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12 [Additional Counsel Listed on Signature Page]

13 *Class Counsel*

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**

17 MATTHEW EDWARDS, et al., individually and
18 on behalf of all others similarly situated,

19 Plaintiffs,

20 v.

21 NATIONAL MILK PRODUCERS
22 FEDERATION, aka COOPERATIVES
WORKING TOGETHER; DAIRY FARMERS OF
23 AMERICA, INC.; LAND O'LAKES, INC.;
DAIRYLEA COOPERATIVE INC.; and AGRI-
24 MARK, INC.,

25 Defendants.

Case No. 11-CV-04766-JSW

[consolidated with 11-CV-04791-JSW
and 11-CV-05253-JSW]

CLASS ACTION

**DECLARATION OF ELAINE T.
BYSZEWSKI IN SUPPORT OF
PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT**

Date: August 26, 2016
Time: 11:00 a.m.
Place: Courtroom 5
Hon. Jeffrey S. White

26
27
28

1 I, ELAINE T. BYSZEWSKI, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State of
3 California. I am a partner with the law firm of Hagens Berman Sobol Shapiro LLP, counsel of
4 record for plaintiffs. I am making this declaration in support of Plaintiffs' Motion for Preliminary
5 Approval of Settlement. I have personal knowledge of the matters stated herein and, if called
6 upon, I could and would competently testify thereto.

7 2. On January 16, 2015, the first mediation took place before the Hon. Layn Phillips,
8 but the case was not resolved. On May 15, 2015, notice went out to millions of class members.

9 3. After the close of fact discovery, the parties filed cross motions for summary
10 adjudication, and defendants filed a *Daubert* motion to exclude the opinions of Dr. Sunding, as
11 well as a motion to decertify the Classes. These motions were set for hearing on March 4, 2016,
12 but taken off calendar by the Court.

13 4. The parties then had another mediation session before the Hon. Phillips on May 16,
14 2016. The mediation did not result in an agreement.

15 5. The parties continued to discuss resolution, however, and subsequently reached the
16 agreement that plaintiffs now respectfully request the Court to preliminarily approve. Attached as
17 ***Exhibit A*** is a true and correct copy of the Settlement Agreement.

18 6. The settlement agreement specifies that the portion of the common fund going
19 towards settlement notice and distribution shall not exceed \$2 million. This is exceedingly
20 reasonable given that there are approximately 73 million class members to whom notice must be
21 disseminated and, upon election, cash distributed. Plaintiffs have been able to minimize projected
22 administrative expenses related to settlement through the use of a simple claims form to trigger
23 distribution of a fixed amount to be delivered using electronic means. Each of these elements has
24 enabled plaintiffs to maximize the amount of cash going directly to class members. The parties
25 are also utilizing two notice administrators to minimize costs. Along with the notice disseminated
26 by Gilardi & Co. LLC, the administrator that plaintiffs will later propose for the electronic
27 distribution of funds, Sipree, Inc., will host the settlement notice website to ensure the most
28

1 efficient and cost effective processing of claims. Because claims will be submitted via the
2 website, hosting by Sipree will enable it to directly pull the information submitted by class
3 members and minimize overall costs of administration.

4 7. Given the relatively untested antitrust immunity statutes at issue, as well as the
5 complex econometric modeling employed by Dr. Sunding and subject to a pending *Daubert*
6 motion, there was a risk faced by the class of no recovery. So this settlement represents an
7 excellent recovery for the class – ensuring \$52 million in cash for the class.

8 8. Plaintiffs did not enter into the settlement agreement without a thorough
9 understanding of the strengths and weaknesses of their case, which has been extensively litigated
10 over the past five years.

11 9. In advance of filing the pending motions, the parties conducted comprehensive
12 discovery. Defendants have collectively produced over half a million documents and each
13 responded to 20 written interrogatories and 30 requests for admission. Plaintiffs deposed a Rule
14 30(b)(6) witness for each of the defendants. And plaintiffs deposed defendants' litigation experts,
15 Mr. Kaplan (twice) and Mr. Gallagher, as well as defendants' consultant during the course of the
16 conspiracy, Dr. Brown. The parties submitted multiple sets of expert declarations at both class
17 certification and merits, including extensive regression modeling of the overcharge and its pass
18 through to consumers.

