk base alloted each producer getting an increase since August 21, 1963.

19. If your answer to interrogatory fourteen above is "no", state the name and address of the agent, servant, employee or official of the said defendant corporation who has access to the records of the said corporation.

20. State, if you know, the date when the Borden Company last changed the requirements for transferring milk bases.

21. State, if you know, what other milk bases or percentages of Alabama produced milk has Borden transferred from one Alabama producer to another Alabama producer since August 21, 1963.

22. Do you know W. J. Barritt, Jr.,?

23. If your answer is "yes", what is his capacity with Borden's Dairy, a division of the Borden Company in Florida.

24. Was the Borden Company through its Pensacola branch purchasing or transporting milk from any milk producers in Alabama, which milk is hauled to the Pensacola branch of the said defendant corporation during the month of August, 1963?

25. If your answer is "yes", name the counties in Alabama in which milk producers are located whose milk is transported by the Borden Company or for use in the Borden Company's Pensacola branch plant.

26. If your answer to the preceding question is "yes", name the producers in Baldwin County, Alabama, from whom the Borden Company obtained milk in August 21, 1963.

27. Give the total gallonage of milk purchased from each Alabama producer during the months of June, July and August, 1963.

28. Were you notified when the Borden Company through the actions of one, W. J. Barritt, Jr., President of the Borden's Dairy, in Florida, stated in writing that Borden's would not recognize any purported transfer of plaintiff's milk base by the Borden Company?

29. Is the Borden Company, defendant in this cause, purchasing or transporting milk from any milk producers in Alabama which milk is hauled to the Pensacola branch of the said defendant corporation?

30. If youranswer is "yes", name these producers as they were on August 21, 1963, and give the gallonage of milk which was purchased from each producer during the preceding month.

31. Name the producers from which the said defendant is purchasing milk in Alabama for the defendant's Pensacola branch as of the 21st day of September, 1963, and give the gallonage purchased from each of said producers during that period.

32. Do you have a copy of the allotment breakdown of milk base by producers furnished to the State of Alabama Milk Control Board on or about May 13, 1963?

33. If your answer to the preceding question is "yes", attach a copy showing the percentage of Alabama milk designated as the producers' base for each of the Alabama producers.

34. Did W. J. Barritt, Jr., or anyone in authority in the Borden Company, give you any instructions concerning the transfer of Alabama milk base from a producer to a purchaser of such base during the year 1963?

35. If your answer to the preceding question is "yes", state the name or identification of the person instructing you on milk base transfers and attach a copy of the instructions if same are in writing.

THOMPSON & WHITE

BY: C. LeNoir Thompson
Attorneys for plaintiff.

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned Notary Public, in and for said State and County, personally appeared C. LeNoir Thompson, who being by me first duly sworn, deposes on oath and says as follows:

My name is C. LeNoir Thompson and I am one of the Attorneys of Record for the plaintiff in the above entitled cause, and as such, I am authorized to make this affidavit. I further state that the answer of the said witness to the foregoing interrogatories will, if truthfully made, be material evidence for the plaintiff on the trial of said cause.

C. LeNoir Thompson

Subscribed and sworn to before me by the said C. LeNoir Thompson on this the 3rd day of December 1963.

Helen R. Page
Notary Public

FILED
DEC 3 1963
ALICE I. DUCK, CLERK
REGISTER

JOHN DUBROCK	X	
Plaintiff	X	IN THE CIRCUIT COURT OF
vs	X	BALDWIN COUNTY, ALABAMA
BORDEN'S DAIRY, a division of the BORDEN COMPANY	X	AT LAW NO._____
	X	
Defendant	X	

Comes the plaintiff in the above styled cause and propounds the following interrogatories to the defendant's agent, servant or employee, W. J. Barritt, Jr.:

(1) What is the defendant's correct name?

(2) If the defendant is a corporation, in what state was the defendant incorporated?

(3) Is the defendant qualified under the laws of Alabama to conduct business within the State of Alabama?

(4) If the defendant is a non-resident or Foreign corporation qualified to conduct business within the State of Alabama, state the name and address of all agents designated by defendant for service of court process.

(5) Did the defendant purchase milk from producers in Baldwin County, Alabama, during the months of June, July and August, 1963?

(6) Did the defendant transport this milk from the dairy farms of producers in Baldwin County to defendant's plant in Pensacola, Florida, during and prior to the month of August, 1963?

(7) Did the following plaintiffs: Claude Creighton, R. A. Flowers, A. V. Campbell, W. J. Campbell and John DuBrock, individually, or through their attorney advise you that they wished to sell or transfer their milk bases with Borden's in accordance with the allocation as indicated under the Alabama-Florida compact in effect during the month of August, 1963?

(8) If your answer is "yes" to the foregoing interrogatory, did you authorize the sale or transfer of any of the following named milk bases, including that of the plaintiff herein: R. A. Flowers, Claude Creighton, A. V. Campbell, W. J. Campbell and John DuBrock?

(9) If your answer is "no" to the preceding interrogatory, did you advise the said plaintiff or plaintiffs and/or the attorney of such that the said bases could be transferred and outlined the procedure for said transfer of sale?

(10) If your answer is "no" to the authorization of sale and

transfer, then attach a copy of the letter or letters which you wrote to the plaintiff herein or his attorney, C. LeNoir Thompson in reply to a request for the transfer by your company of a sale of the milk base.

(11) Were you advised as an officer of Borden's, Inc., at Tampa, Florida, concerning the appearance of the said plaintiff herein at the office of Borden's, Inc., of Pensacola, Florida, and of a request personally and by attorney for the said plaintiff herein to Mr. Jay Strubel, an agent, servant or employee of the said Borden's Inc., as to the required proceedings of Borden's, Inc., under which plaintiff's milk base could be sold or transferred?

