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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

GERALD CARLIN, JOHN RAHM, PAUL
ROZWADOWSKI and DIANA WOLFE,
individually and on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

DAIRYAMERICA, INC. and
CALIFORNIA DAIRIES, INC.

Defendants.

Case No. 1:09 CV 00430-AWI (EPG)

CLASS ACTION

**FOURTH AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

REDACTED

1 Individual and Representative Plaintiffs Gerald Carlin, John Rahm, Paul Rozwadowski and
2 H. Diana Wolfe, on behalf of themselves and all others similarly situated, allege:

3 1. This class action is brought on behalf of a class (the “Class”) of tens of thousands
4 of dairy farmers in the United States who sold raw milk that was priced according to a Federal Milk
5 Marketing Order (“FMMO”) during the period January 1, 2002 through April 30, 2007 (“Class
6 Period”). FMMOs are part of, and administered by, the United States Department of Agriculture
7 (“USDA”).

8 2. During the Class Period, Plaintiffs and other members of the Class received a check
9 each month for the sale of their raw milk. The monthly milk checks provided to those dairy farmers
10 contained prices that were calculated by FMMOs using formulas that factor in market prices for
11 dairy products. USDA collected the market prices for dairy products that were plugged into the
12 FMMO formulas each month to calculate raw milk prices paid to dairy farmers.

13 3. Nonfat dry milk (“NFDM”) was one of the dairy products whose prices were
14 collected and used by USDA to calculate the price of raw milk. During the Class Period, USDA
15 obtained NFDM prices by conducting weekly surveys of firms that sell substantial quantities of
16 NFDM. The higher the NFDM prices reported in those surveys, the higher the raw milk prices that
17 USDA calculated and that dairy farmers received.

18 4. During the Class Period, the largest seller of NFDM surveyed by USDA was
19 Defendant DairyAmerica, Inc. (“DairyAmerica”). DairyAmerica was a marketing association
20 comprised of nine cooperative members, including Defendant California Dairies, Inc. (“California
21 Dairies). [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 5. During the Class Period, DairyAmerica sold the vast majority of NFDM
25 manufactured by its nine cooperative members. DairyAmerica had a singular mission when selling
26 NFDM: to maximize the profits of its nine member cooperatives.

27 6. During the Class Period, DairyAmerica marketed and sold approximately 75 percent
28 of the NFDM produced in the United States, and also exported NFDM to over 40 countries

1 worldwide. With control over such a dominant share of the domestic NFDM market, DairyAmerica
2 could shape the raw milk prices paid to farmers by modifying the data it reported to USDA each
3 week.

4 7. During the Class Period, DairyAmerica, California Dairies and seven other
5 cooperative members of DairyAmerica conspired to fraudulently report depressed NFDM prices to
6 USDA. Specifically, in knowing defiance of USDA's unambiguous reporting instructions, those
7 entities conspired to direct and directed DairyAmerica to (1) report forward pricing sales of NFDM;
8 (2) report sales of skim milk powder ("SMP") as NFDM; (3) delay the reporting of sales of NFDM;
9 (4) report artificially-discounted prices for exports of NFDM; and (5) exclude commissions from
10 the reports of NFDM sales. Each of these five misreporting methods contravened the clear reporting
11 instructions provided by USDA, and each misreporting method resulted in DairyAmerica reporting
12 lower prices to USDA than it should have.

13 8. DairyAmerica, California Dairies and seven other cooperative members of
14 DairyAmerica conspired to misreport, and intentionally misreported, NFDM prices to USDA for
15 the specific purpose of depressing raw milk prices and protecting their profits. Raw milk is the
16 principal cost input for manufacturing NFDM and other dairy products, such as cheese and butter.
17 Thus, by improperly reporting ineligible and artificially-discounted NFDM sales prices, the
18 member cooperatives of DairyAmerica (1) substantially reduced their cost of manufacturing
19 NFDM and other dairy products; (2) sold NFDM and other dairy products at prices above the cost
20 of manufacturing; (3) shielded their processing plants from rising raw milk costs during the
21 pendency of forward pricing contracts; and (4) prevented NFDM and other dairy product prices
22 from rising to a level that would decrease customer demand. In sum, by misreporting NFDM sales
23 in weekly reports to USDA, DairyAmerica and its member cooperatives leveraged their dominant
24 market share to depress raw milk prices paid to farmers and maximize their profits from the sale of
25 dairy products.

26 9. Defendants engaged in various schemes to conceal their fraudulent
27 misrepresentations from government agencies and auditors. [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] Furthermore,
4 during each month of the Class Period, the California Department of Food and Agriculture
5 (“CDFA”) sent auditors to the offices of DairyAmerica to ensure that it was reporting sales data
6 accurately. Before the auditors arrived each month, DairyAmerica’s Controller and Officer
7 Manager would gather invoices reflecting actual sales transactions and transport them to an off-site
8 storage facility so that the auditors could not find them. DairyAmerica also concealed electronic
9 databases containing accurate sales prices from those auditors and prohibited senior accounting
10 staff with knowledge of the company’s misreporting from speaking to the those government
11 auditors as well as commercial auditors.

12 10. As a direct result of Defendants’ fraudulent misreporting, the raw milk prices
13 calculated by USDA were lower than they should have been during the Class Period, and Plaintiffs
14 and the other members of the Class were deprived of millions of dollars of income. Meanwhile,
15 DairyAmerica, California Dairies and the other cooperative members of DairyAmerica profited
16 substantially from their misreporting.

17 11. Compelling direct and circumstantial evidence make clear that DairyAmerica,
18 California Dairies and other cooperative members intentionally lied to USDA and deprived tens of
19 thousands of farmers of income. Those farmers now seek to recover damages stemming from that
20 fraudulent misconduct. In particular, Plaintiffs seek, on behalf of themselves and all others similarly
21 situated, compensatory, consequential, treble and punitive damages, as well as restitution,
22 disgorgement of ill-gotten monies, injunctive relief and reasonable attorneys’ fees.

23 12. In the alternative, Plaintiffs allege that DairyAmerica, California Dairies and seven
24 other cooperative members of DairyAmerica negligently misreported NFDM sales data to USDA
25 in contravention of clear instructions. For these alternative negligence claims, Plaintiffs seek, on
26 behalf of themselves and all others similarly situated, compensatory and consequential damages,
27 as well as restitution, disgorgement of ill-gotten monies, injunctive relief and reasonable attorneys’
28 fees.

THE PLAINTIFFS

13. Individual and representative Plaintiff Gerald Carlin is a dairy farmer and a resident of Meshoppen, Pennsylvania. Mr. Carlin sold raw milk that was priced according to FMMO formulas during the period January 1, 2002 through April 30, 2007 and is a member of the Class.

14. Individual and representative Plaintiff John Rahm is a dairy farmer and a resident of Versailles, Ohio. Mr. Rahm sold raw milk that was priced according to FMMO formulas during the period January 1, 2002 through April 30, 2007 and is a member of the Class.

15. Individual and representative Plaintiff Paul Rozwadowski is a dairy farmer and a resident of Stanley, Wisconsin. Mr. Rozwadowski sold raw milk that was priced according to FMMO formulas during the period January 1, 2002 through April 30, 2007 and is a member of the Class.

16. Individual and representative Plaintiff H. Diana Wolfe is a dairy farmer and a resident of Rome, Ohio. Ms. Wolfe sold raw milk that was priced according to FMMO formulas during the period January 1, 2002 through April 30, 2007 and is a member of the Class.

THE DEFENDANTS

17. Defendant DairyAmerica is a not-for-profit corporation organized and existing under the laws of the State of California with its principal place of business in Fresno, California. During the Class Period, DairyAmerica marketed and sold approximately 75 percent of all the NFDM produced in the United States and exported NFDM to over 40 countries worldwide.

18. Defendant California Dairies is a for-profit corporation organized and existing under the laws of the State of California with its principal place of business in Visalia, California. California Dairies is the second largest dairy processing cooperative in the United States and earns more than \$4 billion in annual sales. California Dairies owns six dairy processing plants that produce NFDM, butter, buttermilk powder and cheddar cheese. California Dairies annually ships over 18 billion pounds of milk to be processed and manufactures approximately 40 percent of the NFDM in the United States. California Dairies sells dairy products in all 50 states and around the world. The predecessors to California Dairies created DairyAmerica, and California Dairies has

1 been a member of DairyAmerica since its inception. [REDACTED]
2 [REDACTED]
3 [REDACTED]

4 **CO-CONSPIRATORS AND AGENTS**

5 19. Seven cooperatives not named as Defendants participated as co-conspirators in the
6 violations alleged herein and performed acts and made statements in furtherance thereof. During
7 the Class Period, those seven cooperatives were members of DairyAmerica, and their executives
8 served on DairyAmerica's Board of Directors. Those seven cooperatives include: Agri-Mark Inc.
9 ("Agri-Mark"), Dairy Farmers of America, Land O'Lakes Inc. ("Land O'Lakes"), Lone Star Milk
10 Producers, Inc. ("Lone Star"), Maryland & Virginia Milk Producers Cooperative Association, Inc.
11 ("Maryland & Virginia"), O-AT-KA Milk Producers Inc. ("O-AT-KA"), and United Dairymen of
12 Arizona. Those seven cooperatives are hereafter referred to as "Co-Conspirators."

13 20. Defendants and Co-Conspirators conspired to fraudulently misreport NFDM prices
14 to USDA. Specifically, they conspired to direct and directed DairyAmerica to (1) report forward
15 pricing sales; (2) report sales of SMP; (3) delay the reporting of sales; (4) report artificially-
16 discounted export prices; and (5) exclude commissions and broker fees from.

17 21. Defendants are jointly and severally liable for the acts of Co-Conspirators whether
18 named or not named as Defendants in this Complaint. Each Defendant and each Co-Conspirator
19 acted as the agent of, and joint venturer for, Defendants and Co-Conspirators with respect to the
20 acts, violations, and common course of conduct alleged herein.

21 **JURISDICTION AND VENUE**

22 22. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332(d) in that
23 Plaintiffs and Defendants are citizens of different states and the amount in controversy exceeds the
24 value of \$75,000, exclusive of interest and costs. This Court has personal jurisdiction over the
25 Defendants. Both DairyAmerica and California Dairies are incorporated in, and have their principal
26 place of business in, the State of California and they engaged in the misconduct alleged herein in
27 the State of California.
28

CLASS ACTION ALLEGATIONS

23. Plaintiffs seek to bring this case as a class action pursuant to Federal Rule of Civil Procedure 23 on behalf of themselves and all others similarly situated. The proposed Class is defined as comprising: dairy farmers in the United States who sold raw milk during the Class Period that was priced according to a FMMO. Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest, and their legal representatives, heirs, and successors.

NUMEROSITY

24. The proposed Class is so numerous and geographically dispersed that joinder of all of its members is impractical. Thousands of dairy farmers are members of the proposed Class and sold raw milk at prices set by a FMMO.

25. The members of the Class can be readily ascertained. The Class definition encompasses a finite membership demarcated with precise criteria, and the identities of Class members can be obtained from multiple sources.

COMMON QUESTIONS OF LAW AND FACT

26. Plaintiffs allege an overarching scheme to misreport data and suppress raw milk prices that presents a common core of questions. Virtually all of the issues of law and fact in this class action are common to the Class and include at least the following:

- a. whether Defendants and Co-Conspirators misrepresented dairy product prices to USDA;
- b. whether Defendants and Co-Conspirators intentionally misrepresented dairy product prices to USDA;
- c. whether Defendants and Co-Conspirators failed to exercise reasonable care when reporting dairy product prices to USDA;
- d. whether Defendants and Co-Conspirators made misrepresentations for the purpose of lowering raw milk prices paid to dairy farmers;
- e. whether Defendants and Co-Conspirators made misrepresentations to obtain financial gain;
- f. whether Defendants and Co-Conspirators engaged in a pattern of racketeering;

1 g. whether Defendants' and Co-Conspirators' misrepresentations of dairy product
2 prices deprived income from dairy farmers; and

3 h. the nature of relief available by reason of Defendants' and Co-Conspirators'
4 violations of law.

5 27. Plaintiffs' claims are typical of Class members' claims. Plaintiffs and all other
6 members of the Class have sustained monetary damages arising out of Defendants' and Co-
7 Conspirators' violations of common and statutory law as alleged herein. The interests of the
8 Plaintiffs are aligned with those of the proposed Class and, in vigorously pursuing their own claims,
9 the Plaintiffs will also advance the interests of Class members.

10 **ADEQUACY OF REPRESENTATION**

11 28. Plaintiffs can and will fairly and adequately represent and protect the interests of the
12 Class and have no interests that conflict with or are antagonistic to the interests of Class members.
13 Plaintiffs have retained attorneys competent and experienced in class actions.

14 **SUPERIORITY**

15 29. A class action is superior to any other available method for the fair and efficient
16 adjudication of this controversy, and common questions of law and fact predominate over any
17 individual questions that may arise. Plaintiffs will use common evidence to prove each element of
18 their claims on behalf of the Class.

19 30. It would be enormously inefficient – for both the Court and the parties – to engage
20 in multiple trials of the same claims asserted in multiple individual actions. Proceeding as a class
21 action, rather than a host of separate individual trials, would provide significant economies in time,
22 effort and expense and permit Class members to seek damages otherwise too costly to pursue.

23 31. Defendants have acted or refused to act on grounds that apply generally to the Class
24 so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class
25 as a whole.

26 **BACKGROUND OF MILK PRICING**

27 A. USDA Pricing of Raw Milk

28 32. Pursuant to the Agricultural Marketing Agreement Act of 1937, USDA oversees ten

1 FMMOs located in ten regions around the country. The ten FMMOs establish minimum prices for
2 the sale of raw, Grade A milk by dairy farmers to processors.

3 33. Approximately 65 percent of all raw, Grade A milk marketed in the United States is
4 marketed under FMMOs, and approximately 50,000 dairy farmers sell raw milk at prices set by
5 FMMOs.

6 34. According to USDA, one of the major objectives of FMMOs is to provide adequate
7 producer prices to ensure an adequate Grade A milk supply.

8 35. FMMOs employ a four-tiered, classified pricing system to calculate monthly raw
9 milk prices based on the intended use of the raw milk. The four classes of milk are: Class I, for
10 beverage products; Class II, for soft manufacturing products such as ice cream, cottage cheese, sour
11 cream, and yogurt; Class III, for hard cheese and cream cheese; and Class IV, for butter and dry
12 milk products.

13 36. FMMO formulas tie the monthly minimum prices for each class of raw milk to the
14 market prices of certain finished dairy products. During the Class Period, the market prices of those
15 finished dairy products were collected by USDA's National Agricultural Statistics Service
16 ("NASS"). NASS obtained the dairy product prices by conducting weekly surveys of dairy firms
17 that sell one million or more pounds of the dairy products. The dairy product prices collected by
18 NASS each week were published in the *Dairy Products Prices* report.

19 37. Class III and Class IV prices were calculated based on FMMO formulas that directly
20 relied on the weekly data collected and published by NASS. The Class III pricing formula
21 incorporated NASS survey prices for cheese, butter, and dry skim whey, and the Class IV pricing
22 formula incorporated NASS survey prices for NFDM and butter.

23 38. Class I prices were determined by adding a differential value to the higher of either
24 an advanced Class III or Class IV skim milk value, plus a multiple of butterfat prices. Class II prices
25 were basically calculated by adding a differential of \$0.70 per hundred pounds of milk to the
26 advanced Class IV skim milk price, plus a multiple of butterfat prices.

27 39. Class II, III and IV prices were the same across each of the ten FMMOs.

28 40. Although the four classes of raw milk were priced differently, dairy farmers were

1 paid a weighted average or “blend” price for the sale of their raw milk. The blend price was derived
2 by pooling all classes of raw milk sold in the same marketing area. Mathematically, this process
3 involved calculating the weighted average value of milk based on the proportion of total milk
4 pooled from each of the four classes. Under this pricing system, each dairy farmer within the same
5 FMMO received an equal share of each class of milk and thus was indifferent to the actual class
6 for which his or her particular milk was used.

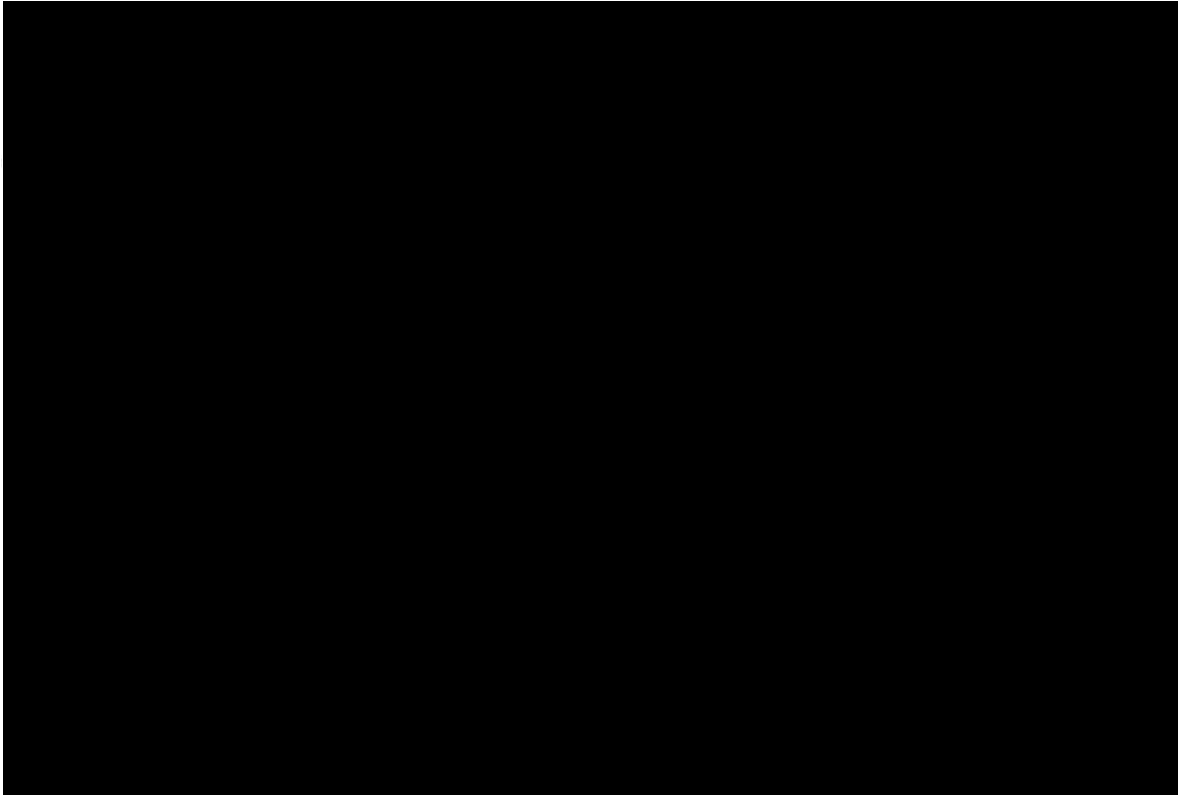
7 41. In sum, during the Class Period, approximately 50,000 dairy farmers were paid for
8 their raw, Grade A milk according to federal formulas that employ a limited number of inputs, and
9 market prices for NFDM was one of those key inputs.

