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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LESA L. DONNELLY and GINELLE)
O'CONNOR, for themselves and)
all other similarly situated,)

Plaintiffs,)

vs.)

DAN GLICKMAN, Secretary,)
U.S. Department of Agriculture,)

Defendant.)
_____)

Civil Action No. C 95-4389 DLJ

SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT

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PART I: INTRODUCTION

Section 1 INTRODUCTION

1.1. This Agreement is voluntarily entered into between plaintiffs Lesa L. Donnelly and Ginelle O'Connor, as class representatives, and defendant Dan Glickman, Secretary of Agriculture of the United States of America ("Defendant"). This Agreement finally and fully resolves the litigation now pending between the parties.

WHEREAS, Plaintiffs filed this action on December 8, 1995, on behalf of female employees of Region 5 of the USDA Forest Service, seeking monetary, injunctive and declaratory relief for alleged violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16;

WHEREAS, Plaintiffs alleged that Defendant had engaged in a pattern and practice of sexual harassment and retaliation against female employees in Region 5;

WHEREAS, the Court, after considering Plaintiffs' motion for class certification and the parties presentations thereon, certified a class in an Order dated February 24, 1997, as amended March 24, 1997, under Federal Rule of Civil Procedure 23(b)(2), consisting of all past and current non-supervisory female employees of U.S. Forest Service Region 5 who have been, or are subject to a sexually hostile work environment at any time since February 1, 1994, and who are seeking equitable relief only;

WHEREAS, Plaintiffs and their counsel have conducted an extensive investigation of the facts in the case;

WHEREAS, Defendant and his counsel have conducted extensive review and discovery of the facts of the case;

WHEREAS, the parties engaged in extensive class certification discovery;

WHEREAS, the parties engaged in extensive settlement negotiations, including negotiations facilitated by a neutral mediator;

WHEREAS, the parties have agreed upon mutually satisfactory terms for the complete resolution of all

class claims that have, or could have, been asserted by Plaintiffs in this litigation;

WHEREAS, Plaintiffs and their counsel have concluded, after carefully considering the facts and applicable law, that the proposed settlement and compromise set forth in this Agreement provides for a fair, efficient and expeditious resolution of all claims of sexual harassment and retaliation asserted by the Class and is fair, reasonable and in the best interests of the Class;

WHEREAS, Defendant believes that the proposed settlement and compromise set forth in this Agreement is consistent with and reaffirms its commitment to eliminate sexual harassment and retaliation in the workplace; and

WHEREAS, the parties seek to avoid the expense, delay and inconvenience of further litigation of the issues raised;

NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED, in reliance upon the representations contained herein, and in consideration of the mutual promises, covenants, and obligations in this Agreement, and for good and valuable consideration, by and among the undersigned, that this action shall be settled, compromised and dismissed on the merits and with prejudice, subject to the approval of the Court, in the manner and upon the terms and conditions set forth below.

PART II: GENERAL PROVISIONS

Section 2 SCOPE AND PURPOSES OF AGREEMENT

2.1. Purposes of Agreement

The purposes of this Agreement are:

1. To eliminate sexual harassment and hostile environment against females;
2. To implement Defendant's zero tolerance policy against sexual harassment against females;
3. To ensure that persons committing or contributing to sexual harassment are held accountable for their actions;
4. To eliminate reprisal against those who exercise their rights to complain about sexual

- harassment;
5. To ensure that issues regarding sexual harassment are addressed and resolved in a timely and effective manner;
 6. To provide finality to the resolution of all claims asserted in this action.

2.2. Class Definition

The class covered by and eligible for relief under this Agreement shall be the class of all past and current non-supervisory female employees of Region 5 who have been, or are being subjected to a sexually hostile work environment at any time since February 1, 1994, through the date of Final Approval, and who are seeking equitable relief only.

2.3. Entry as Court Order

The parties agree and intend that this Agreement constitutes both a judicial order and a contract, and all of its provisions are enforceable by the parties as described herein. The procedures for approval of this Agreement and entry as an order are set forth in section 23. The parties agree and intend that the Court shall retain jurisdiction for three years, as described in paragraphs 2.4 to 2.7, solely for the purpose of enforcing this Agreement as provided herein.

Temporal Term of Agreement

2.4. The term of this Agreement shall be three years as described in paragraphs 2.4 to 2.7.

2.5. The three year period described in paragraph 2.4 shall begin running on the day the Monitoring Council contemplated by section 4 of this Agreement is established. For the purposes of this paragraph, the Council shall be considered established on the first business day after all of the following have occurred: (1) the Council Chairperson has been approved by the Court pursuant to paragraph 4.2(a); (2) the Class Representative Council Member has been selected pursuant to paragraph 4.2(c) and has reported for duty; (3) the Agency

Representative Council Member has been selected pursuant to paragraph 4.2(d) and has reported for duty; and
(4) Defendant has provided the Council with an interim budget for a twelve month period pending approval of the Council budget as provided in paragraph 4.7.

2.6. The Regional Forester shall notify counsel for the parties in writing of the date on which the Monitoring Council is established. Within ten days of receiving notification from the Regional Forester, the parties shall jointly file with the Court a notice identifying the date on which the Monitoring Council was established.

2.7. Notwithstanding the provisions of paragraphs 2.4, after the three year term of this Agreement has expired, the parties shall continue with any meet-and-confer obligation under paragraphs 5.1, 5.2, or 5.3, and either party may litigate to conclusion any motion under paragraph 5.4 that was pending at the conclusion of the three-year term. Nothing in this paragraph shall be construed to require Defendant to maintain a Monitoring Council or to continue to implement the Relief Provisions after the conclusion of the three-year term of this Agreement.

Section 3 GENERAL PROVISIONS

3.1. Definitions.

The following terms used in this Agreement are defined as described:

1. "Adverse action" means, for the purposes of this Agreement, any action taken against an employee that results in a letter of reprimand, suspension without pay, reduction in pay or grade, or removal from the Agency.
2. "The Agency" means the USDA Forest Service.
3. The "Agency Mission", as stated in the Agency's current Strategic Plan, is "to sustain the health, productivity and diversity of the land to meet the needs of present and future generations." To the extent the Agency revises its mission statement in accordance with

the Government Performance and Results Act, any such revised statement shall be applied with respect to this Agreement.

