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Class Counsel

13 [Additional Counsel Listed on Signature Page]
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15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **OAKLAND DIVISION**

18 MATTHEW EDWARDS, *et al.*, individually
and on behalf of all others similarly situated,
19
20 Plaintiffs,

Case No. 4:11-CV-04766-JSW

[consolidated with 11-CV-0491-JSW and
11-CV-05254-JSW]

21 v.

CLASS ACTION

22 NATIONAL MILK PRODUCERS
23 FEDERATION, aka COOPERATIVES
WORKING TOGETHER; DIARY
24 FARMERS OF AMERICA, INC.; LAND
O'LAKES, INC.; DAIRYLEA
25 COOPERATIVE INC.; and AGRI-MARK,
INC.
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**DECLARATION OF STEVEN BERK IN
SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, EXPENSES, AND
SERVICE AWARDS**

Date: December 16, 2016
Time: 9:00 a.m.
Dept: Courtroom 5
Judge: Hon. Jeffrey S. White

1 I, Steven Berk, declare as follows:

2 1. On July 23, 2016, I was sworn in as an Associate Judge for the Superior Court of
3 the District of Columbia having been nominated by the President and confirmed by the United
4 States Senate. All of my conduct in this case, preceded my appointment to the Superior Court.
5 During the course of this litigation, I was an attorney licensed to practice before the courts of the
6 District of Columbia, and the principal of Berk Law PLLC. I have personal knowledge of the facts
7 stated in this declaration and, if called as a witness, I could and would testify competently to them.
8 I make this declaration in support of my firm's request for attorneys' fees and reimbursement of
9 litigation expenses, as set forth in plaintiffs' motion for attorneys' fees, expenses, and service
10 awards.

11 2. My firm is counsel of record in this case and represents named plaintiff Paul
12 Thacker. My resume is attached as *Exhibit A*.

13 3. Throughout the course of the litigation, counsel carefully coordinated their
14 activities to avoid engaging in duplicative work.

15 4. While lead counsel Hagens Berman Sobol Shapiro took responsibility for running
16 the litigation and generally handled all non-plaintiff-specific work on behalf of the classes, each
17 co-counsel firm was responsible for work specific to our clients and certain other class representa-
18 tives.

19 5. In addition, co-counsel assisted in review of documents. Again with respect to this
20 effort, lead counsel assigned discrete and non-overlapping ranges to each firm in order to avoid
21 duplicative work.

22 6. Thus, during the course of the litigation and at the direction of lead counsel, my
23 firm performed the following work:

- 24 • Case evaluation, signing up clients, and reviewing the draft complaints with them;
- 25 • Keeping our clients up to date on the litigation;
- 26 • Collecting documents from our clients;
- 27 • Working with our clients to respond to all discovery propounded on them, including

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the nine sets served by the various defendants over the years;¹

- Preparing our clients and certain other class representatives for deposition and defending them at deposition, including Paul Thacker and Danell Tomasella;
- Reviewing these deposition transcripts and providing requested input to lead counsel for purposes of summary judgment briefing;
- Obtaining declarations from our clients in support of class certification; and
- Remaining up to speed on the litigation for the purpose of effectively carrying out the foregoing activities.

All of this work was assigned or approved by lead counsel.

7. My firm regularly prepared and maintained files contemporaneously documenting all time spent, including tasks performed, and expenses incurred. All of the time and expenses reported by my firm were incurred for the benefit of this litigation. Detailed time and expense records supporting this summary information are available, if requested by the Court.

8. Berk Law PLLC’s lodestar is \$216,050.00, and its litigation expenses are \$895.00, for a total investment of \$216,945.00. A breakdown of the lodestar by lawyer or paralegal involved in this litigation follows:

CO-COUNSEL BERK LAW				
NAME	POSITION	RATE	HOURS	TOTAL AMOUNT
Steven Berk	Partner	\$650	214	\$139,100.00
Matthew Bonness	Associate	\$450	38	\$17,100.00
Lauren Connell	Associate	\$350	171	\$59,850.00
TOTAL:			423	\$216,050.00

9. The total number of hours reasonably expended on this litigation by my firm from

¹ Specifically, I refer to (1) Land O’Lakes First Set of Interrogatories; (2) Land O’Lakes Second Set of Interrogatories; (3) Land O’Lakes First Set of Requests for Production; (4) Land O’Lakes Second Set of Requests for Production; (5) Agri-Mark’s First Set of Interrogatories; (6) Agri-Mark’s First Set of Requests for Production; (7) Dairy Farmers of America’s First Set of

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Class Counsel

EXHIBIT A

Steven N. Berk, Esq.

