CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

In the matter of:	
David Stapleton (Receiver) Vintage Dairy	Order No. R5-2012-0533
	Settlement Agreement and Stipulation for Entry of Order; Order

Section I: INTRODUCTION

This Settlement Agreement and Stipulation for Entry of Administrative Civil Liability Order ("Stipulated Order" or "Order") is entered into by and between the Executive Officer of the Regional Water Quality Control Board, Central Valley Region ("Central Valley Water Board"), on behalf of the Central Valley Water Board Prosecution Staff ("Prosecution Staff"), and David Stapleton, court-appointed receiver of Vintage Dairy (the "Receiver") (Prosecution Team and Receiver are collectively, the "Parties") and is presented to the Central Valley Water Board, or its delegee, for adoption as an order by settlement, pursuant to Government Code section 11415.60.

Section II: RECITALS

1. David Stapleton of the Stapleton Group is the court-appointed Receiver for a dairy facility located at 12103 W Elkhorn Avenue, Riverdale, County of Fresno ("Vintage Dairy"). On 3 May 2007, the Central Valley Water Board issued the Waste Discharge Requirements General Order for Existing Milk Cow Dairies, Order R5-2007-0035 (hereinafter General Order) and the General Order's corresponding Monitoring and Reporting Program. The General Order became effective on 9 May 2007. Vintage Dairy is regulated by the General Order, and the General Order names the owners of dairies subject to the General Order as "the Discharger." The owner of Vintage Dairy is David Albers ("Owner"). However, David Stapleton of Stapleton Group was appointed Receiver for Vintage Dairy through an Order of the Fresno County Superior Court on **5 April, 2011** ("Receiver"). The court-appointed Receiver steps in to the shoes of the Owner of Vintage Dairy to make management decisions on behalf of Vintage Dairy. This includes management decisions related to the General Order.

2. On 5 May 2011, the Executive Officer of the Central Valley Water Board issued Administrative Civil Liability Complaint No. R5-2011-0542 ("Complaint") to the Owner. The Complaint recommends imposing an administrative civil liability totaling $19,800 for alleged violations of the General Order. The Central Valley Water Board found that

the Owner did not submit a Waste Management Plan, a 2008 Annual Report , or a 2009 Annual Report by the required due dates. The penalties brought in the Complaint were adopted as an Administrative Civil Liability Order ("ACL Order") by the Central Valley Water Board on October 13, 2011. None of the penalties assessed in the ACL Order as to the Owner apply as to the Receiver or to any future owner of Vintage Dairy.

3. The General Order required submission of a 2010 Annual Report summarizing activities conducted on Vintage Dairy during the 2010 calendar year ("Compliance Period") by 1 July 2011. The Owner was still in control of Vintage Dairy during the Compliance Period and is responsible for submitting the 2010 Annual Report. To date, the Owner has not submitted a 2010 Annual Report for Vintage Dairy. The Central Valley Water Board sent the Owner a Notice of Violation for failure to submit the 2010 Annual Report on August 16, 2011. Failure to comply with the General Order is a violation of California Water Code Sections 13267 and 13268, and subjects the Owner to a maximum penalty of $1,000 per day for each day he remains out of compliance. The Central Valley Water Board may seek formal enforcement against the Owner for failure to submit the 2010 Annual Report. The Receiver was not in control of Vintage Dairy during the Compliance Period and is therefore not responsible for submitting the 2010 Annual Report. Any future enforcement actions taken against the Owner related to the 2010 Annual Report will not apply as to the Receiver or to any future owner of Vintage Dairy.

4. Vintage Dairy did not comply with the General Order requirement to implement a Waste Management Plan (WMP) by 1 July 2011 while under the Receiver's control. Failure to comply with the General Order is a violation of California Water Code Sections 13267 and 13268, and subjects the Receiver to a maximum penalty of $1,000 per day for each day he remains out of compliance. The Prosecution Staff and the Receiver engaged in settlement negotiations and agree to settle this violation without administrative or civil litigation and by presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption as an order by settlement pursuant to Government Code section 11415.60. The Prosecution Staff believes that the resolution of the alleged violations is fair and reasonable and fulfills its enforcement objectives, that no further action is warranted concerning the violations alleged in the Complaint except as provided in this Stipulated Order and that this Stipulated Order is in the best interest of the public.

