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Counsel for the Proposed Class

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14 SAN FRANCISCO DIVISION

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

Plaintiffs,

v.

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

Defendants.

Case No. 3:11-CV-04766-JSW

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

**REVISED JOINT CASE
 MANAGEMENT STATEMENT;
 STIPULATION AND ~~PROPOSED~~
 SCHEDULING ORDER**

Judge: Hon. Jeffrey S. White
 Date: February 8, 2013
 Time: 1:30 p.m.
 Courtroom: 11, 19th Floor

1 Pursuant to Civil Local Rule 16-9, Plaintiffs and Defendants National Milk Producers
2 Federation, Cooperatives Working Together; Dairy Farmers of America, Inc.; Land O’Lakes, Inc.;
3 Dairylea Cooperative Inc.; and Agri-Mark, Inc., (collectively, the “Parties”) jointly submit the
4 following revised case management statement.

5 **1. JURISDICTION AND SERVICE**

6 **a. Subject Matter Jurisdiction**

7 **i. Plaintiffs’ Statement**

8 Pursuant to the Court’s Order Regarding Motion to Dismiss Consolidated Amended
9 Complaint Dkt. No. 123 (“Order”), dated October 30, 2012, the Court has jurisdiction over
10 Plaintiffs’ claims.¹

11 **ii. Defendants’ Statement**

12 Defendants have asserted and maintain that the Court lacks subject matter jurisdiction over
13 Plaintiffs’ claims, as 7 U.S.C. § 292 grants exclusive or primary jurisdiction over such claims to the
14 Secretary of the U.S. Department of Agriculture. The Court denied Defendants’ motion to dismiss
15 on those grounds.

16 **b. Personal Jurisdiction and Venue**

17 No party contests personal jurisdiction or venue.

18 **c. Service**

19 Defendants have been served with process and have appeared.
20

21 **2. FACTS**

22 **a. Plaintiffs’ Statement**

23 In 2003, Defendant National Milk Producers Federation (“NMPF”) founded Defendant
24 Cooperatives Working Together (“CWT”), whose members include Defendants Dairy Farmers of
25 America, Land O’Lakes, Dairylea, and Agri-Mark, for the sole stated purpose “to strengthen and
26 stabilize milk prices.” From 2003 to 2010, Defendants conspired to limit the production of raw

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28 ¹ Order at 5 (“the Court finds that it has jurisdiction to consider Plaintiffs’ antitrust claims”).

1 farm milk through ten rounds of premature “herd retirements” in order to increase the price of raw
 2 farm milk and drive smaller dairy farmers out of business.² CWT used nearly all of the revenue
 3 created by the mandatory assessments of its members to pay farmers to prematurely slaughter their
 4 entire dairy herds.³ For example, in 2009, CWT member assessments generated \$219 million in
 5 revenues for CWT, which spent \$217 million on herd reductions.⁴ By 2010 CWT had eliminated
 6 over 2,800 dairy farms from the market.⁵ The herd retirement program was a huge success for
 7 Defendants, who were responsible for removing over 500,000 cows from production, reducing the
 8 nation’s milk supply by approximately 10 billion pounds, increasing cumulative milk revenues by
 9 \$9.55 billion, and thereby increasing the price of milk for consumers.⁶ Plaintiffs are indirect
 10 purchasers who seek to recover excess monies paid for milk and other fresh milk products.

11 b. Defendants’ Statement

12 Defendants deny many of the factual allegations in the Complaint regarding the purpose,
 13 operation, and effect of CWT and the herd retirement program. Defendants maintain that, in any
 14 event, the conduct attributed to them in the Complaint is exempt from liability under the Capper-
 15 Volstead Act, 7 U.S.C. §§ 291-292, Section 6 of the Clayton Act, 15 U.S.C. § 17, and also state
 16 law. Defendants also assert that (a) the filed rate doctrine bars Plaintiffs’ claims for damages,
 17 which assertion the Court rejected at the motion to dismiss stage, and (b) the doctrine of laches
 18 applies to bar Plaintiffs’ claims.

19
 20 **3. LEGAL ISSUES**

21 a. Plaintiffs’ Statement

22 Plaintiffs believe the primary legal issues are as follows:
 23
 24

25 ² ¶¶ 1-2, 62-108.

26 ³ ¶¶ 7, 11.

27 ⁴ *Id.*

28 ⁵ ¶ 109.

⁶ ¶¶ 14, 109, 112-124.