4. "Best Efforts" means considering and implementing a plan reasonably designed to comply with the specified objectives.
5. "Class Counsel" means the law firm of Minami, Lew & Tamaki LLP, San Francisco, California, or any of its successors in interest, and any associated or retained co-counsel.
6. "Class Member" means a person who falls within the class definition.
7. "Class Representatives" shall refer to Plaintiffs Lesa L. Donnelly and Ginelle O'Connor, who were certified by the Court to represent the class pursuant to Fed. R. Civ. P. 23(b)(2), or their successors in interest.
8. "Counsel for Defendant" means the attorneys assigned to handle this matter at the United States Department of Justice and the USDA Office of General Counsel.
9. "Counsel for the Parties" means Class Counsel and Counsel for Defendant.
10. "The Court" means the United States District Court for the Northern District of California.
11. "The Department" or "USDA" means the United States Department of Agriculture.
12. "Deputy Chief" means the Deputy Chief for Business Operations of the Agency.
13. "EEO" means equal employment opportunity.
14. "Fairness Notice" means the Notice of Settlement Agreement and Fairness Hearing, attached to this Agreement as Exhibit A, which shall be disseminated as provided in paragraph 23.2 after the Court grants preliminary approval.
15. "Final Approval Date" means the date that the Court finally approves this Agreement

after a fairness hearing.

16. "Final Judgment" means the date the Court finally approves this Agreement and either:
(1) the expiration of the time for filing of a direct appeal from the Court's final approval of the Agreement; or (2) if a timely direct appeal is filed, the final resolution of that appeal, including any requests for rehearing and/or petitions for certiorari, resulting in final judicial approval of the Agreement.
17. "Hostile work environment" or "hostile environment" means a gender or sex based hostile work environment, as defined by relevant law.
18. "Master Labor Agreement " means the Master Agreement between the Forest Service and the National Federation of Federal Employees, dated May 6, 1996, as amended, or any successor thereto.
19. "Personnel action" means the process necessary to appoint, separate, or make other personnel changes. See Federal Personnel Manual, chapter 35. A personnel action is effected on a Standard Form 50 or on an OPM-approved exception thereto.
20. "Preliminary Approval" means the date the Court enters an order preliminarily approving this Agreement, pending notice and an opportunity to submit objections to the Agreement and a fairness hearing thereon.
21. "Region 5" means the administrative unit of the Agency known as the Pacific Southwest Region.
22. "Regional Forester" means the Regional Forester or Associate Regional Forester for Region 5.
23. "Retaliation" or "reprisal" means adverse action or harassment directed against a class

member individual who seeks to assert rights based on gender or sex under Title VII, as defined by relevant law.

24. "Sexual Harassment" includes a hostile work environment on the basis of sex, as defined by relevant law.

25. "Supervisor" or "supervisory" shall have the meaning described at 5 U.S.C. § 7103(a)(10) and at Article 3.25 of the Master Labor Agreement. Specifically, the term "supervisor" means an employee having authority in the interest of the Agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority. For the purposes of section 21 of this Agreement, a class member shall be considered a member of the class only if she was not a supervisor at the time of the alleged sexual harassment or retaliation.

3.2. Non-Admission of Liability

Nothing in this Agreement constitutes an admission of any wrongdoing or liability of any kind by the Department, the Agency, or Region 5, for any alleged acts of wrongful discrimination or otherwise. The Department, the Agency, and Region 5 expressly deny any wrongdoing or liability.

3.3. Release/Bar of Claims

Subject to sections 20 and 21, this Agreement resolves finally and forever and bars hereafter any and all

individual or class claims arising more than 45 days prior to the Final Approval Date that any plaintiff or class member may have, or may have had, against the Department relating to sexual harassment and retaliation relating to sexual harassment, and arising from any events, acts, omissions, policies, practices, procedures, conditions or occurrences in connection with the covered class claims at any time through and including the Final Approval Date.

3.4. Non-Retaliation

Retaliation against persons for being involved in this litigation or in activities related to the implementation of this Agreement shall not be tolerated by the Department, the Agency, or Region 5. Any person who is found to have retaliated in violation of this paragraph shall be subject to appropriate discipline, up to and including termination of employment.

PART III: MONITORING AND DISPUTE RESOLUTION

Section 4 MONITORING OF ORDER

4.1. Implementation of a Monitoring Council

For purposes of implementing and monitoring the General Injunctive Relief provisions of sections 6-18 of this Agreement ("Relief Provisions"), a Monitoring Council ("Council") shall be established. The responsibilities of the Council shall continue during the term of this Agreement.

4.2. The Council shall be comprised of a Council Chairperson and two Council

Members selected as follows:

- (a) The Council Chairperson shall be appointed by the Court, after receiving a recommendation from the parties.
- (b) Council Members shall be current Agency employees holding GS 9, 11 or 12 positions at the time of their selection to serve on the Council and shall

be Agency employees occupying GS 9, 11 or 12 positions as Monitoring Council Specialists during their tenure on the Council. The Monitoring Council Specialist positions shall have no known promotion potential.

- (c) One Council Member shall be the Class Representative Council Member, who shall be selected by Plaintiffs. Within thirty days of Final Approval or any other vacancy in the Class Representative Council Member position, Class Counsel shall identify in writing a current Agency employee holding a GS 9, 11 or 12 position to the Deputy Chief, with a copy to counsel for Defendant. The notification shall include a written statement signed by the individual so identified expressing the individual's agreement to accept detail or transfer to a Monitoring Council Specialist position. As soon as possible, but in no event effective later than the third pay period after the identification occurs, the Agency shall detail or reassign the identified individual, at the option of the individual and Class Counsel, to serve as a Monitoring Council Specialist at the individual's current grade. Notwithstanding paragraph 16.1, the Agency shall not be required to advertise any such detail. Prior to final classification, the parties shall collaborate in good faith to develop a position description for the individual consistent with the responsibilities set forth in this Agreement and the individual's knowledge, skills and abilities. In the event that the Class Representative Council Member must be replaced during the last year of the term of the Agreement, the Agency may require a detail if it

determines after an analysis that per diem and lodging is more cost effective than a transfer-of-station.

