

U.S. District Court
Western District of Wisconsin (Madison)
CIVIL DOCKET FOR CASE #: 3:17-cv-00299-jdp

Minerva Dairy, Inc. et al v. Brancel, Ben et al
Assigned to: District Judge James D. Peterson
Referred to: Magistrate Judge Stephen L. Crocker
Cause: 42:1983 Civil Rights Act

Date Filed: 04/20/2017
Date Terminated: 02/05/2018
Jury Demand: None
Nature of Suit: 950 Constitutional - State Statute
Jurisdiction: Federal Question

Plaintiff

Minerva Dairy, Inc.

represented by **Anastasia Paulinna Boden**
Pacific Legal Foundation
930 G Street
Sacramento, CA 95814
916-419-7111
Fax: 916-419-7747
Email: apb@pacificlegal.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joshua Paul Thompson
Pacific Legal Foundation
930 G Street
Sacramento, CA 95814
916-419-7111
Fax: 916-419-7747
Email: JThompson@pacificlegal.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Wencong Fa
Pacific Legal Foundation
930 G Street
Sacramento, CA 95814
916-419-7111
Fax: 916-419-7747
Email: wfa@pacificlegal.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Adam Mueller

represented by **Anastasia Paulinna Boden**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joshua Paul Thompson

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Wencong Fa
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Ben Brancel

*In his official capacity as the Secretary of the
Wisconsin Department of Agriculture, Trade and
Consumer Protection*

represented by **Katherine D. Spitz**
Wisconsin Department of Justice
17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
608-266-1001
Fax: 608-267-8906
Email: spitzkd@doj.state.wi.us
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gesina S. Carson
Wisconsin Department of Justice
17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
608-266-1672
Fax: 608-267-8906
Email: carsongs@doj.state.wi.us
ATTORNEY TO BE NOTICED

Rachel Lee Bachhuber
Wisconsin Department of Justice
17 W. Main Street
PO Box 7857
Madison, WI 53707-7857
608-266-0188
Fax: 608-267-8906
Email: bachhuberrl@doj.state.wi.us
ATTORNEY TO BE NOTICED

Defendant

Brad Schimel

*In his official capacity as the Attorney General
for the state of Wisconsin*

represented by **Katherine D. Spitz**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gesina S. Carson
(See above for address)

Rachel Lee Bachhuber

(See above for address)

ATTORNEY TO BE NOTICED

Defendant**Peter J. Haase**

*In his official capacity as the Bureau Director of
the Division of Food and Recreational Safety
within the Wisconsin Department of Agriculture,
Trade and Consumer Protection*

represented by **Katherine D. Spitz**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Gesina S. Carson

(See above for address)

ATTORNEY TO BE NOTICED

Rachel Lee Bachhuber

(See above for address)

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/20/2017	<u>1</u>	COMPLAINT against All Defendants. (Filing fee \$ 400 receipt number 0758-2011151.), filed by All Plaintiffs, (Attachments: # <u>1</u> Exhibit 1 - Wisconsin Butter Grades; Classification and Disrating Tables, # <u>2</u> Exhibit 2 - Characteristics and Disratings In Body, Color and Salt # <u>3</u> Exhibit 3 - Relation of Final Wisconsin Butter Grade to Preliminary Flavor Classification as Affected by Total Disrating, # <u>4</u> Exhibit 4 - Examples of the Relation of Wisconsin Butter Grades to Flavor Classification, # <u>5</u> Exhibit 5 - E-mail dated 2/7/2017, # <u>6</u> Exhibit 6 - Warning Letter dated 2/28/2017, # <u>7</u> JS-44 Civil Cover Sheet, # <u>8</u> Summons - Brancel, # <u>9</u> Summons - Haase, # <u>10</u> Summons - Schimel) (Thompson, Joshua) Modified on 4/20/2017: Added exhibit descriptions. Removed duplicate text. E-mail to counsel. (lak) (Entered: 04/20/2017)
04/21/2017		Case randomly assigned to District Judge James D. Peterson and Magistrate Judge Stephen L. Crocker. (kwf) (Entered: 04/21/2017)
04/21/2017		Standard attachments for District Judge James D. Peterson required to be served on all parties with summons or waiver of service: NORTC , Corporate Disclosure Statement . (kwf) (Entered: 04/21/2017)
04/21/2017	<u>2</u>	Summons Issued as to Ben Brancel. (Attachments: # <u>1</u> Summons Issued as to Brad Schimel, # <u>2</u> Summons Issued as to Peter J. Haase) (kwf) (Entered: 04/21/2017)
05/04/2017	<u>3</u>	Affidavit of Service by Plaintiff. Ben Brancel served on 4/24/2017, answer due 5/15/2017. (Thompson, Joshua) (Entered: 05/04/2017)
05/04/2017	<u>4</u>	Affidavit of Service by Plaintiff. Brad Schimel served on 4/24/2017, answer due 5/15/2017. (Thompson, Joshua) (Entered: 05/04/2017)