19 10. Given the developed stage of litigation and the risk that plaintiffs faced with the
20 pending motions and at trial, there are no obvious deficiencies regarding the settlement.

21 11. An online claims process will permit class members to submit a simple claim
22 opting for cash, which will be distributed in fixed amounts. No proof of purchase will be
23 required. The claim form will require an email address, so that the cash can be distributed
24 electronically, in order to maximize the settlement funds going to class members, as opposed to
25 administrative expenses. Those submitting a claim for cash will receive an electronic notification
26 via email that will permit them to choose an online account, *e.g.*, Amazon, PayPal, or Google

1 Wallet account, for the money to be distributed into. Any class member whose claim form
2 identifies it as purchasing milk and fresh milk products in an amount that exceeds normal
3 household purchases will receive a higher fixed amount. The fixed amounts to be paid to class
4 members shall be determined once the number submitting claims for cash has been determined,
5 with the goal of complete exhaustion of funds. Any cash remaining after the round one cash
6 distribution may be distributed in a round two. The second round of distribution would be in the
7 form of grocery loyalty cards automatically loaded with a fixed dollar amount, based on triggering
8 purchases of milk or fresh milk products in any amount. This would continue until complete
9 exhaustion of funds is achieved. Alternatively, depending on the amount remaining, it may be
10 distributed as *cy pres* to the Attorneys General for the class jurisdictions for use in prosecuting
11 consumer antitrust claims.

12 12. The amount of compensation is fixed because a detailed accounting of milk and
13 fresh milk purchases over a decade on claims in the context of an estimated 73 million member
14 settlement class would result in excessive administrative expense. Given the magnitude of the
15 class, such precision would defeat the important objective of returning as much money as possible
16 to class members. There are two tiers of fixed amounts, however, in recognition that certain
17 entities have made purchases of a higher order of magnitude than normal households. So there
18 will be two different levels of fixed cash payments, based on class member's purchases and the
19 total number of class members making claims. For example, the regular fixed amount may be
20 \$30, or it may be higher or lower depending on the numbers of all class members making claims,
21 with the higher fixed cash payment above that amount. But the fixed amounts to be paid to class
22 members will not be set until the number submitting claims for cash has been determined. This
23 flexibility will permit fixed amounts likely to achieve complete exhaustion of funds.

24 13. Plaintiffs intend to seek service awards for the 18 class representatives in the
25 amount of \$5,000 each, for a total of \$90,000. The class representatives have been actively
26 involved in the litigation of this case. Each has responded to 37 interrogatories and 39 document
27

1 requests. Defendants have deposed each representative at length. The class representatives have
2 been provided with the material terms of the settlement agreement and have not raised any
3 objections.

4 14. The \$52 million settlement amount certainly falls within a reasonable range given
5 the possibility of no recovery. Moreover, recovery of an estimated 30 percent of damages
6 represents an outstanding recovery by any measure. There is no question that the settlement is
7 fair, adequate and reasonable, and in the best interests of the plaintiffs and the settlement class.

8 I declare under penalty of perjury under the laws of the United States that the foregoing is
9 true and correct. Executed this 12th day of August 2016, at Pasadena, California.

10
11 /s/ Elaine T. Byszewski
12 ELAINE T. BYSZEWSKI

EXHIBIT A

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

MATTHEW EDWARDS, et al., individually
and on behalf of all others similarly situated,

Plaintiffs,

v.

NATIONAL MILK PRODUCERS
FEDERATION, et al.,

Defendants.

CASE NO.: 4:11-CV-04766-JSW

[consolidated with 11-cv-04791-JSW and
11-cv-05253-JSW]

CLASS ACTION

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into this 11th day of August, 2016 by and between National Milk Producers Federation (on its behalf and on behalf of Cooperatives Working Together), Land O'Lakes, Inc., Dairy Farmers of America, Inc., Dairylea Cooperative, Inc., and Agri-Mark, Inc. (collectively "Defendants") and the indirect-purchaser plaintiff class representatives ("Plaintiffs"), both individually and on behalf of a settlement class of indirect purchasers of Milk and Fresh Milk Products ("the Class") as more particularly defined in Paragraphs 1 and 2 below.