- (d) One Council Member shall be selected by the Agency and shall be the Agency Representative Council Member. The Agency initially shall select an individual at the same grade as the individual selected by Plaintiffs. In the event that the Class Representative Council Member must be replaced, the Agency shall not be required to match the grade of the individual subsequently selected for the position; provided that if the Agency Representative Council Member is subsequently replaced, the replacement shall be at the same grade as the incumbent Class Representative Council Member.
- (e) Administrative supervision of the Class Representative Council Member shall be conducted by the Regional Forester or Associate Regional Forester with review by the Deputy Chief. The performance evaluation for the Class Representative Council Member shall be conducted by the Deputy Chief.
- (f) Upon termination of this Agreement, or other departure of the Class Representative Council Member from the Monitoring Council Specialist position, Defendant shall use its best efforts to return the individual to the same or to a comparable position to the position of record that she held prior to her appointment to the Council, or to another position to which the parties agree. Defendant shall use its best efforts to provide such a position in a location acceptable to her.

(g) In the event that the Agency fails to detail or reassign an individual to the Class Representative Council Member position within the time prescribed in subparagraph (c), the running of the term of this Agreement, as provided in paragraphs 2.4 through 2.7, shall be tolled; provided, that under no circumstances shall the term of this Agreement be tolled because Plaintiffs fail to identify, as provided, in subparagraph (c) an eligible individual to serve as the Class Representative Council Member or because the individual cannot enter on duty promptly.

4.3. The Council Chairperson and each Council Member shall sign a Confidentiality Agreement and Privacy Act Protective Order acknowledgment, attached hereto as Exhibit B. Provided that each Member signs the required Confidentiality Agreement, Council Members may review confidential information.

4.4. A Council Member may resign or be removed from the Council if that individual is unable or unwilling to perform his/her duties. A Council Member or the Council Chairperson may be removed involuntarily if the Court finds that his/her actions are contrary to the purposes of this Agreement. Either party may petition the Court for removal of a Council Member or the Council Chairperson after meeting and conferring as provided in paragraph 5.2.

4.5. If the Council Chairperson or a Council Member must be replaced, the replacement shall be identified in accordance with the procedures described in paragraph 4.2.

4.6. The primary place of business for the Council and the duty station for the Council Members shall be at Region 5 headquarters at Mare Island, California. The Agency shall provide the Council with office facilities in an administratively distinct and secure space at Region 5 headquarters.

4.7. Defendant shall provide the Council with office facilities, equipment, administrative assistance,

and other resources reasonably necessary to carry out its responsibilities under this Agreement in a timely and effective manner. The Council shall submit a reasonable annual budget for approval by the Regional Forester and the Deputy Chief. Any dispute with respect to Defendant's obligations under this paragraph may be raised by lodging a written request for a meet-and-confer with the other party. The parties shall meet-and-confer as provided in paragraph 5.3. Thereafter, either party may bring the dispute before the Court as provided in paragraph 5.4.

4.8. The Council shall have reasonable access to relevant books, data, and documents, in whatever form they are maintained in the ordinary course of business, and other sources of information necessary or appropriate to the exercise of its authority.

4.9. The Council shall direct all requests for written or statistical information, or for an official Agency position with respect to any issue, in writing to a Council Liaison who shall be designated by the Agency. The Council Liaison will provide the information in a reasonably prompt manner, which will be deemed to be not more than seven business days unless the Liaison articulates in writing legitimate reasons for a more extended response time.

4.10. The Council may exercise its discretion to travel to and visit job-sites, facilities or any other locations that are reasonably necessary to fulfill its responsibilities.

4.11. The Council shall monitor the Agency's compliance with the Relief Provisions of this Agreement.

In carrying out its responsibilities, the Council may:

- (a). Evaluate the effectiveness of the Relief Provisions of this Agreement;
- (b). Develop and recommend changes, modifications or adjustments to the programs described in the Relief Provisions to the extent necessary to effectuate the purposes of this Agreement;
- (c). Review reports required by the Agreement and make recommendations based on such reports;
- (d). Evaluate whether Defendant addresses and resolves issues regarding sexual harassment in a

timely and effective manner; provided, however, that the Council shall have no authority to review or evaluate the Department's processing of formal EEO complaints pursuant to 29 C.F.R. Part 1614.

4.12. Counsel for either party may submit matters in writing to the Council for its consideration and may request, in writing, an in-person or telephonic conference with the Council or the Council Chairperson. All matters or written requests for a conference submitted to the Council by counsel for either party shall be served on counsel for the opposing party. The Council may request an in-person or telephonic conference with Counsel for the Parties. Ex-parte in-person or telephonic communications between Class Counsel or Counsel for Defendant and the Council or the Council Chairperson shall be held only if (1) the other party consents in writing in advance, or (2) the Council Chairperson in the exercise of his or her sole discretion initiates the ex parte communication. The Council Chairperson shall keep a log of all ex-parte communications that he or she initiates under the preceding sentence, and shall provide a copy of the log to counsel for each party quarterly or upon request.

4.13. The Council shall attempt to operate by consensus. However, if unanimity cannot be achieved, the majority view shall prevail. The deliberations of the Council shall be confidential. Nothing in this paragraph or in paragraph 4.12 shall be construed to limit the ability of the Class Representative Council Member to consult with Class Counsel or the Agency Representative Council Member to consult with Counsel for Defendant.

4.14. The Council shall issue detailed periodic reports at nine month intervals to the parties on the state of compliance with the Agreement.

4.15. The Council shall meet with the Regional Forester at least quarterly to discuss progress toward meeting the goals of the Agreement and any other issues with respect to Defendant's compliance with the Agreement.

4.16. The Council may issue recommendations to the Regional Forester as to any matter within its authority as described in paragraph 4.11. The Council shall consider cost-effectiveness in making its

recommendations. Each such recommendation shall be in writing and contain a statement of rationale.

4.17. The Regional Forester shall consider each written recommendation of the Council and notify the Council whether he or she intends to implement the recommendation. Except as otherwise provided, if the Regional Forester declines to implement, in whole or in part, any recommendation, Defendant shall bear the burden of objecting and demonstrating, in accordance with the procedures set forth in section 5 below, that implementing the recommendation: (1) would have a significant adverse impact on the Agency's mission; (2) is unrelated to the implementation of the Relief Provisions of this Agreement; (3) is contrary to law as set forth by statute or regulation; or (4) is unduly expensive in light of reasonable budgetary constraints.

4.18. If Defendant declines to implement a Council recommendation on the basis that it is unduly expensive in light of reasonable budgetary constraints, Defendant shall make its best efforts to demonstrate that the disputed recommendation could be accomplished as effectively in a less costly manner. Nothing in this Agreement shall be construed to limit or restrict Defendant's right to determine the mission, budget, organization, number of employees and internal security practices of the Department, Agency or Region 5.