05/04/2017	5	Affidavit of Service by Plaintiff. Peter J. Haase served on 4/24/2017, answer due 5/15/2017. (Thompson, Joshua) (Entered: 05/04/2017)
05/09/2017	6	Notice of Appearance filed by Katherine D. Spitz for Defendants Ben Brancel, Peter J. Haase, Brad Schimel. (Spitz, Katherine) (Entered: 05/09/2017)
05/15/2017	7	ANSWER by Defendants Ben Brancel, Peter J. Haase, Brad Schimel. (Spitz, Katherine) (Entered: 05/15/2017)
05/16/2017		Set Telephone Pretrial Conference: Telephone Pretrial Conference set for 6/13/2017 at 2:00 PM before Magistrate Judge Stephen L. Crocker. Counsel for Plaintiff responsible for setting up the call to chambers at (608) 264-5153. [Standing Order Governing Preliminary Pretrial Conference attached] (kwf) (Entered: 05/16/2017)
06/01/2017	8	Joint Report of Rule 26(f) Planning Meeting by Defendants Ben Brancel, Peter J. Haase, Brad Schimel. (Spitz, Katherine) (Entered: 06/01/2017)
06/07/2017	9	MOTION FOR PRELIMINARY INJUNCTION by Plaintiffs Minerva Dairy, Inc., Adam Mueller, (Attachments: # 1 See 10 ., # 2 See 11 ., # 3 See 12 ., # 4 See 13 ., # 5 See 13 ., # 6 See 13 .) (Thompson, Joshua) Modified on 6/7/2017. (lak) (Entered: 06/07/2017)
06/07/2017	10	Brief in Support of 9 Motion for Preliminary Injunction by Plaintiffs Minerva Dairy, Inc., Adam Mueller. (Thompson, Joshua) (Entered: 06/07/2017)
06/07/2017	11	Proposed Findings of Fact filed by Plaintiffs Minerva Dairy, Inc., Adam Mueller re: 9 Motion for Preliminary Injunction. (Thompson, Joshua) (Entered: 06/07/2017)
06/07/2017	12	Declaration of Anastasia Boden filed by Plaintiffs Minerva Dairy, Inc., Adam Mueller re: 9 Motion for Preliminary Injunction. (Thompson, Joshua) (Entered: 06/07/2017)
06/07/2017	13	Declaration of Adam Mueller filed by Plaintiffs Minerva Dairy, Inc., Adam Mueller re: 9 Motion for Preliminary Injunction, (Attachments: # 1 Exhibit 1 - Email dated February 7, 2017 from Defendant Peter Haase to Plaintiff Adam Mueller re: Cease and Desist Sale of Ungraded Butter in Wisconsin, # 2 Exhibit 2 - Letter dated February 28, 2017 from Wisconsin Department of Agriculture, Trade, and Consumer Protection to Plaintiff Adam Mueller re: Sale of Ungraded Butter in Wisconsin is Illegal) (Thompson, Joshua) (Entered: 06/07/2017)
06/08/2017		Set Deadlines as to 9 MOTION FOR PRELIMINARY INJUNCTION. Procedure to be followed on Motions for Injunctive Relief attached. Brief in Opposition due 6/28/2017. No Reply. (kwf/cew) (Entered: 06/08/2017)
06/13/2017		Minute Entry for proceedings held before Magistrate Judge Stephen L. Crocker: Telephone Preliminary Pretrial Conference held on 6/13/2017 [:25] (skv) (Entered: 06/13/2017)
06/14/2017	14	Notice of Appearance of <i>Additional Counsel</i> filed by Gesina S. Carson for Defendants Ben Brancel, Peter J. Haase, Brad Schimel. (Carson, Gesina) (Entered: 06/14/2017)
06/15/2017	15	Pretrial Conference Order - Dispositive Motions due 12/1/2017. Final Pretrial Submissions due 4/25/2018. Final Pretrial Conference set for 5/16/2018 at 4:00 PM. Court Trial set for 5/23/2018 at 9:00 AM. Signed by Magistrate Judge Stephen L. Crocker on 6/15/2017. (kwf) (Entered: 06/15/2017)

