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## LEPRINO FOODS COMPANY'S POST-HEARING BRIEF

In the Matter of:

***Proposed changes in the Class 4a and 4b price formulae as provided in the Consolidated Stabilization and Marketing Plan considered at the June 30 – July 1, 2011 Hearing held by the California Department of Food and Agriculture in Sacramento, California.***

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Pending before the Secretary of the California Department of Food and Agriculture ("CDFA" or "Department") are proposed amendments to the Consolidated Stabilization and Marketing Plan concerning changes in the Class 4a and 4b price formulae. The hearing on this matter ("Hearing") was held June 30 – July 1, 2011 in Sacramento, California. In accordance with California Food and Agricultural Code § 61903, Leprino Foods Company ("Leprino") is submitting this Post-Hearing Brief to clarify its testimony.

### Basing Whey Manufacturing Costs on FMMO Cost Study is Unfounded and Illogical

As noted in my testimony, the Western United and Land O'Lakes proposals adopt the Federal Order manufacturing cost allowance which is based upon a cost study that is far inferior to the studies formerly conducted by CDFA.

The Cornell cost study that underpins the Federal Order whey manufacturing cost allowance was dominated by large whey plants in highly concentrated cheese manufacturing areas that consolidated whey from several cheese plants. These plants are significantly larger than the national norm and many of the operations receive condensed whey from multiple sources.

Class III / IV Hearing Transcript: September 14, 2006

[www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5061663](http://www.ams.usda.gov/AMSV1.0/getfile?dDocName=STELPRDC5061663)

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6A. Some of the intermediate size plants don't  
7 necessarily have whey drying facilities, either,  
8 but, you know -- and it bears mentioning, I  
9 guess, and I think I did in the working paper,  
10 that a few of the plants that were drying whey  
11 were drying more than their own whey as well.

Dr. Stephenson acknowledged in cross-examination that the cost of condensing the whey at the originating plant and transportation costs (if not borne by the receiving plant) were not captured in his cost study.

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5Q. And you, as you stated in your testimony,  
6 you 1 asked the -- let me back it up a second.  
7 Your weighted average cost of processing  
8 for the whey plants is based entirely upon the

- 9 costs of the surveyed plants, correct?  
10A. That's correct.

Also, although Dr. Stephenson attempted to use a similar accounting methodology in his cost study, he was confined by available time and resources to using a web-based questionnaire to collect the cost data. In contrast, CDFA conducted whey cost studies four consecutive years using their proven and rigorous methodology. Discarding CDFA's own cost studies in order to utilize an estimation method with noted deficiencies would be wholly inconsistent with CDFA practices and would be poor policy. The underlying framework for determining costs of whey processing should therefore be based upon the CDFA methodology.

#### Sliding Scale vs. a Higher Fixed Factor for Whey

The Hearing Panel asked numerous witnesses for a preference between a sliding scale and fixed whey factor. As noted in my response, a fixed factor in excess of the existing \$0.25 per cwt overvalues whey for those high volume commodity manufacturers who operate on a slim margin. The existing fixed factor of \$0.25 represented the average value of whey under the former whey factor for the period from November 1997 through January 2011. Although more recent whey markets are generating higher revenue streams, history indicates that these current markets are not sustainable over the long term. Therefore, if the Department deems it desirable to transfer further whey revenue to producers through the regulated milk price, the sliding scale as proposed by Dairy Institute is the preferred mechanism. Increasing the fixed factor is not supported by market history and places significant processing capacity at risk.

#### A Class 4b Price That Is Lower Than FMMO Class III Is Justified

Minimum milk prices in California must not exceed the finished product value net of manufacturing costs in California. Many witnesses challenged the basis for California milk prices to be lower than Federal Order prices, but a simple review of transportation to market provides insights. The cost to transport cheese from our California facilities on refrigerated trucks is as follows:

- Illinois: 9.1 cents per pound
- New Jersey: 14.6 cents per pound
- Florida: 15.2 cents per pound

This is only one piece of the equation but the manufacturing costs are well documented and stand on their own. The Department must base California minimum milk prices upon objective values in California, rather than relying on someone's emotional sense of equity or historic prices that do not reflect current transportation or other cost structures.