4.19. Defendant shall not be required to implement any Council recommendation with respect to any unit or agency outside Region 5.

4.20. Prior to implementing a Council recommendation that recommends any change to conditions of employment (as defined in 5 U.S.C. § 7103(a)(14)) of bargaining unit employees, Region 5 will provide the exclusive representative with notice and an opportunity to bargain over those aspects of the change that are within the scope of bargaining under the Federal Labor Relations Act and applicable case law. If a Council recommendation requires further action under the Master Labor Agreement, the Regional Forester shall so indicate in the notice required by the first sentence of paragraph 4.17. Any negotiations that result from the notice will be conducted in accordance with appropriate provisions of the Master Labor Agreement. In addition, if the

union objects to any change in conditions of employment, the Parties shall meet in good faith, and may invite the members of the Council or representatives of the Union to meet, to determine whether the recommendation can be modified to resolve the objections.

4.21. The implementation of any Council recommendation relating to an individual personnel matter shall be in the Agency's sole discretion and shall be reviewed only in accordance with existing law and procedure. For the purposes of this paragraph, a recommendation shall be considered to relate to an individual personnel matter if it recommends that Defendant take a personnel action or adverse action with respect to a specific employee or group of employees. A Council recommendation relating to an individual personnel matter shall be confidential and subject to the Privacy Act Protective Order at paragraph 4.3.

Section 5 DISPUTE RESOLUTION

5.1. To contest in whole or in part any recommendation of the Council concerning the Relief Provisions, the objecting party shall lodge a written objection to the recommendation with the Council and the other party within twenty-one calendar days of issuance of the recommendation. The objection shall articulate in detail the factual bases for the objection under the standards set forth in paragraph 4.17 above and shall set forth any supporting information. The parties shall meet and confer about the dispute for a twenty-one day period following the written objection.

5.2. If any dispute arises between the parties involving the fitness or abilities of a Council member to serve under paragraph 4.4, or Defendant's obligations to provide the Council with resources under paragraph 4.7, the party raising the dispute shall lodge a notice with the other party in writing of its concerns and the basis therefor. The parties shall meet and confer about the dispute for a twenty-one day period following the written notice.

5.3. If any dispute arises between the parties with respect to this Agreement, other than a dispute arising from a recommendation of the Council under paragraph 5.1, a dispute arising from the fitness or ability of a Council member to serve under paragraph 4.4, or a dispute regarding Defendant's obligations to provide the Council with resources under paragraph 4.7, the party raising the dispute shall lodge a notice with the other party in writing of its concerns and the basis therefor. The parties shall meet and confer about the dispute for a twenty-one day period following the written objection. Upon an agreement of the parties, any such dispute may first be submitted to the Council for its consideration and recommendation.

5.4. If the parties are unable to resolve a dispute after meeting and conferring as described in paragraphs 5.1, 5.2 or 5.3, either party may raise the dispute by filing a motion with the Court. In a dispute relating to a recommendation of the Council, it shall be Defendant's burden to demonstrate that any recommendation would have a significant adverse impact on the Agency's mission, is unrelated to the purposes of the Agreement, is contrary to law, or is unduly expensive in light of reasonable budgetary constraints as set forth in paragraph 4.17.

5.5. For the purposes of this section, the parties shall meet and confer in good faith. The parties' obligation to meet and confer shall be satisfied, however, if one party, after receiving a request from the other party to meet and confer, informs the requesting party that it does not believe that it is required to meet and confer with respect to the matter at issue.

5.6. Upon written agreement of the parties, the time for any notice or for any meet-and-confer under this section may be extended. Upon an agreement of the parties, after satisfying the meet and confer requirements of paragraphs 5.1, 5.2, or 5.3, any dispute may be brought before a neutral mediator.

5.7. If Defendant declines to implement a recommendation of the Council and fails to lodge an objection, or if either party refuses to meet and confer as to any dispute in the required time, the other party may

seek relief before the Court as provided in paragraph 5.4.

PART IV: GENERAL INJUNCTIVE RELIEF

Section 6 EARLY INTERVENTION PROGRAM

6.1. Region 5 shall operate a conflict resolution program, known as the Early Intervention Program ("EIP"). Among the purposes of the Early Intervention Program shall be:

- (a) Reducing conflict within the workforce;
- (b) Addressing employee requests for intervention on an expedited basis;
- (c) Resolving conflicts at the lowest possible level;
- (d) Providing an additional and alternative process to filing an informal or formal EEO complaint;
- (e) Focusing resolution efforts at the root cause of the conflict;
- (f) Reducing EEO complaint filings; and
- (g) Affirming that EIP does not replace the EEO administrative process.

6.2. Region 5 shall publicize and implement the EIP according to its implementation plan, which is attached hereto as Exhibit C.

6.3. Region 5 may, consistent with the above stated purposes, make changes in the EIP. At least 21 days prior to making any changes to the EIP, Region 5 shall notify the Council in writing, which shall include its rationale for the proposed changes.

Section 7 PERFORMANCE EVALUATIONS

7.1. Pursuant to an Interim Agreement executed December 15, 1998, the Agency established a Performance Evaluation Task Force that developed performance evaluation clarifications and supplemental performance evaluation standards, attached hereto as Exhibit D. Region 5 shall implement the standards developed by the Task Force insofar as they relate to sexual harassment, subject to its obligations to meet and confer under the Master Labor Agreement, within 30 days of Final Approval; provided, however, that if Final Approval occurs during the last 90 days of a fiscal year, the standards shall be implemented at the beginning of the next fiscal year.

Section 8 EXIT INTERVIEWS

8.1. Region 5 shall ensure that an Exit Interview is offered to all employees leaving a Region 5 unit, including the following specific actions:

- (a) Region 5 shall include a notation on its property form requiring the departing employee to indicate by signature whether he or she wishes to have an Exit Interview.
- (b) A departing employee who wishes to have an Exit Interview shall have the option of a written and/or oral Exit Interview. The Agency shall maintain a pool of interviewers to conduct oral Exit Interviews in each province. A departing employee may choose to be interviewed by a person from outside his or her Forest or unit.
- (c) Oral interviews may be conducted in-person or over the telephone.

8.2. Each completed Exit Interview shall be reviewed by the civil rights officer who services the departing employee's unit.

