

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

LDT KELLER FARMS, LLC, )  
KELLER FARMS PARTERSHIP )  
841 Burkettsville-St. Henry Road )  
Fort Recovery, Ohio 45846-9733 )

Plaintiff )

VS. )

BRIGITTE HOLMES LIVESTOCK CO., )  
INC., )  
C/O James R. Schrier, Statutory Agent )  
415 Columbia Street, Suite 3000 )  
Lafayette, IN 47901 )

AND )

BRIGITTE HOLMES, Individually )  
140 Farver Street )  
Shipshewana, IN 46565 )

AND )

SAMUEL STEPHEN HOLMES )  
140 Farver Street )  
Shipshewana, IN 46565 )

AND )

MERVIN MISHLER )  
3835 E. 225 N )  
Lagrange, IN 46761 )

AND )

LEVI GRABER )  
8398 N 1225 E )  
LOOGOOTEE, IN 47553 )

AND )

CASE NO.: 1108CV0243 JM

JUDGE: \_\_\_\_\_

2008 OCT 17 PM 12:41  
STATE CLERK  
FOR THE U.S. DISTRICT COURT  
NORTHERN DISTRICT  
OF INDIANA

FILED

**COMPLAINT WITH JURY DEMAND**  
**ENDORSED HEREON**

JOSEPH N. GRABER )  
 aka, JOE N. Graber )  
 RR 3 )  
 BOX 320 )  
 LOOGOOTEE, IN 47555 )  
 )  
 AND )  
 )  
 FREEMAN RABER )  
 RR 3 )  
 BOX 300 )  
 LOOGOOTEE, IN )  
 )  
 Defendants )

Comes now the Plaintiff, LDT Keller Farms, LLC, by and through its attorney, and hereby states, alleges and avers:

**JURISDICTION AND PARTIES**

1. At all times relevant hereto Plaintiff, LTD Keller Farms, LLC, is an Ohio Limited Liability Corporation, in good standing with the State of Ohio, and Keller Farms, an Ohio General Partnership with three equal partners, Luke R. Keller, Daniel R. Keller and Timothy L. Keller, (collectively referred to hereinafter as “Keller Farms”) are engaged in the business of dairy farming and such other necessary commercial agricultural matters, with its principal place of business located at 841 St. Henry-Burketsville Road, Fort Recovery, Ohio.
2. At all times relevant hereto, Defendant, Brigitte Holmes Livestock Co., Inc., was, and is, an Indiana corporation in good standing with the Secretary of State of Indiana, with its principal place of business located at 240 Farver Street, Suite 3000, Shipshewana, Indiana, is licensed with the State of Indiana Board of Animal Health in accordance with Indiana

Code §15-17-14, *et seq.*, as a dealer in livestock and registered with the United States Department of Agriculture as a “dealer” and/or a “market agency” in livestock and carrying a bond as required by 7 USC § 181, *et seq.* Upon information and belief, Brigitte Holmes Livestock Co., Inc. holds itself out as Holmes Livestock Co., Inc.

3. At all times relevant hereto, individual Defendant, Brigitte Holmes, is a resident of the county of Lagrange, Indiana and served as the President of Brigitte Holmes Livestock Co., Inc., and operated and exerted control over the assets and course of business conducted by Brigitte Holmes Livestock Co., Inc., which, upon information and belief, holds itself out as Holmes Livestock Co., Inc.
4. At all times relevant hereto, Defendant, Samuel Stephen Holmes, aka, Steve Holmes, is a resident of the County of Lagrange, Indiana, and is the husband of individual Defendant, Brigitte Holmes. The Indiana Secretary of State has registered one, Steve Holmes, as the manager of Brigitte Holmes Livetock, Co., Inc. Additionally, Defendant, Samuel Stephen Holmes, has served as President of, operated, and exerted control over a now dissolved corporation known as “Central State Livestock Sales,” that was neither registered with the State of Indiana, Board of Animal Health as required by Indiana Code § 15-17-14, *et seq.*, nor the United States Department of Agriculture as required by 7 USC § 181, *et seq.* Upon information and belief, “Central State Livestock Sales” held itself out as Holmes Livestock Co., Inc.
5. At all times relevant hereto, Defendant, Mervin Mishler, is a resident of Lagrange County, Indiana, and was, and is, an agent of Brigitte Holmes Livestock Co., Inc., licensed by the State of Indiana Board of Animal Health in accordance with Indiana Code § 15-17-14, *et seq.* Upon information and belief, Mervin Mishler also performed livestock “sales” and

provided “stock yard” services with the now dissolved corporation, “Central State Livestock Sales”, and continues to provide, upon information and belief, “stock yard” services for Brigitte Holmes Livestock Co., Inc., which, upon information and belief, held itself out as Holmes Livestock Co., Inc.