WHEREAS, Plaintiffs are prosecuting several lawsuits, which have been consolidated under *Edwards, et al. v. National Milk Producers Federation, et al.*, No. 4:11-CV-04766-JSW (N.D. Cal.) (the "Action") on their own behalf and on behalf of the Class against Defendants;

WHEREAS, Plaintiffs allege that Defendants participated in an unlawful conspiracy to pay farmers to prematurely send their cows to slaughter in order to reduce supplies of raw milk in violation of the laws of various jurisdictions;

WHEREAS, Defendants have vigorously denied and continue to deny Plaintiffs' allegations, any wrongdoing, and any liability to the Plaintiffs' claims, and have asserted defenses to Plaintiffs' claims, including that Defendants' conduct is immune from liability under Section 6 of the Clayton Act, 15 U.S.C. § 17, the Capper Volstead Act, 7 U.S.C. §§ 291-292, and similar immunity statutes under the Class jurisdictions;

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law regarding the Action and have concluded that resolving claims against Defendants according to the terms set forth below is in the best interest of Plaintiffs and the Class;

WHEREAS, Defendants, despite their belief that they are not liable for the claims asserted and have defenses thereto, have nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the uncertainties and business disruption and burden of continued litigation, and to obtain the releases, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Defendants, based on the allegations of the Action, as more particularly set out below;

WHEREAS, both the Plaintiffs and Defendants agree that this Agreement shall not be deemed or construed to be an admission or evidence of the truth of any of the Plaintiffs' claims or allegations in the Action;

WHEREAS, arm's-length settlement negotiations have taken place between Lead Counsel and counsel for Defendants, in part with the assistance of a mediator;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice as to the Releasees, as defined below, and except as hereinafter provided, without costs as to Plaintiffs, the Class, or Defendants, subject to the approval of the Court, on the following terms and conditions:

A. Definitions.

1. For purposes of this Agreement, the "Settlement Class" shall refer collectively to the

sixteen classes certified by the Court in its Order Regarding Motion for Class Certification (ECF No. 266) and its subsequent order certifying a class for the state of West Virginia (ECF No. 287). For purposes of clarity, the "Settlement Class" consists of:

All consumers who, from 2003 to the present, as residents of Arizona, California, the District of Columbia, Kansas, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New Hampshire, Oregon, South Dakota, Tennessee, Vermont, West Virginia, and/or Wisconsin, indirectly purchased milk and/or other fresh milk products (including cream, half & half, yogurt, cottage cheese, cream cheese, and/or sour cream) for their own use and not for resale.

Excluded from the Settlement Class are (1) Defendants and their co-conspirators; (2) any entity in which Defendants have a controlling interest; (3) Defendants' officers, directors, and employees; (4) Defendants' legal representatives, successors, and assigns; (5) governmental entities; and (6) the Court to which this case is assigned. The parties to this Agreement also hereby stipulate for purposes of this settlement only that the requirements of Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure are satisfied.

2. For purposes of this Agreement, "Milk and Fresh Milk Products" shall have the meaning as defined in the Third Amended Consolidated Class Action Complaint (ECF No. 288; hereinafter "Complaint"). For purposes of clarity, the term "Milk and Fresh Milk Products" includes all fluid milk products and fresh milk products, including cream, half & half, yogurt, cottage cheese, sour cream, and cream cheese.
3. "Releasees" shall refer to Defendants, all past or present members of National Milk Producers Federation, and all other participants in the Cooperatives Working Together program, and to all of their respective past and present, direct and indirect, parents, subsidiaries, joint ventures, affiliates, unincorporated entities, divisions, and groups, and all of their respective past and present, direct and indirect, parents, subsidiaries, affiliates, unincorporated entities, divisions, groups, and members; the predecessors, successors and assigns of any of the above; and each and all of the present and former principals, partners, officers, directors, members, supervisors, employees, agents, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the foregoing.
4. "Named Plaintiffs" means Matthew Edwards, Boys and Girls Club of the East Valley,

Jonathan Rizzo, Paul Thacker, Scott Cook, Danell Tomasella, Kory Pentland, Lori Curtis, Mary Anderson, Julie Ewald, Sheila Jackson, Scott Weber, Jennifer Clites, John Peychal, John Murray, Jeffrey Robb, Kathleen Davis, and Brandon Steele, represented by Class Counsel.