10 B. Weekly NASS Survey

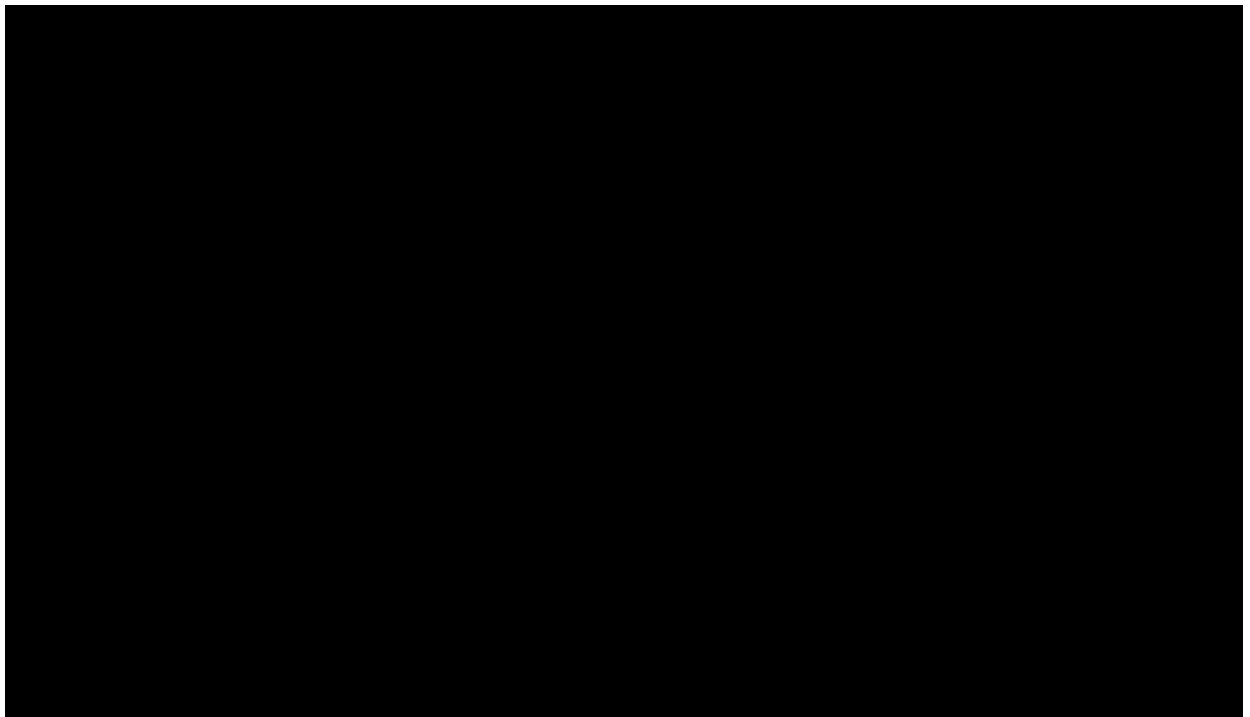
11 42. During the Class Period, on a weekly basis, NASS surveyed dairy firms that
12 annually manufactured one million or more pounds of NFDM. In the surveys, those dairy firms
13 reported the price and volume of the NFDM that they sold during the prior week. Each reporting
14 dairy firm submitted its weekly NASS survey information using either a paper questionnaire or an
15 electronic reporting system.

16 43. Both the paper questionnaire and the electronic reporting system included the
17 following introductory language: “Dear Nonfat Dry Milk Producer: USDA is collecting weekly
18 information on nonfat dry milk sales and prices to be published in the Dairy Products Prices Release
19 every Friday. Your cooperation in filling out this form and returning it is requested. Response to
20 this survey is mandatory under Public Law No. 106-532. The information that you provide is
21 important in estimating U.S. nonfat dry milk prices.”

22 44. During the Class Period, both the paper questionnaire and the electronic reporting
23 system contained the same set of explicit instructions. The instructions contained a list of items that
24 were to be included and excluded from the weekly surveys:



45. During the Class Period, NASS also required firms that report NFDM sales data each week to complete an Annual Validation Worksheet. The Annual Validation Worksheet required the reporting firms to certify each year that they complied with each of the instructions on the weekly reporting forms:



1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 C. CDFA Pricing of Raw Milk

5 46. Some regions of the country fall outside of the geographic scope of the ten FMMOs.

6 In those regions, several states have established their own program to calculate raw milk prices for

7 in-state dairy farmers. One of those states is California.

8 47. California's milk marketing program, which is operated by CDFA, establishes

9 monthly minimum prices that processors must pay to purchase raw milk from dairy farmers. Like

10 USDA, CDFA ties the monthly minimum prices for raw milk to the market prices of select dairy

11 products, including NFDM.

12 48. CDFA conducts weekly surveys of California processing plants to determine the

13 market prices of NFDM. Using the sales data collected from those surveys, CDFA computes a

14 weighted average price of NFDM called the California Weighted Average Price ("CWAP"). CDFA

15 subsequently inputs the CWAP into formulas that calculate the monthly minimum prices that

16 California farmers receive from the sale of their raw milk.

17 **OPERATION OF DAIRYAMERICA**

18 A. Governance of DairyAmerica

19 49. One of the entities surveyed by USDA to obtain NFDM prices during the Class

20 Period was DairyAmerica.

21 50. DairyAmerica was formed in 1995 by two predecessors to California Dairies

22 (California Milk Producers and Danish Creamery Association) to jointly market their powdered

23 milk. In 1999, California Milk Producers and Danish Creamery Association merged to form

24 California Dairies.

25 51. [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 [REDACTED]

2 52. During the Class Period, nine cooperatives were members of, and exclusively

3 controlled, DairyAmerica: Agri-Mark, California Dairies, Dairy Farmers of America, Land

4 O'Lakes, Lone Star, Maryland & Virginia, O-AT-KA, St. Albans Cooperative Creamery ("St.

5 Albans") and United Dairymen of Arizona.

6 53. DairyAmerica was an agent of, and a joint venture among, its nine member

7 cooperatives. In comments submitted to USDA on September 4, 2007, DairyAmerica stated,

8 "DairyAmerica operates as a marketing agent on behalf of all of its members." Member Dairy

9 Farmers of America described DairyAmerica as "a joint venture to market non-fat dry milk,

10 domestically and internationally."

11 54. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 55. During the Class Period, DairyAmerica was governed by a board of directors. The

15 Board of Directors was comprised exclusively of senior executives and representatives from each

16 of the nine cooperatives that were members of DairyAmerica. [REDACTED]

17 [REDACTED]

18 56. [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 57. [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 58. [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 59. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 60. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 61. [REDACTED]

18 [REDACTED] Even

19 though DairyAmerica was a nonprofit corporation, DairyAmerica's singular purpose was
20 commercial: to maximize the profit of its nine members. In comments submitted to USDA on
21 September 4, 2007, DairyAmerica wrote that it "owes a duty to its members to maximize overall
22 profit."

23 62. During the Class Period, DairyAmerica marketed and sold the vast majority of the
24 NFDM produced by its member cooperatives, which amounted to approximately 75 percent of all
25 the NFDM produced in the United States. DairyAmerica also marketed and sold other powder
26 products, such as SMP, that were manufactured by cooperative members.

27 63. [REDACTED]

28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 64. The Board of Directors hired Richard Lewis to serve as CEO and CFO of
4 DairyAmerica during the Class Period. [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 B. Board of Directors Understood and Regularly Discussed Reporting Instructions

11 65. During the Class Period, the Board of Directors regularly discussed and understood
12 the instructions for completing the weekly reports to USDA and directed DairyAmerica on how to
13 complete those reports. Decisions about what to include in reports to USDA were routinely within
14 the scope of the Board's responsibilities. For example, the agenda for the February 14, 2002 board
15 meeting includes the following agenda item: "Reporting Issues – CWAP and NASS."

16 66. [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 67. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 68. [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 69. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 **CONSPIRACY AND MOTIVE TO MISREPORT**

14 70. During the Class Period, Defendants and Co-Conspirators conspired to fraudulently
15 misreport NFDM prices to USDA. Specifically, they conspired to direct and directed DairyAmerica
16 to (1) report forward pricing sales that DairyAmerica was instructed to exclude; (2) deceptively
17 report sales of SMP as NFDM; (3) improperly delay the reporting of sales prices; (4) report
18 artificially discounted, rather than accurate, export prices; and (5) improperly exclude commissions
19 and brokers fees from the reports.

20 71. Defendants and Co-Conspirators conspired to misreport, and intentionally
21 misreported, NFDM prices and volume to USDA for the specific purpose of artificially depressing
22 raw milk prices and maximizing their profits. [REDACTED]

23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 [REDACTED] On June 15, 2007, CEO Lewis wrote that reported prices “are critical
27 to processors of nonfat dry milk because this accounting system directly applies the weighted
28 average reported price to calculate its financial obligations.”

1 72. Defendants and Co-Conspirators had at least four specific financial motivations for
2 misreporting sales to USDA during the Class Period. First, raw milk is the principal cost input for
3 manufacturing NFDM and other dairy products, such as cheese, butter and SMP. Reducing raw
4 milk prices paid to dairy farmers therefore increased the profits of processing plants owned by the
5 cooperative members of DairyAmerica, including California Dairies. [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED] By misreporting NFDM sales in weekly reports to USDA, Defendants and Co-
14 Conspirators leveraged their dominant market share to depress raw milk prices and thus increase
15 their profits from the sale of dairy products.

16 73. Notably, DairyAmerica's misreporting to USDA not only reduced its cooperative
17 members' cost of acquiring raw milk from farmers compensated by FMMO prices; it also reduced
18 cooperative members' cost of acquiring raw milk from farmers in California. When DairyAmerica
19 misreported NFDM sales data to USDA, the prices calculated by NASS for NFDM were artificially
20 depressed. DairyAmerica used those NASS prices for NFDM as a base in its sales contracts to set
21 the prices at which it sold NFDM to customers. When DairyAmerica sold NFDM produced by its
22 members' plants in California, DairyAmerica reported those sales to CDFA. Because those sales
23 were transacted at prices that correlate to NASS values for NFDM, DairyAmerica reported lower
24 sales prices to CDFA as a result of misreporting to USDA. [REDACTED]
25 [REDACTED]

26 74. Second, the member cooperatives of DairyAmerica sought to earn profits from the
27 sale of NFDM by selling the product at prices above prevailing NASS and CWAP rates. [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED] Accomplishing this goal is complicated by
3 the fact that sales prices transacted by DairyAmerica are reported to USDA and CDFA and thus set
4 future NASS and CWAP prices. Because NFDM sales prices set NASS and CWAP prices, it is
5 difficult to consistently sell NFDM at prices above NASS and CWAP rates. Rather than do so
6 lawfully, Defendants and Co-Conspirators established a scheme to deceptively report ineligible and
7 artificially-depressed NFDM prices that were lower than actual sales prices. By unlawfully creating
8 a differential between transacted and reported NFDM prices, Defendants and Co-Conspirators
9 fabricated a profit margin from DairyAmerica's sales of NFDM.

10 75. Third, Defendants and Co-Conspirators misrepresented NFDM sales prices through
11 DairyAmerica to protect themselves from financial losses during the pendency of fixed-price
12 contracts. DairyAmerica's sales of NFDM and SMP often involved fixing a price well in advance
13 of the shipment of the product to the customer. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 [REDACTED] Accordingly, Defendants and Co-Conspirators sought to
20 manage the economic risk of fixed-price contracts by misreporting NFDM sales and artificially
21 depressing raw milk prices to the detriment of farmers.

22 76. Fourth, Defendants and Co-Conspirators reported ineligible and artificially-
23 discounted NFDM sales prices to prevent wholesale NFDM and SMP from reaching levels that
24 would diminish customer demand. [REDACTED]
25 [REDACTED]
26 [REDACTED]

27 By misreporting sales figures to
28 USDA, Defendants and Co-Conspirators sought to restrain raw milk prices and ensure that
wholesale powder prices remained at levels that maximized their revenue and profits.

1 77. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 A. Processor Interests and Farmer Interests Diverge

12 78. It is a fiction that dairy cooperatives are always making decisions that serve the
13 interests of their farmer members. Just as shareholder-owned companies may defraud shareholders,
14 cooperatives may defraud their farmer members.

15 79. The compensation structure of cooperatives in the dairy industry makes them
16 particularly susceptible to engaging in conduct antagonistic to farmers' interests. Farmers governed
17 by USDA and CDFA prices are paid on a monthly basis for their sale of raw milk, and the values
18 in their milk checks are primarily calculated by USDA and CDFA formulas. Importantly, the
19 revenue earned by cooperatives from processing plants and joint ventures is not included in the
20 monthly payments to farmers. Instead, the managements of cooperatives have the discretion to
21 spend revenue earned from their processing plants on salaries, bonuses, investments, joint ventures,
22 equipment and other expenditures. Even when management distributes revenue from processing
23 plants and joint ventures to members, that distribution – called a patronage dividend – is made
24 annually (rather than monthly) and often in the form of equity (rather than cash) that farmers cannot
25 access until a much later date, typically upon retirement. For example, Maryland & Virginia
26 provides 20 percent of each patronage refund in the form of cash every year and the remainder is
27 maintained as equity that cannot be retrieved by farmers until retirement, after which the equity is
28 paid over an eight-year period.

1 80. Notably, a substantial percentage of the Class is comprised of farmers who were
2 either independent of any cooperative or members of cooperatives unaffiliated with DairyAmerica
3 during the Class Period. Those farmers had no relationship with Defendants or Co-Conspirators
4 and, thus, were not eligible to receive any patronage dividends associated with DairyAmerica's
5 sales.

6 81. Accordingly, dairy farmers directly benefit from and prefer higher monthly milk
7 prices, rather than lower monthly milk prices that increase profits for processing plants and joint
8 ventures. Meanwhile, cooperative managers may prefer to limit monthly milk prices in order to
9 increase revenue from processing plants and joint ventures and thus increase the funds available to
10 management. This is particularly true for cooperatives with substantial ownership interests in
11 processing plants and joint ventures, such as the members of DairyAmerica. Indeed, the three
12 largest processing cooperatives in the country were members of DairyAmerica during the Class
13 Period: California Dairies, Land O'Lakes and Dairy Farmers of America collectively operated 48
14 processing plants and earned more than \$34 billion in annual revenue from them.

15 82. Executives of Defendants and Co-Conspirators have acknowledged that the pricing
16 interests of cooperative organizations may substantially diverge from the pricing interests of their
17 farmer members. [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]

2 83. Lower raw milk prices for dairy farmers was not a mere consequence of Defendants

3 and Co-Conspirators misreporting sales data, but rather was the motivating purpose behind the

4 misreporting. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 **FIRST TYPE OF MISREPORTING:**

12 **INCLUSION OF FORWARD PRICING SALES**

13 A. NASS Instruction to Exclude Forward Pricing Sales

14 84. During the Class Period, the instructions on the weekly NASS reporting form

15 explicitly required the exclusion of information from sales contracts in which the selling price was

16 set 30 days or more before completion of the sales transaction, except for sales conducted via

17 USDA's Dairy Export Incentive Program. Specifically, the instructions on the NASS reporting

18 form list the following as an exclusion: "Forward pricing sales: sales in which the selling price was

19 set (and not adjusted) 30 or more days before the transaction was completed. This exclusion does

20 not include sales through the Dairy Export Incentive Program (DEIP)." DEIP is a program

21 maintained by USDA that awards cash bonuses to exporters who apply to sell dairy products in

22 foreign markets where prevailing prices are lower than the cost of manufacturing those products.

23 85. The surveys conducted by NASS were intended to collect *current* market prices so

24 that dairy farmers' monthly milk checks reflected up-to-date market dynamics. As a result, the

25 instructions on the surveys logically required the exclusion of sales data from forward pricing sales,

26 which contain future rather than current prices.

27 B. Clarity of Instruction to Exclude Forward Pricing Sales

28 86. The NASS instruction to exclude forward pricing sales was not difficult to

1 understand. USDA's Office of the Inspector General concluded that the instruction "is clear." An
2 April 2007 press release issued by NASS states that the "guidelines explicitly exclude the reporting
3 of forward pricing sales in which the selling price was set 30 days or more before the transaction
4 was completed." [REDACTED]

5 [REDACTED]
6 87. DairyAmerica Sales Director White stated that the "instructions provided by NASS
7 in the questionnaires during the period 2002 through February 2007 were entirely clear and in plain,
8 understandable English." He also stated that "in clear and unambiguous written terms, the
9 instructions from NASS on how to fill out the weekly questionnaires instructed DairyAmerica to
10 exclude figures from the sale of NFDm in which the selling price was set (and not adjusted) 30 or
11 more days before the transaction was completed, unless those sales were transacted through" DEIP.