6. At all times relevant hereto, Defendant, Levi Graber, is, and was, a resident of Daviess County, Indiana, and is engaged in the business of selling “livestock” and providing “stock yard” services. Defendant, Levi Graber, is not, nor has been, licensed with the State of Indiana Board of Animal Health as required by Indiana Code §15-17-14, *et seq.*, nor is he registered with the United States Department of Agriculture as either a “dealer,” “marketing agency” or a “stockyard” as required by 7 USC § 181, *et seq.*
7. At all times relevant hereto, Defendant, Joseph N. Graber, aka Joe N. Graber, is, and was, a resident of Daviess County, Indiana, and is engaged in the business of selling “livestock” and providing “stock yard” services. Defendant, Joseph N. Graber, is a business associate of his son, Defendant, Levi Graber, and, upon information and belief, he is also a business associate of Defendant, Freeman Raber. Defendant, Joseph N. Graber, is not licensed with the State of Indiana Board of Animal Health as required by Indiana Code § 15-17-14, *et seq.*, nor is he registered with the United States Department of Agriculture as either a “dealer”, “marketing agency” or a “stockyard” as required by 7 USC § 181, *et seq.*
8. Upon information and belief, at all times relevant hereto, Defendant, Freeman Raber, was, and is, a resident of Daviess County, Indiana, and is associated in a livestock “dealer” business venture with Defendants, Levi Graber and Joseph N. Graber. Defendant, Freeman Raber, is not licensed with the State of Indiana Board of Animal Health in accordance with Indiana Code § 15-17-14, *et seq.*, nor is he registered with the United

States Department of Agriculture as either a “dealer”, “marketing agency” or a “stockyard” in accordance with 7 USC § 181, *et seq.*

### **FACTUAL ALLEGATIONS**

9. This matter involves the sale and purchase of approximately 284 Holstein heifers between May 10, 2006 and January 31, 2007. All but three of the 284 total Holstein heifers sold to the Plaintiff were sterile.
10. Upon information and belief, all Holstein heifers that were sold between May 10, 2006 and January 31, 2007, were obtained by Defendant, Birgitte Holmes Livestock Co., Inc. and/or the dissolved corporation, “Central State Livestock Sales,” and individual Defendants Brigitte Holmes, Samuel Stephen Holmes and/or Mervin Mishler, holding themselves out collectively as Holmes Livestock Co., Inc.
11. Each of the 284 Holstein heifers sold between May 10, 2006 and January 31, 2007 were, individually, the female of a twin set that was comprised of both a male and a female.
12. It is the ordinary custom and practice in the dairy industry, that the female of a twin set comprised of male and female, is separated and segregated from the dairy herd, and that they are shipped off for sale as a beef cow with the newly born bulls and are known as “freemartins” i.e., new born females that have a 92% to 95% probability of being sterile. Consequently, a “freemartin” is a bovine “state of being” that is immutable and constitutes a material, inherent defect in the Holstein heifer, and it is not a “latent” defect.
13. Prior to May 10, 2006 and at all times relevant thereafter, upon information and belief, Defendant, Brigitte Holmes Livestock Co., Inc., and individual Defendants, Brigitte Holmes, Samuel Stephen Holmes and/or Mervin Mishler, obtained Holstein heifers that

were identified and segregated as being freemartins from various dairy farms and/or livestock sale barns in various states and the province of Ontario, thereby engaging in interstate and international commerce.

14. Upon information and belief, prior to May 10, 2006 and at all times relevant thereafter, Defendant, Brigitte Holmes Livestock Co., Inc., and individual Defendants, Brigitte Holmes, Samuel Stephen Holmes and/or Mervin Mishler, purchased approximately 284 Holstein freemartin heifers at fair market price of less than \$50.00 a piece.
15. Upon information and belief, between March 1, 2006 and May 10, 2006, Defendant Brigitte Holmes Livestock Co., Inc., and individual Defendants, Brigitte Holmes, Samuel Stephen Holmes, and/or Mervin Mishler, holding themselves out collectively as Holmes Livestock Co., Inc., conspired with individual Defendants, Levi Graber and Joseph N. Graber, and entered into an agreement whereby Defendants, Levi Graber, Joseph N. Graber and/or Freeman Raber, would purchase freemartin Holstein heifers from Defendant, Brigitte Holmes Livestock Co., Inc., and individual Defendants, Brigitte Holmes, Samuel Stephen Holmes and/or Mervin Mishler, and in violation of 7 USC § 213(a), fraudulently re-selling them as non-freemartin Holstein heifers in excess of \$475.00 a piece.
16. Upon information and belief, prior to May 10, 2006, July 21, 2006 and September 13, 2006, Defendant, Brigitte Holmes Livestock Co., Inc., and individual Defendants, Brigitte Holmes, Samuel Stephen Holmes and/or Mervin Mishler, holding themselves out collectively as Holmes Livestock Co., Inc., delivered and sold 80 identified freemartin Holstein heifers to individual Defendants, Levi Graber, Joseph N. Graber and Freeman Raber, for the purpose of fraudulently re-selling, in violation of 7 USC § 213(a), the