5. "Class Member" means each member of the Class who has not timely elected to be excluded from the Class.
6. "Releasers" shall refer to Named Plaintiffs and the Class Members, and to their past and present officers, directors, employees, agents, stockholders, attorneys, servants, representatives, parents, subsidiaries, affiliates, partners, members, insurers and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executives, administrators and assigns of any of the foregoing, as well as to anyone claiming by, for, or through the Releasers.
7. "The Settlement Fund" shall be \$52,000,000, as specified in Paragraph 18, plus accrued interest on said deposits as set forth in Paragraph 19.
8. "Class Counsel" shall refer to:

HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101

B. Approval of this Agreement and Dismissal of Claims Against Defendants.

9. Plaintiffs and Defendants shall use their best efforts to effectuate this Agreement, including cooperating in seeking the Court's approval for the establishment of procedures (including the giving of settlement notice under Federal Rules of Civil Procedure 23(e)) to secure the complete, and final dismissal with prejudice of the Action.
10. Plaintiffs shall submit to the Court a motion for preliminary approval of the Settlement, and authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to all Class Members (the "Motion"). The Motion shall include (i) a proposed form of, method for, and date of dissemination of notice; and (ii) a proposed form of order. The text of the foregoing items (i) and (ii) shall be agreed upon

by Plaintiffs and Defendants before submission of the Motion. The Motion shall recite and ask the Court to find that the proposed form of and method for dissemination of the notice of settlement constitutes valid, due, and sufficient notice to the Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23. The motion shall be submitted in advance of the August 26, 2016, status conference previously set by the Court.

11. Plaintiffs and Defendants shall jointly seek the entry of an order and final judgment, the text of which Plaintiffs and Defendants shall agree upon. The terms of that order and final judgment will include, at a minimum, the substance of the following provisions:
 - a) as to the Action, approving finally this settlement and its terms as being a fair, reasonable, and adequate settlement as to the Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;
 - b) as to the Releasees, directing that the Action be dismissed with prejudice and, except as provided for in this Agreement, without costs;
 - c) discharging and releasing the Releasees from all Released Claims; and
 - d) reserving exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement, to the United States District Court for the Northern District of California.

12. This Agreement shall become final when (i) the Court has entered a final order approving this Agreement under Federal Rule of Civil Procedure 23(e) and a final judgment dismissing the Action with prejudice as to Releasees against all Class Members and without costs other than those provided for in this Agreement, and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to Releasees described in (i) hereof has expired or, if appealed, approval of this Agreement and the final judgment as to Releasees have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that the provisions of Rule 60 of the Federal Rules of Civil Procedure shall not be taken into

account in determining the above-stated times. On the date that Plaintiffs and Defendants have executed this Agreement, Plaintiffs and Defendants shall be bound by its terms, and this Agreement shall not be rescinded except in accordance with this Paragraph or Paragraphs 19(h), 25, or 26 of this Agreement.

13. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, documents and discussions associated with them, shall be deemed or construed to be an admission by Defendants (or the Releasees) or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Defendants (or the Releasees), or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed in the Action, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding. Defendants expressly reserve the right to assert any and all available defenses (including immunities under the Clayton Act, the Capper Volstead Act, and any other privileges and immunities) in other actions and proceedings. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations, documents, discussions, or proceedings associated with them, nor any other action taken to carry out this Agreement by any of the settling parties shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, or administrative, or other action or proceedings, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims (as defined below), or as otherwise required by law.
14. The parties to this Agreement contemplate and agree that, prior to final approval of the settlement as provided for in Paragraphs 9-12 hereof, appropriate notice 1) of the settlement; and 2) of a hearing at which the Court will consider the approval of this Settlement Agreement will be given to Class Members.

