

# Exhibit 1

## SETTLEMENT AGREEMENT AND RELEASE

Subject to Court approval, Plaintiffs Christopher O'Connor, Kevin O'Connor, James Adam Cox, Michael Fraser and Robert McNally ("Named Plaintiffs"), individually, and on behalf of a certified class of other persons, and Defendants Oakhurst Dairy and Dairy Farmers of America, Inc. ("Defendants") have entered into this Settlement Agreement and Release ("Settlement Agreement") to settle all issues between them. The signatories to this Settlement Agreement are jointly referred to as the "Parties." The interpretation of this Settlement Agreement shall be governed by the statutes and common law of Maine, excluding any that mandate the use of another jurisdiction's laws.

### RECITALS

WHEREAS, in *Christopher O'Connor, et al. v. Oakhurst Dairy, et al., United States District Court for the District of Maine, Case No. 2:14-cv-00192-NT*, employees of Defendant Oakhurst Dairy who worked as delivery drivers assigned to work at an Oakhurst location in Maine between May 5, 2008 and August 29, 2012 have raised individual and class claims of allegedly unpaid overtime and untimely paid wages on behalf of themselves and others ("the Action").

WHEREAS, the Named Plaintiffs and Defendants have litigated this Action by participating in extensive motion practice and discovery (including depositions of the Named Plaintiffs, exchanges of documents, data and other information) and by twice mediating the matter over the course of several days with the assistance of mediator Mark Irvings and ultimately with a Judicial Settlement Officer, the Honorable John C. Nivison.

WHEREAS, Plaintiffs' Counsel have investigated the facts relating to the claims alleged in this Action and have concluded that there are numerous disputed issues of fact and law

relating to the claims asserted in this Action, there will be expense and time necessary to prosecute this Action through trial, as well as risks, uncertainty, and costs of further prosecution, the relative benefits conferred upon the Settlement Class Members under this Settlement Agreement are substantial, and thus the Settlement on the terms set forth in this Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members.

WHEREAS, Defendants deny Plaintiffs' allegations, and further deny any wrongdoing, or legal liability, arising from any facts or conduct alleged in the Action, but have concluded further litigation would be protracted, expensive, and would divert management and employee time and attention, there are uncertainties and risks inherent in the Action, and it is appropriate to fully and finally settle the Action in the manner, and upon the terms, set forth in this Settlement Agreement, so long as neither this Settlement Agreement, nor any document referred to or contemplated in this Settlement Agreement, nor any action taken to carry out this Settlement Agreement, may be construed as, or may be used as, an admission, concession, or indication by, or against, Defendants, of any fault, wrongdoing, or liability of any kind, and the Settlement Agreement shall not be disclosed, referred to, or offered into evidence against Defendants in any further proceeding in this Action, or in any other civil, criminal, or administrative action or proceeding, except for purposes of approving, interpreting, or enforcing the Settlement.

NOW THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN the Parties, subject to the approval of the Court, that the Action shall be settled, under the following terms and conditions:

## **DEFINITIONS**

Wherever used in this Settlement Agreement, and in all of its exhibits, the terms set forth below shall have the following meanings:

1. The “Settlement Class” or “Settlement Class Members” means: Named Plaintiffs and all current and former Route Sales Drivers assigned to work at an Oakhurst location in Maine who performed compensable work as employees of Oakhurst Dairy between May 5, 2008 and August 29, 2012 and received from Oakhurst Dairy at least one non-zero dollar check for compensable work during that time period. The total number of class members is about 127.

2. “Named Plaintiffs” means Christopher O’Connor, Kevin O’Connor, James Adam Cox, Michael Fraser and Robert McNally.

3. “Plaintiffs’ Counsel” means Jeffrey Neil Young, David G. Webbert, and Carol J. Garvan of Johnson, Webbert & Young, LLP.

4. “Complaint” means the operative complaint filed in this Action.

5. “Class Period” refers to the period from May 5, 2008 to August 29, 2012.

6. “Court” means the United States District Court of the District of Maine.