- 1 i. Capper-Volstead’s § 1 antitrust exemption lists “processing, preparing for
2 market, handling, and marketing” but omits producing. Are Defendants’
3 concerted production restraints exempt from antitrust scrutiny under Capper-
4 Volstead?
- 5 ii. If Defendants’ production restraints are not exempt under Capper-Volstead, are
6 Defendants per se liable for conspiring to raise, stabilize, fix, and/or maintain
7 prices of farm milk sold in the U.S. by restricting farm milk production through
8 herd retirements?
- 9 iii. If so, are Defendants therefore in violation of state antitrust and/or unfair and
10 deceptive trade practices statutes, as well as the common law of unjust
11 enrichment in multiple states?
- 12 iv. Is this case appropriate for class certification under Federal Rule of Civil
13 Procedure 23?
14

15 Plaintiffs note that two of the legal issues listed by Defendants below have already been
16 resolved by this Court. First, this Court determined that the U.S. Department of Agriculture does
17 not have exclusive or primary jurisdiction over this action.⁷ Second, this Court determined that
18 the filed-rate doctrine does not bar Plaintiffs’ damage claims.⁸

19 b. Defendants’ Statement

20 Defendants suggest that the legal issues include, but are not limited to:

- 21 i. Whether Plaintiffs’ state antitrust, unfair competition, and unjust enrichment
22 claims are barred by state statutory exemptions and immunities for agricultural
23 cooperatives;
24

25
26 ⁷ See Order at 3-6 (“The Supreme Court has already determined that the Secretary does not
have primary or exclusive jurisdiction.”).

27 ⁸ See Order at 7-10 (“Therefore, the Court denies Defendants’ motion to dismiss based on the
28 filed-rate doctrine.”).

1 b. Defendants' Statement

2 Defendants expect to oppose Plaintiffs' planned motions for class certification and partial
3 summary judgment. As explained below, Defendants believe that there are certain potentially
4 dispositive matters that the Court should consider before class certification, and they intend to seek
5 leave to file a motion for partial summary judgment on those matters shortly. In addition,
6 Defendants recently submitted a motion to transfer to this Court an action brought by a purported
7 direct purchaser, *Brenda Blakeman v. National Milk Producers Federation et al.*, Case No. 3:12-
8 cv-01246-GPM-PMF (S.D. Ill.), which was filed on December 7, 2012 in the U.S. District Court
9 for the Southern District of Illinois, *see* Paragraph 10, *infra*.

10 **5. AMENDMENT OF PLEADINGS**

11 a. Plaintiffs' Statement

12 Plaintiffs do not anticipate filing an amended pleading at this time but may seek leave to do
13 so in the future based on facts learned in discovery or to conform the operative complaint to their
14 motion for class certification or any order from the Court granting same.

15 b. Defendants' Statement

16 Plaintiffs commenced this action on September 26, 2011. On October 28, 2011, Plaintiffs
17 filed a First Amended Class Action Complaint. In an Order dated July 19, 2012, the Court granted
18 Plaintiffs leave to amend and set an August 10, 2012 deadline for plaintiffs "to clarify the facts
19 underlying their theory of predatory conduct." *See* Order (July 19, 2012) (Dkt. No. 105), at 2.
20 Plaintiffs filed a Consolidated Amended Class Action Complaint on August 20, 2012. In an Order
21 dated October 30, 2012, the Court noted that Plaintiffs had not pled facts in support of a theory of
22 fraudulent concealment, and set a deadline of November 15, 2012 for Plaintiffs to amend their
23 pleading to include such facts. *See* Order (Oct. 30, 2012) (Dkt. No. 123), at 10 n.6. Plaintiffs did
24 not further amend the complaint by that date. Plaintiffs must seek leave under Federal Rule of
25 Civil Procedure 15(a)(2) before any further amendments may be made.
26
27
28

1 **6. EVIDENCE PRESERVATION**

2 The Parties certify that they have reviewed the Guidelines Relating to the Discovery of
3 Electronically Stored Information (“ESI Guidelines”), and that they have met and conferred
4 pursuant to Federal Rule of Civil Procedure 26(f) regarding reasonable and proportionate steps
5 taken to preserve evidence relevant to the issues reasonably evident in this action. The parties have
6 come to agreement on a stipulation and proposed preservation order, which they concurrently file
7 with the Court for approval.