C. Release and Discharge.

15. In addition to the effect of any final judgment entered in accordance with this Agreement, upon this Agreement becoming final as set out in Paragraph 12 of this Agreement, and in consideration of payment of the Settlement Amount, as specified in Paragraph 18 of this Agreement, and for other good and valuable consideration, the Releasees shall be

completely released, acquitted, and forever discharged from any and all claims, demands, judgments, actions, suits, causes of action, whether class, individual, or otherwise (whether or not any Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively, or in any other capacity) that Releasors, or each of them, ever had, now has, or hereafter can, shall, or may have on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, accrued or unaccrued, suspected or unsuspected injuries (including claims which, if known by Releasors might have affected their settlement with and release of the Releasees, or which might have affected their decision not to object to this Settlement), damages, and consequences thereof in any way arising out of, in connection with, or relating to allegations described in the Complaint and/or Defendants' answer and affirmative defenses thereto, up to the date of execution of this Agreement, including but not limited to any conduct alleged, and causes of action asserted or that could have been alleged or asserted, in complaints filed in this Action, including those arising under any federal or state law, and whether legal, statutory, or equitable (the "Released Claims"). For the avoidance of doubt, the release provided herein is meant to be as broad as legally permissible with regard to any of the allegations in the Complaint or subjects discussed in this paragraph.

16. In addition to the provisions of Paragraph 15 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights, and benefits conferred by § 1542 of the California Civil Code, which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE.
A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
DEBTOR;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or

different from those which he, she, or it knows or believes to be true with respect to the claims which are the subject matter of the provisions of Paragraph 15 of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to the subject matter of the provisions of Paragraph 15 of this Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts. Plaintiffs, any Class Member, and the Releasees shall be deemed by operation of the final order(s) approving the settlement and entering judgment to have acknowledged that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

D. Covenant Not to Sue.

17. Releasors shall not, after the date of this Agreement, sue or otherwise seek to establish liability against any Releasee based, in whole or in part, upon any of the Released Claims or conduct at issue in the Released Claims described in Paragraphs 15 and 16 of this Agreement. Named Plaintiffs and Lead Counsel acknowledge that Defendants consider it to be a material term of this Agreement that all Class Members will be bound by the provisions of this paragraph; provided, however, that should there be a breach of this covenant not to sue by any Class Member, Named Plaintiffs and Lead Counsel will cooperate with any Defendant's efforts to seek the dismissal of any such claim or action.

E. Settlement Amount.

18. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, National Milk Producers Federation shall pay the sum of \$52,000,000 (fifty-two million) in United States Dollars according to the terms of this Paragraph 18 (the "Settlement Amount"). Within thirty (30) calendar days after preliminary approval, National Milk Producers Federation will cause to be deposited into an escrow account to be administered in accordance with the provisions of Paragraph 19 of this Agreement (the "Escrow Account") the sum of \$26,000,000 (twenty-six million) in United States dollars for the benefit of the Settlement Class, provided that the account has been established for

thirty (30) calendar days. Within ninety (90) calendar days after preliminary approval, National Milk Producers Federation will cause to be deposited into the Escrow Account a second and final deposit of \$26,000,000 (twenty-six million) in United States dollars.

19. Escrow Account.

- a) The Escrow Account will be established at Huntington National Bank, with such bank serving as escrow agent ("Escrow Agent") subject to escrow instructions mutually acceptable to Plaintiffs' Class counsel and Defendants, such escrow to be administered under the Court's continuing supervision and control.
- b) The Escrow Agent shall cause the funds deposited in the Escrow Account (the "Settlement Fund") to be invested in short-term instruments backed by the full faith and credit of the United States Government or fully insured in writing by the United States Government, or money market funds rated Aaa and AAA, respectively by Moody's Investor Services and Standard and Poor's, invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then current market rates.
- c) All funds held in the Escrow Account shall be deemed and considered to be in *custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.
- d) Plaintiffs and Defendants agree to treat the Settlement Fund as being at all times a qualified settlement fund within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent shall timely make such elections as necessary or advisable to carry out the provisions of this Paragraph 19, including the relation-back election (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.
- e) For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the