7. “Final Approval Order” means the Court’s Order Granting Final Approval of Class Action Settlement.

8. “Final Approval Hearing” means the hearing set by the Court at which it shall consider the Settlement, arguments, and evidence that may be presented by the proponents of the Settlement, and arguments and evidence that may be presented by any objectors to the Settlement.

9. “Global Settlement Fund” means the gross settlement amount of Five Million Dollars and 00/100 Cents (\$5,000,000.00), which is the total amount of funds available in

Settlement for: (1) payment to Settlement Class Members, including any Service Award for the Class Representatives, (2) payment to Class Counsel for attorneys' fees, expenses, and costs, and (3) payment for settlement administration costs. The Global Settlement Fund will also include an additional amount estimated by the Settlement Administrator needed to cover the employer share of employment taxes (but not income taxes) related to the Settlement Awards allocated to W-2 wages and Defendants shall be responsible for funding all such estimated employment taxes (but not income taxes).

10. "Net Settlement Fund" means the amount available for payments to Settlement Class Members, after deducting all attorneys' fees, costs, expenses; Service Awards; and Settlement Administrator costs.

11. "Settlement" means the parties' resolution of the matter as to the Settlement Class Members.

12. "Released Person(s)" means Defendants, all current and former parents, siblings, subsidiaries, related companies, partnerships, joint ventures, or other affiliates, and, with respect to each of them, their predecessors and successors, and, with respect to each such entity, all of its past, present, and future employees, officers, directors, members, stockholders, owners, representatives, assigns, attorneys, agents, insurers, and any other persons acting by, through, under, or in concert with, any of these persons or entities, and their successors.

13. "Plan of Allocation" means the formula for calculating each Located Settlement Class Members' Settlement Award from the Net Settlement Fund. Each Settlement Class Member will be allocated an initial minimum settlement amount of the Net Settlement Fund according to the following formula determined by the Named Plaintiffs: The "Individual Overtime Owed" multiplied by the "Recovery Percentage," except that each Settlement Class

Member will be entitled to a minimum of \$100.

- The “Individual Overtime Owed” to each Settlement Class Member is calculated as the hours worked over forty per week by the Settlement Class Member for each week between May 5, 2008 and August 29, 2012, multiplied by 1.5 times the Settlement Class Member’s regular rate of pay. The “hours worked” for each Settlement Class Member is based on Defendants’ daily scan-in/scan-out time records for each Settlement Class Member, except that when a Settlement Class Member received a non-zero paycheck for compensable work in a given workweek but Defendants did not produce time records for that week, the class-wide average weekly overtime pay is imputed for that week. The “regular rate of pay” for each Settlement Class Member is an hourly rate of pay based on Defendants’ weekly pay records and daily time records for the Settlement Class Member.
- The “Recovery Percentage” is calculated as the “Net Settlement Fund” (defined above) divided by the total “Individual Overtime Owed” to all Settlement Class Members as calculated above.

14. “Located Settlement Class Member” means each Settlement Class Member for whom the Administrator verifies a current mailing address.

15. “Opt-out” means a Settlement Class Member who, in accordance with this Settlement Agreement, excludes himself from the Settlement Class and the Settlement, and does not subsequently, in accordance with this Settlement Agreement, rescind that exclusion.

16. “Released Claims” means any and all claims, rights, demands, liabilities, and causes of action of every nature and description, whether known or unknown, arising on, or

before, the date of the execution of this Settlement Agreement (the “Release Period”), that were, or could have been, raised in the Action relating to unpaid and/or untimely payment of overtime, wages, or compensation of any kind, including any claims for liquidated damages, attorneys’ fees, costs, expenses, penalties, interest, Settlement Administrator costs, and Service Awards, and any other monetary claims related to the payment of wages, including any claims arising under the Fair Labor Standards Act, the Maine Minimum Wage and Overtime Law, 26 M.R.S. §§ 661 *et seq.*, state, municipal, local, or common laws, rules, and regulations.

17. “Settlement Administrator” means, subject to approval by the Court, KCC Class Action Settlement Administration.