8.3. If an Exit Interview raises possible allegations of sexual harassment, hostile environment or retaliation for EEO activity, the civil rights officer who reviews the Exit Interview shall refer the allegations to the appropriate line officer, the Regional Civil Rights Director, the Regional Human Resources Director, and the Washington Office Civil Rights Officer.

8.4. The Regional Civil Rights Director shall periodically conduct a trend analysis of all Exit Interviews received under paragraph 8.2. The trend analysis shall examine Exit Interviews for patterns of conduct or inaction.

8.5. The Regional Human Resources Director shall consider whether corrective action is required with respect to Exit Interviews received under paragraph 8.3.

8.6. Region 5 shall prepare a semi-annual report evaluating the effectiveness of the Exit Interview process and summarizing significant information gleaned from Exit Interviews. The Region may, in its discretion,

procure a contractor to prepare the report required by the preceding sentence. The Regional Civil Rights Director shall discuss the reports annually with the Regional Leadership Team.

Section 9 MISCONDUCT INVESTIGATION PROCEDURES

9.1. Region 5 shall maintain an investigation procedure relating to employee misconduct. Allegations of sexual harassment or retaliation may be processed as misconduct.

9.2. In conducting misconduct investigations, Region 5 shall ensure that:

- (a) such investigations are conducted in a timely and effective manner;
- (b) staffing for such investigations is sufficient to accomplish its objectives;
- (c) investigators are properly trained to conduct such investigations;
- (d) individuals who have been determined to have engaged in misconduct are appropriately and effectively disciplined, up to and including termination;
- (e) individuals who have engaged in acts of misconduct are effectively deterred from engaging in future misconduct; and
- (f) the intake, processing and outcome of allegations of sexual harassment or retaliation are documented.

9.3 The Regional Director of Human Resources shall be responsible for administering the misconduct investigation procedures.

Section 10 TRAINING

10.1. Region 5 shall provide annual mandatory training to its employees designed to assist them in recognizing, addressing and correcting sexual harassment and retaliation.

10.2. Region 5 shall provide an annual letter to its employees with respect to the requirements of this Agreement. The first such letter shall be issued within sixty days of the Final Approval Date and shall be posted on Region 5's website. Class Counsel shall be provided with an opportunity to review and comment on the first annual letter thirty days in advance of its issuance. The letter required by this paragraph shall be designed and

intended to prevent retaliation against Class Members as a result of this Agreement.

10.3. Region 5 shall provide specialized sexual harassment prevention training to supervisors or employees who are found, through Defendant's administrative processes, to have engaged in sexual harassment or retaliation.

10.4. Region 5 may, in its discretion, use outside contractors to provide the training required by this section.

Section 11 THE INFORMAL EEO PROCESS.

11.1. The Agency shall provide training to all EEO counselors involved in the informal EEO process in Region 5. The training shall cover, among other things, the need for accuracy and timeliness and the proper role of EEO counselors in the informal process.

11.2. To assess the effectiveness of the informal EEO process, the Agency shall design and conduct a voluntary survey of participants in the informal EEO process in Region 5. The survey shall be provided to each complainant and responding official in the informal EEO process at the conclusion of the informal process.

11.3. The Agency shall conduct an annual analysis of completed survey forms to determine whether the informal EEO process is functioning effectively and appropriately as to Region 5.

11.4. The Agency expressly acknowledges that an EEO counselor may not withdraw any class member's informal EEO complaint without the employee's written permission.

11.5. The Agency shall create and maintain a process for tracking complaints in Region 5 by type of discrimination, responding officials, and location in order to determine whether any patterns of conduct are discernible.

11.6. Region 5 shall maintain an alternative dispute resolution process that will be made available to a

complainant within the first 90 days after an initial informal complaint is filed. Defendant's obligation under this paragraph may be met by offering the complainant the opportunity to participate in the Early Intervention Process or mediation.

11.7. The Council may recommend modifications or revisions to the informal EEO process. The Agency shall consider the recommendations of the Council and, if the Agency decides not to implement the proposed modifications or revisions, it shall provide the Council with a written statement of its reasons within 21 days. The Agency's decision with respect to a Council recommendation as to the Informal EEO Process shall not be subject to the dispute resolution procedures set out in section 5.

Section 12 MENTORING PROGRAM

12.1. The Agency shall create a task force to examine the Region 5 mentoring program. The task force shall recommend to the Council proposals designed to assure that class members are provided appropriate mentoring, including assistance with respect to issues relating to sexual harassment.

Section 13 SCHOLARSHIPS

13.1. Region 5 shall set aside at least \$100,000.00 per year for scholarships; provided, however, that Region 5 shall not be required to set aside more than \$100,000. The parties agree that funds will be set aside for scholarships under this paragraph only from Congressionally appropriated funds legally available for such purpose. Nothing in this paragraph shall be interpreted or construed as a commitment or requirement that Defendant obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

13.2. The Council shall review Region 5's current scholarship program to assure that women are not

denied opportunities as a result of sexual harassment and reprisal, and that scholarships are available to men and women equitably; provided, however, that nothing in this section shall be construed to authorize or require establishing quotas for the distribution of scholarship funds.

Section 14 ADVERSE ACTION DIGEST

14.1. Region 5 shall publish a semi-annual adverse action digest of disciplinary actions of one day suspension or more taken against employees in Region 5.

14.2. The adverse action digest shall summarize adverse actions according to forest or Regional Office, supervisory or non-supervisory position, and gender of the person against whom adverse action was taken, and shall describe the nature of the offense and the disciplinary action taken.

14.3. Nothing in this paragraph shall be construed to require the disclosure of the identity of an individual against whom action was taken.

Section 15 WOMEN'S CONFERENCE

15.1. Region 5 shall sponsor an annual women's conference, open to female employees of Region 5 regardless of supervisory capacity. Each annual conference may be attended by not more than 500 participants according to criteria established by the Council. Additionally, the Council may, in its discretion, further limit the number of participants.

15.2. The Council shall review and approve the agenda or curriculum for the women's conference.

Section 16 ADVANCE ADVERTISEMENT OF WORK DETAILS

16.1. Region 5 shall advertise all details of 90 days or more in Region 5.

16.2. Region 5 shall maintain records of all details advertised under this section.

Section 17 POSITIVE INCENTIVES AND CIVIL RIGHTS PERFORMANCE

17.1. Region 5 shall create a task force to consider ways in which the Region may (1) provide positive incentives to employees who perform exceptionally in the civil rights components of their duties; and (2) take into consideration the civil rights performance records of employees who seek promotion or advancement. The task force shall recommend to the Council proposals designed to accomplish the forgoing objectives.