- regulations promulgated there under, the administrator of the Settlement Fund shall be the Escrow Agent. The Escrow Agent shall timely and properly file all informational and other tax returns necessary or advisable with respect to the Settlement Fund (including without limitation the returns described in Treas. Reg. § 1.468B-2(k)(1)) , and shall be solely responsible for such filing. Such returns (as well as the election described in Paragraph 19(d)) shall be consistent with Paragraph 19(d) and in all events shall reflect that all Taxes, as defined below (including any estimated Taxes, interest, or penalties), on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided in Paragraph 19(f) hereof.
- f) All (i) taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendants or any other Releasee with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a qualified settlement fund for federal or state income tax purposes ("Taxes"); and (ii) expenses and costs incurred in connection with the operation and implementation of Paragraphs 19(d) through 19(f) (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Paragraph 19(f)) ("Tax Expenses"), shall be timely paid out of the Settlement Fund by the Escrow Agent.
- g) Neither Defendants nor any other Releasee nor their respective counsel shall have any liability or responsibility for the Taxes or the Tax Expenses, including filing any tax returns or paying any Taxes or Tax Expense. Further, Taxes and Tax Expenses shall be treated as, and considered to be, a cost of administration of the Settlement Fund and shall be timely paid by the Escrow Agent out of the Settlement Fund without prior order from the Court and the Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any claimants authorized by the Court any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes and Tax Expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)). Neither Defendants nor any other Releasee is responsible nor shall they have any

- liability therefor. Plaintiffs and Defendants agree to cooperate with the Escrow Agent, each other, and their tax attorneys, advisors, auditors, and accountants to the extent reasonably necessary to carry out the provisions of Paragraphs 19(d) through 19(f).
- h) If this Agreement does not receive final Court approval, then all amounts paid by Defendants into the Settlement Fund (other than costs expended in accordance with Paragraph 20) shall be returned to Defendants from the Escrow Account by the Escrow Agent along with any interest accrued thereon within thirty (30) calendar days.

20. **Payment of Expenses.** The parties agree that a maximum of \$2,000,000 of the Settlement Fund may be used towards notice of settlement to the class and the administration costs of the Settlement Fund set forth in Paragraph 19 (the “Settlement Fund Expenses”), with the exception that payment of Taxes owing based on income earned by the Settlement Fund shall not contribute to the \$2,000,000 maximum (as the Taxes will be paid from the earned income). The \$2,000,000 in settlement notice and administration expenses are not recoverable if this settlement does not become final to the extent such funds are expended for notice and administration costs. Other than as set forth in this Paragraph 20, neither Defendants nor any of the other Releasees under this Agreement shall be liable for any of the costs or expenses of the litigation of the Action, including attorneys' fees; fees and expenses of expert witnesses and consultants; and costs and expenses associated with discovery, motion practice, hearings before the Court or any Special Master, appeals, trials or the negotiation of other settlements, or for Class administration and costs.

F. The Settlement Fund.

21. Releasers shall look solely to the Settlement Fund for settlement and satisfaction against the Releasees of all Released Claims, and shall have no other recovery against Defendants or any other Releasee.
22. **Distribution Plan.** After this Agreement becomes final within the meaning of Paragraph 12, the Settlement Fund shall be distributed in accordance with a plan to be submitted by Plaintiffs to the Court, in consultation with Defendants and subject to approval by the Court. The Settlement Amount net of fees, service awards, and costs as set forth in Paragraphs 20 and 24, shall be distributed to the Settlement Class, as approved by the

Court.

- a) *No Reversion.* Once the settlement receives final approval from the Court within the meaning of Paragraph 12, Defendants will have no possibility of reversion. If complete exhaustion of settlement funds is not feasible for unanticipated reasons, it will be distributed as *cy pres* to the Attorneys General for the Class jurisdictions for use in prosecuting consumer antitrust claims.
- b) *Incentive Payments.* Defendants do not object to the award of incentive payments solely from the Settlement Fund by the Escrow Agent to the Named Plaintiffs, separate and apart from the cash to be distributed to the Class, subject to Court approval. The approval or disapproval, in whole or in part, by the Court of any incentive payment shall be considered by the Court separately from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceedings relating to the incentive payments, including the appeal of any order relating thereto, shall not operate to terminate or cancel this Agreement or be deemed to be material thereto.
- c) *Defendants Not Responsible for Distribution.* In no event shall any Releasee have any responsibility, financial obligation, or liability whatsoever with respect to the investment, distribution, or administration of the Settlement Fund and/or the Escrow Account, including, but not limited to, the costs and expenses of such distribution and administration, with the sole exception of the provisions set forth in Paragraph 20 of this Agreement. Defendants shall be dismissed from this Action prior to any distribution of this Settlement Fund and shall have no involvement in the distribution of this Settlement Fund.

23. Plaintiffs and Class Counsel shall be reimbursed and indemnified solely out of the Settlement Fund for all expenses. The Releasees shall not be liable for any costs, fees, or expenses of any of Plaintiffs' or the Class' respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund Expenses.