- freemartin Holstein heifers as non-freemartin Holstein heifers.
17. In furtherance of the conspiracy to fraudulently sell freemartin Holstein heifers in violation of 7 USC § 213(a), Defendant, Levi Graber, placed an advertisement in the Farm World newspaper, to wit: "(30) Holstein heifers, 200#." with a telephone number, as ran in the May 10, 2006 edition of Farm World newspaper.
  18. Between May 10, 2006 and May 14, 2006, Plaintiff, by and through its member, Luke Keller, contacted Defendant, Levi Graber, by telephone and discussed with Defendant, Levi Graber, the Holstein heifers that were advertised. Luke Keller specifically informed Defendant, Levi Graber, that he wanted to purchase Holstein heifers for the purpose of increasing the milk production capacity of Plaintiff's dairy herd.
  19. During the aforesaid telephone conversation, Defendant, Levi Graber, misrepresented to Keller Farms in violation of 7 USC § 213(a), that the Holstein heifers advertised for sale in Farm World newspaper were purchased directly from a "large Dutch dairy operation."
  20. During the aforesaid telephone conversation, Defendant, Levi Graber, specifically represented to Keller Farms, in violation of 7 USC § 213(a), that the Holstein heifers advertised for sale in Farm World newspaper were not from a set of twins, nor were they "freemartins."
  21. During the aforesaid telephone conversation, Defendant, Levi Graber, represented to Keller Farms that the Holstein heifers that were advertised for sale in Farm World newspaper were in the possession, custody and control of Levi Graber's father, Defendant, Joseph N. Graber, aka, Joe N. Graber.
  22. On May 15, 2006, Defendants, Levi Graber, Joseph Graber and/or Freman Raber, knew that the 25 Holstein heifers that they offered to sell to the Plaintiff for \$12,000.00 were

- freemartins.
23. On May 15, 2006, Defendants, Levi Graber and Joseph N. Graber, with purpose and malicious intent to deceive, in violation of 7 USC § 213 (a), failed to disclose to the Plaintiff that the 25 Holstein heifers that they offered to sell to the Plaintiff for \$12,000.00 were freemartins.
  24. On May 15, 2006, Defendants, Levi Graber and Joseph N. Graber, with purpose and malicious intent to deceive, in violation of 7 USC § 213 (a), specifically represented to the Plaintiff that the 25 Holstein heifers that they offered to sell to the Plaintiff for \$12,000.00 were not freemartins.
  25. On May 15, 2006, Plaintiff, relying upon the oral representations of the Defendants that the heifers for sale were not freemartins, accepted delivery and tender of the 25 Holstein heifers in exchange for \$12,000.00. Defendant, Levi Graber, deposited the \$12,000.00 into an account that he jointly held, upon information and belief, with Defendant, Freeman Raber.
  26. At the conclusion of the sale on May 15, 2006, Defendant, Levi Graber, assured Plaintiff that he would notify it when he had additional Holstein heifers suitable for dairy production available for sale.
  27. On or before July 20, 2006, Defendant, Levi Graber notified Plaintiff that he had additional Holstein heifers for sale that were not freemartins.
  28. On July 21, 2006, Defendants, Levi Graber and Joseph Graber, knew that the 28 Holstein heifers that they offered to sell to the Plaintiff for \$15,400.00 were freemartins.
  29. On July 21, 2006, Defendants Levi Graber and Joseph N. Graber, with purpose and malicious intent to deceive, in violation of 7 USC § 213 (a), failed to disclose to the

- Plaintiff that the 28 Holstein heifers that they offered to sell to the Plaintiff for \$15,400.00 were freemartins.
30. On July 21, 2006, Defendants, Levi Graber and Joseph N. Graber, with purpose and malicious intent to deceive, in violation of 7 USC § 213 (a), represented to the Plaintiff that the 28 Holstein heifers that they offered to sell to the Plaintiff for \$15,400.00 were not freemartins.
31. On July 21, 2006, Plaintiff, relying upon the oral representations of the Defendants that the heifers for sale were not freemartins, accepted delivery and tender of the 28 Holstein heifers in exchange for \$15,400.00. Defendant, Levi Graber, deposited the \$15,400.00 into an account that he jointly held, upon information and belief, with Defendant, Freeman Raber.
32. On or before September 11, 2006, Defendant, Levi Graber notified Plaintiff that he had additional Holstein heifers for sale that were not freemartins.
33. On September 13, 2006, Defendants, Levi Graber and Joseph Graber, knew that the 27 Holstein heifers that they offered to sell to the Plaintiff for \$14,900.00 were freemartins.
34. On September 13, 2006, Defendants, Levi Graber and Joseph N. Graber, with purpose and malicious intent to deceive, in violation of 7 USC § 213 (a), failed to disclose to the Plaintiff that the 27 Holstein heifers that they offered to sell to the Plaintiff for \$14,900.00 were freemartins.
35. On September 13, 2006, Defendants Levi Graber and Joseph N. Graber, with purpose and malicious intent to deceive, in violation of 7 USC § 213 (a), represented to the Plaintiff that the 27 Holstein heifers that they offered to sell to the Plaintiff for \$14,900.00 were not freemartins.

36. On September 13, 2006, Plaintiff, relying upon the oral representations of the Defendants that the heifers for sale were not freemartins, accepted delivery and tender of the 27 Holstein heifers in exchange for \$14,900.00.
37. Of the total number of 80 Holstein heifer calves sold by the Defendants, Levi Graber, Joseph N. Graber and/or Freeman Raber, to Keller Farms, in violation of 7 USC § 213(a), 79 were unable to conceive.
38. The first 25 Holstein heifers sold to Plaintiff on May 15, 2006 were diagnosed as being freemartins on or about March 15, 2007. In the following months, as the balance of the 79 heifer calves sold by Defendants, Levi Graber, Joseph N. Graber and/or Freeman Raber, reached the age of 15 to 17 months old, they too were diagnosed as being freemartins by a veterinarian.
39. On or about September 13, 2006, Defendant, Levi Graber, informed the Plaintiff that he was unable, or no longer willing, to obtain any more Holstein heifer calves to sell to Plaintiff. Defendant, Levi Graber, then informed the Plaintiff that Defendant, Samuel Stephen Holmes, was a good source for obtaining Holstein heifer calves for the purpose of increasing the milk production capacity of its dairy herd and Defendant, Levi Graber, gave Plaintiff the cellular telephone number for Defendant, Stephen Samuel Holmes, and Defendant, Brigitte Holmes, individually.
40. Luke Keller, at the suggestion of Defendant, Levi Graber, contacted Defendant, Samuel Stephen Holmes, and explained to him that he was wanting to purchase Holstein heifers for the purpose of increasing the milk production capacity of Keller Farms' dairy herd. Defendants, Samuel Stephen Holmes and Mervin Mishler, were informed that Plaintiff did not want any twins, nor any freemartins. Defendants, Samuel Stephen Holmes and Mervin