(12) What instructions on the sale of milk base by Baldwin County, Alabama, producers, if any, did you issue to the said Jay Strubel or to Lamar Garrett, both being agents, servants or employees of Borden's, Inc., at Pensacola, Florida?

(13) Attach copies of instructions issued to either or both Jay Strubel and/or Lamar Garrett.

(14) Attach a copy of any letters written C. LeNoir Thompson, attorney for said plaintiff together with a copy of the letter or letters written to Borden's by the said C. LeNoir Thompson, in his capacity as attorney for plaintiff.

THOMPSON & WHITE

BY: C. LeNoir Thompson
Attorneys for plaintiff

STATE OF ALABAMA

BALDWIN COUNTY

Before me, the undersigned Notary Public, in and for said State and County, personally appeared C. LeNoir Thompson, who being by me first duly sworn, deposes on oath and says as follows:

My name is C. LeNoir Thompson and I am one of the Attorneys of Record for the plaintiff in the above entitled cause, and as such I am authorized to make this affidavit. I further state that the answer of the defendant to the foregoing interrogatories will, if truthfully made be material evidence for the plaintiff on the trial of said cause.

C. LeNoir Thompson

Subscribed and sworn to before me by the said C. LeNoirThompson on this the 3rd day of December, 1963.

Notary Public, Baldwin County, Alabama

FILED

DEC 3 1963

ALICE J. DUCK, CLERK REGISTER

SUMMONS AND COMPLAINT

MOORE PRINTING COMPANY - BAY MINETTE, ALA.

The State of Alabama,
Baldwin County.

Circuit Court, Baldwin County

No. 5294

_____ TERM, 19____

TO ANY SHERIFF OF THE STATE OF ALABAMA

You Are Commanded to Summon BORDEN'S DAIRY, a division of THE BORDEN COMPANY

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed in the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against BORDEN'S DAIRY, a division of THE BORDEN COMPANY, Defendant

by JOHN DUBROCK

_____, Plaintiff

Witness my hand this 31 day of Oct 1962

Alice D. Duck, Clerk

No. 5794 Page

STATE of ALABAMA
Baldwin County

CIRCUIT COURT

JOHN DUBROCK

Plaintiffs

vs.

BORDEN'S DAIRY, a division of

THE BORDEN COMPANY

Defendants

1. Summons and Complaint
2. Interrogatories

Filed 19

Clerk

Hon. Fred S. Ball or
Hon. Richard A. Ball
717 First Nat'l Bank Bldg.
Montgomery, Ala.

Plaintiff's Attorney

Defendant's Attorney

9505

Defendant lives at

RECEIVED IN OFFICE
Received in Office
Dec 3 1963
M. S. BUTLER, Sheriff

Sheriff.

I have executed this summons

this 5 Dec 1963

by leaving ~~a~~ copy with

Fred Ball as agent for The Borden Company

Sheriff.

Deputy Sheriff.

JOHN DUBROCK	X	
Plaintiff	X	IN THE CIRCUIT COURT OF
vs	X	BALDWIN COUNTY, ALABAMA
BORDEN'S DAIRY, a Division of the BORDEN COMPANY	X	AT LAW NO._____
	X	
Defendant	X	

Comes the plaintiff in the above styled cause and for replication to defendant's Pleas 3 and 4 as amended in said cause shows as follows:

1. That on to-wit, the 8th day of May, 1963, the Alabama Milk Control Board and the Florida Milk Commission entered into an agreement in accordance with copy attached hereto and marked plaintiff's Exhibit "A", which agreement was for the specific benefit of your said plaintiff and others setting out the names of the said beneficiaries of said agreement which list of producers is marked plaintiff's Exhibit "B" and attached hereto and made a part of this replication.

And further, that said agreement allocated to the said Alabama producers of which your plaintiff was one, a specified portion of the milk sales to the defendant herein.

2. As to Plea 4 as amended of said answer of the defendant, said plaintiff shows that said defendant denied said plaintiff the right to sell or dispose of the milk base owned by your said plaintiff and guaranteed or protected under the said agreement between the Alabama Milk Control Board and the Florida Milk Commission.

FILED
NOV 1 1965
ALICE L. DUCK, CLERK REGISTER

C. LeRoy Thompson
Attorney for plaintiff.

I hereby certify I have this 1st day of November, 1965, mailed a copy of the foregoing replication to Honorable John Chason attorney for defendant U. S. Postage pre-paid to his address in Bay Minette, Ala.

C. LeRoy Thompson

Exhibit "A"

AGREEMENT

The Committee representing the Florida Milk Commission and the Alabama Milk Control Board agrees, in light of the emergency situation existing in the Pensacola milk marketing area that a temporary solution to the plan be adopted by the Alabama State Milk Control Board and immediately recommended for adoption by the Florida Milk Committee, said emergency temporary agreement to be as follows:

(1) All sales of Borden Company in Alabama to be allocated to Alabama producers.

(2) Thirty per cent (30%) of the Florida sales to be allocated to Alabama producers.

(3) The remaining Florida sales of Borden Company (70%) shall be allocated to Florida base earned producers.

(4) All sales of Alabama produced milk by the Borden plant within the State of Florida shall be subject to all price restrictions and regulations of the Florida Milk Commission.

(5) All Alabama sales of Alabama produced milk by Borden Company shall be subject to price restrictions and regulations of the Alabama State Milk Control Board.