18. “Settlement Award” means the gross payment a Located Settlement Class Member is entitled to under this Settlement Agreement.

19. “Notice of Settlement” means the form that, subject to Court approval, will be provided per the terms of this Settlement Agreement to each Settlement Class Member to explain the Settlement process. The Notice of Settlement, attached hereto as Exhibit A, includes a summary of the Action, a summary of the Settlement terms, including the release, and an estimate of each Settlement Class Member’s payment under the Settlement (calculated as if all Settlement Class Members will be receiving payment) and the factors used to calculate it, a description of how the member may opt-out of or object to the Settlement, and contact information for the Settlement Administrator and Plaintiffs’ counsel.

20. “Effective Date” means the first day following the last of the following occurrences: (a) the issuance of the Court’s Final Approval Order; (b) if an objection has been made to final approval of the settlement, the date on which the objector’s time to appeal the Final Approval Order has expired, with no appeal or other judicial review having been taken or sought;

or (c) if an appeal of the Final Approval Order has been timely filed, the date the Final Approval Order is finally affirmed by an appellate court with no possibility of subsequent appeal or other judicial review or the date the appeal(s) or other judicial review are finally dismissed with no possibility of subsequent appeal or other judicial review.

**NO ADMISSION OF LIABILITY BY DEFENDANTS**

21. Defendants deny liability or wrongdoing of any kind associated with the claims alleged in the Action. Consequently, this Settlement Agreement is a compromise and shall not be construed as an admission of liability, culpability, wrongdoing, or negligence by Defendants or the Released Parties, for any purpose, and under any circumstance. Defendants have not conceded any claims or defenses that were, or could have been, raised in the Action. The Parties merely negotiated and reached a settlement to avoid further disputes and litigation and the attendant inconvenience and expense. The Settlement Class and Defendants expressly agree to undertake risks that intervening developments in the law may materially strengthen, or weaken, their respective claims and defenses in the Action, and they have agreed to resolve the Action despite such risks. This Settlement Agreement, as well as the negotiations that occurred in connection with its creation, shall not constitute evidence with respect to any issue, or dispute, in any lawsuit, legal proceeding, or administrative proceeding, except for legal proceedings concerning the approval, enforcement, or interpretation of this Settlement Agreement.

**CLASS CERTIFICATION**

22. For purposes of the Settlement only, Defendants consent to certification under Federal Rule of Civil Procedure 23 of a class comprised of Settlement Class Members. The Parties agree certification for settlement purposes is not an admission by Defendants that Rule 23 class certification would be proper absent the Settlement. For purposes of settling this lawsuit,

the Parties stipulate and agree the requisites for establishing class certification with respect to the Settlement Class Members have been, and are, met. If this Settlement Agreement, and the Settlement it memorializes, are not finally approved by the Court, or if any appeal materially changes the terms of this Settlement Agreement, then Defendants' consent to certify a class shall be withdrawn.

23. For purposes of the Settlement only, Defendants similarly consent to Named Plaintiffs serving as class representatives and Plaintiffs' Counsel serving as class counsel.

### **THE GLOBAL SETTLEMENT FUND**

24. Subject to Court approval and the terms of this Settlement Agreement, in consideration for the release of claims and other consideration set forth herein, Defendants will pay into the Global Settlement Fund a gross amount of \$5,000,000.00, plus an additional amount to cover the estimated employer share of taxes for W-2 wages as estimated by the Settlement Administrator.

25. Monies shall be returned from the Global Settlement Fund to Defendants only as follows: If, after final calculation of the employer's share of wage-related taxes for all Located Settlement Class Members, it is determined the estimated amount of such taxes paid by Defendants was higher than the actual amount owed by them, the amount Defendants overpaid into the Global Settlement Fund shall be returned to Defendants. If one or more Located Settlement Class Members fail(s) to negotiate a payment within one-hundred eighty (180) days of issuance, and such amounts cumulatively are less than \$15,000.00, such amounts shall be returned to Defendants to apply towards Federal Insurance Contribution Act costs related to the Settlement. To the extent the amount of payments that Located Settlement Class Members fail to negotiate equals, or exceeds, \$15,000.00, all such uncashed payments shall be turned over to the



State of Maine's unclaimed property fund. Whether or not a Located Settlement Class Member's Settlement Award check is negotiated, the Settlement Agreement, including its release of claims as set forth herein, shall remain binding on all Located Settlement Class Members.

