

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION**

Farm-to-Consumer	:	Case No. 5:10-cv-4018
Legal Defense Fund, et al.	:	
	:	
Plaintiffs	:	Judge Mark W. Bennett
	:	
v.	:	
	:	
Sebelius, et al.	:	
	:	
	:	
Defendants	:	

**PLAINTIFFS' REPLY TO DEFENDANTS' STATEMENT OF ADDITIONAL
MATERIAL FACTS**

1. Admit.
2. Admit.
3. Admit.
4. Denied. The Athens Free Market is in a different part of town and is not even related to Athens Locally Grown. Appendix, pg. 34, par. 20, pg. 37, par. 26.
5. Denied. What actually happened was GDA inspectors entered Mr. Wagoner's private truck without requesting permission and began opening closed coolers located within, again without Mr. Wagoner's permission. This happened while Mr. Wagoner was helping growers unload products that did not require refrigeration elsewhere in the building. When Mr. Wagoner saw the GDA inspectors in his truck, he went over to ask them why they were there. Appendix, pgs. 34-35, par. 21.
6. Admit that the jugs that contained the raw milk were purchased in South Carolina where it is legal to purchase raw dairy products.
7. Admit that the raw milk in the truck was embargoed and placed under a stop sale order, but deny that Mr. Wagoner was told it is illegal to sell raw milk in Georgia. To the contrary, Mr. Wagoner did not sell any raw milk in Georgia and the GDA inspectors told him that the FDA ban on interstate commerce

was the reason for the embargo. Appendix, pg. 33, par. 7, pg. 35, par. 22, pgs. 36-37, par. 25.

8. Admit to the conduct but deny any implication that the conduct was legal or authorized under applicable law.
9. Denied. The embargo order was placed by the GDA but was ordered at the direction of the FDA. Appendix, pg. 36, par. 25.
10. Admit that Mr. Wagoner asked and the GDA inspectors agreed that Mr. Wagoner's truck could be driven to his home, but deny that the raw milk had to be destroyed.
11. Plaintiffs are without sufficient information to either admit or deny this statement, thus, they deny it.
12. Plaintiffs are without sufficient information to either admit or deny this statement, thus, they deny it.
13. Admit that Mr. Wagoner did not have any contact with anyone from FDA over the weekend but Mr. Wagoner was told that the FDA ban on interstate commerce was the reason for the embargo.
14. Plaintiffs are without sufficient information to either admit or deny this statement, thus, they deny it.
15. Admit.
16. Plaintiffs are without sufficient information to either admit or deny this statement, thus, they deny it.
17. Admit but also admit that the FDA ban on interstate commerce was the reason for Ms. Willis' presence.
18. Denied. Appendix, pgs. 35-38, pars. 23-29.
19. Denied. Appendix, pgs. 35-38, pars. 23-29.
20. Denied. Ms. Willis was asked about the requirements of federal law and her response was that the raw milk must be destroyed. Ms. Willis also acquiesced in the GDA inspector's comment that changing the law required congressional action. Appendix, pg. 37, par. 29.
21. Denied. Appendix, pg. 37, par. 29.

22. Plaintiffs are without sufficient knowledge as to what constitutes Georgia law, and therefore cannot either confirm or deny that Mr. Wagoner had an opportunity to challenge the embargo in court. In all other respects, this statement is denied. Appendix, pgs. 35-36, par. 24-25, pg. 37, par. 28.
23. Denied. Appendix, pgs. 35-38, pars. 23-29.
24. Denied. Appendix, pgs. 35-38, pars. 23-29.

Dated: July 8, 2011

Respectfully submitted,

/s/ David G. Cox

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system that will send notification of such filings(s) to the following:

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