(6) The Florida Milk Commission agrees that the Alabama State Milk Control Board shall have all authority necessary to enforce compliance with this agreement within the State of Florida.

(7) The Alabama State Milk Control Board agrees that the Florida Milk Commission shall have all authority necessary to enforce compliance with this agreement in the State of Alabama.

(8) This agreement shall be in full force and effect from May 1, 1963, to August 1, 1963, and thereafter upon mutual consent of the parties.

(9) It is the intent of the parties by this agreement to solve all problems existing between the respective states of Alabama and Florida as they relate to the dairy industry and this agreement contemplates the same or similar arrangement be made in order to protect the Florida producers selling their milk in the State of Alabama.

This agreement made and entered into at Tallahassee, Leon Co.
this the 8th day of May, A.D., 1963.

/s/ Dr. Wallace Miller
Chairman of Alabama Board

/s/ J. H. Cone
Chairman, Florida committee

Due to the emergency conditions existing, the Alabama State Milk Control Board was present and acquiesced the Chairman's signature to the above agreement, and the Chairman of the Florida committee polled by telephone a majority of the Florida Milk Commission prior to execution of this agreement.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

I hereby certify that this is a true and correct copy of the Agreement between the committee of the Florida Milk Commission and the Alabama Milk Control Board.

James G. McLean
Executive Secretary

Sworn to and subscribed before me this _____ day of October, 1963.

_____
Notary Public

Exhibit "B"

PRODUCER NAME	BASE %
Abrams, J. W.	2.1044
Atkinson, B. N.	1.8154
Campbell A. V.	1.4678
Campbell, W. J.	1.8780
Coley, H. S.	2.1038
Dubrock, John	1.1516
Ellison, Ike	3.4148
Emmons, Roy	2.1275
Farrar, W. H.	1.4660
Flowers, R. A.	1.0930
Gray, Tom	1.6483
Hugghins, Homer S.	4.1559
Lee, H. A.	1.5940
Lee, G.F.	2.0236
Long, C. F.	3.7507
Owens, T. O.	4.0013
Smith, Edgar No.2	5.7899
Stone, B. N.	2.3708
Wilson, J. P.	2.5377
Creighton, Claude T.	1.3779
Black Belt Parties	48.2769
TOTAL	100.0000

JOHN DUBROCK,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
BORDEN'S DAIRY, A Division of the BORDEN COMPANY,	X	AT LAW NO. 5794
	X	
Defendant.	X	

Comes the Defendant in the above styled cause and for plea to count "-1-" of the complaint filed in said cause, says:

1. Not guilty.

2. That the allegations of the complaint are untrue.

3. The complaint claims damages for the conversion of a milk base on August 21, 1963. The Defendant is a milk distributor with its plant located in Pensacola, Florida, at which plant the so-called conversion of the milk base occurred. That on October 25, 1962, prior to the date of the alleged conversion, the Florida Milk Commission adopted a base fixing order for Borden's Pensacola Plant, which order allocated all bases in Borden's Pensacola Plant to Florida producers serving such plant and which order required the Defendant to obey such base order under penalty of having its license as a distributor suspended or revoked. The Plaintiff, with other producers, filed a suit in the Circuit Court of Leon County, Florida, against the Florida Milk Commission challenging the validity of such base order. The Circuit Court of said County rendered judgment in favor of the Florida Milk Commission and against the Plaintiff in this case, and others who were joint Plaintiffs therein. Such case was appealed to the Supreme Court of Florida and is now pending before such Court. Such order of the Florida Milk Commission still remains in full force and effect, and, therefore, the Plaintiff John Dubrock had no

milk base with the Defendant which would be the subject of any conversion on August 21, 1963, hence the Plaintiff should not recover in this suit.

4. The complaint claims damages for the conversion of a milk base on August 21, 1963. Subsequent to that date, and until August 30, 1963, the Plaintiff continued to deliver milk to the Defendant and such deliveries continued until August 30, 1963, at which time the Plaintiff voluntarily ceased selling milk to the Defendant and thereby voluntarily abandoned any so-called milk base which he may have had at any timeprior to that date, with the Defendant, hence he should not recover in this suit.

5. The complaint claims damages for the conversion of a milk base on August 21, 1963. On that date the Plaintiff was not a licensee of the Alabama State Milk Control Board. A milk base in the State of Alabama becomes personal property, which is the subject of a conversion, only when a producer is selling to a distributor, and both are licensed by the Alabama State Milk Control Board. The Plaintiff was not the owner, on August 21, 1963, of personal property which would be the subject of any conversion.

Attorneys for the Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 2 day of Aug, 1968.

FILED

AUG 8 1968

ALICE L. BOX, CLERK
RESISTER

5794

JOHN DUBROCK,
Plaintiff,

vs.

BORDEN'S DAIRY, A Division
of the BORDEN COMPANY,
Defendant.

****

PLEAS

****

JOHN DUBROCK	)	
Plaintiff	)	
	)	IN THE CIRCUIT COURT OF
vs.	)	
	)	BALDWIN COUNTY, ALABAMA
BORDEN'S DAIRY, a division of THE BORDEN COMPANY	)	
	)	AT LAW NO._____
Defendant	)	

DEMURRER:

Comes the Defendant in the above styled cause and demurs to the complaint filed in said cause and each and every count thereof, separately and severally, and assigns the following separate and several grounds, viz:

1. That said complaint does not state a cause of action.

2. That said complaint does not allege any duty owing by the Defendant to the Plaintiff.

3. The allegation in each count of the complaint claims damages for the conversion of a milk base without alleging sufficient facts to show that such base is personal property.

4. That each of said counts are vague and indefinite.

5. The allegations of the complaint are not sufficient to show any ownership of a milk base on the part of the Plaintiff.