Mishler, acknowledged their understanding of Plaintiff's requirements.

41. Defendant, Samuel Stephen Holmes, represented to the Plaintiff that he is a respectable livestock dealer, operating an honest business and that if he did sell any freemartin Holstein heifers, he would inform the buyer that the heifers were freemartins and that they would be sold at fair market value and not at the same fair market value as breedable Holstein heifers.
42. Defendants, Samuel Stephen Holmes and Mervin Mishler, further informed the Plaintiff that they would give Plaintiff notice as to when Holstein heifer calves would be available for sale.
43. Despite having been informed by the Plaintiff of Plaintiff's requirements for their dairy herd, and representing to the Plaintiff that they would provide Holstein heifer calves that were not freemartins, between September 13, 2006 and January 1, 2007, Defendant Brigitte Holmes Livestock, Co., Inc., and individual Defendants, Brigitte Holmes, Samuel Stephen Holmes and/or Mervin Mishler, collectively and individually, and as holding themselves out as Holmes Livestock Co., Inc., knew, purposed and intended, in violation of 7 USC § 213 (a), to only, and exclusively, deliver and tender freemartin Holstein heifer calves to Plaintiffs, to wit:
  44. On October 27, 2006, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and as holding themselves out as Holmes Livestock Co., Inc., knew that the 35 Holstein heifers that they offered to sell to the Plaintiff for \$15,625.00 were freemartins.
  45. On October 27, 2006, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually,

- and as holding themselves out as Holmes Livestock Co., Inc., with purpose and intent to deceive, in violation of 7 USC § 213 (a), failed to disclose to the Plaintiff that the 35 Holstein heifers that they offered to sell to the Plaintiff for \$15,625.00 were freemartins.
46. On October 27, 2006, Defendant Brigitte Holmes Livestock, Co., Inc., and individual Defendants Brigitte Holmes, Samuel Stephen Holmes and/or Mervin Mishler, collectively and individually, and as holding themselves out as Holmes Livestock Co., Inc., with purpose and malicious intent to deceive, in violation of 7 USC § 213 (a), represented to the Plaintiff that the 35 Holstein heifers that they offered to sell to the Plaintiff for \$15,625.00 were not freemartins.
47. On October 27, 2006, Plaintiff, relying upon the oral representations of the Defendants that the heifers for sale were not freemartins, accepted delivery and tender of 35 Holstein heifers in exchange for \$15,625.00.
48. On or before November 9, 2006, Defendants, Brigitte Holmes Livestock Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes, and/or Mervin Mishler, holding themselves out as Holmes Livestock Co., Inc., notified Plaintiff that they had additional Holstein heifers for sale that were not freemartins.
49. On November 10, 2006, Defendants, Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and as holding themselves out as either or both, Holmes Livestock Co., Inc., knew that the 33 Holstein heifers that they offered to sell to the Plaintiff for \$6,600.00 were freemartins.
50. On November 10, 2006, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and

individually, and as holding themselves out as Holmes Livestock Co., Inc., with purpose and intent to deceive, in violation of 7 USC § 213 (a), failed to disclose to the Plaintiff that the 33 Holstein heifers that they offered to sell to the Plaintiff for \$6,600.00 were freemartins.

51. On November 10, 2006, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and as holding themselves out as Holmes Livestock Co., Inc., with purpose and intent to deceive, in violation of 7 USC § 213 (a), represented to the Plaintiff that the 33 Holstein heifers that they offered to sell to the Plaintiff for \$6,600.00 were not freemartins.
52. On November 10, 2006, Plaintiff, relying upon the oral representations of the Defendants that the heifers for sale were not freemartins, accepted delivery and tender of 33 Holstein heifers in exchange for \$6,600.00.
53. On or before November 24, 2006, Defendants, Brigitte Holmes Livestock Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes, and/or Mervin Mishler, holding themselves out as Holmes Livestock Co., Inc., notified Plaintiff that they had additional Holstein heifers for sale that were not freemartins.
54. On November 25, 2006, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and as holding themselves out as Holmes Livestock Co., Inc., knew that the 41 Holstein heifers that they offered to sell to the Plaintiff for \$15,700.00 were freemartins.
55. On November 25, 2006, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and as holding themselves out as Holmes Livestock Co., Inc., with purpose