12 88. Sales Director White also explained that the instruction to exclude forward pricing
13 contracts "was intuitive and logical. NASS prices are designed to reflect current market prices.
14 Accordingly, it made perfect sense that NASS would require the exclusion of inputs from long-
15 term contracts." [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 C. DairyAmerica Misreported Forward Pricing Sales to NASS

19 89. From January 2002 through April 2007, DairyAmerica improperly reported forward
20 pricing sales to NASS. In its weekly reports to NASS, DairyAmerica included prices and volumes
21 from sales of NFDm in which the selling price was set more than 30 days before the completion of
22 the transaction. DairyAmerica included these prices in the weekly reports even though the sales
23 were transacted outside of the DEIP.

24 90. During the Class Period, DairyAmerica included prices and volumes from forward
25 pricing sales in weekly reports to NASS in contravention of the clear instruction on the survey form
26 to exclude such data.

27 91. [REDACTED]
28 [REDACTED]

1 [REDACTED]

2 92. A substantial share of the forward pricing sales that DairyAmerica misreported to

3 NASS were derived from contracts for export. From January 2006 through April 2007, more than

4 90 percent of DairyAmerica's contracts for the export of NFDM were transacted outside of DEIP

5 and established selling prices more than 30 days before the completion of the transaction.

6 93. The NFDM prices from forward pricing sales that DairyAmerica improperly

7 reported to NASS were often lower than the NFDM prices that were properly reported to NASS.

8 As a result, DairyAmerica's improper reporting of forward pricing sales artificially reduced the

9 value of raw milk prices calculated by USDA.

10 94. The NFDM prices reported by DairyAmerica between January 1, 2002 and April

11 14, 2007 were aggregated with data from other dairy firms and published in the weekly *Dairy*

12 *Products Prices* report. Once the data were published by NASS, they were utilized by USDA's

13 Agricultural Marketing Service ("AMS") as a component in its formula for establishing raw milk

14 prices in FMMOs during the Class Period.

15 95. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 D. Government Investigation

25 96. An article in the March 2007 issue of the dairy publication *The Milkweed* first

26 alleged that DairyAmerica improperly reported forward pricing sales to USDA. The USDA's

27 Office of the Inspector General concluded that the misreporting of forward pricing sales "was only

28 discovered because of the impact of the article in *The Milkweed* and that the error was not detected

1 by NASS' existing survey and estimation process."

2 97. *The Milkweed* article prompted DairyAmerica CEO Lewis to contact NASS to
3 discuss the company's reporting of NFDM sales. An April 11, 2007 discussion between CEO Lewis
4 and NASS confirmed that DairyAmerica had improperly included forward pricing sales in its
5 weekly reports to NASS. According to USDA, April 11, 2007 is "the date that [the government]
6 determined that there was in fact a price reporting error."

7 98. On April 20, 2007, NASS issued a press release that states, "NASS has determined
8 that one nonfat dry milk plant erroneously included some long-term, fixed prices sales data in its
9 weekly reports. NASS guidelines explicitly exclude the reporting of forward pricing sales in which
10 the selling price was set 30 days or more before the transaction was completed. As part of an annual
11 effort to ensure proper reporting, NASS reiterated these guidelines with all participating plants in
12 October 2006. At that time, the plants indicated they were in compliance."

13 99. On May 9, 2007, nine Senators, including Republican Senators Larry Craig and
14 Arlen Specter, and Democratic Senators Hillary Clinton, Bernie Sanders and Joe Biden, wrote a
15 letter to the Secretary of Agriculture and the Inspector General of USDA. The letter states, "Despite
16 the lack of a formal USDA system to verify the accuracy of this data, we understand that the
17 misreported prices so far have only been connected to one plant out of 39 required to report prices.
18 We also understand that this plant was visited by NASS employees in both April and October 2006,
19 where USDA and the firm went over the prohibition against including forward contracted fixed-
20 price NDM in the data they reported."

21 100. At the requests of the Senators, USDA's Inspector General subsequently launched
22 an investigation into DairyAmerica's reporting errors. On February 14, 2008, the Inspector General
23 issued a report that concluded DairyAmerica had failed to comply with the instruction to exclude
24 forward pricing sales and that farmers had been deprived of millions of dollars in income. The
25 report states:

26 A large dairy firm inappropriately included long-term forward contracted nonfat
27 dry milk volume and price information in their weekly submissions to NASS. We
28 found that this dairy firm has been including data for sales of this type since 2002.
NASS then aggregated the misreported data from this large dairy firm with the
weekly data submitted by other dairy firms for the same reporting period. This

1 caused inaccurate nonfat dry milk aggregated volume and price statistics to be
2 published weekly. . . . Given that incorrect nonfat dry milk prices were factored
3 into the FMMO formula, the published FMMO prices were also incorrect. . . . A
4 representative from the large dairy firm has stated that long-term forward contract
sales began in 2002 and that they inappropriately included data relating to these
sales in their weekly submissions to NASS.

5 101. The Inspector General's report made five recommendations so that USDA could
6 identify and prevent misreporting in the future. None of those recommendations entailed changing
7 the instruction to exclude forward pricing contracts. Indeed, the report found that "the wording on
8 the data collection instrument is clear."

9 102. Secretary of Agriculture Charles F. Connor described DairyAmerica's misreporting
10 as a "significant lapse" in following "clearly articulated instructions."

11 E. Testimony of Doug White

12 103. Doug White, who served as Sales Director of DairyAmerica from 1998 until 2011,
13 submitted a sworn declaration in this case about DairyAmerica's misreporting of forward pricing
14 sales. [REDACTED]

15 104. Mr. White is highly knowledgeable about DairyAmerica's misreporting of forward
16 pricing sales. While employed as Director of Sales, Mr. White's responsibilities included
17 determining the prices at which to sell NFDM, negotiating and entering into contracts for the sale
18 of NFDM, and arranging transactions for the sale of NFDM through DEIP. [REDACTED]

19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 105. Sales Director White was heavily involved in discussions regarding the reporting of
24 sales data to USDA and its impact on raw milk prices, including the reporting of forward pricing
25 sales. [REDACTED]

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[REDACTED]

106. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

107. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

108. In a sworn declaration dated June 18, 2015, Sales Director White admitted that DairyAmerica intentionally misreported forward pricing sale to USDA and that California Dairies and other cooperative members instructed DairyAmerica to do so. Sales Director White swore that: (1) the NASS instruction to exclude forward pricing sales was “entirely clear”; (2) USDA officials met with DairyAmerica’s CEO to ensure that the company was complying with the instruction; (3) he warned both DairyAmerica’s CEO and Controller that the company was failing to comply with the instruction; (4) he advised both DairyAmerica’s CEO and Controller to halt the misreporting of forward pricing sales in the weekly reports to NASS; (5) in response, the CEO said that forward pricing sales would be reported “regardless of whether doing so contradicted the instruction”; (6) senior executives from California Dairies and Co-Conspirators knew of and understood the NASS instruction; (7) those senior executives nonetheless repeatedly directed DairyAmerica to misreport forward pricing sales to NASS; (8) the member cooperatives instructed DairyAmerica to misreport forward pricing sales for the specific purposes of reducing payments to dairy farmers and protecting the profits of their processing plants; and (9) several cooperatives exited DairyAmerica in part to avoid paying a judgment in this case.

109. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

F. DairyAmerica's Executives and Board Members Understood the NASS Instructions

110. During the Class Period, while DairyAmerica improperly reported forward pricing sales to NASS, the executives and Board members of DairyAmerica, including senior executives of California Dairies, understood that the instructions from NASS for completing the weekly surveys required the exclusion of forward pricing sales.

111. According to Sales Director White, during the Class Period, he read the instructions supplied by NASS for completing the weekly reports on "multiple occasions." On each such occasion that he read the instructions, he "understood the instructions to mean exactly what they state," including that "when submitting weekly reports to NASS, DairyAmerica should exclude figures from non-DEIP sales of NFDM in which the selling price was set (and not adjusted) 30 or more days before the transaction was completed."

112. Accordingly, Sales Director White stated that "during the period 2002 through February 2007, when DairyAmerica filled out weekly reports to NASS and included figures from non-DEIP sales of NFDM in which the selling price was set (and not adjusted) 30 or more days before the transaction was completed," he believed that "DairyAmerica was not complying with the clear text of NASS's instructions and was violating the spirit of NASS's instructions."

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113. According to Sales Director White, during the Class Period, he had multiple conversations with CEO Lewis, Controller McAbee and Office Manager Annette Smith about the instructions supplied by NASS for completing the weekly reports. Based on those conversations, Sales Director White concluded that CEO Lewis, Controller McAbee and Office Manager Smith read the NASS instructions during the Class Period and "understood those instructions to mean that DairyAmerica should exclude figures from non-DEIP sales of NFDM in which the selling price was set (and not adjusted) 30 or more days before the transaction was completed."

114. During the Class Period, Sales Director White also had multiple conversations with members of the Board of DairyAmerica, including senior executives of California Dairies, about the NASS reporting instructions. Based on those conversations, Sales Director White concluded

1 that Board Members of DairyAmerica understood “that forward pricing sales were supposed to be
2 excluded from NASS surveys” during the Class Period. Sales Director White specifically
3 concluded that “several members of the board and officers of DairyAmerica – including Keith
4 Gomes, Joe Heffington, Keith Murfield, Joel Clark, David Parrish, William Schreiber, William
5 Neary, Craig Alexander, Richard Mosemann, Jim Baird, and Richard Stammer – understood that
6 the instructions supplied by NASS for the weekly reporting of data from the sale of NFDM required
7 that DairyAmerica exclude figures from non-DEIP sales of NFDM in which the selling price was
8 set (and not adjusted) 30 or more days before the transaction was completed.” During the Class
9 Period, Keith Gomes and Joe Heffington were senior executives of California Dairies.

10 115. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 116. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 117. According to Sales Director White, during the period 2002 through February 2007,
27 many industry players that regularly interacted with DairyAmerica – including export partner
28 Fonterra Cooperative Group (“Fonterra”), traders of NFDM, competitors of DairyAmerica, and

1 customers of DairyAmerica – also “understood that the instructions supplied by NASS for the
2 weekly reporting of data from the sale of NFDM required that DairyAmerica exclude figures from
3 non-DEIP sales of NFDM in which the selling price was set (and not adjusted) 30 or more days
4 before the transaction was completed.” During the Class Period, DairyAmerica exclusively sold
5 products in the export market through the New Zealand-based broker Fonterra.

6 118. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 119. Another document shows that Hoogwegt Dairy, one of DairyAmerica’s largest
11 customers, understood the NASS instruction to exclude forward pricing contracts. Hoogwegt Dairy
12 publishes a monthly newsletter. In the February 2006 issue, the cover article titled “NASS and
13 Product Pricing” states: “Regardless of product, NASS has the following uniform instructions as to
14 what not to include in the price data reported to USDA. The following items are excluded:
15 transportation and clearing charges, intra-company sales, resales of purchased product and forward
16 pricing sales. Specifically any sales in which the selling price was set and not adjusted 30 or more
17 days before the transaction was completed are to be excluded.” [REDACTED]
18 [REDACTED]

19 120. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
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3 [REDACTED]
4 121. [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 G. Sales Director White Warned DairyAmerica's CEO and Controller

15 122. During the Class Period, Sales Director White warned both CEO Lewis and
16 Controller McAbee to halt the inclusion of forward pricing sales in DairyAmerica's weekly reports
17 to USDA.

18 123. During the period 2002 through 2006, Sales Director White had multiple
19 conversations with CEO Lewis in which he "asked Richard Lewis whether DairyAmerica was
20 improperly including figures in the reports from non-DEIP sales of NFDm in which the selling
21 price was set (and not adjusted) 30 or more days before the transaction was completed." During
22 those conversations, Sales Director White told CEO Lewis that he "did not think we should
23 continue to include those figures in the reports to NASS because DairyAmerica was defying
24 NASS's instructions and because the figures reported to NASS were intended to reflect current
25 market prices, not future prices derived from long-term contracts."

26 124. In response to Sales Director White's warnings, "Richard Lewis asserted that
27 DairyAmerica should continue to include in its weekly reports to NASS sales figures from non-
28 DEIP sales of NFDm in which the selling price was set (and not adjusted) more than 30 days before

1 the transaction was completed.” According to Sales Director White, “Richard Lewis stated that
2 sales data from exports should be reported to NASS regardless of whether they were part of long-
3 term contracts and regardless of whether doing so contradicted the instructions from NASS.”

4 125. Sales Director White also warned Controller McAbee that DairyAmerica should halt
5 the misreporting of NFDM sales to USDA. During the period 2002 through 2006, Sales Director
6 White had multiple conversations with Controller McAbee in which he discussed “whether
7 DairyAmerica was improperly including figures from non-DEIP sales of NFDM in which the
8 selling price was set (and not adjusted) 30 or more days before the transaction was completed.”
9 Furthermore, Sales Director White told Controller McAbee that he “did not think we should
10 continue to include those figures in the reports to NASS because DairyAmerica was defying
11 NASS’s instructions and because the figures reported to NASS were intended to reflect current
12 market prices, not future prices derived from long-term contracts.”

13 126. Sales Director White was not the only person who warned CEO Lewis and
14 Controller McAbee to halt the misreporting to USDA. According to Sales Director White’s
15 declaration, between 2002 and 2006, “several other individuals – including traders, Fonterra
16 employees and other DairyAmerica employees – questioned Richard Lewis about whether
17 DairyAmerica was or was not complying with NASS’s instructions for submitting weekly reports
18 and about whether DairyAmerica was improperly including figures from non-DEIP sales of NFDM
19 in which the selling price was set (and not adjusted) 30 or more days before the transaction was
20 completed.”

21 H. USDA Warns DairyAmerica

22 127. In his declaration, Sales Director White states that USDA also warned
23 DairyAmerica to comply with the instruction to exclude forward pricing sales during the Class
24 Period. According to Sales Director White, between the period 2002 and 2006, USDA officials met
25 with CEO Lewis “to ensure that it was complying with, and would continue to comply with,
26 NASS’s instructions for completing and submitting weekly reports, including the instruction that
27 requires the exclusion of figures from non-DEIP sales of NFDM in which the selling price was set
28 (and not adjusted) 30 or more days before the transaction was completed.”

1 128. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 129. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 130. According to Lowell Randel, a director of USDA's Research, Education and
21 Economics Mission Area, NASS representatives reminded DairyAmerica representatives of "what
22 to include in these reports and what to exclude from these reports" every year.

23 I. Defendants and Co-Conspirators Instructed DairyAmerica to Misreport

24 131. Defendants and Co-Conspirators conspired to misreport and intentionally
25 misreported forward pricing sales data to NASS during the Class Period. In his declaration [REDACTED]
26 [REDACTED]
27 [REDACTED]

28 132. [REDACTED]

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135. According to Sales Director White’s declaration, the decision by DairyAmerica “to improperly include, in its weekly reports to NASS, figures from non-DEIP sales of NFDM in which the selling price was set (and not adjusted) 30 or more days before the transaction was completed, and thus limit and prevent the rise of raw milk prices, was taken jointly by Richard Lewis and several executives from cooperatives that were members of DairyAmerica.” Those executives included senior executives from California Dairies.

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J. Defendants and Co-Conspirators Conspired to Intentionally Misreport NFDM Sales in Order to Lower Raw Milk Prices and Maximize Their Profits

138. In his declaration, Sales Director White explains why the Defendants and Co-Conspirators intentionally misreported forward pricing sales: to lower raw milk prices.

139. Sales Director White states in his declaration that when the executives of California Dairies and Co-Conspirators decided “to disobey NASS’s instructions and include, in DairyAmerica’s weekly reports to NASS, figures from non-DEIP, long-term contracts,” those executives did so in order “to shield their cooperatives from sizable losses that would stem from the sale of NFDM through the long-term export contracts executed by Fonterra.”

140. [REDACTED]

141. [REDACTED]

142. On August 1, 2007, in response to news reports of DairyAmerica’s misreporting of forward pricing sales, nine United States Senators signed a letter to the Secretary of Agriculture that states, “[I]t appears that this misreporting involved long term fixed price contracts during a period of rapid increases in NDM prices that in turn resulted in higher input prices for the NDM producers through higher milk prices. There seems to have been a potential financial motive to misreport the relatively low NDM prices of the fixed price contracts and therefore lessen the increases in input costs for the NDM producers.”

143. [REDACTED]

144. [REDACTED]

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[REDACTED]

145. [REDACTED]

[REDACTED]

146. [REDACTED]

[REDACTED]

147. [REDACTED]

[REDACTED]

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150. In his declaration, Sales Director White describes one of the most injurious examples of DairyAmerica misreporting forward pricing sales to protect the profits of its cooperative members. According to Sales Director White, in 2006, DairyAmerica entered into contracts negotiated by Fonterra to export a “substantial and unprecedented quantity of NFDM at comparatively low prices.” Those contracts “involved the sale of NFDM at prices that were set (and not adjusted) more than 30 days before the transaction was completed.”

151. Sales Director White explains, “Soon after DairyAmerica entered into these long-term export contracts with Fonterra, there were major shortages in the production of raw milk. As a result of these reductions in the supply of raw milk, the prices of raw milk began to rapidly climb. If DairyAmerica had complied with NASS’s instructions and excluded sales figures from long-term non-DEIP contracts from its weekly reports to NASS, then raw milk prices would have continued to climb unabated, and DairyAmerica would have incurred substantial losses for its

1 cooperative members when it sold NFDM via Fonterra.”

2 152. Sales Director White continued, “To avoid incurring substantial losses for its
3 cooperative members, DairyAmerica chose to report these sales to NASS regardless of NASS’s
4 instructions and, when submitting weekly reports to NASS, improperly included sales data from
5 non-DEIP contracts in which prices were set (and not adjusted) more than 30 days before the
6 transaction was completed. By doing so, DairyAmerica reported below market prices for NFDM
7 from long-term contracts to NASS.”

8 153. According to Sales Director White, “DairyAmerica knew that the figures it reported
9 to NASS from long-term, non-DEIP contracts were intended to be, and would be, used by the
10 USDA to calculate the prices for raw milk. Consequently, DairyAmerica’s inclusion of sales data
11 from long-term export contracts in its reports to NASS caused raw milk prices to be lowered and
12 thus prevented DairyAmerica and its cooperative members from losing substantial sums of money.”