8 **7. DISCLOSURES**

9 The Parties are making their initial disclosures on February 1, 2013, in accordance with the
10 agreed upon schedule further described in Section 17 below.

11 **8. DISCOVERY**

12 The parties anticipate written discovery (including document requests, interrogatories, and
13 requests for admission) as well as deposition discovery. The Parties also anticipate that it will be
14 necessary to engage in some third-party discovery. Plaintiffs have recently served document
15 requests and requests for admissions.

16 **Discovery Plan**

17 **a. Initial Disclosures (Fed. R. Civ. Proc. 26(f)(3)(A))**

18 The Parties made their initial disclosures on February 1, 2013, in accordance with the
19 agreed upon schedule further described in Section 17 below.

20 **b. Subjects, Schedule, and Phasing of Discovery (Fed. R. Civ. Proc. 26(f)(3)(B))**

21 Plaintiffs believe discovery is needed on numerous subjects, including but not limited to the
22 following: the creation and purpose of CWT; its membership; annual assessments collected by
23 CWT and the annuals payments made relating to herd retirements; the effect of CWT’s programs
24 on the supply of milk; the effect of CWT’s programs on the number of milk farms; the effect of
25 CWT’s programs on milk prices; communications between CWT and its members regarding the
26 price of milk; CWT’s policies of requiring any farmer participating in the herd retirement program
27 to retire all cows wherever located and to withdraw entirely from dairy farming for at least one

1 year; and any attempts to impede the ability of a farmer who had participated in the herd retirement
2 program from producing and/or selling milk again. Defendants believe discovery is needed on,
3 among other subjects, each of the factors relating to class certification under Rule 23, plaintiff's
4 alleged status and activities as "indirect purchasers," the relationship, if any, between plaintiffs and
5 any absent putative class members, and each of the defendants, and whether plaintiffs sustained
6 any antitrust injury or other damage.

7 Discovery has commenced and will proceed in accordance with the parties' stipulated
8 schedule (below). The parties agree that document discovery necessary for the class certification
9 motion should be concluded by August 1, 2013.

10 Defendants also respectfully suggest that the Court coordinate discovery in this case with
11 proceedings in the purported direct purchaser action *Brenda Blakeman v. National Milk Producers*
12 *Federation et al.*, Case No. 3:12-cv-01246-GPM-PMF (S.D. Ill.), an action that Defendants have
13 moved to transfer to this Court from the U.S. District Court for the Southern District of Illinois, *see*
14 Paragraph 10, *infra*.

15 **c. Electronically Stored Information (Fed. R. Civ. Proc. 26(f)(3)(C))**

16 Consistent with the Court's model order, the Parties have been negotiating the terms of
17 proposed orders to govern the preservation and discovery of electronically stored information
18 ("ESI"). The parties have come to agreement on a stipulation and proposed preservation order and
19 a stipulation and proposed ESI protocol, which they concurrently file with the Court for approval.
20 The parties agree to meet and confer regarding non-custodial ESI systems and the terms of a search
21 term protocol by February 28, 2013.⁹

22 _____
23 ⁹ Defendants have defined custodial file as follows: A document or electronic file within the
24 administrative control of a particular person. For example, the data custodian of an email is the
25 owner of the mailbox which contains the message, and the custodian of a document is the person
26 who either maintains administrative control of a document within his or her own files, maintains in
27 a regular place a document or electronic file, or, for electronic files, whose name can be searched
28 on the system metadata for such record(s) in a shared or network drive, system, or server. The
definition of a custodial file does not include any electronic file stored on a shared or network
drive, system, or server that is maintained by, revised by, and/or accessible to multiple persons,
with the exception that such a document or electronic file is the custodial file of the person who
created and regularly maintains such electronic file if the person's name can be searched on the
system metadata for such record(s).

1 **d. Depositions**

2 The parties agree that Plaintiffs may notice up to 10 depositions for each Defendant, and
3 may allocate those among fact witnesses and/or 30(b)(6) witnesses. A 7-hour time limitation will
4 apply to each noticed deposition. Defendants together may jointly notice the deposition of each
5 named plaintiff in this action. These deposition numbers are exclusive of experts and third party
6 depositions.

7 **e. Issues About Claims of Privilege (Fed. R. Civ. Proc. 26(f)(3)(D))**

8 There are currently no issues about claims of privilege.

9 **f. Modification of the Discovery Rules (Fed. R. Civ. Proc. 26(f)(3)(E))**

10 The Parties do not intend to enlarge the discovery limitations imposed by the Federal Rules
11 of Civil Procedure at this time but reserve the right to seek to modify these limitations if it becomes
12 necessary.