- and intent to deceive, in violation of 7 USC § 213 (a), failed to disclose to the Plaintiff that the 41 Holstein heifers that they offered to sell to the Plaintiff for \$15,700.00 were freemartins.
56. On November 25, 2006, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and as holding themselves out as Holmes Livestock Co., Inc., with purpose and intent to deceive, in violation of 7 USC § 213 (a), represented to the Plaintiff that the 41 Holstein heifers that they offered to sell to the Plaintiff for \$15,700.00 were not freemartins.
57. On November 25, 2006, Plaintiff, relying upon the oral representations of the Defendants that the heifers for sale were not freemartins, accepted delivery and tender of 41 Holstein heifers in exchange for \$15,700.00.
58. On or before December 7, 2006, Defendants, Brigitte Holmes Livestock Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes, and/or Mervin Mishler, holding themselves out as Holmes Livestock Co., Inc., notified Plaintiff that they had additional Holstein heifers for sale that were not freemartins.
59. On December 8, 2006, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and as holding themselves out as Holmes Livestock Co., Inc., knew that the approximately 7 Holstein heifers that they offered to sell to the Plaintiff for \$1,400.00 were freemartins.
60. On December 8, 2006, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and as holding themselves out as Holmes Livestock Co., Inc., with purpose and intent to deceive, in violation of 7 USC § 213 (a), failed to disclose to the Plaintiff that the

- approximately 7 Holstein heifers that they offered to sell to the Plaintiff for \$1,400.00 were freemartins.
61. On December 8, 2006, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and as holding themselves out as Holmes Livestock Co., Inc., with purpose and intent to deceive, in violation of 7 USC § 213 (a), represented to the Plaintiff that the approximately 7 Holstein heifers that they offered to sell to the Plaintiff for \$1,400.00 were not freemartins.
62. On December 8, 2006, Plaintiff, relying upon the oral representations of the Defendants that the heifers for sale were not freemartins, accepted delivery and tender of 7 Holstein heifers in exchange for \$1,400.00.
63. On or before December 14, 2006, Defendants, Brigitte Holmes Livestock Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes, and/or Mervin Mishler, holding themselves out as Holmes Livestock Co., Inc., notified Plaintiff that they had additional Holstein heifers for sale that were not freemartins.
64. On December 15, 2006, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and as holding themselves out as Holmes Livestock Co., Inc., had direct knowledge and knew that the 17 Holstein heifers that they offered to sell to the Plaintiff for \$3,400.00 were freemartins.
65. On December 15, 2006, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and as holding themselves out as Holmes Livestock Co., Inc., with purpose

and malicious intent to deceive, in violation of 7 USC § 213 (a), failed to disclose to the Plaintiff that the 17 Holstein heifers that they offered to sell to the Plaintiff for \$3,400.00 were freemartins.

66. On December 15, 2006, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and as holding themselves out as Holmes Livestock Co., Inc., with purpose and malicious intent to deceive, in violation of 7 USC § 213 (a), represented to the Plaintiff that the approximately 17 Holstein heifers that they offered to sell to the Plaintiff for \$3,400.00 were not freemartins.
67. On December 15, 2006, Plaintiff, relying upon the oral representations of the Defendants that the heifers for sale were not freemartins, accepted delivery and tender of 17 Holstein heifers in exchange for \$3,400.00.
68. On or before December 20, 2006, Defendants, Brigitte Holmes Livestock Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes, and/or Mervin Mishler, holding themselves out as Holmes Livestock Co., Inc., notified Plaintiff that they had additional Holstein heifers for sale that were not freemartins.
69. On December 21, 2006, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and as holding themselves out as Holmes Livestock Co., Inc., had direct knowledge and knew that the 11 Holstein heifers that they offered to sell to the Plaintiff for \$2,200.00 were freemartins.
70. On December 21, 2006, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and

individually, and as holding themselves out as Holmes Livestock Co., Inc., with purpose and malicious intent to deceive, in violation of 7 USC § 213 (a), failed to disclose to the Plaintiff that the 11 Holstein heifers that they offered to sell to the Plaintiff for \$2,200.00 were freemartins.

71. On December 21, 2006, Defendant Brigitte Holmes Livestock, Co., Inc., and individual Defendants Brigitte Holmes, Samuel Stephen Holmes and/or Mervin Mishler, collectively and individually, and as holding themselves out as Holmes Livestock Co., Inc., with purpose and malicious intent to deceive, in violation of 7 USC § 213 (a), represented to the Plaintiff that the approximately 11 Holstein heifers that they offered to sell to the Plaintiff for \$2,200.00 were not freemartins.
72. On December 21, 2006, Plaintiff, relying upon the oral representations of the Defendants that the heifers for sale were not freemartins, accepted delivery and tender of 11 Holstein heifers in exchange for \$2,200.00.
73. On or before January 10, 2007, Defendants, Brigitte Holmes Livestock Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes, and/or Mervin Mishler, holding themselves out as Holmes Livestock Co., Inc., notified Plaintiff that they had additional Holstein heifers for sale that were not freemartins.
74. On January 11, 2007, Defendant Brigitte Holmes Livestock, Co., Inc., and individual Defendants Brigitte Holmes, Samuel Stephen Holmes and/or Mervin Mishler, collectively and individually, and holding themselves out as Holmes Livestock Co., Inc., had direct knowledge and knew that the 11 Holstein heifers that they offered to sell to the Plaintiff for \$2,200.00 were freemartins.
75. On January 11, 2007, Defendant Brigitte Holmes Livestock, Co., Inc., and individual

Defendants Brigitte Holmes, Samuel Stephen Holmes and/or Mervin Mishler, collectively and individually, and holding themselves out as Holmes Livestock Co., Inc., with purpose and malicious intent to deceive, in violation of 7 USC § 213 (a), failed to disclose to the Plaintiff that the 11 Holstein heifers that they offered to sell to the Plaintiff for \$2,200.00 were freemartins.