13 K. Defendants and Co-Conspirators Tracked the Effects of their Misreporting on Milk Prices

14 154. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
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155. [REDACTED]

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[REDACTED]

[REDACTED]

L. Defendants and Co-Conspirators Had No Reasonable Basis for Their Misrepresentations

156. In the alternative, Plaintiffs allege that Defendants and Co-Conspirators negligently misreported forward pricing sales to USDA during the Class Period, in contravention of clear instructions.

157. DairyAmerica had no reasonable grounds for misunderstanding USDA's instruction

1 to exclude forward pricing sales from weekly reports. Sales Director White maintains that “during
2 the period 2002 through February 2007, there was no reasonable grounds for believing that the
3 instructions from NASS for completing and submitting the weekly reports permitted the inclusion
4 of figures from non-DEIP sales of NFDM in which the price was set 30 or more days before the
5 transaction was completed.”

6 158. Sales Director White further notes that, during the period 2002 through February
7 2007, “when DairyAmerica filled out weekly reports to NASS, the employees, officers and board
8 members of DairyAmerica had no reasonable grounds for believing that DairyAmerica complied
9 with NASS’s instructions to exclude figures from non-DEIP sales of NFDM in which the selling
10 price was set (and not adjusted) 30 or more days before the transaction was completed.”

11 159. Sales Director White’s statements are bolstered by the fact that other reporting firms
12 complied with the instruction to exclude forward pricing sales. On January 30, 2008, after
13 conducting an audit of reporting over a 51-week period, Joe Reilly, the Administrator of NASS,
14 wrote, “Our review of resubmitted reports for the earlier 51-week period showed that incorrect
15 reporting was not a widespread problem. The problem was narrowly isolated . . .” Similarly,
16 NASS’s Advisory Committee on Agriculture Statistics characterized DairyAmerica’s misreporting
17 as “an isolated event.”

18 M. USDA Rejected and Revised Misreported NFDM Prices

19 160. As a result of USDA’s investigation into DairyAmerica’s misreporting of forward
20 pricing sales, the agency rejected and revised previously published NFDM prices as well as the
21 monthly raw milk prices that had been calculated using those NFDM figures.

22 161. On April 12, 2007, AMS requested that DairyAmerica revise its reported data for
23 the previous four-week period by excluding any data from forward pricing sales. The next day,
24 AMS published revised market prices for NFDM for that four-week period.

25 162. On or about April 20, 2007, NASS requested that all 39 firms that had previously
26 reported NFDM review their submissions for the period April 29, 2006 through April 14, 2007 and
27 submit revisions within 45 days. A press release issued by NASS stated, “After confirming that one
28 dairy product plant made errors in its weekly reporting of price data for nonfat dry milk, USDA’s

1 National Agricultural Statistics Service (NASS) will ask 39 plants to review and revise weekly
 2 price data and sales volumes reported over the past 52 weeks. . . . Based on this information, NASS
 3 will issue any needed revisions to previously published weekly prices and volumes for nonfat dry
 4 milk. This process will provide producers and the marketplace with a clearer understanding of the
 5 overall impact of the incorrect reports.”

6 163. [REDACTED]
 7 [REDACTED]
 8 [REDACTED]

9 [REDACTED] In comments submitted to USDA in 2007, DairyAmerica wrote that
 10 about 25 percent of all the NFDM reported to NASS during the revision period was improperly
 11 reported as a result of DairyAmerica’s inclusion of forward pricing sales.

12 164. On June 28, 2007, primarily based on the revised data received from DairyAmerica,
 13 NASS published “revised prices and sales volume” for NFDM for each week during the period
 14 April 29, 2006 through April 14, 2007. The revisions supplied by DairyAmerica substantially
 15 affected the NFDM values for each week during that time period.

16 165. On August 1, 2007, nine United States Senators issued a press release which stated,
 17 “We were concerned to learn that the misreporting of NDM was so significant and long-lasting. In
 18 the recent NASS and AMS reports, there was not a single weekly report that did not require
 19 correction and for the most part the corrections were significant. Forty-six weeks out of the past
 20 year had misreporting of over one million pounds of NDM, with one week’s discrepancy at over
 21 13 million pounds. The misreported volume averaged over 22 percent of the originally reported
 22 volume and in one week exceeded 40 percent.”

23 N. Impact of Misreporting on Dairy Farmers

24 166. Defendants’ and Co-Conspirators’ misreporting of forward pricing sales directly
 25 resulted in farmers receiving lower payments for the sale of raw milk. The improper inclusion of
 26 data from forward pricing sales in weekly reports to NASS resulted in lower prices for Class I, II
 27 and IV milk sold by dairy farmers across the country.

28 167. Indeed, when DairyAmerica finally halted the misreporting of forward pricing sales

1 in the spring of 2007, the NFDM prices calculated by USDA skyrocketed and, in turn, the monthly
2 prices of raw milk calculated by FMMOs increased substantially. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17

18 168. On June 28, 2007, the same day that NASS published revised NFDM data, AMS
19 issued a report titled “Impacts of NASS Nonfat Dry Milk Price and Sales Volume Revisions on
20 Federal Order Prices.” In that report, AMS used the revised NFDM data to calculate the impact of
21 the misreporting of forward pricing sales on FMMO prices for the period April 29, 2006 through
22 April 14, 2007. AMS first used the revised NFDM data to calculate corrected FMMO prices for the
23 period April 29, 2006 through April 14, 2007. AMS then calculated that the misreporting of forward
24 pricing sales had deprived farmers of \$49,782,219 for just the period April 2006 through April
25 2007.

26 169. In February 2008, USDA’s Inspector General issued a report verifying that farmers
27 had been deprived of approximately \$50 million during the final year of the misreporting of forward
28 pricing sales. The report states, “NASS’ published nonfat dry milk price statistics are utilized by

1 AMS as a component of its formula for establishing federal milk marketing order (FMMO) prices.
2 Given that incorrect nonfat dry milk prices were factored into the FMMO formula, the published
3 FMMO prices were also incorrect. ... AMS determined that the errors in nonfat dry milk prices for
4 the period of April 29, 2006, through April 14, 2007 had affected 14 months of minimum FMMO
5 prices, resulting in a \$50 million loss to producers.”

6 170. The USDA Inspector General’s report recommended that NASS instruct reporting
7 firms to review their previously submitted data for the period January 2002 through April 2006 and
8 provide necessary revisions. The report states: “NASS should request that all reporting firms review
9 their submitted data, and provide revisions when appropriate for the period covering January 4,
10 2002 through April 22, 2006. NASS should then publish revised weekly nonfat dry milk quantity
11 and price data.” The report explained that “AMS will then be able to utilize accurate information
12 in its milk pricing formulas to calculate corrected FMMO prices for the entire period when
13 misreporting occurred.”

14 171. Following the issuance of the Inspector General’s report on March 5, 2008, NASS
15 sent a letter formally requesting that DairyAmerica revise its data submissions for the period
16 January 2002 through April 2006. [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 USDA had planned to calculate the losses incurred by farmers prior to April 29, 2006 in a special
21 report to be released on June 19, 2008 [REDACTED]

22 [REDACTED]
23 172. [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]

6 173. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 174. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 175. [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 O. USDA Lacks Remedy To Compensate Farmers

19 176. On August 1, 2007, nine Senators issued a press release expressing concern that
20 dairy farmers had not been compensated for DairyAmerica's misreporting errors. The press release
21 states: "[W]e remain concerned that the financial burden continues to be completely borne by dairy
22 farmers who are not responsible for the erroneous data. . . . Besides noting in one report that the
23 milk marketing orders are unable to provide compensation for this underpayment, USDA has not
24 indicated whether compensation from other funds is being contemplated. With dairy farmers
25 bearing the entire burden of the misreported prices, are there plans to compensate dairy farmers for
26 the underpayments?"

27 177. USDA did not and does not have a mechanism to compensate dairy farmers who
28 were deprived of income as a result of DairyAmerica's misreporting of forward pricing sales. The

1 Dairy Marketing Enhancement Act does not provide USDA with the authority to compensate dairy
2 farmers for inaccurate reports to NASS.

3 178. The February 2008 report issued by the Inspector General states, “All of the funds
4 in the FMMO pools for the 14-month period covered by NASS’ revision had previously been
5 disbursed to the milk producers, and corrective disbursements to producers were no longer possible.
6 The FMMO program does not currently include any mechanisms to provide restitution to the milk
7 producers adversely impacted by the reporting error.”

8 P. Establishment Of Verification and Approval Procedures

9 179. The NFDM prices reported by DairyAmerica between January 1, 2002 and April
10 14, 2007 were not verified, approved or audited by NASS, AMS or any other agency of the federal
11 government. The Inspector General of USDA wrote, “AMS did not have the authority to audit a
12 reporting firm’s books when this dairy firm’s reporting errors occurred.” NASS and AMS were
13 first provided with the authority to verify the accuracy of and audit the dairy product prices reported
14 to NASS on August 2, 2007, several months after the end of the Class Period.

15 180. As a result of, and in the aftermath of, DairyAmerica’s misreporting of forward
16 pricing sales, USDA established a system to verify the accuracy of dairy product prices reported to
17 NASS.

18 181. On April 20, 2007, Lowell Randel, director of USDA’s Research, Education and
19 Economics Mission Area, said, “NASS and other USDA agencies are firmly committed to taking
20 all necessary steps to ensure that the data is reported accurately in the future, and as a part of this
21 process, AMS is moving on the rule-making process to establish data verification for mandatory
22 price reporting program for dairy products.”

23 182. On July 3, 2007, AMS published an interim final rule that provided for audits of
24 dairy product price reporting:

25 [T]he use of reliable market prices for dairy products will help assure that milk
26 producers are paid an equitable price for their milk and that milk processors are
27 paying a competitive price for their milk supply. . . . AMS is aware that inaccurate
28 reporting of nonfat dry milk price information to NASS in 2007 resulted in a
reduction in prices paid to producers. . . . An audit-based program of dairy price
reporting would substantially reduce the likelihood of such errors in reporting.

183. As part of the verification procedure established by USDA in 2007, AMS auditors are required to conduct regular visits of dairy firms that account for 80 percent of the reported NFDM volume, and to visit dairy firms that produce the remaining 20 percent of NFDM volume at least once every two years. During each visit, AMS auditors verify that, consistent with the instructions, eligible sales transactions were reported to NASS and that ineligible sales transactions were excluded from reports to NASS.

184. On August 6, 2007, AMS auditors began making data verification visits to plants. The first plant visited was DairyAmerica. The February 2008 report issued by the Inspector General states, “Had the audit program been implemented earlier, the misreporting by the large dairy firm would have been discovered during AMS’ annual audit of the firm, reducing the negative monetary impact on producers.”

**SECOND TYPE OF MISREPORTING:
INCLUSION OF SKIM MILK POWDER SALES**

A. Skim Milk Powder

185. NFDM and SMP are two different powder products that are produced by removing water from pasteurized skim milk. NFDM produced in the United States comes under the labeling and standards jurisdiction of the Food and Drug Administration’s Code of Federal Regulations (CFR). The CFR mandates that NFDM be manufactured solely from milk and does not stipulate any minimum or maximum protein content. Meanwhile, SMP traded within the international market is subject to the Codex Alimentarius Commission standard. The Codex standard for SMP requires a minimum 34% protein level. To meet the minimum 34% protein level, other dairy products – specifically lactose, milk permeate or milk retentate – are added to the powder.

186. [REDACTED]

B. NASS Instructions Exclude Skim Powder

187. The instructions for completing the weekly NASS survey prohibit the reporting of SMP. The NASS instructions only permit the reporting of “USDA Extra Grade and USPH Grade A, non fortified nonfat dry milk.”

1 188. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 189. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 C. DairyAmerica Improperly Included SMP in Reports to NASS

13 190. During the Class Period, DairyAmerica sold substantial quantities of SMP

14 manufactured by its member cooperatives, including California Dairies. DairyAmerica sold the

15 SMP to foreign customers in the export market.

16 191. Despite the clear instructions from USDA mandating the exclusion of SMP from

17 weekly reports, DairyAmerica included sales of SMP in its weekly reports to the agency during the

18 Class Period.

19 192. [REDACTED]

20 [REDACTED]

21 [REDACTED]

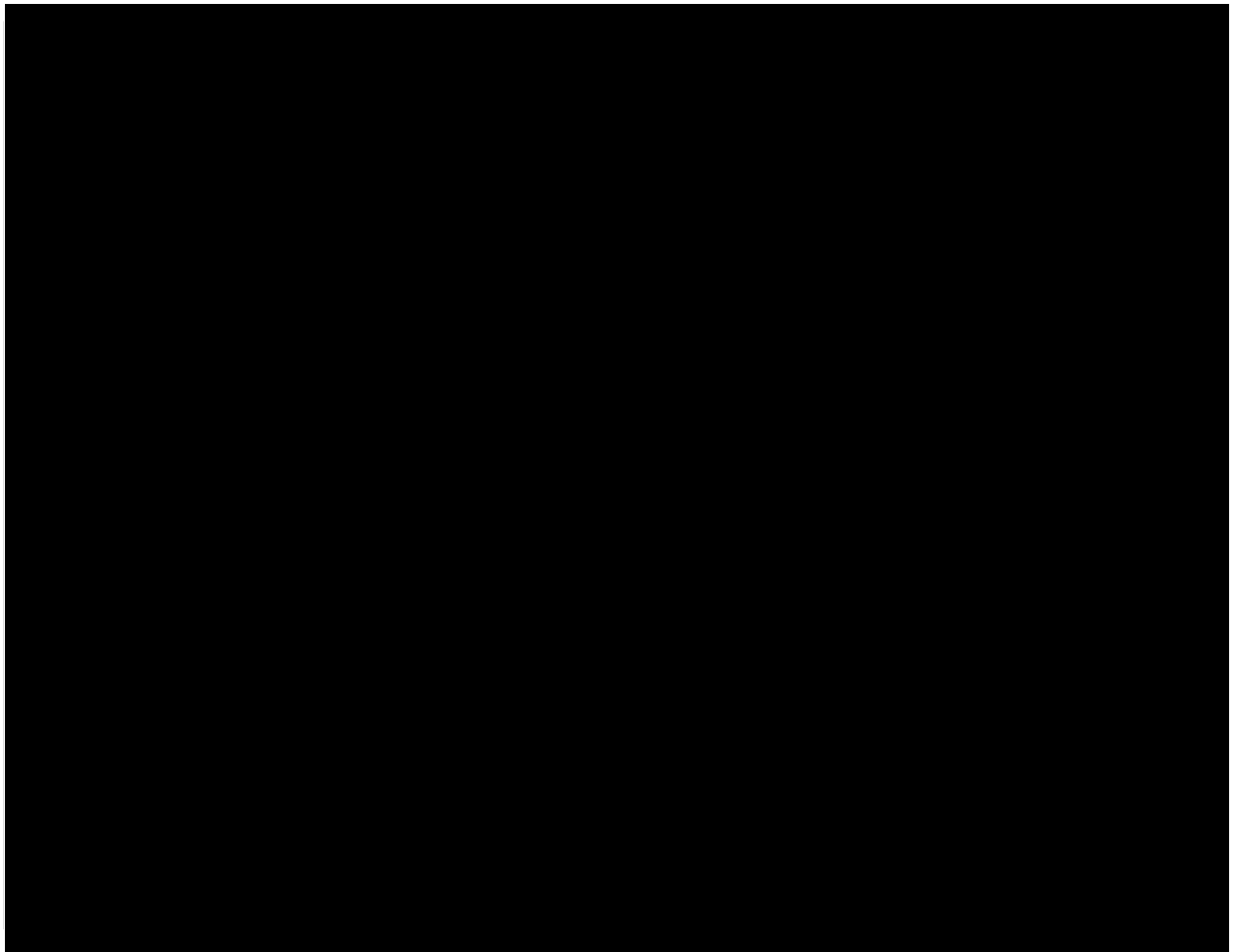
22 [REDACTED]

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25 193. [REDACTED]

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194. [REDACTED]