**PAYMENT TO SETTLEMENT CLASS MEMBERS**

26. Subject to Court approval, Named Plaintiffs shall receive an aggregate award not to exceed \$50,000.00 for their services as class representatives in the Action ("Service Awards"). The Service Awards shall be in addition to the share to which the Named Plaintiffs are otherwise entitled as Settlement Class Members, and shall be payable from the Net Settlement Fund.

27. Subject to Court approval, each Located Settlement Class Member, who is not an Opt-out, shall receive a payment from the Net Settlement Fund according to the Plan of Allocation as defined above.

28. For tax purposes, each Located Settlement Class Member's Settlement Award payment will be allocated as follows: (a) 33 1/3% of the Settlement Award will constitute as taxable back wage income paid under IRS Form W-2 and will be subject to ordinary payroll withholdings under federal and state law; and (b) 66 2/3% of the Settlement Award will constitute liquidated damages, which shall be taxable non-wage income paid under IRS Form 1099.

29. Defendants will make all required employer contributions with respect to any portions of the Settlement Awards paid as wages under IRS Form W-2, including by making estimated payments to the Global Settlement Fund, and will be responsible for the employer portion of any payroll taxes attributable to Settlement Agreement payments. The Settlement Class Members will be responsible for any tax liability arising from the allocation of the Gross Settlement Fund as attorneys' fees, costs, and expenses, Service Awards, taxable wage income,

and taxable non-wage income. Settlement Class Members indemnify and hold Defendants harmless from all of their respective tax obligations, (excluding any employer's share of F.I.C.A. deemed owed), penalties and attorneys' fees (including fees incurred in enforcing this provision), which arise from Defendants' agreement not to withhold state or federal income tax on certain sums paid in conjunction with this Agreement or arise from Settlement Claim Members' failure to pay their tax obligations in full.

30. Payments made under this Settlement Agreement are not intended to, and will not form the basis for, nor shall they be considered wages for calculating or re-calculating additional contributions to, or benefits under, any benefit or compensation plans maintained by Defendants for the benefit of their employees and their beneficiaries.

31. Payments to Settlement Class Members shall be issued by the Settlement Administrator, by way of negotiable instrument, from the Net Global Settlement Fund within the time provided by Paragraphs 50 and 51 below.

**ATTORNEYS' FEES, COSTS, AND EXPENSES**

32. Defendants will not object to Plaintiffs' Counsel seeking an order from the Court directing payments to Plaintiffs' Counsel from the Global Settlement Fund for: (a) attorneys' fees in an amount not to exceed 33 1/3% of the Global Settlement Fund; and (b) reimbursement for reasonable costs and expenses actually expended by, or on behalf of, the Settlement Class including the cost of Settlement Administration. Any attorneys' fees, costs, and expenses approved by the Court will be paid from the Global Settlement Fund. Any amounts not approved will be allocated and paid to the Settlement Class Members by inclusion in the Net Settlement Fund for purposes of the Plan of Allocation.

33. Payment to Plaintiffs' counsel, as provided in the immediately preceding paragraph, shall be issued, by the Settlement Administrator, from the Global Settlement Fund, within twenty-one (21) days of the Effective Date.

**RELEASE**

34. Upon the earlier of either (a) the Effective Date or (b) the date payments are issued to the Settlement Class Members in accordance with the Final Approval Order, each and every Settlement Class Member, other than Opt-outs, shall be deemed to, and shall actually have, released and discharged all Released Parties with respect to all Released Claims. This release shall remain binding on all Settlement Class Members, other than Opt-outs, regardless of whether they have negotiated any payment under this Settlement Agreement, or have been located by the Settlement Administrator.