1625 Massachusetts Avenue, NW, Suite 605,
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PROFESSIONAL EXPERIENCE

Berk Law PLLC, Principal, Washington, D.C. (2009–present). Diverse boutique litigation practice focusing on: (1) litigating nationwide consumer class action cases on behalf of millions of consumers, against leading companies such as Honda and Hewlett Packard; (2) representing whistleblowers in connection with the investigation and filing of claims under the False Claims Act, the Dodd Frank Act, and the IRS whistleblower program, with applications pending of approximately \$30 million in attorney fees. (3) serving as trial counsel in administrative actions before the CFTC, AAA and FINRA. Obtained rare remand of an SEC enforcement action before the United States Court of Appeals for the District of Columbia Circuit.

Chavez & Gertler, Partner, Washington, D.C. (2007-2009) and **Cuneo Gilbert & LaDuca, Partner** Washington, D.C. (2005-2007). Coordinated the work of several law firms as co-lead counsel, or in a leadership position, to successfully prosecute nationwide consumer claims against: General Motors, Bank of America, Sony, JVC, Certainteed, Mercury Marine, American Home Shield, Hewlett Packard and Serta Mattress Company.

iHappen, Founder and CEO, Washington, D.C. (2002-2005). Created a social media platform (pre-Facebook) designed to assist users in building an online profile and share their life events with others. Raised over \$500,000 in early stage financing, and directed the production of a beta-tested digital application.

Jenner & Block, Partner, Washington, D.C. (1996–2002). Practice area: general commercial litigation; focus on conducting internal corporate investigations. Implemented successful nationwide challenge to state laws forbidding CPAs from selling securities; prosecuted antitrust claims against Cessna; and led a pro bono team of attorneys fighting racial discrimination on behalf of public housing residents in Dade County, Florida.

United States Department of Justice, Assistant United States Attorney for the District of Columbia (1990-1995). First chair responsibility in over 25 jury trials and a dozen appellate arguments. Assigned to the Economic Crimes Section with responsibility for investigating and developing fraud cases.

Securities and Exchange Commission, Washington, D.C., Staff Attorney, Office of the General Counsel (1989-1990). Conducted investigations and prosecuted cases against accountants and attorneys under Rule 2(e); represented the Commission in federal court on administrative matters.

Isham, Lincoln & Beale, Associate, Chicago, Illinois (1985-1987) and **Jenner & Block**, Associate, Chicago, Illinois (1987-1989). Represented Goodwill Industries in connection with a criminal scheme by Executive Director to sell donated parcels of real property; briefed and argued two *habeas* cases before the United States Court of Appeals for the Seventh Circuit.

PROFESSIONAL AND VOLUNTEER ACTIVITIES

Treasurer and Member of the Board of Governors, District of Columbia Bar Association (2012-present). Elected Treasurer (2012) by peers to oversee the finances of the nation's second largest bar association with over 100,000 members and an annual budget of in excess of \$30 thirty million; Elected for second term (2013) to the Board of Governors; currently serving on the Budget Committee.

Judicial Evaluations Standing Committee, Chair, District of Columbia Bar Association (2011- 2013). Managed the survey conducted by the DC Bar of DC Superior and DC Court of Appeals. Implemented successful social media and publicity campaign that increased the response rate of attorneys completing evaluations.

National Board of Directors, Appleseed Foundation (2011–2015). Appleseed is a nationwide network of legal centers providing policy and legal solutions to disenfranchised youth, immigrants and low income adults. Participated in a board task force responsible for initiating and implementing reforms in the \$50 billion remittance market.

Adjunct Professor of Law, Boston College Law School (2011-2013). Designed and taught, "*Federal Court Motions Practice from Gibson to Iqbal*," a seminar that studied dispositive motion practice from both a practical and doctrinal perspective. Materials ranged from pleadings in recent cases, to applicable Supreme Court decisions and academic writings.

Montgomery Cheetahs, Chair and Founder, Montgomery County, Maryland (2006 - 2012). Launched Montgomery County's first youth hockey program serving the needs of children with autism and other special needs. The program has grown to include 60-75 special needs families and over 100 student mentors who participate in a nine-month season. The [Cheetahs](#) have received numerous awards including recognition from the Governor of Maryland (2010) and the City of Rockville, Maryland (2008).

United States Holocaust Memorial Museum, docent (1993-1998). Inaugural class of volunteer docents. Provided museum tours and assistance to visitors; assisted survivors in preparing oral histories.