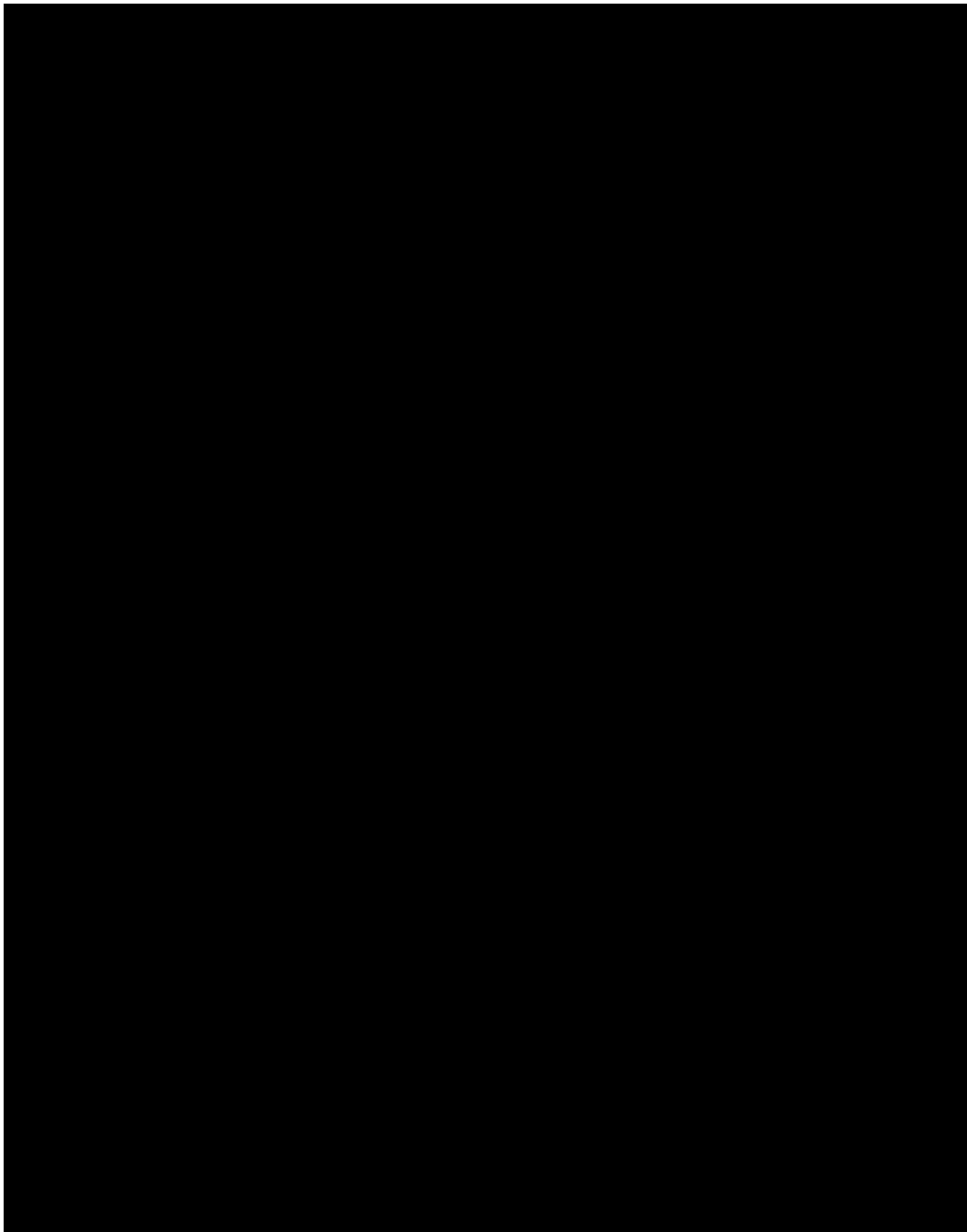
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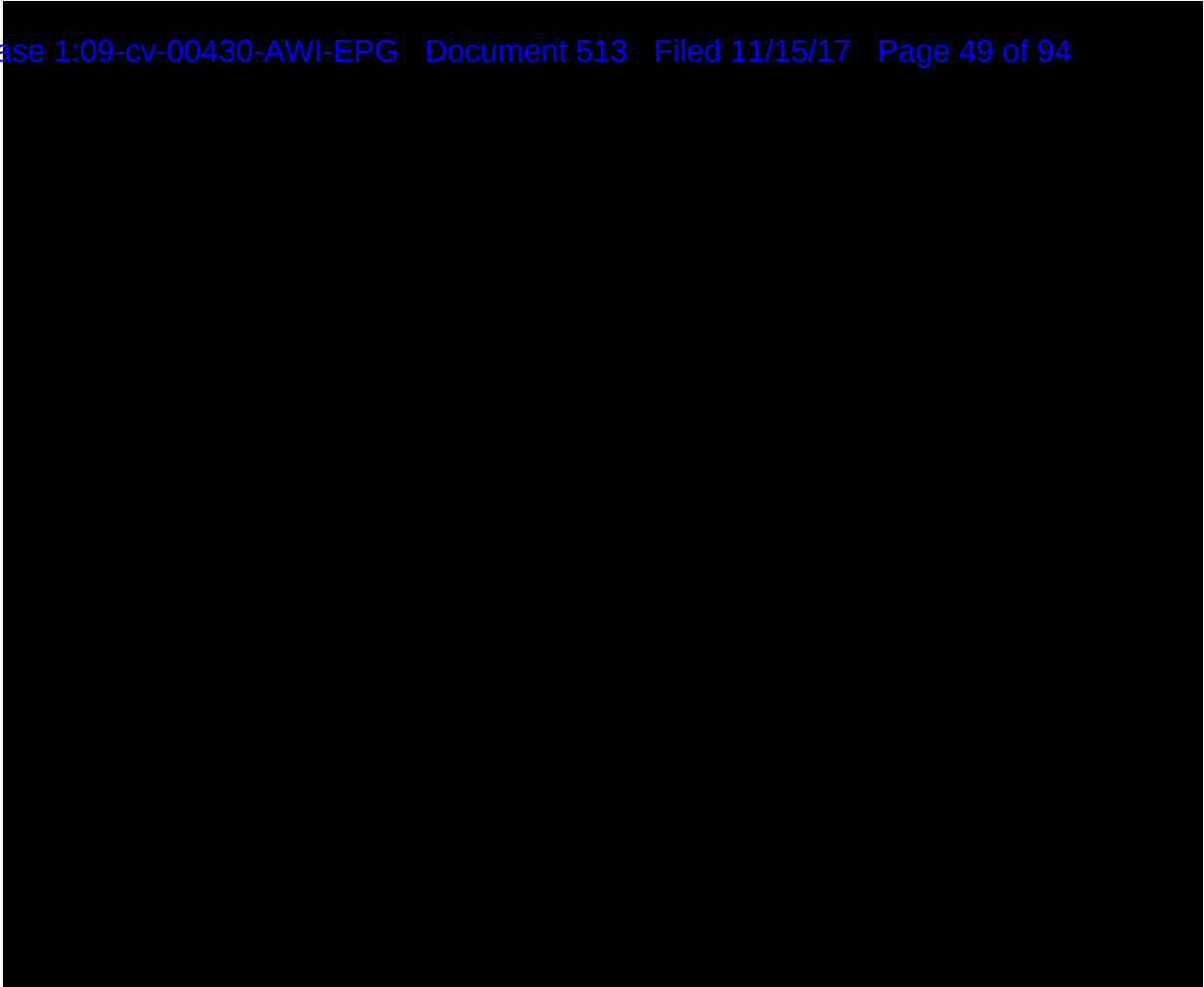


195. [REDACTED]

[REDACTED]

[REDACTED]

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D. Defendants and Co-Conspirators Understood the Instruction to Exclude SMP

196. Defendants and Co-Conspirators understood the clear instructions from USDA to exclude SMP sales from weekly reports. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

197. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 [REDACTED]
2 [REDACTED]
3 198. USDA officials regularly met with DairyAmerica executives during the Class
4 Period to confirm compliance with the agency's instructions to exclude SMP sales. USDA officials
5 communicated with DairyAmerica each year to confirm compliance with USDA's instructions.

6 199. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 E. Defendants and Co-Conspirators Knowingly Misreported SMP to USDA

15 200. Defendants and Co-Conspirators directed DairyAmerica to fraudulently include
16 SMP sales transactions in weekly reports to USDA during the Class Period. Defendants and Co-
17 Conspirators understood the clear instructions from USDA to exclude SMP sales from weekly
18 reports and, nonetheless, knowingly defied those instructions. [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 201. [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 202. Several former senior executives of Fonterra have stated that the vast majority of
4 product sold by Fonterra in the export market on behalf of DairyAmerica was SMP – not NFDM.

5 203. [REDACTED]

6 [REDACTED]

7 [REDACTED] Additionally, whenever a foreign customer purchased SMP
8 from DairyAmerica, the cooperative member that manufactured the product would receive an
9 invoice reflecting the details of the sales transaction, including the identity of the product.

10 204. California Dairies and Co-Conspirators were simultaneously aware of, and
11 approved of, DairyAmerica reporting SMP sales transactions to USDA. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 205. As noted above, the vast majority of product exported by DairyAmerica through
22 Fonterra during the Class Period was comprised of SMP [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 206. [REDACTED]

28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 F. Defendants and Co-Conspirators Misreported SMP Sales to Lower Raw Milk Prices

5 207. Defendants and Co-Conspirators directed DairyAmerica to report SMP sales in
6 order to depress raw milk prices. SMP sales prices in the export market were often lower than
7 NFDM sales prices in the domestic market. By including SMP sales transactions in reports to
8 USDA, DairyAmerica artificially depressed the raw milk prices calculated by USDA that were paid
9 to dairy farmers.

10 G. Defendants and Co-Conspirators Had No Reasonable Basis for Their Misrepresentations

11 208. In the alternative, Plaintiffs allege that DairyAmerica and Co-Conspirators
12 negligently misreported SMP sales data to USDA in contravention of clear instructions.

13 209. During the Class Period, DairyAmerica and its member cooperatives had no
14 reasonable grounds for misunderstanding USDA's instructions to exclude SMP sales from weekly
15 reports. During the Class Period, there was no reasonable ground for believing that the instructions
16 from NASS for completing and submitting the weekly reports permitted the inclusion of figures
17 from SMP sales.

18 210. During the Class Period, when DairyAmerica completed and submitted weekly
19 reports to USDA, Defendants and Co-Conspirators had no reasonable grounds for believing that
20 DairyAmerica had complied with the agency's instructions to exclude figures from SMP sales.

21 **THIRD TYPE OF MISREPORTING:**
22 **DELAYING THE REPORTING OF SALES**

23 A. NASS Instruction Regarding When to Report

24 211. During the Class Period, NASS's survey form clearly required that DairyAmerica
25 report all qualified NFDM sales that were transacted during a particular week. The USDA survey
26 form specifically requested: "Nonfat dry milk sales for the week ending Saturday ____."

27 B. DairyAmerica Intentionally Delayed the Reporting of Select Sales Figures

28 212. Each week during the Class Period, CEO Lewis selected specific sales transaction

1 for DairyAmerica to delay in its reporting to USDA. CEO Lewis delayed the reporting of selected
2 sales figures for the sole purpose of influencing raw milk prices calculated by USDA.

3 213. More often than not, the delayed reported prices selected by CEO Lewis were higher
4 than the prevailing NASS prices. Accordingly, the effect of DairyAmerica deliberately delaying
5 the reporting of sales prices to USDA was to delay and restrain price increases of raw milk, thereby
6 financially injuring dairy farmers.

7 214. Candice Bimemiller is a former employee of DairyAmerica's accounting
8 department. From 2003 through 2009, Ms. Bimemiller served as Credit Manager and reported
9 directly to CEO Lewis, Controller McAbee and Office Manager Smith.

10 215. While employed at DairyAmerica, Credit Manager Bimemiller's responsibilities
11 included collecting the bills of lading from processing plants; sending invoices to domestic
12 customers for the sale of NFDM; matching the figures on bills of lading with sales orders and
13 making any necessary adjustments; inputting and maintaining data reflecting domestic sales and
14 shipments in computer databases; determining the pricing level for domestic customers based on
15 the quantity of NFDM purchased; and assisting with the preparation of weekly sales reports to
16 USDA and CDFA.

17 216. Credit Manager Bimemiller assisted with the reporting of sales of NFDM to USDA
18 by providing final weekly domestic sales figures to Controller McAbee and Office Manager Smith
19 for reporting to USDA. Each week, Controller McAbee and/or Office Manager Smith entered those
20 sales figures into surveys that were provided to USDA.

21 217. On September 9, 2016, Plaintiffs obtained a sworn declaration from Credit Manager
22 Bimemiller. The declaration states, "From 2003 until approximately 2007, I would meet with
23 Richard Lewis each week so that he could review the domestic sales figures. I would print a report
24 of all shipments and sales that were transacted during the week and bring that document to the
25 meetings. During those weekly meetings, Richard Lewis would review the domestic sales figures
26 on the print-out to determine which of those shipments would be billed out that week to be reported
27 to USDA and CDFA. During the weekly meetings, Richard Lewis would regularly instruct me to
28 delay the reporting of certain sales of NFDM. Specifically, he would instruct me to delay, by a

1 week, the reporting of particular NFDM sales that he selected.”

2 218. Credit Manager Bimemiller’s declaration explains, “The sales prices that Mr. Lewis
3 selected for delays in reporting were typically those priced above a specified value and, less
4 frequently, those priced below a specified value.”

5 219. Credit Manager Bimemiller’s declaration further states, “The process of delaying
6 the reporting of NFDM sales was clearly inconsistent with, and in defiance of, instructions that
7 were provided each week by USDA and CDFA. The agencies required that all NFDM be reported
8 during the week in which it was shipped.”

9 220. Credit Manager Bimemiller’s declaration continues, “I informed Richard Lewis that
10 I was not comfortable with DairyAmerica delaying the reporting of sales in a manner that was
11 inconsistent with the agencies’ clear instructions. Accordingly, I asked Richard Lewis to place his
12 initials on my report near any sales figures that he wanted DairyAmerica to delay in its reporting.
13 In response, he laughed and agreed to do so, and thereafter he would mark his initials next to the
14 specific sales figures that he wanted DairyAmerica to delay in its reporting.”

15 C. Cooperative Members Knew and Consented to Delays in DairyAmerica’s Reporting

16 221. California Dairies and Co-Conspirators instructed DairyAmerica to delay the
17 reporting of sales figures in weekly reports to USDA in order to depress raw milk prices.

18 222. California Dairies and Co-Conspirators were aware that DairyAmerica improperly
19 delayed the reporting of certain sales transactions to USDA. [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 D. Defendants and Co-Conspirators Had No Reasonable Basis For Their Misrepresentations

24 223. In the alternative, Plaintiffs allege that Defendants and Co-Conspirators negligently
25 delayed the reporting of sales figures to USDA in contravention of clear instructions.

26 224. During the Class Period, Defendants and Co-Conspirators had no reasonable
27 grounds for misunderstanding USDA’s instructions regarding when to report NFDM sales. During
28 the Class Period, there was no reasonable ground for believing that delaying the reporting of sales

1 figures was compliant with the instructions from USDA for completing and submitting the weekly
2 reports.

3 225. During the Class Period, when DairyAmerica completed and submitted weekly
4 reports to USDA, Defendants and Co-Conspirators had no reasonable grounds for believing that
5 DairyAmerica had consistently complied with the agency's instructions to report NFDM sales
6 during the correct week.

7 **FOURTH TYPE OF MISREPORTING:**
8 **IMPROPER EXCLUSION FROM NAVISION**

9 A. NASS Instruction Regarding Deductions

10 226. During the Class Period, USDA's weekly reporting form specified exactly what
11 NFDM sales data should be included and excluded from the form. USDA's form provided that
12 DairyAmerica should include: "Total volume sold and total dollars received or price per pound."
13 The form also stated that DairyAmerica should exclude: "Transportation and clearing charges from
14 price." Accordingly, to comply with USDA's instructions, DairyAmerica should have first
15 identified the total value received from the sale of qualified NFDM and subsequently deducted
16 transportation and clearing charges before reporting the net value.

17 227. USDA officials communicated with DairyAmerica each year to confirm compliance
18 with those instructions.

19 B. DairyAmerica Made Improper Deductions and Reported Fabricated Prices

20 228. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 229. [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
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[REDACTED]

230. [REDACTED]

[REDACTED]

[REDACTED]

231. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

232. [REDACTED] was an employee of DairyAmerica's accounting department from 2000 through 2009. During the Class Period, she served as Export Documentation Supervisor and reported directly to CEO Lewis, Controller McAbee and Office Manager Smith. She was responsible for the billing and documentation of all export sales, and she tracked and catalogued the prices and volumes of export sales. While Credit Manager Candice Bimemiller handled billing for domestic sales, Supervisor [REDACTED] was responsible for the billing and documentation of exports of powder products.

233. On August 21, 2016, Plaintiffs obtained a sworn declaration from Supervisor [REDACTED] that recounts recurring commissions of fraud. The declaration explains that CEO Lewis and Controller McAbee instructed Supervisor [REDACTED] to create an electronic database that contained two sets of export prices: (1) actual prices paid by foreign customers for the purchase of NFDM and other dairy products and (2) fabricated prices for those export transactions that were concocted internally by CEO Lewis and other DairyAmerica employees. The declaration explains that the fabricated export prices in the database were consistently lower than the actual export prices

1 charged to foreign customers.

2 234. In her declaration, Supervisor [REDACTED] explains that DairyAmerica reported the
3 fabricated export prices, rather than the actual export prices, to USDA from 2001 through at least
4 2008. She states that DairyAmerica reported the fabricated export prices to USDA in weekly
5 reports. She also states that DairyAmerica routinely included the fabricated export prices in
6 applications submitted to federal DEIP to qualify for cash subsidies.

7 235. Supervisor [REDACTED]'s declaration states that "during the period 2001 through at
8 least 2008, each and every week in which DairyAmerica reported prices from export sales of
9 NFDM to the National Agricultural Statistics Service ("NASS"), a division of United States
10 Department of Agriculture ("USDA"), those figures were fabricated by Richard Lewis and his staff
11 and did not accurately reflect export sales transactions. Each and every week in which
12 DairyAmerica reported prices from export sales to NASS, DairyAmerica deliberately reported
13 fabricated prices that were lower than the actual export prices that DairyAmerica charged foreign
14 customers."

15 236. Supervisor [REDACTED]'s declaration further states that "during the period 2001
16 through at least 2008, each and every instance in which DairyAmerica submitted applications to
17 DEIP, DairyAmerica submitted applications containing prices that were fabricated by Richard
18 Lewis and his staff. The fabricated prices submitted by DairyAmerica to DEIP were lower than the
19 actual export prices that DairyAmerica charged foreign customers. DairyAmerica reported the
20 lower fabricated prices for the purpose of qualifying for cash subsidies provided by DEIP."

21 237. Supervisor [REDACTED]'s declaration describes how DairyAmerica engaged in the
22 fraudulent reporting. It states, "In 2001, Richard Lewis and Jean McAbee instructed me to assemble
23 an electronic export documentation database that would contain and track figures relating to export
24 sales of NFDM. This export documentation database included two sets of figures. The first set of
25 figures would consist of accurate figures from the actual sale of NFDM in the export market to
26 foreign customers. The second set of figures would consist of fabricated export sales figures that
27 were created internally at DairyAmerica. As instructed by Richard Lewis and Jean McAbee, I
28 assembled a database that contained both the accurate export figures charged to foreign customers

1 and the fabricated export figures created internally at DairyAmerica.”

2 238. Supervisor [REDACTED]’s declaration further states, “I obtained the accurate export
3 figures from contracts that were signed by foreign purchasers of NFDM. DairyAmerica’s export
4 broker, Fonterra Cooperative Group (“Fonterra”), would facilitate the sale of NFDM to foreign
5 customers. Whenever a foreign customer signed a contract to purchase NFDM from DairyAmerica,
6 a Fonterra employee would send a copy of the contract to me. I would then input the accurate sales
7 figures contained in those contracts into the export documentation database.”