Section III: STIPULATIONS

The Parties stipulate to the following:

1. **Time Schedule for Compliance:** The General Order requires all covered facilities to implement the WMP by 1 July 2011. The Receiver is currently out of compliance with this requirement prescribed by the Central Valley Water Board. California Water Code Section 13300 allows a Regional Board to develop a time schedule of specific actions that a discharger shall take in order to correct violations of requirements. The Receiver agrees to the following time schedule for implementation of the WMP to come into compliance with the General Order:

a. **Submission of a Final Waste Management Plan (15 November 2011):** The Receiver submitted a WMP by 15 November 2011. The Central Valley Water Board staff has reviewed the WMP and the WMP submitted by the Receiver is complete and in compliance with the requirements of the General Order ("Approved WMP").

b. **Notice to Future Owners of Vintage Dairy Regarding Backflow Prevention:** The Approved WMP did not require capital improvements to the facility infrastructure. However, the Approved WMP reported that several groundwater wells on the property were inactive during time of inspection (hereinafter "Inactive Wells"). Necessary backflow prevention for the Inactive Wells could not be verified in the Approved WMP as required by item VI of Attachment B to the General Order.
The Receiver has taken the necessary steps to achieve full compliance with all requirements of the General Order for Vintage Dairy. If future owners of Vintage Dairy choose to re-activate the Inactive Wells, future owners must submit documentation to the Central Valley Water Board from a trained professional that the Inactive Wells will not allow the backflow of wastewater into a water supply well. Such documentation is required in order to maintain compliance with the General Order as to the Inactive Wells.

c. **Notice of General Order Requirements to Future Owners of Vintage Dairy:** As a condition to the close of escrow for the sale of Vintage Dairy to a third party ("New Owner"), the Receiver agrees to provide written notice to the New Owner of the requirement to comply with the General Order at least sixty (60) days prior to the close of escrow for the sale of Vintage Dairy. The Receiver agrees to submit a Change of Ownership form to the Central Valley Water Board containing the following language as an attachment, signed by the New Owner, at least sixty (60) days prior to the date of close of escrow for the sale of Vintage Dairy:

"Vintage Dairy is currently in compliance with Central Valley Regional Water Quality Control Board General Order R5-2007-0035 (Dairy General Order). If a New Owner intends to operate the property as a dairy farm, [New Owner] must request the Executive Officer to transfer coverage under the Order from the Stapleton Group (Vintage Dairy Receiver) to a New Owner in writing, or seek individual permit coverage from the Central Valley Water Board. In accordance with Dairy General Order Standard Provision C.3., a New Owner is not authorized to discharge under the Order and is subject to enforcement until written approval of the coverage transfer from the Executive Officer is received.

If a New Owner intends to re-activate inactive groundwater wells on the property, [New Owner] must submit written documentation to the Central Valley Water Board from a trained professional (defined in Dairy General Order Attachment B, measure VI) that there are no cross-connections

that would allow the backflow of wastewater into supply wells. Written documentation must be received by the Central Valley Water Board no more than 60 days after the re-activation of the wells. Failure to submit documentation will render the existing Waste Management Plan for Vintage Dairy inadequate and is a violation of the Dairy General Order."

d. **Requirement to Submit the 2011 Annual Report**: The Receiver was in control of Vintage Dairy for the majority of the 2011 calendar year. A Change of Ownership Form was submitted to the Central Valley Water Board on July 15, 2011 indicating that Flavio Martins was the new operator of Vintage Dairy, now Top Line Dairy. The Receiver agrees to work with Flavio Martins to ensure that the 2011 Annual Report for the Dairy Facility is submitted by 1 July 2012, the due date required in the General Order. A New Owner will not be required to submit the 2011 Annual Report for the Dairy Facility whether operated as Vintage Dairy or Top Line Dairy.

e. **Collection of Information for the 2012 Annual Report**: The Receiver agrees to work with Flavio Martins, the operator of Top Line Dairy, to collect all information necessary for the 2012 Annual Report. If the Dairy Facility is sold to a new owner the Receiver agrees to transfer all needed to comply with annual reporting requirements for their period of ownership during calendar year 2012. A copy of this correspondence and the data provided will be sent to the Central Valley Water Board. The Receiver will not be responsible for submission of the 2012 Annual Report if the property is sold before 1 July 2012.

2. **Compliance with Applicable Laws:** The Receiver understands that entry into this Stipulated Order and or compliance with the terms of this Stipulated Order is not a substitute for compliance with applicable laws, and that continuing violations for failure to comply with the General Order may subject the Receiver to further enforcement, including additional administrative civil liability.

3. **Party Contacts for Communications related to Stipulated Order:**

For the Central Valley Water Board:

Clay Rodgers
Regional Water Quality Control Board
Central Valley Region
1685 "E" Street
Fresno, CA 93706-2007

For the Receiver:

David Kieffer
The Stapleton Group

515 South Flower Street
36th Floor
Los Angeles, CA 90071

4. **Attorney's Fees and Costs:** Except as otherwise provided herein, each Party shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

5. **Matters Addressed by Stipulation:** Upon the Central Valley Water Board's adoption of this Stipulated Order, this Order represents a final and binding resolution and settlement of the violations alleged in the Complaint, and all claims, violations or causes of action that could have been asserted against the Owner or Discharger as of the effective date of this Stipulated Order based on the specific facts alleged in the Complaint or this Order ("Covered Matters").