76. On January 11, 2007, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and holding themselves out as Holmes Livestock Co., Inc., with purpose and malicious intent to deceive, in violation of 7 USC § 213 (a), represented to the Plaintiff that the approximately 11 Holstein heifers that they offered to sell to the Plaintiff for \$2,200.00 were not freemartins.
77. On January 11, 2007, Plaintiff, relying upon the oral representations of the Defendants that the heifers for sale were not freemartins, accepted delivery and tender of 11 Holstein heifers in exchange for \$2,200.00.
78. On or before January 17, 2007, Defendants, Brigitte Holmes Livestock Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes, and/or Mervin Mishler, holding themselves out as Holmes Livestock Co., Inc., notified Plaintiff that they had additional Holstein heifers for sale that were not freemartins.
79. On January 18, 2007, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and holding themselves out as Holmes Livestock Co., Inc., had direct knowledge and knew that the 20 Holstein heifers that they offered to sell to the Plaintiff for \$5,500.00 were freemartins.

80. On January 18, 2007, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and holding themselves out as Holmes Livestock Co., Inc., with purpose and malicious intent to deceive, in violation of 7 USC § 213 (a), failed to disclose to the Plaintiff that the 20 Holstein heifers that they offered to sell to the Plaintiff for \$5,500.00 were freemartins.
81. On January 18, 2007, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and holding themselves out as Holmes Livestock Co., Inc., with purpose and malicious intent to deceive, in violation of 7 USC § 213 (a), represented to the Plaintiff that the approximately 20 Holstein heifers that they offered to sell to the Plaintiff for \$5,500.00 were not freemartins.
82. On January 18, 2007, Plaintiff, relying upon the oral representations of the Defendants that the heifers for sale were not freemartins, accepted delivery and tender of 18 Holstein heifers in exchange for \$5,500.00.
83. On or before January 30, 2007, Defendants, Brigitte Holmes Livestock Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes, and/or Mervin Mishler, holding themselves out as Holmes Livestock Co., Inc., notified Plaintiff that they had additional Holstein heifers for sale that were not freemartins.
84. On January 31, 2007, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and holding themselves out as Holmes Livestock Co., Inc., had direct knowledge and knew that the 22 Holstein heifers that they offered to sell to the Plaintiff for \$4,500.00 were freemartins.

85. On January 31, 2007, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and holding themselves out as Holmes Livestock Co., Inc., with purpose and malicious intent to deceive, in violation of 7 USC § 213 (a), failed to disclose to the Plaintiff that the 22 Holstein heifers that they offered to sell to the Plaintiff for \$4,500.00 were freemartins.
86. On January 31, 2007, Defendants Brigitte Holmes Livestock, Co., Inc., Brigitte Holmes, individually, Samuel Stephen Holmes and Mervin Mishler, collectively and individually, and holding themselves out as Holmes Livestock Co., Inc., with purpose and malicious intent to deceive, in violation of 7 USC § 213 (a), represented to the Plaintiff that the approximately 22 Holstein heifers that they offered to sell to the Plaintiff for \$4,500.00 were not freemartins.
87. On January 31, 2007, Plaintiff, relying upon the oral representations of the Defendants that heifers for sale were not freemartins, accepted delivery and tender of 22 Holstein heifers in exchange for \$4,500.00.

#### **COUNT I – BREACH OF CONTRACT**

88. Defendants, Levi Graber, Joseph N. Graber and Freeman Raber, had a duty to the Plaintiff, Keller Farms, to provide and sell only Holstein heifer calves that were not freemartins.
89. Defendants, Levi Graber, Joseph N. Graber and Freeman Raber, breached their duty to the Plaintiff to provide and sell only Holstein heifer calves that were not freemartins by selling 80 freemartin Holstein heifers to the Plaintiff, Keller Farms.
90. As a direct and proximate cause of Defendants breach of duty, the Plaintiff, Keller Farms, incurred monetary damages in excess of \$120,000.00.

**COUNT II – BREACH OF CONTRACT**

91. Defendants, Brigitte Holmes Livestock Co, Inc., and Brigitte Holmes, Samuel Stephen Holmes and Mervin Mishler, had a duty to the Plaintiff, Keller Farms, to provide and sell only Holstein heifer calves that were not freemartins.
92. Defendants, Brigitte Holmes Livestock Co, Inc., and Brigitte Holmes, Samuel Stephen Holmes and Mervin Mishler, breached their duty to the Plaintiff to provide and sell only Holstein heifer calves that were not freemartins by selling approximately 204 freemartin Holstein heifers to the Plaintiff, Keller Farms.
93. As a direct and proximate cause of Defendants' breach of duty, the Plaintiff, Keller Farms, incurred monetary damages in excess of \$360,000.00.