8 239. Supervisor [REDACTED]’s declaration explains, “I obtained the fabricated export
9 figures from invoices that were created internally at DairyAmerica. After a foreign customer
10 entered into a contract to purchase NFDM, DairyAmerica’s staff would create a corresponding
11 invoice that contained lower prices than those contained in the contract signed by the foreign
12 customer. That invoice, which contained entirely fabricated prices, would be provided to the
13 processing plant that shipped out the NFDM to the foreign customer. Those processing plants
14 belonged to the cooperative members of DairyAmerica, including California Dairies. Whenever an
15 invoice was provided to the processing plant, a copy of that invoice was provided to me. I would
16 regularly input the fabricated and artificially lower sales figures contained in such invoices into the
17 export documentation database.” The declaration notes, “The fabricated figures contained in the
18 invoices provided to processing plants were created by Richard Lewis and DairyAmerica employee
19 Frances Zapanta.”

20 240. Supervisor [REDACTED]’s declaration further explains, “The accurate export sales
21 figures contained in the export documentation database that I operated were never inputted into the
22 Navision database maintained by DairyAmerica or into any other accounting or reporting database
23 maintained by the company. By contrast, the fabricated export sales figures contained in the export
24 documentation database that I operated were regularly inputted by other DairyAmerica employees
25 into the Navision database and used for accounting and reporting purposes.”

26 241. Supervisor [REDACTED]’s declaration further asserts, “At the direction of Richard
27 Lewis and Jean McAbee, DairyAmerica only reported the export sales figures contained in the
28 Navision database to NASS. As a result, during the period 2001 through at least 2008,

1 DairyAmerica only reported fabricated, artificially-lower export sales figures to NASS. During that
2 time period, the accurate export sales figures reflecting actual export transactions were never
3 reported to NASS.”

4 242. Supervisor [REDACTED]’s declaration also states, “At the direction of Richard Lewis
5 and Jean McAbee, DairyAmerica only included the export sales figures contained in the Navision
6 database when submitting applications for subsidies to DEIP. As a result, during the period 2001
7 through at least 2008, DairyAmerica only submitted fabricated, artificially-lower export sales
8 figures when submitting applications to DEIP. During that time period, the accurate export sales
9 figures reflecting actual export transactions were never included in applications to DEIP.”

10 243. Supervisor [REDACTED] believes she was terminated because of her knowledge of
11 the fraud described in her declaration. Indeed, her declaration states, “In 2009, approximately six
12 months after the filing of the above-captioned lawsuit, I was terminated from my employment at
13 DairyAmerica. My termination was surprising to me, as I had consistently received very positive
14 reviews for my work. For example, in the most recent review immediately prior to my termination,
15 I received a review score of 56 out of 60 – an excellent figure. I believe that I and several of my
16 employees were terminated from our employment at DairyAmerica so that the company could
17 conceal knowledge of its fraudulent activities. I believe concealing such information was important
18 to DairyAmerica after the USDA launched an investigation into DairyAmerica’s misreporting and
19 after the filing of the above-captioned lawsuit.”

20 244. Plaintiffs served a subpoena on Supervisor [REDACTED] to obtain accounting
21 documents from her, including excerpts of the export documentation database described in her
22 declaration. [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28

1 C. [REDACTED]

2 245. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 246. [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 247. [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 248. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 D. [REDACTED]

22 249. [REDACTED]

23 [REDACTED]

24 250. [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 251. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]

5 E. Defendants and Co-Conspirators Conspired to Misreport Artificially-Discounted Figures

6 252. Defendants and Co-Conspirators conspired to intentionally report artificially-
7 discounted export sales figures in DairyAmerica's weekly reports to USDA, in defiance of clear
8 instructions from the agency.

9 253. First, California Dairies and Co-Conspirators knew which export sales figures were
10 reported to USDA. As Supervisor [REDACTED]'s declaration explains, California Dairies and Co-
11 Conspirators received invoices after each export sale of their product, and those invoices contained
12 the artificially-discounted prices that were reported to USDA. [REDACTED]
13 [REDACTED]
14 [REDACTED]

15 254. Second, California Dairies and Co-Conspirators knew that those reported figures
16 were artificially depressed, as the member cooperatives were fully aware that higher sales prices
17 were paid by foreign customers. [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 Thus California
21 Dairies and Co-Conspirators were fully informed of the prices at which their NFDM and SMP were
22 sold in the export market.

23 255. [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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1 F. [REDACTED]

2 259. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 260. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 261. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 262. [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 263. [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

26 [REDACTED]

27 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

264. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

G. Defendants and Co-Conspirators Had No Reasonable Basis for Their Misrepresentations

265. In the alternative, Plaintiffs allege that Defendants and Co-Conspirators negligently reported improperly-discounted export sales figures to USDA in contravention of clear instructions.

266. During the Class Period, Defendants and Co-Conspirators had no reasonable grounds for believing that the instructions from USDA permitted the reporting of artificially-discounted NFDM sales figures. During the Class Period, there was no reasonable ground for believing that DairyAmerica was complying with the reporting instructions from USDA when it made deductions from total sales figures that were not permitted by those instructions.

267. During the Class Period, when DairyAmerica completed and submitted weekly reports to NASS, Defendants and Co-Conspirators had no reasonable grounds for believing that DairyAmerica had complied with USDA's instructions to accurately report export sales of NFDM.

FIFTH TYPE OF MISREPORTING:
IMPROPER DEDUCTION OF COMMISSIONS

A. USDA Rules Require the Reporting of Commissions and Broker Fees

268. During the Class Period, USDA did not permit the deduction of commissions and broker fees from weekly reports. USDA's reporting form does not list commissions or broker fees as an excludable charge. A 2007 document prepared by USDA specifically states that broker fees should be included in weekly reports to USDA.

B. DairyAmerica Charged Commissions to Customers

269. [REDACTED]

270. [REDACTED]

C. [REDACTED]

271. [REDACTED]

272. [REDACTED]

273. [REDACTED]

[REDACTED]

D. Defendants and Co-Conspirators Consented to the Deduction of Commissions

274. During the Class Period, Defendants and Co-Conspirators consented to the improper deduction of commissions and broker fees from the sales figures that DairyAmerica reported each week to USDA.

275. [REDACTED]

[REDACTED]

E. Defendants and Co-Conspirators Had No Reasonable Basis for Their Misrepresentations

276. In the alternative, Plaintiffs allege that Defendants and Co-Conspirators negligently deducted commissions and broker fees from weekly reports to USDA in contravention of clear instructions.

277. During the Class Period, Defendants and Co-Conspirators had no reasonable grounds for believing that the instructions from USDA permitted the deduction of commissions and broker fees from weekly reports to the agency.

278. During the Class Period, when DairyAmerica completed and submitted weekly reports to USDA, Defendants and Co-Conspirators had no reasonable grounds for believing that DairyAmerica was complying with the reporting instructions when it deducted commissions and broker fees.

**MISREPRESENTATIONS WERE INTENDED TO
LOWER PAYMENTS TO FARMERS**

A. Defendants and Co-Conspirators Intended for their Misrepresentations to be Transmitted to Dairy Farmers in the Form of Lower Milk Prices

279. At the direction of California Dairies and Co-Conspirators, DairyAmerica fraudulently misreported NFDM sales to USDA during the Class Period by (1) reporting forward pricing sales; (2) reporting sales of SMP as NFDM; (3) delaying the reporting of sales prices; (4) reporting artificially-discounted export prices; and (5) deducting commissions and brokers fees. Each of these five forms of fraud was intended to, and did, depress raw milk prices that were received by dairy farmers.

280. The dairy product prices misreported by DairyAmerica to USDA were intended to guide dairy farmers in their business transactions. The misreported prices were key components of USDA formulas that determined the price of raw milk for tens of thousands of dairy farmers across the country.

281. Defendants and Co-Conspirators conspired to misreport and misreported NFDM prices to USDA with the full knowledge and intent that the agency would, in turn, incorporate those misrepresentations in published raw milk prices relied upon by Plaintiffs. Defendants and Co-Conspirators knew that the NFDM prices reported by DairyAmerica to USDA were intended to be, and would be, used in USDA formulas to set the prices that were paid to members of the Class for the purchase of raw milk.

282. The sole purpose of USDA collecting NFDM pricing data from DairyAmerica was for the agency to calculate and set raw milk prices paid to farmers. In comments submitted to USDA on September 4, 2007, DairyAmerica wrote, “The issue of what contracts will be reportable to NASS is not academic. Prices reported to NASS are used by AMS to establish and announce minimum prices paid by handlers pursuant to 7 C.F.R. §§ 1000.50 and 1000.53. There is a direct relationship between the NASS prices reported and the prices announced by AMS for regulated minimum price purposes.”

283. Defendants and Co-Conspirators exploited this direct relationship to protect and maximize their profits by improperly reporting ineligible and artificially-discounted NFDM sales.

1 Defendants and Co-Conspirators intended for DairyAmerica's misreporting of NFDM data to
2 reduce compensation to members of the Class by incorporation of those misrepresentations into
3 USDA formulas that established prices at which members of the Class would sell their raw milk.
4 Defendants and Co-Conspirators made the misrepresentations for the specific purpose of
5 depressing raw milk prices on which Plaintiffs relied.

6 284. When introducing the Dairy Market Enhancement Act of 2000, which makes the
7 reporting of dairy product prices to NASS mandatory, Congressman Ron Kind said: "This
8 legislation will foster a more accurate price and inventory reporting system for dairy products and
9 enable farmers to base business decisions on the most accurate information."

10 B. Defendants and Co-Conspirators Intended for their Misrepresentations to Reduce
11 Payments to Dairy Farmers

12 285. During the Class Period, Defendants and Co-Conspirators understood that lower raw
13 milk prices calculated by USDA would injure all dairy farmers who sold raw milk that was priced
14 by FMMOs, even if such prices served the interests of cooperative-owned processing plants.

15 286. [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 287. [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]”

7 288. [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]

11 289. [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 290. [REDACTED]
17 [REDACTED]
18 [REDACTED]

19 **IMPACT OF MISREPORTING ON DEFENDANTS AND CO-CONSPIRATORS**

20 291. As a result of misreporting NFDM sales figures, Defendants and Co-Conspirators
21 benefitted financially and maximized their profits. By improperly reporting ineligible and
22 artificially-discounted NFDM sales prices, Defendants and Co-Conspirators (1) substantially
23 reduced their cost of manufacturing NFDM and other dairy products; (2) sold powder products at
24 prices above prevailing NASS and CWAP rates; (3) shielded their processing plants from rising
25 raw milk costs during the pendency of forwarding pricing contracts; and (4) prevented dairy product
26 prices from rising to a level that would decrease customer demand. In sum, by misreporting NFDM
27 sales in weekly reports to USDA, Defendants and Co-Conspirators leveraged their dominant market
28 share to depress raw milk prices and maximize their profits from the sale of dairy products.

1 292. During the Class Period, DairyAmerica collected one cent from every pound of
2 powder that it sold. By maximizing the profits of its members, DairyAmerica retained and expanded
3 its membership during the Class Period. Furthermore, by retaining and expanding its membership,
4 DairyAmerica retained and expanded the volume of powder that it sold and thus retained and
5 expanded the revenue that it derived from the one-cent per pound surcharge.

6 **HIDING FRAUD FROM AUDITORS**

7 293. Each month during the Class Period, CDFA sent auditors to the offices of
8 DairyAmerica to ensure that it was reporting NFDM sales accurately. To prevent those auditors
9 from discovering its fraudulent reporting, DairyAmerica intentionally and systematically concealed
10 documents reflecting actual sales transactions from those auditors. Specifically, each month, before
11 the auditors arrived at DairyAmerica offices, Controller McAbee and Office Manager Smith
12 gathered invoices and other accounting documents reflecting actual sales prices, loaded them onto
13 a truck and drove them to an off-site storage facility. Additionally, CEO Lewis and Controller
14 McAbee concealed the electronic databases maintained by Supervisor [REDACTED] and other
15 accounting staff from the auditors; they also instructed senior accounting staff, including
16 Supervisor [REDACTED] and Credit Manager Bimemiller, not to speak to the auditors. As a result,
17 CDFA auditors were prevented from discovering the misreporting schemes engaged by
18 DairyAmerica. Had those CDFA auditors discovered that DairyAmerica was misreporting data,
19 they would have alerted USDA.

20 294. In her sworn declaration, Supervisor [REDACTED] described how DairyAmerica
21 engaged in a scheme to conceal actual export prices from government auditors. Supervisor
22 [REDACTED]'s declaration states, "During the period 2001 through at least 2008, CDFA conducted
23 monthly audits of DairyAmerica. Each month, CDFA would send auditors to the offices of
24 DairyAmerica in Fresno, California. Part of the purpose of those audits was to ensure that
25 DairyAmerica was reporting accurate information to CDFA each week and that DairyAmerica was
26 complying with the CDFA's reporting instructions."

27 295. Supervisor [REDACTED]'s declaration further states, "Each month during the period
28 2001 through at least 2008, approximately one week before CDFA auditors arrived at

1 DairyAmerica's offices to conduct an audit, Jean McAbee and Annette Smith would gather boxes
2 of accounting documents, including the invoices and contracts reflecting accurate export prices,
3 and load them into a truck and drive them to an off-site storage facility. Each month, Jean McAbee
4 and Annette Smith transported the accounting documents containing accurate export sales prices to
5 an off-site storage facility so that CDFA auditors would not see or access those documents during
6 their audits. By doing so, Jean McAbee and Annette Smith prevented the CDFA auditors from
7 discovering the substantial discrepancy between the fabricated export sales prices reported to
8 CDFA and the actual sales prices charged to foreign customers."

9 296. Supervisor [REDACTED]'s declaration further states, "Each month during the period
10 2001 through at least 2008, Richard Lewis and Jean McAbee prohibited CDFA auditors from
11 seeing or reviewing paper or electronic documents (including invoices and contracts) that contained
12 the accurate export prices. Instead, the auditors from the CDFA were only permitted to review data
13 from the Navision database and the invoices that were internally created at DairyAmerica, both of
14 which only contained the fabricated export prices."

15 297. Supervisor [REDACTED]'s declaration also notes, "During the period 2001 through
16 2009, Richard Lewis and Jean McAbee instructed me to refrain from speaking to any CDFA
17 auditors."

18 298. Credit Manager Bimemiller was also instructed not to communicate with CDFA
19 auditors. Her declaration states, "Each month while I was employed at DairyAmerica, auditors from
20 the CDFA would visit DairyAmerica to ensure that the company was complying with the agency's
21 reporting instructions. I was directed by Richard Lewis, Jean McAbee and Annette Smith to not
22 speak with the CDFA's auditors and, if questioned by an auditor, to merely state that DairyAmerica
23 was complying with the reporting instructions. I was also instructed to not make any comments
24 regarding DairyAmerica's practices to Deloitte & Touche LLP, which audited DairyAmerica each
25 year."

26 299. In her declaration, Supervisor [REDACTED] also describes a scheme by
27 DairyAmerica to deceive auditors from the Mexican government. The declaration states, "During
28 the time I was employed at DairyAmerica, the government of Mexico purchased substantial

quantities of NFDM from DairyAmerica. In 2003, the government of Mexico insisted that an audit be conducted of DairyAmerica's export sales. In anticipation of the arrival of auditors from the Mexican government, Richard Lewis instructed me to reconcile the two sets of figures contained in the export documentation database that I operated: the fabricated export sales figures and the accurate export sales figure. Specifically, Richard Lewis instructed me to account for the discrepancy between the fabricated export sales figures and the accurate export sales figures by inventing and adding a non-existent 'administrative fee' to each export sale listed in the database. Richard Lewis told me that I 'had to make the paperwork match.' As a result, in the export documentation database, I added a fake 'administrative fee' to each export transaction, so that each fabricated export sales figure plus the fake "administrative fee" would equal the value of the accurate export sales figure. (Notably, this fake 'administrative fee' was invented and entirely unrelated to the one cent that DairyAmerica retained from each pound of NFDM sold.) Richard Lewis subsequently presented the modified documentation from the export database to the Mexican auditors and persuaded them that the discrepancy between the price charged to the Mexican government and the price reported to the USDA stemmed from an administrative fee – even though no such fee actually existed.”

300. DairyAmerica deceived domestic and foreign government agencies by concealing key accounting documents from their official auditors. DairyAmerica did so in order to implement multiple fraudulent reporting schemes without getting caught.

301. By concealing documents from auditors, DairyAmerica not only protected itself from regulatory scrutiny, but also shielded its member cooperatives, which had directed DairyAmerica to engage in the fraudulent misreporting. DairyAmerica acted as an agent of those member cooperatives when it concealed documents from government auditors.

DEFENDANTS' AND CO-CONSPIRATORS' FRAUDULENT TRANSFER

302. Defendants and Co-Conspirators have already transferred funds, and are planning to fraudulently transfer additional funds, outside of their normal course of business to avoid paying any judgment obtained by Plaintiffs in this case.

303. Member cooperatives provided the sole funds for the creation and operation of

1 DairyAmerica. The Articles of Incorporation of DairyAmerica calculates the property rights and
2 interests of its members according to the proportional value of the unrefunded capital contributions
3 they made to DairyAmerica. The Articles of Incorporation further provides that in the event of the
4 dissolution of DairyAmerica, the residual funds shall be distributed to its owners according to their
5 respective shares of property rights and interests.

6 304. Soon after the filing of this lawsuit, multiple cooperatives terminated their
7 membership in DairyAmerica. In March 2009, just six days after Plaintiffs filed their first
8 complaint, the largest member of DairyAmerica – Dairy Farmers of America – submitted its notice
9 of resignation from the organization. In fact, within nine months of the complaint’s filing, a total
10 of five of the nine cooperative members of DairyAmerica had terminated their memberships.
11 Notably, when those cooperative members exited DairyAmerica, they were refunded all of their
12 capital contributions to the organization. As members of DairyAmerica, each of those five entities
13 would have paid part of any judgment in this case.