13 **g. Other Orders (Fed. R. Civ. Proc. 26(f)(3)(F))**

14 The Parties have negotiated the terms of a stipulation and proposed order regarding the
15 protection of confidential documents and the treatment of inadvertently produced privileged
16 materials. The parties have come to agreement on a stipulation and proposed protective order,
17 which they concurrently file with the Court for approval.

18 **9. CLASS ACTIONS**

19 a. Plaintiffs' Statement

20 Plaintiffs intend to move for certification of 27 state classes, asserting claims under state
21 antitrust statutes and unfair and deceptive trade practices statutes, as well as claims for unjust
22 enrichment. Each state class would be defined as all residents who purchased for their own use and
23 not for resale milk or fresh milk products (including cream, half & half, yogurt, cottage cheese,
24 cream cheese, and sour cream). As more fully set forth in section 17 below, Plaintiffs propose to
25 move for class certification by September 15, 2013.

26 If custodians' names cannot be searched on the system metadata in certain shared or network
27 drives, systems, or servers, the Parties should identify these and provide additional information
28 regarding the shared or network drives, system, or servers to be searched for ESI on a non-
custodial basis. The parties agree to exchange this information by February 28, 2013.

1 judgment interest on such monetary relief; (d) equitable relief in the form of restitution and/or
2 disgorgement of all unlawful or illegal profits received by Defendants as a result of their unlawful
3 conduct; (e) the costs of bringing this suit, including reasonable attorneys' fees; and (f) all other
4 relief to which Plaintiffs and class members may be entitled at law or in equity. Plaintiffs'
5 calculation of damages is in large part dependent on information to be obtained during discovery in
6 this action. Therefore, Plaintiffs have not yet computed damages.

7 b. Defendants' Statement

8 Defendants deny that Plaintiffs are entitled to any of the relief sought. Given that Plaintiffs
9 have not yet stated how they intend to calculate damages, it is too early for Defendants to describe
10 the bases on which they contend damages should be calculated if any liability were to be established.

11 **12. SETTLEMENT AND ADR**

12 The Parties have complied with ADR L.R. 3-5. The Parties discussed the possibility of
13 engaging in alternative dispute resolution during the meet and confer process, and preliminarily
14 agree that mediation is preferable to other forms of ADR for this case. The Parties believe that
15 settlement discussions are premature at this time.

16 **13. CONSENT TO MAGISTRATE JUDGE FOR ALL PURPOSES**

17 The Parties do not consent to have a magistrate judge conduct all further proceedings.

18 **14. OTHER REFERENCES**

19 The Parties agree that this action is not suitable for reference to binding arbitration or a
20 special master. The United States Judicial Panel on Multidistrict Litigation denied a motion filed
21 by plaintiffs in *Stephen L. LaFrance Holding, Inc.* to centralize this action and all similar actions in
22 a single judicial district for coordinated pretrial proceedings.

23 c. Plaintiffs' Statement

24 Should additional actions regarding the same subject matter be filed against Defendants,
25 they can file motions to transfer them to this Court, as Defendants have done with respect to the
26 *Blakeman* action.

1 d. Defendants' Statement

2 Should additional actions regarding the same subject matter be filed against Defendants,
3 however, this action may then be suitable for reference to the Judicial Panel on Multidistrict Litigation.

4 **15. NARROWING OF ISSUES**

5 a. Plaintiffs' Statement

6 The Parties have not identified any issues that can be currently narrowed by agreement.
7 Plaintiffs intend to move for class certification as soon as practicable based on Defendants'
8 anticipated timing for production of documents. Whether Defendants' production restraints are
9 exempt under the Capper-Volstead Act is a significant threshold issue to resolution of the lawsuit.

10 b. Defendants' Statement

11 Defendants believe that the case can be narrowed significantly by considering certain
12 discrete legal issues that can be resolved with minimal discovery, including, without limitation,
13 whether some or all of Plaintiffs' state antitrust, unfair competition, and unjust enrichment claims
14 are barred by state statutory exemptions and immunities for agricultural cooperatives.