6. **Public Notice:** The Receiver understands that this Stipulated Order will be noticed for a 30-day public review and comment period prior to consideration by the Central Valley Water Board, or its delegee. If significant new information is received that reasonably affects the propriety of presenting this Stipulated Order to the Central Valley Water Board, or its delegee, for adoption, the Executive Officer may unilaterally declare this Stipulated Order void and decide not to present it to the Central Valley Water Board, or its delegee. The Receiver agrees that they may not rescind or otherwise withdraw their approval of this proposed Stipulated Order.

7. **Addressing Objections Raised During Public Comment Period:** The Parties agree that the procedure contemplated for the Central Valley Water Board's adoption of the settlement by the Parties and review by the public, as reflected in this Stipulated Order, will be adequate. In the event procedural objections are raised prior to the Stipulated Order becoming effective, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

8. **No Waiver of Right to Enforce:** The failure of the Prosecution Staff or Central Valley Water Board to enforce any provision of this Stipulated Order shall in no way be deemed a waiver of such provision, or in any way affect the validity of the Order. The failure of the Prosecution Staff or Central Valley Water Board to enforce any such provision shall not preclude it from later enforcing the same or any other provision of this Stipulated Order.

9. **Interpretation:** This Stipulated Order shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.

10. **Modification:** This Stipulated Order shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications must be in writing, signed by all Parties, and approved by the Central Valley Water Board, or its delegee.

11. If Order Does Not Take Effect: In the event that this Stipulated Order does not take effect because it is not approved by the Central Valley Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board (State Water Board) or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Central Valley Water Board to determine whether to assess administrative civil liabilities against the Owner for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in the hearing. Notwithstanding objections on the admissibility of settlement discussions as evidence in a hearing, the Parties agree to waive any and all objections related to their efforts to settle this matter including, but not limited to:

a. Objections related to prejudice or bias of any of the Central Valley Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Central Valley Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or

b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.

12. Waiver of Right to Petition: The Receiver hereby waives their right to petition the Central Valley Water Board's adoption of the Stipulated Order as written for review by the State Water Board, and further waive their rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

13. Covenant Not to Sue: The Receiver agrees to a covenant not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to any Covered Matter.

14. Central Valley Water Board is Not Liable: Neither the Central Valley Water Board members nor the Central Valley Water Board staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the Receiver, their directors, officers, employees, agents, representatives or contractors in carrying out activities pursuant to this Stipulated Order.

15. Authority to Bind: Each person executing this Stipulated Order in a representative capacity represents and warrants that he or she is authorized to execute this Stipulated Order on behalf of and to bind the entity on whose behalf he or she executes the Order.

16. **No Third Party Beneficiaries.** This Stipulated Order is not intended to confer any rights or obligations on any third party or parties, and no third party or parties shall have any right of action under this Stipulated Order for any cause whatsoever.

17. **Effective Date:** This Stipulated Order shall be effective and binding on the Parties upon the date the Central Valley Water Board, or its delegee, enters the Order.

18. **Counterpart Signatures:** This Stipulated Order may be executed and delivered in any number of counterparts, each of which when executed and delivered shall be deemed to be an original, but such counterparts shall together constitute one document.

IT IS SO STIPULATED.

California Regional Water Quality Control Board Prosecution Staff
Central Valley Region

By: Clay L. Rodgers
for Pamela Creedon
Executive Officer

Date: 3/16/2012

By: _____
David Stapleton, Receiver
Vintage Dairy

Date: 2/29/11

Order of the Central Valley Water Board

19. In adopting this Stipulated Order, the Central Valley Water Board or its delegee has considered, where applicable, each of the factors prescribed in CWC section 13327. The consideration of these factors is based upon information and comments obtained by the Central Valley Water Board's staff in investigating the allegations in the Complaint or otherwise provided to the Central Valley Water Board or its delegee by the Parties and members of the public. In addition to these factors, this settlement recovers the costs incurred by the staff of the Central Valley Water Board for this matter.

20. This is an action to enforce the laws and regulations administered by the Central Valley Water Board. The Central Valley Water Board finds that issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code of Regulations.

21. The terms of the foregoing Stipulation are fully incorporated herein and made part of this Order of the Central Valley Water Board.

Pursuant to CWC section 13323 and Government Code section 11415.60, **IT IS HEREBY ORDERED** by the California Regional Water Quality Control Board, Central Valley Region.

Kenneth D. Landau

(Signature)

KENNETH D. LANDAU, ASST. EXECUTIVE OFFICER

(Print Name and Title)

Date: 1 MAY 2012