14 305. [REDACTED]
15 [REDACTED] According
16 to Sales Director White, the filing of this lawsuit was one of the reasons that at least three
17 cooperatives – Dairy Farmers of America, Maryland & Virginia, and Lone Star – terminated their
18 memberships in DairyAmerica. Sales Director White specifically recalls “statements by several
19 executives from member cooperatives that exited DairyAmerica, including Maryland & Virginia
20 Milk Producers Cooperative Association, Inc. and Lone Star Milk Producers, in which they stated
21 that they were exiting DairyAmerica in part to avoid liability or paying damages in this case. These
22 statements were made at board meetings of DairyAmerica.”

23 306. [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 307. Despite a duty and capacity of DairyAmerica to retain and allocate resources for the
2 purpose of satisfying a judgment in this case, the remaining four members of DairyAmerica,
3 including Defendant California Dairies, intend to terminate their memberships and thus divest
4 DairyAmerica of all assets in the event Plaintiffs make further progress prosecuting their claims.
5 Those four members of DairyAmerica have repeatedly communicated, through DairyAmerica's
6 counsel, that they will terminate their memberships for the sole purpose of divesting DairyAmerica
7 of assets to satisfy a judgment in this case, if Plaintiffs make significant progress prosecuting their
8 claims.

9 308. The bylaws of DairyAmerica provide the Board of Directors with the discretion to
10 establish three different funds: Revolving Capital Fund, Fixed Capital Fund, and Working Capital
11 Revolving Fund. The bylaws of DairyAmerica state that losses, debts or liabilities can be paid from
12 a Revolving Capital Fund, Fixed Capital Fund, and/or Working Capital Revolving Fund.

13 309. On June 20, 2014, Plaintiffs wrote defense counsel to request that DairyAmerica
14 agree to either 1) create a litigation fund from their capital sufficient to cover the amount of its
15 likely liability in this litigation or 2) refrain from returning to any departing member of
16 DairyAmerica all capital contributions that would otherwise be returnable to such departing
17 member. DairyAmerica rejected both options, thus preserving its capacity to "judgment proof"
18 itself by working with California Dairies and Co-Conspirators to funnel assets out of the
19 organization and avoid an anticipated judgment in this action.

20 310. [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
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CONCEALMENT AND TOLLING

311. Throughout the Class Period, Defendants and Co-Conspirators affirmatively concealed from Plaintiffs and Class members the misrepresentations alleged herein and the identity of the entities that directed and made such misrepresentations.

A. Defendants and Co-Conspirators Concealed the Misreporting from USDA

312. Throughout the Class Period, Defendants fraudulently concealed DairyAmerica's misreporting from USDA officials.

313. [REDACTED]

314. [REDACTED]

315. Throughout the Class Period, in multiple written, in-person and telephonic communications with USDA officials, DairyAmerica executives informed USDA officials that the company was fully complying with the agency's reporting instructions, including specific instructions to exclude forward pricing sales and SMP sales. Meanwhile, DairyAmerica was simultaneously and frequently defying USDA's reporting instructions in multiple ways.

B. Defendants and Co-Conspirators Concealed the Misreporting from Auditors

316. Defendants fraudulently concealed their misrepresentations from government and commercial auditors throughout the Class Period.

1 317. Defendants fraudulently concealed its misrepresentations of NFDM sales by
2 systematically hiding critical accounting documents and electronic databases from state auditors.
3 Each month during the Class Period, before CDFA auditors visited DairyAmerica's offices, the
4 company's Controller and Office Manager transferred invoices and other key accounting
5 documents that contained accurate sales prices to an off-site storage facility. Supervisor
6 Ellingsworth explained that by transporting accounting documents to an off-site storage facility,
7 "Jean McAbee and Annette Smith prevented the CDFA auditors from discovering the substantial
8 discrepancy between the fabricated export sales prices reported to CDFA and the actual sales prices
9 charged to foreign customers." CDFA auditors were also denied access to electronic databases
10 reflecting actual sales prices, and senior accounting staff with knowledge of fraudulent schemes
11 were expressly prohibited from communicating with CDFA auditors.

12 318. Defendants fraudulently concealed its misrepresentations of NFDM sales by
13 deceiving auditors from the government of Mexico, which was a major customer of DairyAmerica.
14 In 2003, the Mexican government conducted an audit of DairyAmerica's export sales. To prevent
15 those Mexican auditors from discovering the discrepancy between transacted and reported prices,
16 DairyAmerica created a fake administrative fee in its electronic records. As Supervisor
17 Ellingsworth explained, CEO Lewis persuaded the Mexican auditors "that the discrepancy between
18 the price charged to the Mexican government and the price reported to the USDA stemmed from
19 an administrative fee – even though no such fee actually existed."

20 319. DairyAmerica executives also prohibited senior accounting staff with knowledge of
21 misreporting from making any comments regarding DairyAmerica's reporting practices to Deloitte
22 & Touche LLP, the private accounting firm which audited DairyAmerica each year.

23 C. Defendants and Co-Conspirators Concealed the Misreporting from the Public

24 320. DairyAmerica misrepresented NFDM prices in confidential reports to USDA that
25 were concealed from public review, and Defendants and Co-Conspirators concealed the contents
26 of those reports throughout the Class Period. In 2014, Plaintiffs were first provided access to some
27 of the confidential reports that DairyAmerica submitted to USDA during the Class Period;
28 DairyAmerica first provided Plaintiffs access to hard copy documents in April 2014 and first

1 provided Plaintiffs access to electronic documents in May 2014.

2 321. In March 2007, *The Milkweed* published a story alleging that DairyAmerica had
3 improperly included forward pricing sales in weekly reports to USDA. The publication of the article
4 was the first time that allegations of DairyAmerica's misreporting of forward pricing sales were
5 made public. [REDACTED]

6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 322. Other than the misreporting of forward pricing sales to USDA, there have been no
11 public disclosures of any of DairyAmerica's misreporting practices. There are no references in any
12 public document, publication or government report to DairyAmerica reporting artificially-
13 discounted sales figures, or improperly reporting sales of SMP, or delaying the reporting of sales
14 figures, or improperly deducting commissions from reported sales. *The Milkweed* article and
15 subsequent USDA investigation only addressed DairyAmerica's improper reporting of forward
16 pricing sales; they never addressed the possibility that DairyAmerica was also engaging in four
17 additional misreporting schemes.

18 D. Defendants and Co-Conspirators Concealed the Scope of the Misreporting from USDA
19 Investigators

20 323. The publication of *The Milkweed* article in March 2007 triggered a USDA
21 investigation of DairyAmerica's reporting of forward pricing sales. During that investigation,
22 USDA repeatedly requested that DairyAmerica provide revisions of sales data reported during the
23 entire Class Period in accordance with the NASS reporting instructions. Yet, DairyAmerica only
24 provided revisions for the last year of the Class Period; [REDACTED]

25 [REDACTED] As a result, USDA was only able to calculate
26 the financial impact on farmers of DairyAmerica's misreporting of forward pricing sales for the
27 period April 2006 through April 2007. [REDACTED]

28 the agency was unable to calculate the financial impact on farmers of DairyAmerica's misreporting

1 of forward pricing sales for the period January 2002 through March 2006.

2 324. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 325. During USDA's investigation of DairyAmerica's reporting of forward pricing sales,

7 DairyAmerica never disclosed to USDA that it had misreported SMP sales as NFDM sales, delayed

8 the reporting of sales figures, reported artificially-discounted export prices or deducted

9 commissions from reported sales figures. For that reason, the USDA investigation only narrowly

10 addressed DairyAmerica's misreporting of forward pricing sales.

11 E. Defendants and Co-Conspirators Concealed the Scope of Misreporting from USDA

12 Investigators

13 326. During the course of the litigation of this case, DairyAmerica has repeatedly

14 concealed significant evidence that would have allowed Plaintiffs to discover much of the alleged

15 misconduct earlier.

16 327. In April 2013, the Court ordered DairyAmerica to disclose the identities of all

17 individuals and documents "likely to have discoverable information relevant to the subject matter

18 of this litigation." Instead, DairyAmerica concedes that it only disclosed the identities of individuals

19 and documents that supported its defense. For that reason, when DairyAmerica responded to the

20 Court order in April 2013, it failed to disclose the name of Sales Director White, Supervisor

21 Ellingsworth or Credit Manager Bimemiller and failed to disclose the export documentation

22 database operated by Supervisor Ellingsworth. DairyAmerica knowingly defied the Court order

23 while repeatedly representing to Plaintiffs and the Court that it was, in fact, complying with the text

24 of the order. As a result, the Court imposed multiple sanctions on DairyAmerica for failing to

25 comply with the Court's unambiguous order.

26 328. DairyAmerica also failed to disclose those three key witnesses and documents in

27 responses to several of Plaintiffs interrogatories that were served in November 2013. For example,

28 in response to interrogatories specifically inquiring as to which DairyAmerica employees helped

1 determine the information to include in reports to USDA, and when employees first learned of
2 DairyAmerica's misreporting of forward pricing sales, DairyAmerica failed to mention Sales
3 Director White, Supervisor Ellingsworth or Credit Manager Bimemiller.

4 329. When DairyAmerica produced documents in 2014 in response to Plaintiffs'
5 discovery requests, the production did not include the export documentation database maintained
6 by Supervisor Ellingsworth and other accounting employees, even though multiple versions of the
7 database were in DairyAmerica's possession. Plaintiffs only learned about the database when it
8 communicated with former Supervisor Ellingsworth in August 2016, and Plaintiffs first obtained
9 excerpts of the database by serving a third-party subpoena on former Supervisor Ellingsworth in
10 September 2016.

11 330. As a result of DairyAmerica concealing the identities of key witnesses (including
12 Sales Director White, Supervisor Ellingsworth or Credit Manager Bimemiller) and electronic
13 databases, Plaintiffs were unable to learn of critical facts and misreporting schemes through normal
14 discovery channels in a timely manner. Instead, due to DairyAmerica's fraudulent concealment, it
15 took several years for Plaintiffs to obtain information from those key witnesses and electronic
16 databases and only after launching a comprehensive and time-consuming investigation with the
17 assistance of licensed investigators.

18 331. When Plaintiffs sought to communicate with former Sales Director Doug White,
19 DairyAmerica made additional misrepresentations that significantly delayed such communication.
20 When Plaintiffs inquired as to whether DairyAmerica's counsel represented former Sales Director
21 White, DairyAmerica answered affirmatively on three separate occasions between September 2014
22 and May 2015, even though Sales Director White had refused to retain DairyAmerica's counsel.
23 Those misrepresentations substantially delayed Plaintiffs' ability to contact Sales Director White
24 and obtain unvarnished evidence from him.

25 332. [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]

2 F. Applicable Statutes of Limitations Have Been Tolloed

3 333. Due to the extensive concealment of evidence and misreporting described above,
4 Plaintiffs were prevented from discovering the allegations that DairyAmerica misreported forward
5 pricing sales before the publication of *The Milkweed* article in March 2007.

6 334. Due to the extensive concealment of evidence and misreporting described above,
7 Plaintiffs were prevented from communicating with former Sales Director White before May 2015
8 and were prevented from securing a declaration from him before June 2015. The declaration
9 contains critical direct evidence that Defendants and Co-Conspirators conspired to intentionally
10 misreport forward pricing sales to USDA during the Class Period.

11 335. Due to the extensive concealment of evidence and misreporting described above,
12 Plaintiffs were prevented from communicating with former Manager Bimemiller before August
13 2016 and were preventing from securing a declaration from her before September 2016. The
14 declaration contains critical direct evidence that DairyAmerica intentionally delayed the reporting
15 of handpicked sales to USDA during the Class Period.

16 336. Due to the extensive concealment of evidence and misreporting described above,
17 Plaintiffs were prevented from communicating with former Supervisor Ellingsworth before August
18 2016 and were prevented from securing a declaration from her before August 2016. The declaration
19 contains critical direct evidence that Defendants and Co-Conspirators conspired to report
20 artificially-discounted export prices to USDA during the Class Period.

21 337. Due to the extensive concealment of evidence and misreporting described above,
22 Plaintiffs were preventing from accessing excerpts of the export documentation database before
23 October 2016. The database contains critical evidence that DairyAmerica reported artificially-
24 discounted export prices and SMP sales to USDA during the Class Period. The database also
25 demonstrates that commissions were excluded from DairyAmerica's reports to USDA.

26 338. As a result of Defendants' and Co-Conspirators' fraudulent concealment and
27 pursuant to the delayed discovery rule and doctrine of fraudulent concealment, any applicable
28 statute of limitations affecting the rights of Plaintiffs and Class members has been tolled. Plaintiffs

1 exercised due diligence to learn of their legal rights and, despite the exercise of due diligence, did
2 not discover and could not have discovered the unlawful conduct alleged herein at the time it
3 occurred.

4 **FIRST CAUSE OF ACTION**

5 **(Negligent Misrepresentation, as to Defendants)**

6 339. Plaintiffs reallege each allegation in each of the paragraphs above as if fully set forth
7 herein.

8 340. At all relevant times, DairyAmerica reported to NASS the price and volume of
9 NFDM sold in weekly questionnaires. NASS provided explicit instructions for reporting such
10 information. The instructions required DairyAmerica to (1) exclude forward pricing sales; (2)
11 exclude sales of SMP; (3) report sales for the week in which those sales were transacted; (4) report
12 NFDM sales prices accurately; and (5) include commissions and broker fees.

13 341. During the Class Period, Defendants and Co-Conspirators negligently and in
14 violation of the NASS instructions (1) reported data from forward pricing sales in DairyAmerica's
15 weekly reports to NASS; (2) reported sales of SMP in DairyAmerica's weekly reports to NASS;
16 (3) delayed the reporting of select sales prices in DairyAmerica's weekly reports to NASS; (4)
17 reported artificially-discounted export prices in DairyAmerica's weekly reports to NASS; and (5)
18 deducted commissions and brokers fees from DairyAmerica's weekly reports to NASS.

19 342. During the Class Period, Defendants and Co-Conspirators conspired to instruct and
20 instructed DairyAmerica to (1) include forward pricing sales in weekly reports to NASS; (2) report
21 sales of SMP in weekly reports to NASS; (3) delay the reporting of select sales prices to NASS; (4)
22 report artificially-discounted export prices in weekly reports to NASS; and (5) deduct commissions
23 and brokers fees from weekly reports to NASS.

24 343. Defendants and Co-Conspirators failed to exercise reasonable care when
25 DairyAmerica (1) reported forward pricing sales in weekly reports to NASS; (2) reported sales of
26 SMP in weekly reports to NASS; (3) delayed the reporting of select sales prices to NASS; (4)
27 reported artificially-discounted export prices in weekly reports to NASS; and (5) deducted
28 commissions and brokers fees from weekly reports to NASS. Defendants and Co-Conspirators had

1 no reasonable ground for believing that they or DairyAmerica were complying with the NASS
2 reporting instructions to (1) exclude forward pricing sales; (2) exclude sales of SMP; (3) report
3 sales for the week in which those sales were transacted; (4) report NFDM sales price accurately;
4 and (5) include commissions and broker fees.

5 344. Defendants and Co-Conspirators intended and knew that the NFDM prices that
6 DairyAmerica reported to NASS would be used in FMMO formulas to set the prices that were paid
7 to Class members for the purchase of raw milk. Indeed, the sole purpose of USDA collecting
8 NFDM pricing data from DairyAmerica was for USDA to calculate and set raw milk prices paid to
9 farmers.

10 345. The NFDM prices improperly reported by Defendants and Co-Conspirators had the
11 direct effect of lowering the raw milk prices calculated by USDA using FMMO formulas.

12 346. Members of the Class justifiably and reasonably relied to their detriment on the
13 prices set by USDA under the FMMOs as being accurate prices calculated based on the correct
14 reporting of prices and volumes to NASS. Such reliance was foreseeable and intended by
15 Defendants and Co-Conspirators.

16 347. As a direct and proximate result of Defendants' and Co-Conspirators' negligent
17 conduct and statements, Class members have suffered and are entitled to compensatory and
18 consequential damages, as well as restitution and disgorgement of ill-gotten monies, in amounts to
19 be proven at trial.

20 **SECOND CAUSE OF ACTION**

21 **(Intentional Misrepresentation, as to Defendants)**

22 348. Plaintiffs reallege each allegation in each of the paragraphs above as if fully set forth
23 herein.

24 349. At all relevant times, DairyAmerica reported to NASS the price and volume of
25 NFDM sold in weekly questionnaires. NASS provided explicit instructions for reporting such
26 information. The instructions required DairyAmerica to (1) exclude forward pricing sales; (2)
27 exclude sales of SMP; (3) report sales for the week in which those sales were transacted; (4) report
28 NFDM sales prices accurately; and (5) include commissions and broker fees.

1 350. During the Class Period, Defendants and Co-Conspirators intentionally and in
2 deliberate defiance of the NASS instructions (1) reported forward pricing sales in DairyAmerica's
3 weekly reports to NASS; (2) reported sales of SMP in DairyAmerica's weekly reports to NASS;
4 (3) delayed the reporting of select sales prices in DairyAmerica's weekly reports to NASS; (4)
5 reported artificially-discounted export prices in DairyAmerica's weekly reports to NASS; and (5)
6 deducted commissions and brokers fees from DairyAmerica's weekly reports to NASS.

7 351. During the Class Period, in deliberate defiance of the NASS instructions,
8 Defendants and Co-Conspirators conspired to instruct and instructed DairyAmerica to (1) include
9 forward pricing sales in weekly reports to NASS; (2) report sales of SMP in weekly reports to
10 NASS; (3) delay the reporting of select sales prices in weekly reports to NASS; (4) report
11 artificially-discounted export prices in weekly reports to NASS; and (5) deduct commissions and
12 brokers fees from weekly reports to NASS.

13 352. Defendants and Co-Conspirators knew they were defying explicit reporting
14 instructions from NASS when they conspired to instruct and instructed DairyAmerica to (1) include
15 forward pricing sales in weekly reports to NASS; (2) report sales of SMP in weekly reports to
16 NASS; (3) delay the reporting of select sales prices in weekly reports to NASS; (4) report
17 artificially-discounted export prices in weekly reports to NASS; and (5) deduct commissions and
18 brokers fees from weekly reports to NASS.