06/28/2017	16	Brief in Opposition by Defendants Ben Brancel, Peter J. Haase, Brad Schimel re: 9 Motion for Preliminary Injunction, filed by Minerva Dairy, Inc., Adam Mueller. (Spitz, Katherine) (Entered: 06/28/2017)
06/28/2017	17	Response to Proposed Findings of Fact filed by Defendants Ben Brancel, Peter J. Haase, Brad Schimel re: 9 Motion for Preliminary Injunction. (Spitz, Katherine) (Entered: 06/28/2017)
06/28/2017	18	Proposed Findings of Fact filed by Defendants Ben Brancel, Peter J. Haase, Brad Schimel re: 9 Motion for Preliminary Injunction. (Spitz, Katherine) (Entered: 06/28/2017)
06/28/2017	19	Declaration of Peter Haase filed by Defendants Ben Brancel, Peter J. Haase, Brad Schimel re: 9 Motion for Preliminary Injunction, (Attachments: # 1 Exhibit 101- Correspondence) (Spitz, Katherine) Modified on 6/29/2017: Corrected exhibit number. (lak) (Entered: 06/28/2017)
06/28/2017	20	Declaration of Michael Pederson filed by Defendants Ben Brancel, Peter J. Haase, Brad Schimel re: 9 Motion for Preliminary Injunction, (Attachments: # 1 Exhibit 100- Application and Exam Materials) (Spitz, Katherine) (Entered: 06/28/2017)
07/10/2017	21	ORDER setting briefing on 9 Motion for Preliminary Injunction by Plaintiffs Minerva Dairy, Inc. and Adam Mueller. Brief in Reply due 7/24/2017. Signed by District Judge James D. Peterson on 7/10/2017. (arw) (Entered: 07/10/2017)
07/24/2017	22	Declaration of Anastasia P. Boden filed by Plaintiffs Minerva Dairy, Inc., Adam Mueller re: 9 Motion for Preliminary Injunction. (Thompson, Joshua) (Entered: 07/24/2017)
07/24/2017	23	Brief in Reply by Plaintiffs Minerva Dairy, Inc., Adam Mueller in Support of 9 Motion for Preliminary Injunction. (Thompson, Joshua) (Entered: 07/24/2017)
08/18/2017	24	OPINION & ORDER denying 9 Motion for Preliminary Injunction. Signed by District Judge James D. Peterson on 8/18/2017. (kwf) (Entered: 08/18/2017)
12/01/2017	25	MOTION FOR SUMMARY JUDGMENT by Defendants Ben Brancel, Peter J. Haase, Brad Schimel. Brief in Opposition due 12/22/2017. Brief in Reply due 1/2/2018. (Bachhuber, Rachel) (Entered: 12/01/2017)
12/01/2017	26	Brief in Support of 25 Motion for Summary Judgment by Defendants Ben Brancel, Peter J. Haase, Brad Schimel. (Bachhuber, Rachel) (Entered: 12/01/2017)
12/01/2017	27	Proposed Findings of Fact filed by Defendants Ben Brancel, Peter J. Haase, Brad Schimel re: 25 Motion for Summary Judgment. (Bachhuber, Rachel) (Entered: 12/01/2017)
12/01/2017	28	Declaration of Steven Ingham filed by Defendants Ben Brancel, Peter J. Haase, Brad Schimel re: 25 Motion for Summary Judgment, (Attachments: # 1 Exhibit 102 - Bill Draft and Newspaper Clippings) (Bachhuber, Rachel) Modified on 12/4/2017: Several pages of the exhibit are unreadable. (lak) (Entered: 12/01/2017)
12/01/2017	29	Supplemental Declaration of Peter Haase filed by Defendants Ben Brancel, Peter J. Haase, Brad Schimel re: 25 Motion for Summary Judgment, (Attachments: # 1 Exhibit 103 - Warning Letters) (Bachhuber, Rachel) Modified on 12/4/2017. (lak) (Entered: 12/01/2017)
12/01/2017	30	Declaration of Gesina S. Carson filed by Defendants Ben Brancel, Peter J. Haase, Brad Schimel re: 25 Motion for Summary Judgment, (Attachments: # 1 Exhibit 104 - Plaintiff's Response to Interrogatories, # 2 Exhibit 105 - Plaintiff's Response to Request for Admissions, # 3 Exhibit 106 - Plaintiff's Response to Request to Produce Documents) (Bachhuber, Rachel) (Entered: 12/01/2017)