35. Each Settlement Class Member shall be deemed to, and shall actually have, knowingly and voluntarily, waived, released, discharged, and dismissed the Released Claims, with full knowledge of any and all rights they may have, and thereby assume the risk of any mistake in fact, or with regard to any facts which are now unknown to them.

36. The signatories to this Settlement Agreement represent they are fully authorized to enter into, and bind, the Parties to the terms and conditions of this Settlement Agreement.

**SETTLEMENT ADMINISTRATION**

37. Plaintiffs' Counsel shall have the responsibility to designate the Settlement Administrator, and have designated KCC Class Action Settlement Administration. The Settlement Administrator's fees and expenses shall be paid from the Global Settlement Fund.

38. No later than ten (10) days after the Parties file their proposed settlement in court, Defendants must serve notice of the proposed settlement with the appropriate federal and state officials in compliance with 28 U.S.C. § 1715(b).

39. Within seven (7) business days after the Court's preliminary review and Order directing that notice of the proposed Settlement Agreement be issued to the Settlement Class Members, the Parties will provide to the Settlement Administrator, and each other, the name, last known U.S. mail and email addresses, and Social Security number for each Settlement Class Member. The Settlement Administrator shall then compare the provided address to information available through the U.S. Postal Service, or a similar database, to determine if there is a more recent U.S. mail address for each Settlement Class Member.

40. Within twenty (20) days after the Court orders that notice of this proposed Settlement Agreement be issued to the Settlement Class Members, the Settlement Administrator will send to each Settlement Class Member, by first-class U.S. mail, addressed to the most recent address as determined by the process described in the preceding paragraph, postage prepaid, a Notice of Settlement. To the extent e-mail notice is sent as part of the process of determining a current U.S. mail address, such e-mail notice will not provide an estimated payment to the Settlement Class Member under the Settlement, but instead, will direct the Settlement Class Member to contact the Settlement Administrator for additional information. This process will utilize appropriate security protocol to allow the Settlement Administrator to confirm the identity of the Settlement Class Members. A copy of the Notice of Settlement is attached as Exhibit A.

41. If any mailing directed at Settlement Class Members is returned by the U.S. Postal Service as undeliverable, within ten (10) days of such receipt, the Settlement Administrator shall reasonably utilize any additional, up-to-date practice to locate a current U.S.

mail address for those Settlement Class Members. The Settlement Administrator shall then send to Settlement Class Members, at the subsequently determined address, a Notice of Settlement.

42. If, despite the required effort(s), the Settlement Administrator is unable to locate an accurate current U.S. mail address for a Settlement Class Member within ninety (90) days of the Court's order directing that notice of the proposed Settlement Agreement be issued to the Settlement Class Members, such Settlement Class Member shall not be considered when apportioning the Net Global Settlement Fund, and the formula for determining the other members' entitlement to their portions of the Net Global Settlement Fund shall be applied as if the Settlement Class Member who could not be found is not a Settlement Class Member, although such Settlement Class Member(s) shall remain bound by the Settlement Agreement and its release provisions.

**OPT-OUT PROCEDURES AND SETTLEMENT CLASS MEMBER OBJECTIONS**

43. As they shall be instructed in the Notice of Settlement, Settlement Class Members shall submit written objection(s) to, or a written request for exclusion from, the Settlement to be post-marked no later than forty-five (45) days from the mailing of the Notice of Settlement.

44. To be valid, any request for exclusion shall be timely mailed to the Settlement Administrator, and must include a statement signed by the Settlement Class Member containing: a reference to Case No. 2:14-cv-000192; a statement to the effect that he or she wants to be excluded from the Settlement; his or her name; current address; and date of birth.

45. To be valid, any objection(s) to the Settlement shall be mailed timely to the Settlement Administrator, and must include a statement signed by the Settlement Class Member containing: a reference to Case No. 2:14-cv-000192; a statement to the effect that he or she

objects to the Settlement; the basis (or bases) for the objection(s); his or her name; current address; date of birth; and whether they intend to appear at the Final Approval Hearing.