24. Class Counsel's Attorneys' Fees And Reimbursement of Expenses.

- a) Class Counsel must file their motion for attorneys' fees and reimbursement of expenses from the Settlement Fund (the "Fee and Expense Application") at least fourteen days before the deadline for objecting to the settlement, as required by the Procedural Guidance for Class Action Settlements of the Northern District of California. Class Counsel reserve the right to make additional applications for fees and expenses incurred, but in no event shall Releasees be responsible to pay any such additional fees and expenses except to the extent they are paid out of the Settlement Fund. In addition, after final approval, Class Counsel may apply to use Settlement Funds to pay the past or future expenses of this litigation. In the event the settlement is reversed on appeal, or awards of attorneys' fees and reimbursement of costs are reduced on appeal, any Plaintiffs' counsel that received awards of fees and/or reimbursement of costs that are subject to reduction shall, within ten (10) business days from receiving notice of the applicable court order, refund to the Settlement Fund the required amounts. Each such Plaintiffs' counsel's law firm, as a condition of receiving such fees, expenses and costs, on behalf of itself and each partner, member, and/or shareholder of it, agrees that the law firm and its partners, members, and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing this Paragraph 24(a). The Fee and Expense Award, as approved by the Court, shall be paid solely from the Settlement Fund within five (5) business days after the Court has entered a final order approving this Agreement under Federal Rule of Civil Procedure 23(e), without regard to the time to appeal or any appeals actually taken. Class Counsel shall allocate the attorneys' fees among Class Counsel in a manner which it in good faith believes reflects the contributions of such counsel to the prosecution and settlement of the Action.
- b) The procedure for and the allowance or disallowance by the Court of the application by Class Counsel for attorneys' fees, costs and expenses to be paid out of the Settlement Fund are not part of this Agreement, and are to be considered by the Court separately from the Court's consideration of the fairness, reasonableness, and adequacy of the settlement, and any order or proceeding

- relating to the Fee and Expense Application, or any appeal from any such order, shall not operate to terminate or cancel this Agreement, or affect or delay the finality of the judgment approving the settlement.
- c) Neither Defendants nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to any payment to Class Counsel of any Fee and Expense Award in the Action.
 - d) Neither Defendants nor any other Releasee under this Agreement shall have any responsibility for, or interest in, or liability whatsoever with respect to the allocation among Class Counsel, and/or any other person who may assert some claim thereto, of any Fee and Expense Award that the Court may make in the Action.

G. Rescission and Consequences Thereof.

25. Rescission.

- a) Defendants shall, in their sole discretion, have the option to rescind this Agreement in its entirety within thirty (30) days after the end of the opt-out period to be identified in the class notice if 15% or more of Class Members, by purchase volume reasonably measured, opt out of the Settlement. Class Counsel shall provide Defendants with a list of all Plaintiffs who have timely submitted exclusion notifications to the settlement administrator within ten (10) days of the deadline for notice of exclusion or opt out, as established in the notice disseminated pursuant to Paragraph 10.
- b) If the Court refuses to approve this Agreement or any part hereof; or if such approval is modified or set aside on appeal, and if subject to remand the Court refuses to approve this Agreement or any part hereof; or if the Court does not enter the final judgment provided for in Paragraphs 11 and 12 of this Agreement; or if the Court enters the final judgment and appellate review is sought, and on such review, such final judgment is not affirmed in its entirety, and if subject to remand the Court refuses to enter the final judgment provided for in Paragraphs 11 and 12 of this Agreement, then Defendants and the

Plaintiffs shall each, in their sole discretion, have the option to rescind this Agreement in its entirety. Written notice of the exercise of any such right to rescind shall be made according to the terms of Paragraph 35. A modification or reversal on appeal of any amount of the Fee and Expense Award shall not be deemed a modification of all or a part of the terms of this Agreement or such final judgment.

26. In the event that this Agreement does not become final as set forth in Paragraph 12, then this Agreement shall be of no force or effect and any and all parts of the Settlement Fund caused to be deposited in the Escrow Account (including interest earned thereon) shall be returned within thirty (30) days to National Milk Producers Federation less only disbursements made in accordance with Paragraph 20 of this Agreement. Defendants expressly reserve all of their rights and defenses if this Agreement does not become final.