6. For aught that appears from each count of the complaint the milk base referred to was simply a working arrangement between the parties and was not a property right in the Plaintiff.

7. No specific claim of ownership on the part of the Plaintiff to such milk base is sufficiently set out.

8. Said complaint claims damages for a tort and not for a breach of contract.

9. Count "-2-" of the complaint seeks to set out the quo modo of the negligence on the part of the Defendant without setting out sufficient facts to establish such negligence.

10. That count "-2-" of said complaint refers to a letter but the contents of such letter are not set out therein.

DUMURRER

JOHN DUBROCK

Plaintiff

vs.

BORDEN'S DAIRY, a division
of THE BORDEN COMPANY

Defendant

* * * * * * * * * * * * * * * * * *

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO._____

11. That the allegations as to damages are but conclusions of the pleader.

Attorneys for Defendant

Defendant demands a trial of this cause by a jury.

Attorneys for Defendant

FILED

DEC 16 1963

ALICE L. DUCK, CLERK REGISTER

DEMURRER

JOHN DUBROCK

Plaintiff

vs.

BORDEN'S DAIRY, a division
of THE BORDEN COMPANY

Defendant

* * * * * * * * * * * * * * * * * *

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 5794

FILED

DEC 16 1983

ALEX L. BURK, CLERK
REGISTER

JOHN DUBROCK	X	
Plaintiff	X	IN THE CIRCUIT COURT OF
vs	X	BALDWIN COUNTY, ALABAMA
BORDEN'S DAIRY, a Division of the BORDEN COMPANY	X	AT LAW NO._____
	X	
Defendant	X	

Comes the plaintiff in the above styled cause and amends his replication to defendant's Pleas 3 and 4 as amended in said cause to read as follows:

1. That on to-wit, the 8th day of May, 1963, the Alabama Milk Control Board and the Florida Milk Commission entered into an agreement in accordance with copy attached hereto and marked plaintiff's Exhibit "A", which agreement was for the specific benefit of your said plaintiff and others including your said plaintiff as one of said beneficiaries of said agreement which said agreement was in effect on August 21, 1963.

And further, that said agreement allocated to the said Alabama producers of which your plaintiff was one, a specified portion of the milk sales to the defendant herein.

2. As to Plea 4 as amended of said answer of the defendant, said plaintiff shows that said defendant denied said plaintiff the right to sell or dispose of hissaid milk base which said milk base amounted to 1.1516% of all sales of the defendant in Alabama to be allocated to Alabama producers, owned by your said plaintiff and guaranteed or protected under the said agreement between the Alabama Milk Control Board and the Florida Milk Commission, which said agreement was in effect on August 21, 1963.

C. Dean Thompson
Attorney for plaintiff

FILED

NOV 4 1975

ALICE I. DIX, CLERK
REGISTER

C O P Y

Exhibit "A"

C O P Y

AGREEMENT

The Committee representing the Florida Milk Commission and the Alabama Milk Control Board agrees, in light of the emergency situation existing in the Pensacola milk marketing area that a temporary solution to the plan be adopted by the Alabama State Milk Control Board and immediately recommended for adoption by the Florida Milk Committee, said emergency temporary agreement to be as follows:

(1) All sales of Borden Company in Alabama to be allocated to Alabama producers.

(2) Thirty per cent (30%) of the Florida sales to be allocated to Alabama producers.

(3) The remaining Florida sales of Borden Company (70%) shall be allocated to Florida base earned producers.

(4) All sales of Alabama produced milk by the Borden plant within the State of Florida shall be subject to all price restrictions and regulations of the Florida Milk Commission.

(5) All Alabama sales of Alabama produced milk by Borden Company shall be subject to price restrictions and regulations of the Alabama State Milk Control Board.

(6) The Florida Milk Commission agrees that the Alabama State Milk Control Board shall have all authority necessary to enforce compliance with this agreement within the State of Florida.

(7) The Alabama State Milk Control Board agrees that the Florida Milk Commission shall have all authority necessary to enforce compliance with this agreement in the State of Alabama.

(8) This agreement shall be in full force and effect from May 1, 1963, to August 1, 1963, and thereafter upon mutual consent of the parties.

(9) It is the intent of the parties by this agreement to solve all problems existing between the respective states of Alabama and Florida as they relate to the dairy industry and this agreement contemplates the same or similar arrangement be made in order to protect the Florida producers selling their milk in the State of Alabama.

This agreement made and entered into at Tallahassee, Leon County, Florida, on this the 8th day of May, A.D., 1963.

/s/ Dr. Wallace Miller
Chairman of Alabama Board

/s/ J. H. Cone
Chairman, Florida committee

Due to the emergency conditions existing, the Alabama State Milk Control Board was present and acquiesced the Chairman's signature to the above agreement, and the Chairman of the Florida committee polled by telephone a majority of the Florida Milk Commission prior to execution of this agreement.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

I hereby certify that this is a true and correct copy of the Agreement between the committee of the Florida Milk Commission and the Alabama Milk Control Board.

James G. McLean
Executive Secretary

Sworn to and subscribed before me this 5 day of October, 1963.

Notary Public

JOHN DUBROCK,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
BORDEN'S DAIRY, a Division of the BORDEN COMPANY,	X	AT LAW NO. 5794
	X	
Defendant.	X	

MOTION

Comes the Defendant in the above styled cause and moves the Court to strike the Replication to Defendant's Pleas 3 and 4 and each paragraph, separately and severally, and as grounds for its said Motion says:

1. That said Replication presents no defense to Defendant's Pleas 3 and 4.

2. That said Replication is frivolous.

3. That said Replication is vague and indefinite.

4. That the allegation in such Replication that the agreement, which is attached as Exhibit A, was for the benefit of the Alabama Producers, of which your Plaintiff was one, is but a conclusion of the Pleader.