Section 18 RECORD-KEEPING AND REPORTS

18.1. Region 5 shall maintain and provide to the Monitoring Council semi-annual reports on the effectiveness of the following programs:

1. EIP program
2. Exit interviews
3. Misconduct investigation
4. Training
5. Informal EEO process
6. Mentoring program
7. Scholarships
8. Positive Incentives and Civil Rights Performance

PART V: CREATION OF FEDERAL WOMEN'S PROGRAM POSITION

Section 19 FEDERAL WOMEN'S PROGRAM POSITION

19.1. Region 5 shall establish a full-time Federal Women's Program Manager position.

19.2. The Federal Women's Program Manager may be assigned additional duties as deemed appropriate in the discretion of Defendant; provided, however, that the Federal Women's Program duties shall be predominant.

PART VI: INDIVIDUAL RELIEF FOR CLASS MEMBERS

Section 20 PRESERVATION OF PENDING EEO COMPLAINTS

20.1. Any Class Member who has filed a complaint of discrimination relating to sexual harassment or retaliation for EEO activity related to sexual harassment in accordance with the provisions of 29 C.F.R. Part 1614 and 42 U.S.C. § 2000e-16, and whose complaint is still pending before the Department or Agency, the Equal Employment Opportunity Commission, or any court, may continue such complaint. The matters raised in those complaints shall be redressed, if at all, through the regular procedures of the forum in which the matter is pending in accordance with current law and regulation. This Agreement shall not be construed to provide any other remedy, or bar, restrict or limit in any manner any such claims, with respect to the matters raised in such complaints.

Section 21 OTHER CLAIMS

21.1. Any class member who seeks to allege an individual claim of discrimination relating to sexual harassment or retaliation for EEO activity related to sexual harassment that arose on or after February 1, 1994, and that is not currently pending before, or has not previously been rejected or decided by, the Department, the Equal Employment Opportunity Commission, or any court, or been settled at any stage of any proceeding, may initiate a complaint with respect to such matter by filing a Settlement Agreement Complaint Form ("Complaint Form") with the Complaint Administrator. For purposes of this section, a claim shall not be excluded from processing solely because the complainant consulted an Agency EEO counselor/mediator with respect to the claim at issue, provided that no claim shall be considered if the complainant received a Notice of Right to

File a formal EEO complaint. In the event of a dispute about whether the complainant received a Notice of Right to File, the initial burden shall be upon the complainant to declare under penalty of perjury that she did not receive a Notice of Right to File with respect to the claim at issue, whereupon the burden shall be upon the Agency to demonstrate that she did in fact receive such a notice.

21.2. A blank Complaint Form, in the form attached hereto as Exhibit E, shall be disseminated with the Fairness Notice as provided in paragraph 23.2.

21.3. No complaint shall receive processing under this section unless the complainant completes a Complaint Form, signs it under penalty of perjury and mails it to the Complaint Administrator within 90 days after the date of the Fairness Hearing. A Complaint Form that is postmarked by the U.S. Postal Service by the due date shall be considered timely filed. Late-filed Complaint Forms shall not be considered.

21.4. The Complaint Administrator shall review each Complaint Form to make an initial determination of eligibility or deficiency based on the information set forth in the Complaint Form according to the procedures set forth in Appendix I to this Agreement. Within ten days of receiving each Complaint Form, the Complaint Administrator shall notify the complainant in writing of an initial determination of eligibility or deficiency.

- (a) A determination of deficiency shall state that the Complaint Form is deficient along with the reason for the deficiency. The complainant shall have thirty days after the date of the notice of deficiency to file a new Complaint Form correcting the deficiency. Within ten days of receiving a corrected Complaint Form, the Complaint Administrator shall make a determination of eligibility or deficiency and notify the complainant in writing of the receipt of the corrected Complaint Form

and the determination of eligibility or deficiency thereon. Any corrected Complaint Forms timely filed with the Complaint Administrator after the filing deadline set forth in paragraph 21.3 shall be considered filed as of the date of their original filing.

- (b) A determination of eligibility shall not be precedential with respect to the determination of the merits of the complaint by the Department's Office of Civil Rights ("OCR").

21.5. The Complaint Administrator shall provide a copy of all Complaint Forms and corrected Complaint forms and all determinations of eligibility or deficiency to Counsel for the Parties within ten days of the determination of eligibility or deficiency.

21.6. The Complaint Administrator shall refer all Complaint Forms as to which there has been an determination of eligibility to the Agency for informal processing and shall forward copies to OCR. The Agency shall immediately begin processing all such complaints under normal Agency informal complaint processing procedures. Individuals who are referred to the informal process shall be offered the alternative dispute resolution procedures set forth in section 11 above.

21.7. After the conclusion of the time for informal processing under paragraph 21.6, OCR shall begin formal processing of the complaints not resolved through informal processing in accordance with the provisions of 29 C.F.R. Part 1614 and 42 U.S.C. § 2000e-16. OCR shall dismiss any such complaint raising a claim that previously had been dismissed in accordance with 29 C.F.R. § 1614.107, or that had been filed previously alleging discrimination on an alternate basis. OCR also shall dismiss any such complaint if the complainant is not a member of the Class or if the discriminating conduct alleged in the complaint is outside the class period. In the event of a dismissal, the notice of dismissal shall include a separate notation stating whether the complaint was dismissed because the complainant is not a member of the Class, the complaint is outside the class period, or the claim has been filed previously on an alternate basis, and the facts supporting those determinations. OCR shall

promptly provide copies of any acceptance or dismissal of a complaint raised in a Complaint Form filed under this Agreement to the complainant and the complainant's personal representative, if any. On a monthly basis, Defendant shall provide to Class Counsel and counsel for Defendant copies of all acceptances or dismissals of complaints raised in a Complaint Form filed under this Agreement. Within ten days of request, Class Counsel may review any underlying documents relied upon by OCR in making a determination to accept or dismiss such a claim.

21.8. A class member who files a Complaint Form may attach documentation that she has filed a complaint for processing under the normal procedures, and state that the complaint was lost by the Department. The Complaint Administrator shall refer all such claims to OCR. If the Department has no record of the complaint, within ten days of the referral OCR shall return the Complaint Form to the Complaint Administrator for an initial determination of eligibility and the complaint shall be processed in accordance with paragraphs 21.4 through 21.8.