19 353. Defendants and Co-Conspirators knew that DairyAmerica was defying explicit
20 reporting instructions from NASS when DairyAmerica (1) included forward pricing sales in weekly
21 reports to NASS; (2) reported sales of SMP in weekly reports to NASS; (3) delayed the reporting
22 of select sales prices in weekly reports to NASS; (4) reported artificially-discounted export prices
23 in weekly reports to NASS; and (5) deducted commissions and brokers fees from weekly reports
24 to NASS.

25 354. Defendants and Co-Conspirators were each aware of the falsity of the
26 misrepresentations when they conspired to instruct and instructed DairyAmerica to (1) include
27 forward pricing sales in weekly reports to NASS; (2) report sales of SMP in weekly reports to
28 NASS; (3) delay the reporting of select sales prices in weekly reports to NASS; (4) report

1 artificially-discounted export prices in weekly reports to NASS; and (5) deduct commissions and
2 brokers fees from weekly reports to NASS.

3 355. Defendants and Co-Conspirators knew that, and intended that, the prices that
4 DairyAmerica reported to NASS would be used in FMMO formulas to set the prices that were paid
5 to Class members for the purchase of raw milk. Defendants and Co-Conspirators knew that, and
6 intended that, the prices paid to Class members for the purchase of raw milk would be artificially
7 depressed when Defendants and Co-Conspirators conspired to instruct and instructed
8 DairyAmerica to (1) include forward pricing sales in weekly reports to NASS; (2) report sales of
9 SMP in weekly reports to NASS; (3) delay the reporting of select sales prices in weekly reports to
10 NASS; (4) report artificially-discounted export prices in weekly reports to NASS; and (5) deduct
11 commissions and brokers fees from weekly reports to NASS.

12 356. Defendants and Co-Conspirators intentionally misreported NFDM sales in weekly
13 reports to NASS for the purposes of lowering the raw milk prices paid to Class members and
14 protecting the profits of Defendants and Co-Conspirators. Defendants and Co-Conspirators
15 intended to cause financial loss to Class members and to obtain financial gain for themselves when
16 they conspired to instruct and instructed DairyAmerica to (1) include forward pricing sales in
17 weekly reports to NASS; (2) report sales of SMP in weekly reports to NASS; (3) delay the reporting
18 of select sales prices in weekly reports to NASS; (4) report artificially-discounted export prices in
19 weekly reports to NASS; and (5) deduct commissions and brokers fees from weekly reports to
20 NASS.

21 357. The NFDM prices improperly reported by Defendants and Co-Conspirators had the
22 direct effect of lowering the raw milk prices calculated by USDA using FMMO formulas.

23 358. Members of the Class justifiably and reasonably relied to their detriment on the
24 prices set by USDA under the FMMOs as being accurate prices calculated based on the correct
25 reporting of prices and volumes to NASS. Such reliance was foreseeable and intended by
26 Defendants and Co-Conspirators.

27 359. As a direct and proximate result of Defendants' and Co-Conspirators' intentional
28 conduct and statements, Class members have suffered and are entitled to compensatory,

consequential, and punitive damages, as well as restitution, disgorgement of ill-gotten monies and reasonable attorneys' fees, in amounts to be proven at trial.

THIRD CAUSE OF ACTION

(Conspiracy to Violate RICO, as to California Dairies)

360. Plaintiffs reallege each allegation in each of the paragraphs above as if fully set forth herein.

361. At all relevant times, California Dairies and Co-Conspirators each constituted a "person" within the meaning of 18 U.S.C. § 1961(3), as each was capable of holding a legal or beneficial interest in property.

362. At all relevant times, the corporation DairyAmerica constituted an "Enterprise" within the meaning of 18 U.S.C. § 1961(4).

363. The Enterprise engaged in and affected interstate and foreign commerce during the Class Period. Among other things, the Enterprise advertised, marketed, and sold NFDM throughout the United States, and it transacted business through the use of the United States mails and interstate telephone wires. The NFDM figures reported by the Enterprise established minimum monthly pay prices for thousands of dairy farmers located around the country, and those figures also guided the terms of domestic and global sales of NFDM.

364. California Dairies and Co-Conspirators are each separate entities, distinct from the Enterprise itself, which unlawfully used the Enterprise as a vehicle through which unlawful activity was committed.

365. The common and shared purpose of the Enterprise was to artificially depress raw milk prices regulated by USDA by knowingly and intentionally reporting sales figures to NASS that were ineligible and artificially-discounted.

366. The Enterprise had an ongoing organization with a framework for making decisions, functioned as a continuing unit, and had an ascertainable structure and system of authority guiding its operations, separate and apart from the pattern of racketeering in which the Enterprise was engaged.

367. During the Class Period, California Dairies and Co-Conspirators each participated

1 in the operation and management of the Enterprise and perpetrated particular racketeering acts in
 2 furtherance thereof. California Dairies and Co-Conspirators participated in the Enterprise through
 3 their control of DairyAmerica.

4 368. [REDACTED]

5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED] Through their
 8 positions on the Board of Directors, California Dairies and each Co-Conspirator instructed
 9 DairyAmerica to repeatedly misreport NFDM sales data to USDA, which constitutes a pattern of
 10 racketeering activity. [REDACTED]
 11 [REDACTED]
 12 [REDACTED]

13 369. California Dairies is a member of DairyAmerica and, in conjunction with Co-
 14 Conspirators, directed and controlled the activities of DairyAmerica during the Class Period.
 15 California Dairies directly participated in the operation and management of the Enterprise,
 16 including through the following senior employees and representatives:

- 17 a) Keith Gomes served as Senior Vice-President and COO of California Dairies and also
- 18 served as President of DairyAmerica and as a member of DairyAmerica's Board;
- 19 b) Richard Cotta served as President and CEO of California Dairies and also served as
- 20 President of DairyAmerica and as chairman of DairyAmerica's Board;
- 21 c) Joe Heffington served as Senior Vice-President and CFO of California Dairies and also
- 22 served on DairyAmerica's Board;
- 23 d) Jim Gomes served as Senior Vice President of Marketing for California Dairies and also
- 24 served on DairyAmerica's Board;
- 25 e) Gary Korsmeier served as President and CEO of California Dairies and also served as
- 26 President of DairyAmerica and as a member of DairyAmerica's Board;
- 27 f) Dave Bush served as Senior Vice President of Operations for California Dairies;
- 28 g) Duane Matheron served as Treasurer of California Dairies and also served on

1 DairyAmerica's Board;

2 h) Jay Te Velde served as a Director of California Dairies and also served on DairyAmerica's
3 Board.

4 During the Class Period, senior executives of California Dairies attended Board Meetings of the
5 Enterprise and knowingly instructed the Enterprise to repeatedly misreport NFDM sales data to
6 USDA in defiance of the NASS instructions.

7 370. Co-Conspirators were also members of DairyAmerica and, in conjunction with
8 California Dairies, directed and controlled the activities of DairyAmerica during the Class Period.
9 Co-Conspirators directly participated in the operation and management of the Enterprise. During
10 the Class Period, senior executives of Co-Conspirators attended Board Meetings of the Enterprise
11 and knowingly instructed the Enterprise to repeatedly misreport NFDM sales data to USDA in
12 defiance of the NASS instructions.

13 371. Beginning no later than January 1, 2002, California Dairies and Co-Conspirators
14 each knowingly and intentionally conspired to violate 18 U.S.C. § 1962(c). The object of this
15 ongoing conspiracy was to conduct or participate in, directly or indirectly, the conduct of the affairs
16 of the Enterprise through a pattern of racketeering activity. The conspiracy executed a scheme to
17 defraud through a pattern of racketeering consisting of distinct predicate acts.

18 372. During the Class Period, California Dairies and Co-Conspirators conspired to direct
19 and conduct the Enterprise to knowingly and intentionally transmit to NASS, by mail or wire,
20 fraudulent price information—*i.e.*, by knowingly (1) including forward pricing sales in weekly
21 reports to NASS; (2) reporting sales of SMP in weekly reports to NASS; (3) delaying the reporting
22 of sales prices in weekly reports to NASS; (4) reporting artificially-discounted export prices in
23 weekly reports to NASS; and (5) deducting commissions and brokers fees from weekly reports to
24 NASS. California Dairies and Co-Conspirators conspired to direct and conduct the Enterprise to
25 knowingly and intentionally transmit to NASS, by mail or wire, fraudulent price information for
26 the common purpose of artificially depressing raw milk prices calculated by USDA. Under the
27 direction and at the express instruction of California Dairies and Co-Conspirators, DairyAmerica
28 repeatedly and knowingly transmitted misrepresentations of NFDM sales to USDA via mail and

1 wires. These actions constitute mail and wire fraud in violation of 18 U.S.C. §§ 1341 and 1343,
2 respectively, and serve as predicate acts to a pattern of racketeering activity pursuant to 18 U.S.C.
3 §§ 1961(1) and (5).

4 373. The “predicate acts” which constitute the alleged “pattern of racketeering activity”
5 pursuant to 18 U.S.C. § 1961(5) involve two categories of “racketeering activity” set out in 18
6 U.S.C. § 1961(1): mail fraud in violation of 18 U.S.C. § 1341; and wire fraud in violation of 18
7 U.S.C. § 1343.

8 374. *Mail Fraud.* Each of the acts indictable under 18 U.S.C. § 1341 (mail fraud)
9 involved California Dairies and Co-Conspirators knowingly causing a matter or thing to be sent or
10 delivered by the Postal Service or a commercial interstate mail carrier with specific intent and for
11 the purpose of executing a scheme or artifice to defraud in that each was material and incidental to
12 an essential element of the scheme. The scheme to defraud included California Dairies and Co-
13 Conspirators knowingly and intentionally reporting NFDM prices to NASS which were ineligible
14 for submission or artificially discounted, as set out above, for the fraudulent purpose of artificially
15 depressing raw milk prices calculated by USDA and depriving Class members of money and
16 property by trick, deceit, chicane, or overreaching.

17 375. *Wire Fraud.* Each of the acts indictable under 18 U.S.C. § 1342 (wire fraud)
18 involved California Dairies and Co-Conspirators knowingly causing the use of interstate wire
19 communication to transmit with specific intent and for the purpose of executing a scheme or artifice
20 to defraud in that each was material and incidental to an essential element of the scheme. The
21 scheme to defraud included California Dairies and Co-Conspirators knowingly and intentionally
22 reporting NFDM prices to NASS which were ineligible for submission or artificially discounted,
23 as set out above, for the fraudulent purpose of artificially depressing raw milk prices calculated by
24 USDA and depriving Class members of money and property by trick, deceit, chicane, or
25 overreaching.

26 376. The scheme to defraud included California Dairies and Co-Conspirators instructing
27 DairyAmerica to misreport NFDM pricing and volume data to NASS – using either a paper
28 questionnaire delivered through interstate mail or an electronic reporting system transmitted by

interstate wire – on each and every week during the period January 4, 2002 through April 22, 2007,
including on or about the following dates:

04/12/07
04/03/07
03/28/07
03/21/07
03/14/07
03/07/07
02/28/07
02/21/07
02/14/07
02/07/07
01/31/07
01/24/07
01/17/07
01/10/07
01/03/07
12/27/06
12/20/06
12/13/06
12/06/06
11/29/06
11/22/06
11/15/06
11/08/06
11/01/06
10/25/06
10/18/06
10/11/06
10/04/06
09/27/06
09/20/06
09/13/06
09/06/06
08/30/06
08/23/06
08/16/06
08/09/06
08/02/06
07/26/06
07/19/06
07/12/06

1	07/05/06
2	06/28/06
3	06/21/06
4	06/14/06
5	06/01/06
6	06/07/06
7	05/24/06
8	05/17/06
9	05/10/06
10	05/03/06

377. The pattern of racketeering activity described above is believed to have begun no later than January 1, 2002, and was open-ended and would have continued indefinitely into the future.

378. The Enterprise's submission of fraudulent weekly reports to NASS gave rise to the expectation by California Dairies and Co-Conspirators that mail and wire communications would be employed when executing the scheme to defraud through a pattern of racketeering.

379. California Dairies and Co-Conspirators knew they were defying explicit reporting instructions from NASS, and thus reporting sales figures that were ineligible or artificially-discounted, when they conspired to instruct and instructed the Enterprise to (1) include forward pricing sales in weekly submissions to NASS; (2) report sales of SMP in weekly reports to NASS; (3) delay the reporting of select sales prices in weekly reports to NASS; (4) report artificially-discounted export prices in weekly reports to NASS; and (5) deduct commissions and brokers fees from weekly reports to NASS.

380. California Dairies and Co-Conspirators knew that the prices paid to Class members for the purchase of raw milk would be artificially depressed when California Dairies and Co-Conspirators conspired to instruct and instructed the Enterprise to (1) include forward pricing sales in weekly reports to NASS; (2) report sales of SMP in weekly reports to NASS; (3) delay the reporting of select sales prices in weekly reports to NASS; (4) report artificially-discounted export prices in weekly reports to NASS; and (5) deduct commissions and brokers fees from weekly reports to NASS.

381. California Dairies and Co-Conspirators agreed, among and between them, to

1 purposefully and intentionally (1) include forward pricing sales in weekly submissions to NASS;
2 (2) report sales of SMP in weekly reports to NASS; (3) delay the reporting of select sales prices in
3 weekly reports to NASS; (4) report artificially-discounted export prices in weekly reports to NASS;
4 and (5) deduct commissions and brokers fees from weekly reports to NASS.

5 382. The misreporting constituted a pattern of racketeering activity in the form of repeat
6 violations of the mail and wire fraud statutes; each week for multiple years, at the direction of
7 California Dairies and Co-Conspirators, DairyAmerica transmitted misrepresentations to NASS by
8 mail or electronically in order to obtain financial gain and cause financial loss to farmers.

9 383. California Dairies and Co-Conspirators facilitated, engaged in and directed the
10 pattern of racketeering with the knowledge of the falsity of the Enterprise's misrepresentations to
11 USDA, and they operated the Enterprise with the specific intent to deceive and defraud dairy
12 farmers and obtain financial gain.

13 384. The predicate acts underlying the pattern of racketeering activity were designed to
14 work in conjunction with each other to assist California Dairies and Co-Conspirators in artificially
15 depressing NASS prices and lowering their costs of acquiring raw milk.

16 385. The pattern of racketeering activity engaged by California Dairies and Co-
17 Conspirators substantially affected interstate commerce, as the misreported sales figures were used
18 to set raw milk prices for thousands of farmers around the country.

19 386. California Dairies and Co-Conspirators received substantial financial benefits from
20 their conducting of the Enterprise. The racketeering activity artificially depressed NASS prices,
21 which: (1) substantially reduced the costs incurred by California Dairies and Co-Conspirators to
22 manufacture and/or acquire NFDM and other dairy products; (2) allowed California Dairies and
23 Co-Conspirators to sell powder products at prices above NASS and CWAP rates; (3) shielded
24 California Dairies and Co-Conspirators from rising raw milk prices during the pendency of
25 forwarding pricing contracts; and (4) prevented the prices of dairy products from rising to a level
26 that would decrease customer demand. As a result, California Dairies and Co-Conspirators earned
27 more profits from the sale of NFDM and other dairy products during the Class Period than they
28 otherwise would have absent the racketeering activity.

387. California Dairies and Co-Conspirators adopted the goal of furthering or facilitating the criminal endeavor of the Enterprise by agreeing to facilitate some of the acts leading to the substantive offenses, and directly by, as described above, engaging in numerous overt acts to establish the pattern of racketeering activity in furtherance of the conspiracy, including instructing the Enterprise to repeatedly misreport NFDM sales data to USDA in contravention of explicit NASS instructions.

388. California Dairies and Co-Conspirators knew that the weekly misreporting of NFDM sales data to USDA, by mail or wire, constituted a pattern of racketeering activity.

389. Based on the foregoing, California Dairies and Co-Conspirators have violated 18 U.S.C. § 1962(d).

390. As a direct and proximate result of racketeering activities engaged by California Dairies and Co-Conspirators, members of the Class have been injured in their business and property in an amount to be proven at trial. These injuries are a direct result of California Dairies' and Co-Conspirators' violations of 18 U.S.C. § 1962. Members of the Class were the intended targets of California Dairies' and Co-Conspirators' violations of 18 U.S.C. § 1962, and their injuries were reasonably foreseeable consequences thereof. There are no independent causes which have intervened between the alleged violations of 18 U.S.C. § 1962 and the injuries to Class members. NASS does not exercise discretion in setting raw milk prices based on NFDM reports; NASS collects and aggregates data from the weekly reports and mechanistically applies the aggregated results to pre-set formulae that turn out raw milk prices. There is a direct one-to-one relationship between the extent to which the misreporting of sales data lowers the reported price of NFDM and the extent to which the computed USDA price for raw milk is depressed.

391. Pursuant to 18 U.S.C. § 1964(c), California Dairies is jointly and severally liable for three times the damages that Class members have suffered, plus the costs of bringing this suit, including attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Individual and Representative Plaintiffs, on behalf of themselves and all others similarly situated, request of this Court the following monetary and equitable relief:

A. An order certifying that the action may be maintained as a class action and appointing Plaintiffs and Plaintiffs' undersigned counsel to represent the Class;

B. Compensatory and consequential damages suffered by Plaintiffs and members of the Class in an amount to be determined at trial, including any damages as may be provided for by statute;

C. Punitive damages;

D. Treble damages;

E. Restitution and disgorgement of ill-gotten monies;

F. Reasonable attorneys' fees;

G. Costs of suit;

H. Pre- and post-judgment interests;

I Preliminary injunctive relief, including but not limited to an order freezing assets and an accounting;

J. Injunctive relief; and

K. Such other and further relief as this Court may deem necessary or proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demands a trial by jury on all issues so triable.

DATED: October 4, 2017

Respectfully submitted,

BERMAN TABACCO

By: /s/ A. Chowning Poppler
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