5. That said Replication fails to allege that the Plaintiff was an Alabama Producer who was licensed by the Alabama Milk Control Board.

6. The allegation in Exhibit A, which is attached to the Replication, that such agreement was in force and effect on August 21, 1963, is contrary to such agreement which states that it expired August 1, 1963, except upon mutual consent of the parties, and there is no allegation that such agreement was extended by mutual consent of the parties.

7. That the agreement attached as Exhibit A to the Replication is not properly executed by the proper authorities.

8. It is not shown by such Replication when or where the Defendant denied the right of the Plaintiff to sell or dispose of a milk base.

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 22 day of Aug., 1966

FILED

AUG 8 1966

ALICE L. BUCK, CLERK

5784

JOHN DUBROCK,
Plaintiff,

vs.

BORDEN'S DAIRY, a Division
of the BORDEN COMPANY,

Defendant.

****

MOTION

****

JOHN DUBROCK,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
BORDEN'S DAIRY, A Division of the BORDEN COMPANY,	X	AT LAW NO. 5794
	X	
Defendant.	X	

MOTION TO STRIKE

Comes the Defendant in the above styled cause and moves to strike the Replication of the Plaintiff and Exhibits "A" and "B" attached thereto to Defendant's Pleas 3 and 4, as amended, and as grounds for its said motion says:

1. That Replication 1 neither admits nor denies the allegation of Defendant's Pleas 3 and 4 as amended.

2. That the Agreement attached as Exhibit "A" to the Plaintiff's Replication does not show that such Agreement was ever formally adopted by the Florida Milk Commission and by the Alabama Milk Control Board.

3. The Agreement attached as Exhibit "A" to Plaintiff's Replication does not allege that such Agreement was for the benefit of Alabama producers who are not licensed by the Alabama Milk Control Board at that time.

4. That nothing appears in Exhibit "A", which is attached to the Replication of the Plaintiff to show that it was for the specific benefit of the Plaintiff.

5. That Exhibit "B", which is attached to the Replication of the Plaintiff, is a copy of a list of names and base percentages without anything listed thereon to show that they are producers licensed by the State of Alabama and entitled to the

benefit of any agreement.

6. That Exhibit "A", which is attached to Plaintiff's Replication, is only an agreement that a plan be adopted by the Florida Milk Commission and Alabama Milk Control Board without any formal adoption of either Board appearing thereon.

7. That it affirmatively appears by paragraph (8) of Exhibit "A" to Plaintiff's Replication that such agreement shall be in force and effect only from May 1, 1963, to August 1, 1963, and thereafter upon mutual consent of the parties and no proof is offered that such agreement was extended beyond August 1, 1963, by mutual consent of the parties.

8. That the Complaint filed by the Plaintiff claims damages for a conversion which is supposed to have occurred on August 21, 1963, and for aught appearing from Plaintiff's Replication any so-called agreement which was entered into by the Florida Milk Commission and the Alabama Milk Control Board on May 8, 1963, had expired by its terms on August 1, 1963.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 22 day of Aug, 1966.

Attorneys for Defendant

FILED

AUG 1966

ALICE L. DUCK, CLERK REGISTER

5784

JOHN DUBROCK,
Plaintiff,

vs.

BORDEN'S DAIRY, A Division
of the BORDEN COMPANY,
Defendant.

****

MOTION TO STRIKE

****

JOHN DUBROCK,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
vs.	X	BALDWIN COUNTY, ALABAMA
BORDEN'S DAIRY, A Division of the BORDEN COMPANY,	X	AT LAW NO. 5794
	X	
Defendant.	X	

Comes the Defendant in the above styled cause and amends pleas "3" and "4" heretofore filed in said cause so that the same shall read as follows:

3. The complaint claims damages for the conversion of a milk base on August 21, 1963. The Defendant, on that date, and at the present time, is a milk distributor with one of its plants located in Pensacola, Florida, at which plant the so called conversion of milk base occurred. On October 25, 1962, prior to the date of the alleged conversion, the Florida Milk Commission adopted a base fixing order for Borden's Pensacola Plant, which order allocated all bases in Borden's Pensacola Plant to Florida producers serving such plant, which said order the Defendant was required to obey under penalty of having its license as a distributor suspended or revoked. Such order had not been modified or rescinded on August 21, 1963, hence the Plaintiff had no milk base on that date which was the subject of a conversion and he cannot recover in this suit.

4. The complaint claims damages for the conversion of a milk base on August 21, 1963. Such Plaintiff continued to deliver milk to the Defendant until August 30, 1963, with no change in the base arrangements between the parties up to August 30, 1963, at which time the Plaintiff voluntarily ceased selling milk to the Defendant and thereby voluntarily abandoned any milk base

which he may have had with the Defendant prior to such date, hence he should not recover in this suit.

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing pleading has been served upon counsel for all parties to this proceeding, by mailing the same to each by First Class United States Mail, properly addressed and postage prepaid on this 2nd day of Aug, 1966

FILED

AUG 18 1966

ALICE L. BECK, CLERK, CHANCERY

5794

JOHN DUBROCK,
Plaintiff,

vs.

BORDEN'S DAIRY, A Division
of the BORDEN COMPANY,
Defendant.