EDUCATION

Boston College Law School, JD, *cum laude*, 1985; Managing Editor *Boston College Law Review*.

London School of Economics, MSc, International Relations 1982.

Washington University, AB with honors, 1981.

PUBLICATIONS

In the Wake of Concepcion and Dukes, Consumer Class Action Lawyers Must Take Some Clues from the Whistleblower Bar, The National Law Journal (January 30, 2013).

Reform from Within: Changing the Paradigm of Class Action Litigation, AAJ Class Action Litigation Newsletter (Spring, 2012)

BAR ADMISSIONS

District of Columbia, 1992; Illinois, 1985. **Court Admissions:** United States Supreme Court; United States Court of Appeals for the District of Columbia Circuit, and the Second, Seventh, Ninth, Tenth and Eleventh Circuits; United States District Court for the District of Columbia, and the Northern District of Illinois.

HONORS AND AWARDS

DC SuperLawyer, Consumer Litigation (2014, 2015).

District of Columbia, Judicial Nominations Commission, 2013; selected as a finalist and referred to the White House for nomination to the Superior Court of the District of Columbia (October of 2013).

Federal Bureau of Investigation (FBI) 1993, official commendation, for the indictment and conviction of nine individuals involved in a complex scheme to defraud a public pension fund.

THE HONORABLE STEVEN N. BERK ASSOCIATE JUDGE SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA

In October of 2015, President Barack Obama nominated Steven N. Berk to the Superior Court bench. The Senate confirmed his nomination on June 23, 2016 and Judge Berk was sworn in on July 29, 2016.

Judge Berk was born in Lincolnwood, Illinois. He received a Bachelor of Arts degree, with university honors, in Economics and History from Washington University in St. Louis in 1981 and a Master of Science Degree in International Relations from the London School of Economics in 1982. Judge Berk received his Juris Doctor degree, cum laude, from Boston College Law School in 1985 where served as the Managing Editor of the Law Review.

Upon graduation from law school, he moved back to the Chicago, where he was employed as an associate at the law firms of Isham Lincoln and Beale and Jenner & Block, specializing in commercial litigation and white-collar criminal defense. In September of 1989, Judge Berk moved to Washington, DC to accept a position in the General Counsel's Office of the Securities and Exchange Commission. While there he primarily prosecuted cases against accountants practicing negligently before the Commission.

In 1990, Judge Berk was sworn in as an Assistant United States Attorney in the Office of the United States Attorney for the District of Columbia. Upon joining the office, Judge Berk worked in the Appellate Division where he eventually argued more than a dozen cases before the United States Court of Appeals for the District of Columbia Circuit and the District of Columbia Court of Appeals. He served in the Misdemeanor, Felony Trial, Grand Jury, and Federal Economic Crimes Section. In total, he tried approximately 25 cases to a jury. While in the Economic Crimes Section he received an award from the Federal Bureau of Investigation for his successful prosecution and conviction of eight individuals for fraud against a District of Columbia based pension fund.

In 1995, Judge Berk returned to the law firm of Jenner & Block and was elected to the partnership in 1996. His practice focused on federal court civil litigation. During this time, Judge Berk spent thousands of hours, pro bono, leading a team of attorneys in an historic fair housing case involving the discriminatory conditions and practices of Miami, Dade County's public housing projects. After over a decade of litigation, Judge Berk and his team were able to steer the case to a successful resolution.

In 2000, Judge Berk left the practice of law and became the founder of an Internet start up, iHappen that developed an early social networking site. Despite the company's innovative applications, operations were ceased in 2003. Judge Berk returned to the practice of law, eventually opening his own firm in 2009 (Berk Law PLLC) where he focused his practice on consumer class action litigation and the representation of whistleblowers. In his class action cases, he successfully litigated and resolved complex nationwide claims against numerous Fortune 500 companies, including Honda, Dell, Sony, Ford, HP and Brunswick.

Throughout his career Judge Berk has been an active volunteer in his community and at the Bar. From 1993 to 2000, he volunteered as a docent and transcriber of survivor histories at the United States Holocaust Memorial Museum. In 2006, he and his sons started a hockey club for children with special needs including autism. After a decade, the club (named *the Cheetahs*) continues to serve the needs of hundreds of families. At the District of Columbia Bar Association, Judge Berk has participated in a number of pro bono programs and served in various leadership positions. Notably, he was the Chairman of the Judicial Evaluations Committee, the Treasurer and a twice-elected member of the Board of Governors.