15 **16. EXPEDITED SCHEDULE**

16 At this time the Parties do not believe that an expedited trial schedule is appropriate.

17 **17. SCHEDULING**

18 The parties stipulate to the following case management schedule:

19 Last day for Rule 26(a) Initial Disclosures	February 1, 2013
20 Initial Case Management Conference	February 8, 2013
21 Last day to negotiate preservation order	February 12, 2013
22 Last day to negotiate ESI protocol	February 12, 2013
23 Last day to exchange custodian lists (including positions and dates) and information 24 sufficient to identify relevant shared or network drives, 25 systems, or servers in which custodians' names cannot be searched on the system metadata	February 28, 2013
26 Last day to negotiate re a search term protocol	February 28, 2013
27 Last day to meet and confer re custodians/shared drives	March 14, 2013

1	Last day to commence rolling production	May 1, 2013
2	Last day to produce documents necessary	
3	for class certification	August 1, 2013
4	Last day for motion for class certification	September 15, 2013
5	Last day to file updated Case Status Report	December 6, 2013
6	Last day to file Opposition to motion for	
7	class certification	December 13, 2013
8	Second Case Management Conference	December 13, 2013
9	Last day to file Reply in support of motion	
10	for class certification	February 21, 2014
11	Fact discovery closes	February 28, 2014
12	Hearing on motion for class certification	April 4, 2014
13	Last day for expert reports on merits	TBD
14	Last day for depositions of experts	TBD
15	Last day for responsive expert reports	TBD
16	Close of expert discovery	TBD
17	Last day to file dispositive motions	TBD
18	Oppositions to dispositive motions	TBD
19	Reply briefs in support of dispositive motions	TBD
20	Hearing on dispositive motions	TBD
21	Motions in limine	TBD
22	Oppositions to motions to limine	TBD
23	Joint Proposed Final Pretrial Order	TBD
24	Pre-trial Conference	TBD
25	Trial	TBD

18. TRIAL

a. Plaintiffs' Statement

Plaintiffs have requested a jury trial that they expect to last approximately three weeks.

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20. OTHER MATTERS

There are no other matters at this time.

Respectfully submitted,

DATED: February 12, 2013

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*Attorneys for Defendant National Milk Producers
Federation*

I, Elaine T. Byszewski, attest that concurrence in the filing of this document has been obtained from each of the other signatories.

[PROPOSED] ORDER

1
2 BASED ON STIPULATION OF THE PARTIES, THE FOLLOWING SCHEDULE IS ENTERED
3 FOR THIS CASE:

4	Last day for Rule 26(a) Initial Disclosures	February 1, 2013
5	Initial Case Management Conference	February 8, 2013
6	Last day to negotiate preservation order	February 12, 2013
7	Last day to negotiate ESI protocol	February 12, 2013
8	Last day to exchange custodian lists	
9	(including positions and dates) and information	
10	sufficient to identify relevant shared or network drives,	
11	systems, or servers in which custodians' names	
12	cannot be searched on the system metadata	February 28, 2013
13	Last day to meet and confer re custodians/shared drives	February 28, 2013
14	Last day to negotiate re a search term protocol	February 28, 2013
15	Last day to meet and confer re custodians	
16	and shared drives	March 14, 2013
17	Last day to commence rolling production	May 1, 2013
18	Last day to produce documents necessary	
19	for class certification	August 1, 2013
20	Last day ^{to file} for motion for class certification	September 15, 2013
21	Last day to file updated case status report	December 6, 2013
22	Last day to file Opposition to motion	October 11
23	for class certification	December 13, 2013
24	Second Case Management Conference	December 13, 2013
25	Last day to file reply in support of motion for	October 25, 2013
26	class certification	February 21, 2014
27	Fact discovery closes	February 28, 2014
28	Hearing on motion for class certification	November 15, 2013
		April 4, 2014
	Last day for expert reports on merits	TBD
	Last day for depositions of experts	TBD

1	Last day for responsive expert reports	TBD
2	Close of expert discovery	TBD
3	Last day to file dispositive motions	TBD
4	Oppositions to dispositive motions	TBD
5	Reply briefs in support of dispositive motions	TBD
6	Hearing on dispositive motions	TBD
7	Motions in limine	TBD
8	Oppositions to motions to limine	TBD
9	Joint Proposed Final Pretrial Order	TBD
10	Pre-trial Conference	TBD
11	Trial	TBD

12 **IT IS SO ORDERED**

13
14 Dated: February 13, 2013


15 Hon. Jeffrey S. White
16 UNITED STATES DISTRICT JUDGE

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