****

AMENDED PLEAS

****

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA

JOHN DUBROCK, Plaintiff, -vs- BORDEN'S DAIRY, a Division of The Borden Company, Defendant.	)	No. 5794

ANSWERS TO INTERROGATORIES

Comes now LAMAR GARRETT, Branch Manager of the Pensacola plant of Borden's Dairy, a Division of The Borden Company, Defendant in the above-styled cause, and files his Answers to the Interrogatories propounded by the Plaintiff herein and says:

1) Yes.

2) Yes. Borden's Dairy, Pensacola plant.

3) As Manager since April 1959.

4) Yes.

5) I have known him about 4 years.

6) Yes, a voluntary, mutually agreed upon base, not handled by any official authority of Alabama or Florida.

7) Yes.

8) The record of this base was kept at Borden's Pensacola plant until April 1960, and thereafter records were transferred to Borden's District Office, Tampa, Florida, although monthly settlement checks distributed by the Pensacola plant still show the bases of Alabama producers.

9) In December 1960, Plaintiff's milk base was .5818; July 1961, same; July 1962, same; July 1963, 1.1516.

10) This milk base percentile was on the producer's settlement sheet mailed to the Plaintiff for the month of August, 1963.

11) See answer to Interrogatory No. 9 above. Form attached hereto.

12) Unknown.

13) Unknown what so-called compact means.

14) Yes.

15) See Attachments Numbered 3 and 4.

16) As of September 1962, .5818. As of September 1963, 1.1516.

17) None.

18) None.

19) Myself.

20) There has been no change, except by orders of the Florida Milk Commission, which purport to pre-empt all bases at Borden's Pensacola plant solely for Florida producers. These orders are now being litigated in the Florida courts. The Florida Milk Commission has purported to adopt a so-called Florida-Alabama compact under which Borden's prior system of voluntary milk bases was eliminated. The legality of this compact has been questioned and probably will be litigated.

21) None.

22) Yes.

23) President, Borden's Dairy, a Division of The Borden Company.

24) Yes.

25) Baldwin, Escambia, Covington, Monroe & Butler Counties, Alabama.

26) Claude T. Creighton, John Dubrock, W. J. Campbell, A. V. Campbell, R. A. Flowers and Thomas I. Gray.

27) See Attachments Numbered 1 and 2.

28) Yes.

29) Yes.

30) See Attachments Numbered 1 and 2.

31) Unable to determine information desired from question.

32) No.

33) See answer to Interrogatory No. 27 above.

34) Mr. Barritt advised that due to the uncertain legal situation and likelihood that a transferee would obtain nothing, all efforts to transfer herd and base should be discouraged, and the prospective buyer advised that it would be doubtful that he would acquire anything of value.

35) See answer to Interrogatory No. 34 above.

Lamar Garrett

CHASON, STONE & CHASON
P. O. Box 120
Bay Minette, Alabama

By _____
John Chason

STATE OF FLORIDA
COUNTY OF ESCAMBIA

Before me, the undersigned authority, personally appeared LAMAR GARRETT, Branch Manager of the Pensacola plant of Borden's Dairy, a Division of The Borden Company, who, upon being first duly sworn, states that the foregoing answers to Interrogatories are true and correct to the best of his information, knowledge and belief.

Lamar Garrett

_____
Notary Public

My Commission expires: My Commission Expires Jan. 23, 1968

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answers to Interrogatories has been furnished to C. L. Thompson, of Thompson & White, Attorneys for Plaintiff, 124 Court House Square, Bay Minette, Alabama, by ~~mail~~ hand, this 7th day of February, 1964.

_____

Borden's

MILK SETTLEMENT
FLORIDA DISTRICT

BRANCH	PRODUCER NO
PENSACOLA FL	300

CLASS CODE
1 CLASS I
2 CLASS II
3 CLASS III
4 CLASS IV
5 ALA CLASS I
6 BULK SALES
7 BULK TRANSFER
8 MILITARY SALES
9 NONPOOL SALES

JOHN DUBROCK
ROUTE 1
ROBERTSDALE ALA

BLEND PRICE 5541

PERIOD ENDED MO.	DAY	YEAR	CODE SEE UPPER RIGHT	BASE PRICE CENTS	BASE	BUTTERFAT TEST	BUTTERFAT PER HUNDRED CENTS	GALLONS	AMOUNT
8	31	63	1	5650	1.1516	400	565	1382	78083
8	31	63	2	3440		400	344	72	2477
							TOTAL	1454	80560

DEDUCTIONS (CR.)

HAULING CHGS	4362CR
F S DAIRY ASN	138CR
ADVANCE	29500CR

38686
CHECK NUMBER

46560
Net Amount Due

	Abrams, J.W.	Adkinson, E.W.	Campbell, A.V.	Campbell, W.J.	Coley, H.S.	Dubrock	Ellison	Emmons	Farrar
JUNE									
Class I	3,261	3,258	2,859	1,497	2,417	1,323	2,786	1,712	3,983
Class II						84			1,097
Class VIII		199	140		223		993		1,541
JULY									
Class I	3,249	3,350	2,940	1,983	2,485	1,361	2,866	2,514	4,096
Class II		382	550			11	83	91	2,223
Class VIII		665	583	116	370		568	499	813
AUGUST									
Class I	3,726	3,401	2,984	1,652	2,523	1,382	2,909	2,552	4,158
Class II						72			1,065
Class VIII	257	1,090	698		629		26	298	1,567

A T T A C H M E N T 1

JUNE

	Flowers	Gray	Huggins	H.A. Lee	O.F. Lee	Long	T.O. Owens	Smith	Stone	Wilson	Creighton	B.B. Dairies	Totals
Class I	1,256	1,058	4,776	1,832	1,259	4,310	4,598	6,653	2,724	2,916	1,275	55,476	111,229
Class II	158		970	850					650			14,664	18,473
Class VIII						336	1,097	673		333			5,535