21.9. The firm of Rosenthal & Company, 14 Galli Dr., Suite 100, Novato, California, (800) 211-5201, shall serve as Complaint Administrator for the purposes of this section and section 23.2. The Complaint Administrator shall have no authority to determine the merits of any claim initiated pursuant to this section.

21.10. Nothing in this Agreement shall be construed to permit or require individual relief or further processing with respect to any claim that is barred by the principles of res judicata or collateral estoppel. No determinations made with respect to any complaint pursuant to this Agreement shall be construed to be binding, controlling or precedential with respect to any complaint pending under section 20.

PART VII: CLASS REPRESENTATIVES' CLAIMS

Section 22 CLASS REPRESENTATIVES' CLAIMS

22.1. Not later than thirty days after Preliminary Approval of this Agreement, the parties shall commence settlement negotiations for the purpose of resolving all outstanding individual claims of the class

representatives. The parties may use a neutral mediator to assist them in the resolution of the class representatives' claims. The negotiations on the class representatives' claims shall continue for not more than ninety days.

22.2. If the negotiations contemplated by paragraph 22.1 do not achieve a negotiated resolution of the class representatives' individual claims, the parties shall return to the Court to request a discovery schedule and proceed with litigation of the class representatives' individual claims.

PART VIII: NOTICE, DISSEMINATION AND APPROVAL

Section 23 NOTICE, DISSEMINATION AND APPROVAL OF AGREEMENT

23.1. Preliminary Approval and Scheduling of Fairness Hearing

The parties shall request that the Court give its preliminary approval to the Agreement, schedule a fairness hearing to be held not earlier than 90 days after the Court preliminarily approves the Agreement, and request that the Court approve and sign the Fairness Notice, which is attached to this Agreement as Exhibit A.

23.2. Notice

Within ten days after the Court grants preliminary approval, schedules a fairness hearing, and approves and signs the Fairness Notice, Defendant shall provide notice to potential class members as follows:

- (a) Defendant shall deliver by electronic transmission a copy of the Fairness Notice to all current female employees of Region 5 who have Region 5 electronic mail accounts. The Complaint Administrator shall mail a copy of the Fairness Notice to all current female employees of Region 5. Region 5 shall provide the Complaint Administrator, with a copy to Class Counsel, with a certified list of the last known address for all current female employees of Region 5.
- (b) The Complaint Administrator shall mail a copy of the Fairness Notice to all former female employees of Region 5 during the class period according to the guidelines set forth in Appendix I to this Agreement. Region 5 shall provide the Complaint Administrator, with a copy to Class Counsel, with a certified list of the last known addresses for all former female employees of Region 5 during the class period.
- (c) The Complaint Administrator shall publish, according to the protocols set forth in Appendix I to this Agreement, a notice of preliminary approval and the time and place of the fairness hearing, along with information on how to obtain a copy of the Fairness Notice.
- (d) Defendant shall post the Fairness Notice, along with information on how to obtain a hard copy, on the Region 5 and Forest Service's national intranet and internet websites. The posting shall enable class members to download and print the Complaint Form described in section 21.2. Additionally, defendant shall use its best efforts to post a link to the Fairness Notice, with an explanatory note, on the intranet and internet websites for each of the other Forest Service Regions.

- (e) The notice published under paragraph (c) and posted under paragraph (d) shall state that any Class Member may obtain a copy of the Fairness Notice by telephoning the Complaint Administrator at a toll-free number. The Complaint Administrator shall promptly send a copy if requested to do so.

23.3. Objections

The parties agree to request an order of the Court that any person who wishes to raise an objection to this Agreement shall, at least 30 days prior to any fairness hearing that is scheduled by the Court, submit a written statement to the Court, and shall serve copies on counsel for the parties. The statement shall contain the individual's name, address, and telephone number, along with a statement of his or her objections to the Agreement and the reasons for the objections. The parties may file responses to objections not less than seven days prior to the fairness hearing.

23.4. Parties to Seek Approval

The parties shall jointly use their best efforts to obtain prompt approval of this Agreement. If the Court does not approve this Agreement as written after conducting a fairness hearing, it shall be voidable in its entirety at the option of either party.

PART IX: ATTORNEYS' FEES AND COSTS

Section 24 ATTORNEYS' FEES AND COSTS

24.1. Liability Fees

For legal services performed by Class Counsel related to liability, including defending this Agreement against collateral attack, Class Counsel shall be entitled to reasonable attorney's fees and costs on the same basis as a prevailing party pursuant to 42 U.S.C. § 2000e-5(k), up to and through the date of Final Judgment. For the purposes of this paragraph, Class Counsel shall be entitled to reasonable fees for conferring with class members regarding the proposed settlement and fairness hearing process between the execution of the Agreement and Final Approval. Within 30 days after the date of Final Approval, Class Counsel shall submit to Counsel for Defendant a verified demand and documentation in support of their demand itemizing the services performed through the date of Final Approval, the hours spent on the services, and the specific costs incurred. If the parties are unable to agree to the amount of attorney's fees to be paid under this paragraph within 30 days after submission of the demand, Class Counsel may submit a fee petition to the Court at any time after the expiration of 30 days. With respect to fees for activities occurring after the date of Final Approval and prior to Final Judgment, Class Counsel may submit a verified demand and the parties shall follow the same procedure described herein.

Implementation Fees

24.2. For legal services performed by Class Counsel after the date of Final Approval in connection with implementation of this Agreement during its term, Defendant shall pay reasonable attorney's fees and costs. For the purposes of this paragraph, implementation activities shall be limited to the following:

- (a) activities with respect to selecting, removing or replacing the Council Chairperson under paragraphs 4.2(a), 4.4 and 4.5 and the Class Representative Council Member under paragraphs 4.2(c), 4.2(f), 4.4 and 4.5;
- (b) providing notice to the Court of the date on which the Monitoring Council was established pursuant to section 2.6;

(c) consulting with the Class Representative Council Member and the Class Representatives with respect to matters relating to this Agreement;

(d) making presentations to the Council under paragraph 4.12;

(e) reviewing the reports required by paragraph 4.13 and section 18;

(f) reviewing Council recommendations made under paragraph 4.16, including, provided that Class Counsel reasonably believes the recommendation may be adverse to the interests of the Class or that an objection is lodged by the Agency pursuant to paragraph 5.1, review and analysis of underlying documents or data;

(g) meeting and conferring with Counsel for Defendant as provided in section 5 and paragraphs 4.20, 29.1 and 30.1 and;

(h) with respect to individual claims filed under section 21, answering class members' general inquiries about the claims process prior to and during the time period provided for filing such claims, reviewing initial determinations of eligibility or deficiency as provided in paragraph 21.5, and reviewing acceptances or dismissals of complaints, including review of underlying documents, as provided in paragraph 21.7; provided, however, that Class Counsel shall not be entitled to fees under this paragraph or paragraph 24.3 for activities related to the representation of class members in pursuing their individual complaints.