46. The Settlement Administrator shall provide copies of all received requests to opt-out, and of all objections, to counsel for both parties. Plaintiffs' Counsel shall be responsible for proposing and submitting the necessary report to the Court regarding Opt-outs, objections, and requests to appear at the Final Approval Hearing.

47. Any Settlement Class Member who wishes to rescind a properly submitted request for exclusion shall be instructed in the Notice of Settlement of the right and process for rescission.

48. If 7.5% or more of the Settlement Class Members opt out without rescinding, Defendants shall have the unilateral right to rescind the Settlement such that: (1) Defendants' obligations under the Settlement will cease to have any force and effect; (2) the Settlement Agreement will be vacated, null, void, and canceled; (3) the parties will return to the *status quo ante* as if they had not entered into a settlement; (4) the Settlement, and all negotiations and agreements and proceedings related to the Settlement, will be without prejudice to the rights of the parties; and (5) evidence of the Settlement, negotiations, and proceedings will be inadmissible and not discoverable.

#### **FINAL SETTLEMENT APPROVAL**

49. Prior to the Final Approval Hearing, counsel for Defendants will prepare and Plaintiffs' Counsel will approve, a joint motion for final approval of the Settlement. The joint motion for approval of the Settlement will request the following:

- a. An Order Granting Final Approval to the Settlement, concluding the terms of the Settlement to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

- b. An Order approving Class Counsels' fees, costs, and expenses;
- c. An Order approving Service Awards to the Class Representatives;
- d. An Order approving payment for services by the Settlement Administrator;
- e. An Order dismissing the Action on the merits, with prejudice, in accordance with the terms of this Settlement Agreement;
- f. An Order declaring all Settlement Class Members (except those who affirmatively opt-out per the Settlement Agreement) are bound by the release of claims described in this Settlement Agreement; and
- g. An Order reserving jurisdiction over the construction, interpretation, implementation, and enforcement of the Settlement, and over the administration and distribution of payments under the Settlement.

#### **DISTRIBUTION OF SETTLEMENT PAYMENTS**

50. Within fourteen (14) days after the issuance of the Court's Final Approval Order, Defendants must pay all amounts due into the Global Settlement Fund. These amounts paid into the Global Settlement Fund must remain in the Fund and must not be distributed until after the Effective Date, except that if all appeals are limited to issues other than the payments due to Settlement Class Members such as the payment allocated to Plaintiffs' Counsel or the service awards, then the payments due to Settlement Class Members will be distributed as provided in Paragraph 51 below.

51. Subject to the limitations in paragraph 50 above, within fourteen (14) days after Defendants pay all amounts due in the Global Settlement Fund, the Settlement Administrator shall: issue all payments due to Settlement Class Members under this Settlement Agreement by negotiable instrument, along with the appropriate W-2, W-9, and 1099 Forms.

**PUBLIC COMMENT**

52. Plaintiffs' Counsel and Defendants' Counsel agree not to publicize the Settlement, including but not limited to, issuing press releases, to a third party, but shall retain all other rights to discuss the Settlement with their respective clients, and Plaintiffs' Counsel shall retain the right to communicate with Settlement Class Members *via* non-public means, such as U.S. Mail or e-mail. Plaintiffs' Counsel and Defendants' Counsel also agree that their response to any inquiries from the media about the Action, or the settlement of the Action, shall be limited to "we are pleased the matter was resolved to the satisfaction of all parties."