JULY

Class I	1,292	1,525	4,911	1,884	1,563	4,432	4,729	6,842	2,801	2,993	1,248	57,050	116,114
Class II	654		970	779		451	12	204	1,095			16,424	23,929
Class VIII						879	938	1,357					6,788

AUGUST

Class I	1,311	1,437	4,986	1,913	2,428	4,500	4,801	6,946	2,844	3,045	777	57,919	118,194
Class II	851		1,666	591	169				1,088			18,565	24,067
Class VIII						1,637	381	694		101			7,378

ATTACHMENT 2

1962	Creighton	Dubrock	Campbell, A.V.	Flowers	Campbell, W.J.
Sept.					
Class I	1,607	1,219	3,362	1,477	2,268
Class II			1,334	114	238
Oct.					
Class I	1,658	1,177	3,440	1,512	2,321
Class II			1,075	98	381
Nov.					
Class I	1,787	1,242	3,226	1,346	2,176
Class II	103		185		125
Class III	364		929		102
Dec.					
Class I	1,880	1,457	3,393	1,491	2,289
Class II	115		208	91	140
Class III	95		313		727
1963					
Jan.					
Class I	1,803	1,438	3,268	1,436	2,205
Class II			333	35	225
Class III			31		175
Feb.					
Class I	1,338	1,371	2,963	1,073	1,998
Class II		166	426		61
Class IX (School Milk)		91	197		133
March					
Class I	1,456	1,465	3,164	1,390	2,134
Class II		576	1,914	103	380
April					
Class I	1,340	1,427	3,358	1,476	2,265
Class II			1,572	91	
Class VIII (Military Milk)			99		34

ATTACHMENT 3

1963	Creighton	Dubrock	Campbell, A.V.	Flowers	Campbell, W.J.
May					
Class I	1,282	1,411	3,161	1,389	1,866
Class II			1,003		
Class III				5	
June					
Class I	1,275	1,323	2,859	1,256	1,497
Class I		84		158	
Class VIII	(Military Milk)		140		
July					
Class I	1,248	1,361	2,940	1,292	1,983
Class II		11	550	654	
Class VIII	(Military Milk)		583		116
August					
Class I	777	1,382	2,984	1,311	1,652
Class II		72		851	
Class VIII	(Military Milk)		698		
Totals					
Class I	17,451	16,273	38,118	16,449	24,654
Class II	218	909	8,600	2,195	1,550
Class III	459		1,273	5	1,004
Class VIII			1,520		150
Class IX (School Milk)		91	197		133
	18,128	17,273	49,708	18,649	27,491

ATTACHMENT 4

IN THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA. AT LAW.

JOHN DUBROCK,	)	
Plaintiff,	)	
-vs-	)	
BORDEN'S DAIRY, a Division of The Borden Company,	)	No. 5794
	)	
Defendant.	)	

ANSWERS TO INTERROGATORIES

Comes now W. J. BARRITT, JR., President of Borden's Dairy, Division of The Borden Company, Defendant in the above-styled cause and files his Answers to the Interrogatories propounded by the Plaintiff herein and says:

1) The correct name of the Defendant is Borden's Dairy, a Division of The Borden Company.

2) The Borden Company was incorporated in the State of New Jersey.

3) The Borden Company is qualified under the laws of Alabama to conduct business within the State of Alabama.

4) The statutory agent in Alabama designated for service of process upon Defendant is the Corporation Trust Company, First National Bank Building, Montgomery, Alabama.

5) Yes.

6) Yes.

7) The only knowledge I personally had of a producer wanting to transfer a base was through my first conversation with Mr. Thompson on August 14, at which time he advised me that Mr. Creighton wanted to transfer his base.

8) I did not, at any time, authorize the sale or transfer of any of the milk bases alleged to belong to the five producers as listed by Mr. Thompson.

9) No.

10) Copies of all correspondence with Mr. C. L. Thompson, Attorney, are attached.

11) I was advised by Mr. Jay Struble that Mr. C. L. Thompson and five producers, namely: A. V. Campbell, W. J. Campbell, Claude Creighton, John Dubrock and R. A. Flowers, appeared at Borden's office in Pensacola on August 30, 1963, and requested that effective immediately Borden was not to pick up the milk of these producers. Also, a copy of Mr. Thompson's letter of September 13, 1963, addressed to Borden's Dairy at Pensacola was forwarded to me for reply.

12) Our local Pensacola operators, Jay Struble and Lamar Garrett, were well aware that a base was allocated to regular producers supplying the Pensacola plant for the purpose of allocating fairly the utilization of the milk, and that the transfer of a base had to be approved by Borden, and usually was acceptable only if the transferee was satisfactory to Borden and purchased the farm and cattle of the transferor. Also, Messrs. Struble and Garrett were aware of the legal complications pertaining to the new Order of the Florida Milk Commission and the litigation pending regarding bases.

13) No written instructions.

14) Copies of letters written by Mr. C. L. Thompson and myself are attached.

W. J. Barritt, Jr. (President, Borden's Dairy, Division of The Borden Company)

CHASON, STONE & CHASON
P. O. Box 120
Bay Minette, Alabama
Attorneys for Defendant

By _____
John Chason

STATE OF FLORIDA
COUNTY OF HILLSBOROUGH

Before me, the undersigned authority, personally appeared W. J. BARRITT, JR., President of Borden's Dairy, Division of The Borden Company, who, upon being first duly sworn, states that the foregoing Answers to Interrogatories are true and correct to the best of his information, knowledge and belief.