12/01/2017	31	Supplemental Declaration of Michael Pederson filed by Defendants Ben Brancel, Peter J. Haase, Brad Schimel re: 25 Motion for Summary Judgment. (Bachhuber, Rachel) Modified on 12/4/2017. (lak) (Entered: 12/01/2017)
12/01/2017	32	Declaration of Kevin Potter filed by Defendants Ben Brancel, Peter J. Haase, Brad Schimel re: 25 Motion for Summary Judgment. (Bachhuber, Rachel) (Entered: 12/01/2017)
12/01/2017	33	MOTION FOR SUMMARY JUDGMENT by Plaintiffs Minerva Dairy, Inc., Adam Mueller. Brief in Opposition due 12/22/2017. Brief in Reply due 1/2/2018. (Thompson, Joshua) (Entered: 12/01/2017)
12/01/2017	34	Proposed Findings of Fact filed by Plaintiffs Minerva Dairy, Inc., Adam Mueller re: 33 Motion for Summary Judgment. (Thompson, Joshua) (Entered: 12/01/2017)
12/01/2017	35	Brief in Support of 33 Motion for Summary Judgment by Plaintiffs Minerva Dairy, Inc., Adam Mueller. (Thompson, Joshua) (Entered: 12/01/2017)
12/01/2017	36	Declaration of Adam Mueller filed by Plaintiffs Minerva Dairy, Inc., Adam Mueller re: 33 Motion for Summary Judgment, (Attachments: # 1 Exhibit 1 - Email dated February 7, 2017 from Defendant Peter Haase to Plaintiff Adam Mueller re: Cease and Desist Sale of Ungraded Butter in Wisconsin, # 2 Exhibit 2 - Letter Dated February 28, 2017 from Wisconsin Department of Agriculture, Trade, and Consumer Protection to Plaintiff Adam Mueller re: Sale of Ungraded Butter in Wisconsin is Illegal) (Thompson, Joshua) Modified on 12/4/2017: Captioned as Declaration in Support of Motion for Preliminary Injunction. Related to Motion for Summary Judgment. (lak) (Entered: 12/01/2017)
12/01/2017	37	Declaration of Anastasia P. Boden filed by Plaintiffs Minerva Dairy, Inc., Adam Mueller re: 33 Motion for Summary Judgment. (Thompson, Joshua) Modified on 12/4/2017: Duplicate of 12 , Declaration in Support of Motion for Preliminary Injunction. (lak) (Entered: 12/01/2017)
12/01/2017	38	Declaration of Anastasia P. Boden filed by Plaintiffs Minerva Dairy, Inc., Adam Mueller re: 33 Motion for Summary Judgment. (Thompson, Joshua) Modified on 12/4/2017: Duplicate of 22 , Declaration in Support of Motion for Preliminary Injunction. (lak) (Entered: 12/01/2017)
12/01/2017	39	Deposition of Michael Pederson taken on October 30, 2017. (Thompson, Joshua) (Entered: 12/01/2017)
12/01/2017	40	Disregard. See 42 . Modified on 12/4/2017. (lak) (Entered: 12/01/2017)
12/01/2017	41	Deposition of Steve Ingham taken on October 30, 2017, (Attachments: # 1 Exhibit 1 - Defendants' Notarized Signatures for Defendants' Responses to Plaintiff's Interrogatories, Set One) (Thompson, Joshua) (Entered: 12/01/2017)
12/04/2017	42	Deposition of Peter Haase taken on October 31, 2017. (Thompson, Joshua) (Entered: 12/04/2017)
12/22/2017	43	Brief in Opposition by Defendants Ben Brancel, Peter J. Haase, Brad Schimel re: 33 Motion for Summary Judgment filed by Minerva Dairy, Inc., Adam Mueller. (Spitz, Katherine) (Entered: 12/22/2017)
12/22/2017	44	Response to Proposed Findings of Fact filed by Defendants Ben Brancel, Peter J. Haase, Brad Schimel re: 33 Motion for Summary Judgment. (Spitz, Katherine) (Entered: 12/22/2017)
12/22/2017	45	Brief in Opposition by Plaintiffs Minerva Dairy, Inc., Adam Mueller re: 25 Motion for Summary Judgment filed by Peter J. Haase, Ben Brancel, Brad Schimel. (Thompson, Joshua) (Entered: 12/22/2017)
12/22/2017	46	Response to Proposed Findings of Fact filed by Plaintiffs Minerva Dairy, Inc., Adam Mueller re: 25 Motion for Summary Judgment. (Thompson, Joshua) (Entered: 12/22/2017)