24.3. Class Counsel shall be entitled to reasonable attorney's fees and costs for responding to inquiries from class members regarding the Individual Claim process set forth in section 21 outside the time period set forth in subparagraph 24.2(h), provided, however, that the total amount of fees and costs paid for such activities shall not exceed \$10,000. Class Counsel shall submit demands for such fees and costs as separate items in their quarterly fee demands as provided in paragraph 24.4.

24.4. Class Counsel shall submit quarterly demands for fees and costs under paragraphs 24.2 to Defendant during the term of this Agreement. Within 30 days after Class Counsel has submitted a quarterly demand for fees, counsel for Defendant shall notify Class Counsel in writing whether any of the billed time is disputed. At the same time, counsel for Defendant shall submit the appropriate request to the Treasury Department for the payment of all non-disputed amounts and shall request expedited payment.

24.5. Notwithstanding the provisions of paragraph 24.2, Class Counsel may petition the Court to seek

fees and costs from Defendant for activities not specifically identified in paragraph 24.2 that are necessary to the adequate representation of the class and that were not reasonably foreseeable by the parties.

24.6. Enforcement Fees

For legal services performed by Class Counsel in connection with the dispute resolution procedures set forth in section 5, including the resolution of any outstanding disputes under paragraph 2.7, Class Counsel shall be entitled to attorneys' fees and cost on the same terms and conditions as would be available to a prevailing party under Title VII, 42 U.S.C. § 2000e-5(k).

24.7. Resolution of Implementation and Enforcement Fees Disputes

The parties shall meet and confer for a period of 30 days to attempt in good faith to resolve any disputes concerning attorney's fees, expenses and costs with respect to implementation or enforcement. Any dispute that cannot be resolved may be submitted to the Court.

PART X: MISCELLANEOUS PROVISIONS

Section 25 FULL AND EXCLUSIVE AGREEMENT

25.1. Agreement constitutes the full and exclusive Agreement of the Parties with respect to the matters discussed herein, and supersedes all prior agreements, written or oral, with respect to such matters. No representations or inducements to compromise this action have been made, other than those recited in this Agreement.

Section 26 CONSTRUCTION AND COLLATERAL USE OF AGREEMENT

26.1. The Parties to this action have entered into this Agreement as a compromise measure to

terminate this action and resolve all issues of controversy between them. This Agreement shall not be construed for or against either party. The terms of this Agreement, its substance, the negotiations leading up to the Agreement, and the information exchanged by the Parties in the course of those negotiations may not be offered, taken, construed or introduced as evidence for any purpose, either in this action or in any pending or subsequent proceeding of any nature, except that in any subsequent action involving the enforcement, construction, or application of this Agreement, a copy of the Agreement may be presented to verify its contents.

Section 27 SEVERABILITY

27.1. Should any provision of this Agreement be found by the Court to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired, and (ii) such provisions shall be enforced to the maximum extent possible so as to effect the intent of the parties.

Section 28. DUTY TO DEFEND

28.1. In the event that this Agreement or the entry of an Order approving this Agreement generates, either through intervention or separate lawsuits, attacks on the lawfulness of any of the provisions contained in this Agreement, the parties agree to defend the provisions against such attacks. If any such lawsuit is brought in state court against Defendant, Defendant shall seek to remove such action to the District Court and the signatories shall support that action.

Section 29 RESPONSES TO CHANGES IN LAW

29.1. The parties to this Agreement recognize that changes in law may occur in the area of personnel selection and management during its term. To the extent the Office of Personnel Management or a change in law may require modification to any statement, policy, or program outlined in this Agreement, either before or after its

implementation, the parties shall meet and confer pursuant to paragraph 5.3 as to whether such modification is required, necessary or appropriate. If the parties are unable to resolve any such dispute after meeting and conferring, either party may raise the dispute by filing a motion with the Court.

Section 30 EFFECT OF MASTER LABOR AGREEMENT

30.1. Prior to implementing any changes in conditions of employment (as defined in 5 U.S.C. § 7103(a)(14)) of bargaining unit employees that may be required by this Agreement, Region 5 will provide the exclusive representative with notice and an opportunity to bargain over those aspects of the changes that are within the scope of bargaining under the Federal Labor Relations Act and applicable case law. Any negotiations that result from the notice will be conducted in accordance with appropriate provisions of the Master Labor Agreement. In addition, if the union objects to any term of the Agreement during bargaining on the ground that it causes a change in conditions of employment, the Parties shall meet in good faith to discuss the union's objections, and may invite representatives of the union to meet with the parties.

Section 31 HEADINGS

31.1. The headings in this Agreement are for the convenience of the Parties only and shall not limit, expand, modify, or aid in the interpretation or construction of this Agreement.

Section 32 COUNTERPARTS

32.1. This Agreement may be executed in one or more counterparts and each executed copy will be deemed an original that is binding upon all Parties.

Section 33 AMENDMENTS

33.1. This Agreement and any Exhibits attached hereto may be amended only by a written instrument executed on behalf of the parties, subject to the consent of the Court, and without further notice to the class, unless the Court requires such notice.

EXECUTED:

DAVID W. OGDEN
ASSISTANT ATTORNEY
GENERAL

ROBERT S. MULLER III
UNITED STATES ATTORNEY

Date JACK W. LEE

Date LOIS B. OSLER
ADAM ISSENBERG

Date BRAD YAMAUCHI
Minami, Lew & Tamaki LLP

U.S. Department of Justice
Civil Division
Federal Programs Branch

Date JUDITH KURTZ

Attorneys for Plaintiffs
and Class Counsel

Of Counsel:
Charles R. Rawls
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Office of the General
Counsel
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Agriculture

Date LESA L. DONNELLY

Date GINELLE O'CONNOR

Attorneys for Defendant

Class Representatives