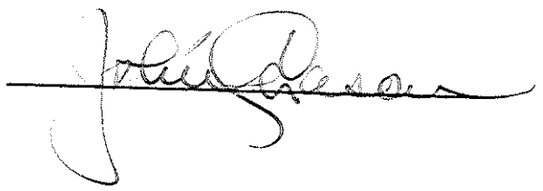
W. J. Barritt, Jr.

Notary Public

My Commission expires: 12-27-65

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answers to Interrogatories has been furnished to C. L. Thompson of Thompson & White, Attorneys for Plaintiff, 124 Court House Square, Bay Minette, Alabama, by ~~mail,~~ hand this 5th day of February, 1964.



September 20, 1963

Mr. C. LeRoy Thompson
Thompson & White
Attorneys at Law
Jay Minette, Alabama

Dear Mr. Thompson:

Your letter of September 13, 1963, addressed to Mr. Jay Struble, Borden's Pensacola Plant, has been referred to me for reply.

You were advised by me in my letter to you dated August 21, 1963, in response to your letter of August 19, 1963, that Borden's could not and would not recognize any purported premium or alleged or so-called bases with respect to its Pensacola Plant.

On August 30, 1963, you accompanied by the following Alabama producers who had previously delivered milk to Borden's Plant at Pensacola, namely, A. V. Campbell, W. J. Campbell, Claude Creighton, John DuBrocke and R. A. Flowers, met with Mr. Jay Struble and Borden's Office Manager at Pensacola and advised that effective immediately Borden's was not to pick up the milk of these producers. Consequently, Borden's did not pick up any milk of these producers after August 30. We were later informed that the milk of these producers was being delivered to a plant in Mobile.

You were well aware on August 20, 1963, because of my letter to you dated August 21, 1963, that Borden's would, under no circumstances, recognize any purported premium or the so-called bases to which you make reference. So far as Borden's is concerned, the above named producers have severed their relationship with Borden's Plant in Pensacola as of August 30, 1963, at their own request, and any relation they now hold for assignment or otherwise must be with the new distributors to which they have been delivering since August 30, 1963.

Yours very truly,

WJB/ab

W. J. Barrett, Jr.
President of Division

cc: Ala. Milk Control Board
Fla. Milk Commission
J. C. Struble

bcc: J. A. McClain
John Pappanastos

THOMPSON & WHITE

Attorneys-At-Law

BAY MINETTE, ALABAMA

C. LeNoir Thompson

Mary Thompson White

937-2801
Phones : 937-7467
937-2555

September 13, 1963

Borden's, Inc.
Pensacola, Florida

ATTN: Mr. Jay Strubel

Dear Mr. Strubel:

This will confirm our conversation on the afternoon of August 30, 1963, when I advised you as attorney for the five producers in Baldwin County that we had arranged the sale of their milk bases and with your approval would obtain the approval of the Alabama Milk Board and the Florida Milk Commission so that the transfers could be effected immediately and you would be able to begin picking up milk from the holders of these bases the following week.

You advised me that you would contact your Tampa office and would let me know on Tuesday, September 3, 1963, the decision of Borden's.

I would respectfully suggest that you have not advised me and the purchasers are awaiting action from you so that I may furnish to you the names and locations for picking up this 375 gallons daily milk base earned and/or purchased by the five Alabama producers.

Your kindness in advising me the form in which to present the transfer to your company as I requested in that conversation will be appreciated as I do not wish any misunderstanding about the procedure for handling the transfers of these milk bases.

Yours very truly,

CLT/hm

cc: Alabama Milk Control Board
Montgomery, Alabama

Florida Milk Commission
Tallahassee, Florida

August 21, 1963

Mr. C. LeRoy Thompson
Thompson & White, Attorneys-At-Law
Bay Minette, Alabama

Dear Mr. Thompson:

This will acknowledge your letter of August 19, 1963.

Borden's cannot and will not recognize any purported transfer of alleged or so-called bases with respect to its Pensacola plant and does not accept the validity of the purported Florida-Alabama so-called compact between the Florida Milk Commission and the Alabama Milk Control Board.

Serious legal problems have arisen out of action of the Florida and Alabama authorities concerning the Pensacola Milk Marketing Area and can only be settled, in all likelihood, by litigation. In these circumstances, it would be highly inadvisable for any Alabama producer to attempt to transfer any alleged or so-called base or quota with respect to Borden's Pensacola plant.

Yours very truly,

WJB/ab

W. J. Barrett, Jr.
President of Division

cc: J. A. McCladn, Jr.

THOMPSON & WHITE

Attorneys-At-Law

BAY MINETTE, ALABAMA

C. LeNoir Thompson

Mary Thompson White

Phones: 937-3921
937-7437
937-8338

[illegible]

[illegible]
[illegible]
[illegible] Florida

Dear [illegible]:

[illegible] conversation with [illegible] Mr. Lamar Cassell, manager [illegible] Circuit Court of [illegible] Pensacola [illegible] was filed [illegible] a trial and has [illegible]

[illegible] on page [illegible] there are bases for the [illegible] Pensacola plant at Pensacola [illegible] Alabama-Florida company [illegible] in this case [illegible] plant [illegible] right to [illegible] plant, as found in [illegible]

[illegible] the base [illegible] offices [illegible] purchase of [illegible]

[illegible] proposal [illegible]

[illegible] information direct so that no confusion [illegible] transfer of these [illegible] under the Alabama-Florida company [illegible] the [illegible] company at Pensacola and [illegible] materialized.

[illegible] if you [illegible] under [illegible]

[illegible]

[illegible]