01/02/2018	47	Brief in Reply by Defendants Ben Brancel, Peter J. Haase, Brad Schimel in Support of 25 Motion for Summary Judgment. (Carson, Gesina) (Entered: 01/02/2018)
01/02/2018	48	Reply in Support of Proposed Findings of Fact filed by Defendants Ben Brancel, Peter J. Haase, Brad Schimel re: 25 Motion for Summary Judgment. (Carson, Gesina) (Entered: 01/02/2018)
01/02/2018	49	Brief in Reply by Plaintiffs Minerva Dairy, Inc., Adam Mueller in Support of 33 Motion for Summary Judgment. (Thompson, Joshua) (Entered: 01/02/2018)
01/02/2018	50	Reply in Support of Proposed Findings of Fact filed by Plaintiffs Minerva Dairy, Inc., Adam Mueller re: 33 Motion for Summary Judgment. (Thompson, Joshua) (Entered: 01/02/2018)
02/05/2018	51	ORDER granting 25 Motion for Summary Judgment by Defendants Ben Brancel, Peter J. Haase, Brad Schimel; denying 33 Motion for Summary Judgment by Plaintiffs Minerva Dairy, Inc., Adam Mueller. Signed by District Judge James D. Peterson on 2/5/2018. (voc) (Entered: 02/05/2018)
02/05/2018	52	JUDGMENT entered in favor of Defendants Ben Brancel, Peter J. Haase, Brad Schimel dismissing the case. (voc) (Entered: 02/05/2018)
02/06/2018	53	Bill of Costs by Defendants Ben Brancel, Peter J. Haase, Brad Schimel. Motions referred to Peter A. Oppeneer, Clerk of Court. Objection to Bill of Costs due 2/16/2018. Brief in Support to Bill of Costs due 2/26/2018. Brief in Reply in Opposition to Bill of Costs due 3/5/2018. (Attachments: # 1 Transcript Invoices) (Carson, Gesina) (Entered: 02/06/2018)
02/26/2018	54	ORDER on Bill of Costs: Costs Taxed in favor of Defendants in the amount of \$480.00. Signed by Peter A. Oppeneer, Clerk of Court by J. Titak, Deputy Clerk on 2/26/18. (jat) (Entered: 02/26/2018)
03/05/2018	55	NOTICE OF APPEAL by Plaintiffs Minerva Dairy, Inc., Adam Mueller as to 51 Order on Motion for Summary Judgment, 52 Judgment. Filing fee of \$ 505, receipt number 0758-2203948 paid. Docketing Statement filed. (Attachments: # 1 Docketing Statement) (Thompson, Joshua) Modified on 3/6/2018. (kwf) (Entered: 03/05/2018)
03/07/2018	56	Appeal Information Packet. (lak) (Entered: 03/07/2018)