**COUNT III – BREACH OF WARRANTY FITNESS FOR A PARTICULAR PURPOSE**

94. Defendants, Levi Graber, Joseph N. Graber and Freeman Raber, were informed by Keller Farms that the Holstein heifer calves that it desired to purchase would be put into service as milk producing dairy cows. The Defendants were specifically told that Keller Farms would not purchase freemartin Holstein heifer calves. Defendants warranted that the 80 Holstein heifer calves would not be freemartins, because freemartins would not be fit for the purpose of milk production on a dairy farm.
95. Defendants, Levi Graber, Joseph N. Graber and Freeman Raber, breached their duty to the Plaintiff to provide and sell only Holstein heifer calves that were not freemartins by selling 80 freemartin Holstein heifers to the Plaintiff, Keller Farms.
96. As a direct and proximate cause of Defendants' breach of duty, the Plaintiff, Keller Farms, incurred monetary damages in excess of \$120,000.00.

**COUNT IV – BREACH OF WARRANTY FITNESS FOR A PARTICULAR PURPOSE**

97. Defendants, Brigitte Holmes Livestock Co., Inc., Brigitte Holmes, Samuel Stephen Holmes and Mervin Mishler, were informed by Keller Farms that the Holstein heifer calves that it desired to purchase would be put into service as milk producing dairy cows. The Defendants were specifically told that Keller Farms would not purchase freemartin Holstein heifer calves. Defendants warranted that the approximately 204 Holstein heifer calves would not be freemartins, because freemartins would not be fit for the purpose of milk production on a dairy farm.
98. Defendants, Brigitte Holmes Livestock Co., Inc., Brigitte Holmes, Samuel Stephen Holmes and Mervin Mishler, breached their duty of warranty to the Plaintiff to provide and sell only Holstein heifer calves that were not freemartins by selling approximately 204 freemartin Holstein heifers to the Plaintiff, Keller Farms.
99. As a direct and proximate cause of Defendants’ breach of duty, the Plaintiff, Keller Farms, incurred monetary damages in excess of \$360,000.00.

**COUNT V – VIOLATION OF THE PACKERS AND STOCKYARD ACT**

100. Defendants, Levi Graber, Joseph N. Graber and Freeman Raber, had a statutory duty to refrain from engaging in the use of “any unfair . . . or deceptive practice or device in connection with . . . selling . . . livestock.” 7 USC § 213 (a).
101. Defendants, Levi Graber, Joseph N. Graber and Freeman Raber, breached their statutory duty to the Plaintiff to provide and sell only Holstein heifer calves that were not freemartins by intentionally selling 80 freemartin Holstein heifers to the Plaintiff, Keller Farms at prices far in excess of that which a freemartin heifer would bring.
102. As a direct and proximate cause of Defendants’ breach of their statutory duty, the Plaintiff,

Keller Farms, incurred monetary damages in excess of \$120,000.00.

**COUNT VI – VIOLATION OF THE PACKERS AND STOCKYARD ACT**

103. Defendants, Brigitte Holmes Livestock Co., Inc., Brigitte Holmes, Samuel Stephen Holmes and Mervin Mishler, had a statutory duty to refrain from engaging in the use of “any unfair . . . or deceptive practice or device in connection with . . . selling . . . livestock.” 7 USC § 213 (a).
104. Defendants, Brigitte Holmes Livestock Co., Inc., Brigitte Holmes, Samuel Stephen Holmes and Mervin Mishler, breached their statutory duty to the Plaintiff to provide and sell only Holstein heifer calves that were not freemartins by intentionally selling approximately 204 freemartin Holstein heifers to the Plaintiff, Keller Farms at prices far in excess of that which a freemartin heifer would bring.
105. As a direct and proximate cause of Defendants’ breach of their statutory duty, the Plaintiff, Keller Farms, incurred monetary damages in excess of \$360,000.00.

**COUNT VII – FRAUD AND FRAUDULENT CONCEALMENT**

106. Defendants, Levi Graber, Joseph N. Graber and Freeman Raber, knew that the 80 Holstein heifers that Defendant offered to sell to the Plaintiffs were freemartins, With such knowledge, Defendants had a duty to disclose to the Plaintiffs that the Holstein heifers offered for sale were freemartins and a duty to refrain from representing to the Plaintiffs that the Holstein heifers for sale were not freemartins.
107. Defendants, Levi Graber, Joseph N. Graber and Freeman Raber, breached their duty to the Plaintiff to disclose to the Plaintiffs that the Holstein heifers offered for sale were freemartins and breached their duty to refrain from representing to the Plaintiffs that the Holstein heifers for sale were not freemartins. Such breach of duty constitutes fraud and

fraudulent concealment.

108. As a direct and proximate cause of Defendants' fraudulent concealment and fraud, the Plaintiff, Keller Farms, incurred monetary damages in excess of \$120,000.00.

**COUNT VIII – FRAUD AND FRAUDULENT CONCEALMENT**

109. Defendants, Brigitte Holmes Livestock Co., Inc., Brigitte Holmes, Samuel Stephen Holmes and Mervin Mishler, knew that the approximately 204 Holstein heifers that Defendant offered to sell to the Plaintiffs were freemartins, With such knowledge, Defendants had a duty to disclose to the Plaintiffs that the Holstein heifers offered for sale were freemartins and a duty to refrain from representing to the Plaintiffs that the Holstein heifers for sale were not freemartins.
110. Defendants, Brigitte Holmes Livestock Co., Inc., Brigitte Holmes, Samuel Stephen Holmes and Mervin Mishler, breached their duty to the Plaintiff to disclose to the Plaintiffs that the Holstein heifers offered for sale were freemartins and breached their duty to refrain from representing to the Plaintiffs that the Holstein heifers for sale were not freemartins. Such breach of duty constitutes fraud and fraudulent concealment.
111. As a direct and proximate cause of Defendants' fraudulent concealment and fraud, the Plaintiff, Keller Farms, incurred monetary damages in excess of \$360,000.00.