27. Further, and in any event, Plaintiffs and Defendants agree that this Agreement, whether or not it shall become final, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Defendants (or the Releasees), or of the truth of any of the claims or allegations contained in the complaint or any other pleading filed in the Action, or by any person or entity in any other action, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding.

H. Miscellaneous.

28. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the relevant claims with respect to each Releasee as provided in this Agreement.

29. The United States District Court for the Northern District of California shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be

resolved by negotiation and agreement by Plaintiffs and Defendants. This Agreement shall be governed by and interpreted according to the substantive laws of the state of California without regard to its choice of law or conflict of laws principles.

30. This Agreement constitutes the entire, complete and integrated agreement among Plaintiffs and Defendants pertaining to the settlement of the Action against Defendants, and supersedes all prior and contemporaneous undertakings of Plaintiffs and Defendants in connection herewith. This Agreement may not be modified or amended except in writing executed by Plaintiffs and Defendants, and approved by the Court.
31. Defendants shall submit all materials required to be sent to appropriate Federal and State officials pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715, only after Plaintiffs and Defendants have conferred and agree that any such materials are necessary.
32. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Plaintiffs and Defendants. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by Plaintiffs or Class Counsel shall be binding upon all Class Members and Releasors. The Releasees (other than Defendants that are parties hereto) are third party beneficiaries of this Agreement and are authorized to enforce its terms applicable to them.
33. This Agreement may be executed in counterparts by Plaintiffs and Defendants, and a signature page delivered by facsimile, email, or PDF shall be deemed an original signature for purposes of executing this Agreement.
34. Neither Plaintiffs nor Defendants shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.
35. Where this Agreement requires either party to provide notice or any other communication or document to the other, such notice shall be in writing, and such notice, communication, or document shall be provided by email or letter by overnight delivery to the undersigned counsel of record for the party to whom notice is being provided.
36. Class Counsel will return or destroy all copies of discovery materials obtained in this

litigation from Defendants or third parties, including Dr. Scott Brown, within thirty (30) days after this Agreement becomes final as set forth in Paragraph 12 of this Agreement.

37. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

Dated: August 11, 2016

Dated: 8/11/16



Steve W. Berman
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101

Dated: _____

Jeff D. Friedman
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Ave., Suite 202
Berkeley, CA 94710

Class Counsel for Plaintiffs and the Class and on behalf of all Plaintiffs' Counsel

Dated: _____

Jill M. O'Toole
SHIPMAN & GOODWIN LLP
One Constitution Plaza
Hartford, CT 06103

Counsel for Defendant Agri-Mark, Inc.

litigation from Defendants or third parties, including Dr. Scott Brown, within thirty (30) days after this Agreement becomes final as set forth in Paragraph 12 of this Agreement.

37. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

Dated: August 11, 2016

Dated: _____

Steve W. Berman
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101

Dated: 8/12/2016



Jeff D. Friedman
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Ave., Suite 202
Berkeley, CA 94710

Class Counsel for Plaintiffs and the Class and on behalf of all Plaintiffs' Counsel

Dated: _____

Jill M. O'Toole
SHIPMAN & GOODWIN LLP
One Constitution Plaza
Hartford, CT 06103

Counsel for Defendant Agri-Mark, Inc.

litigation from Defendants or third parties, including Dr. Scott Brown, within thirty (30) days after this Agreement becomes final as set forth in Paragraph 12 of this Agreement.

37. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

Dated: August 11, 2016

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Class Counsel for Plaintiffs and the Class and on behalf of all Plaintiffs' Counsel

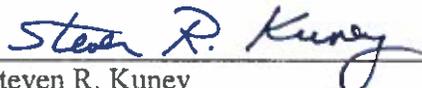
Dated: 8/11/2016



Jill M. O'Toole
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One Constitution Plaza
Hartford, CT 06103

Counsel for Defendant Agri-Mark, Inc.

Dated: 8/12/2016



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Counsel for Defendants Dairy Farmers of America, Inc. and as successor by merger to DairyLea Cooperative, Inc.

Dated: 8/12/2016



Nathan P. Eimer
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Counsel for Defendant Land O'Lakes, Inc.

Dated: August 12, 2016



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Counsel for Defendant National Milk Producers Federation