**NOTICES**

53. Unless otherwise specifically provided in this Settlement Agreement, all notices, demands, or other communications given under this Settlement Agreement shall be in writing, and shall be deemed to have been duly given as of the third business day after mailing by United States mail and by email, addressed as follows:

**To the Class Representatives or Settlement Class Members:**

Jeffrey Neil Young  
Johnson, Webbert & Young, LLP  
P.O. Box 79  
160 Capitol Street, Suite 3  
Augusta, ME 04332  
jyoung@work.law  
dwebbert@work.law  
cgarvan@work.law

**To the Defendant:**

Patrick F. Hulla  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
4520 Main Street, Ste 400  
Kansas City, MI 64111  
Patrick.Hulla@ogletreedeakins.com and,



Frederick B. Finberg  
The Bennett Law Firm, P.A.  
121 Middle Street, Suite 300  
Portland, Maine 04101  
rfinberg@thebennettlawfirm.com

**MISCELLANEOUS**

54. If the Court unexpectedly rejects this Settlement Agreement, the Parties agree to work in good faith to resolve any differences they may have regarding any revised agreement to be re-submitted to the Court; if the parties are unable to resolve any such differences on their own, the parties further agree to reengage the Judicial Settlement Officer, the Hon. John C. Nivison, to attempt to resolve any disputes about the terms and conditions of any revised agreement to be re-submitted to the Court.

55. The Parties agree to waive all appeals, and to stipulate to final certification of the Rule 23 claims, but only for purposes of implementing the Settlement.

56. If there is a conflict between this Settlement Agreement and any other document related to the Settlement, the Parties intend for this Settlement Agreement to control.

57. All of the Parties acknowledge they have been represented by competent, experienced counsel throughout all negotiations which preceded the execution of this Settlement Agreement, and this Settlement Agreement is made with the consent and advice of counsel who have jointly prepared this Settlement Agreement.

58. The Parties agree to use their best, reasonable efforts, and to fully cooperate with each other to implement and effectuate the terms of this Settlement Agreement.

59. This Settlement Agreement may be executed in counterparts, and when signed and delivered by at least one counterpart, each counterpart shall be deemed an original, and,

when taken together with other signed counterparts, shall constitute one agreement, which shall be binding on, and effective as to, all of the Parties.

60. This Settlement Agreement shall be binding on, and inure to the benefit of, the successors of each of the Parties, including each Settlement Class Member who does not opt out of the Settlement.

61. The Parties believe this is a fair, reasonable, and adequate Settlement Agreement, and have arrived at this Settlement Agreement after protracted litigation, and through considerable arm's-length negotiations (including with the final negotiations overseen by the Judicial Settlement Officer, the Honorable John C. Nivison), taking into account all relevant factors, both present and potential.

62. The descriptive headings of any sections of this Settlement Agreement are inserted for convenience or reference only, and do not constitute a part of this Settlement Agreement.

#### **ENTIRE AGREEMENT**

63. This Settlement Agreement, entered into by the Named Plaintiffs, for themselves and all the Settlement Class Members, and Defendants, constitutes the entire agreement between the Parties concerning the subject matters addressed in this Settlement Agreement. No extrinsic, oral, or written representations or terms shall modify, vary, or contradict the terms of this Settlement Agreement.

64. Except in writing, and signed by Plaintiffs' Counsel and Defendants' Counsel, this Settlement Agreement and its attachments may not be changed, altered, or modified.

IN WITNESS WHEREOF, the undersigned have duly executed this Settlement Agreement as of the date indicated below:

Dated: \_\_\_\_\_, 2018 By: \_\_\_\_\_  
On behalf of Defendant Oakhurst Dairy

Dated: \_\_\_\_\_, 2018 By: \_\_\_\_\_  
On behalf of Defendant Dairy Farmers of America, Inc.

Dated: \_\_\_\_\_, 2018 By: \_\_\_\_\_  
Christopher O'Connor, Class Representative

Dated: \_\_\_\_\_, 2018 By: \_\_\_\_\_  
James Adam Cox, Class Representative

Dated: \_\_\_\_\_, 2018 By: \_\_\_\_\_  
Michael Fraser, Class Representative

Dated: \_\_\_\_\_, 2018 By: \_\_\_\_\_  
Kevin O'Connor, Class Representative

Dated: \_\_\_\_\_, 2018 By: \_\_\_\_\_  
Robert McNally, Class Representative

Dated: \_\_\_\_\_, 2018 By: \_\_\_\_\_  
Plaintiffs' Counsel