**COUNT IX – CONSTRUCTIVE FRAUD**

112. Defendants, Levi Graber, Joseph N. Graber and Freeman Raber, knew that the 80 Holstein heifers that Defendant offered to sell to the Plaintiffs were freemartins, With such knowledge, Defendants had a duty to disclose to the Plaintiffs that the Holstein heifers offered for sale were freemartins and a duty to refrain from representing to the Plaintiffs that the Holstein heifers for sale were not freemartins.

113. Defendants, Levi Graber, Joseph N. Graber and Freeman Raber, breached their duty to the Plaintiff to disclose to the Plaintiffs that the Holstein heifers offered for sale were freemartins and breached their duty to refrain from representing to the Plaintiffs that the Holstein heifers for sale were not freemartins. Such breach of duty constitutes constructive fraud.
114. As a direct and proximate cause of Defendants' constructive fraud, the Plaintiff, Keller Farms, incurred monetary damages in excess of \$120,000.00.

**COUNT X – FRAUD AND FRAUDULENT CONCEALMENT**

115. Defendants, Brigitte Holmes Livestock Co., Inc., Brigitte Holmes, Samuel Stephen Holmes and Mervin Mishler, knew that the approximately 204 Holstein heifers that Defendant offered to sell to the Plaintiffs were freemartins, With such knowledge, Defendants had a duty to disclose to the Plaintiffs that the Holstein heifers offered for sale were freemartins and a duty to refrain from representing to the Plaintiffs that the Holstein heifers for sale were not freemartins.
116. Defendants, Brigitte Holmes Livestock Co., Inc., Brigitte Holmes, Samuel Stephen Holmes and Mervin Mishler, breached their duty to the Plaintiff to disclose to the Plaintiffs that the Holstein heifers offered for sale were freemartins and breached their duty to refrain from representing to the Plaintiffs that the Holstein heifers for sale were not freemartins. Such breach of duty constitutes constructive fraud.
117. As a direct and proximate cause of Defendants' constructive fraud, the Plaintiff, Keller Farms, incurred monetary damages in excess of \$360,000.00.

**PLAINTIFF, KELLER FARMS', PRAYER FOR RELIEF**

WHEREFORE, for the initial sale of the 80 freemartin Holstein heifers sold between May

15, 2006 and September 13, 2006, Plaintiff demands judgment against the Defendants, Levi Graber, Joseph N. Graber, aka, Joe Graber, and Freeman Raber, Defendants, Brigitte Holmes Livestock, Co., Inc., and individual Defendants, Brigitte Holmes, Samuel Stephen Holmes, aka, Steve Holmes and Mervin Mishler joint and severally, as follows:

- A. Compensatory damages of \$120,000.00 to be proven at the trial of this matter;
- B. Punitive Damages of \$360,000.00;
- C. Pre-judgment and post judgment interest at the highest legal rate permitted in the State of Indiana;
- D. Plaintiffs costs and attorney's fees;
- E. Such other relief available pursuant to law and equity as may be appropriate under the premises.

WHEREFORE, for the sale of approximately 204 freemartin Holstein heifers sold between September 13, 2006 and January 31, 2007, Plaintiff demands judgment against the Defendants, Brigitte Holmes Livestock, Co., Inc., and individual Defendants, Brigitte Holmes, Samuel Stephen Holmes, aka, Steve Holmes and Mervin Mishler, joint and severally, as follows:

- A. Compensatory damages of \$360,000.00 to be proven at the trial of this matter;
- B. Punitive Damages of \$1,080,000.00;
- C. Pre-judgment and post judgment interest at the highest legal rate permitted in the State of Indiana;
- D. Plaintiffs costs and attorney's fees;
- E. Such other relief available pursuant to law and equity as may be appropriate under the premises.

**COMPLAINT**

*LDT Keller Farms, LLC., vs. Levi Graber, et al.,*

**United State District Court**

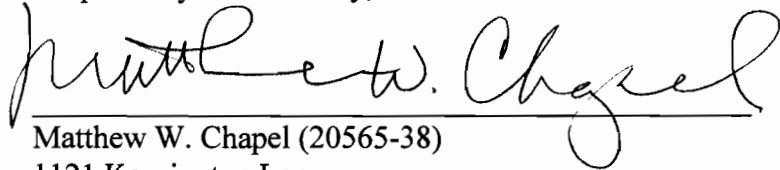
**Northern District of Indiana**

**Fort Wayne Division**

**JURY DEMAND**

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted by,



Matthew W. Chapel (20565-38)

1121 Kensington Lane

P.O. Box 613

Celina, Ohio 45822-0613

(419)584-1004

[matt.chapel@gmail.com](mailto:matt.chapel@gmail.com)

Attorney for Plaintiff, LDT Keller Farms, LLC and Keller Farms Partnership