

# **Exhibit A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

MARILYN KEEPSEAGLE, et al.,	)	
	)	
Plaintiffs,	)	Civil Action No. 1:99CV03119
	)	(EGS)
v.	)	
	)	
TOM VILSACK, Secretary, United States	)	Judge: Emmet G. Sullivan
Department of Agriculture,	)	Magistrate Judge: Alan Kay
	)	
Defendant.	)	

**ADDENDUM TO SETTLEMENT AGREEMENT**

**I. INTRODUCTION**

This is an addendum to the Settlement Agreement approved by the Court in *Keepseagle v. Vilsack*, No. 1:99CV03119 (D.D.C.) on April 29, 2011, as revised by the parties and approved by the Court on August 1, 2012. Except where otherwise specified and defined herein, all terms used in this Addendum shall have the same meanings as set forth in the Settlement Agreement. The purpose of this Addendum is to modify the *cy pres* provisions set forth in the Settlement Agreement. Thus, the provisions of this Addendum will govern in place of the following portions of the original and revised Settlement Agreement: sections II.I, II.J, IX.F.6 and IX.F.7 (original Settlement Agreement), IX.F.9 (revised Settlement Agreement).

This Addendum also modifies Settlement Agreement section XIII.A. The Court shall retain jurisdiction over this action until 180 days after the Effective Date set forth below solely for the purpose of (a) supervising the distribution of supplemental awards described in section III below; (b) supervising distribution to Initial Cy Pres Beneficiaries pursuant to section IV.A below; and (c) ruling on appointment of Trustees or any other matter arising with respect to implementation of sections IV.B and C below. In all other respects the Court’s jurisdiction is limited as set forth in section XIII.A of the Settlement Agreement.

This addendum shall be operative and binding on the parties as if its terms had been included in the Settlement Agreement referenced above upon execution (in one document or in counterparts) by counsel for the parties on the signature lines set forth below and approval by the Court.

**II. DEFINITIONS**

A. “Initial Cy Pres Beneficiary” is any non-profit organization that (i) has provided

business assistance, agricultural education, technical support, or advocacy services to Native American farmers or ranchers between January 1, 1981 and November 1, 2010 to support and promote their continued engagement in agriculture, (ii) is either a tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code (“Code”); educational organization described in Section 170(b)(1)(A)(ii) of the Code; or an instrumentality of a state or federally recognized tribe, including a non-profit organization chartered under the tribal law of a state or federally recognized tribe, that furnishes assistance designed to further Native American farming or ranching activities, provided, however, that the use of any grant funds by such grant recipient shall be restricted exclusively to charitable and educational purposes described in Section 170(c)(2)(B) of the Code; and (iii) is proposed by Class Counsel and approved by the Court.

- B. “Primary *Cy Pres* Beneficiary” is a trust created for the purpose of distributing the *cy pres* funds after the distribution of Supplemental Liquidated Awards to the Prevailing Claimants. The trust (referred to as “The Trust” or the “Native American Agriculture Fund”) shall seek recognition as a non-profit organization under §501(c)(3). The trust document is attached hereto as Exhibit A. Establishment of the trust will be dated as of six months after the Court approves this Addendum, including the Trust Agreement, and the time to appeal expires without appeal of the order approving the Addendum, or any appeal from that order is finally resolved without further opportunity for appeal. The initial members of the Board of Trustees for the Trust, as well as the Executive Director, shall be nominated by Class Counsel and approved by the Court.
- C. A “Prevailing Claimant” is one of the people who received either a Track A or Track B Liquidated Award pursuant to the original Settlement Agreement or the Revised Settlement Agreement, or the Legal Representative of the Estate of any prevailing claimant who is deceased. If a prevailing claimant has died since the last payments were issued, the Legal Representative of the Estate shall be determined in the manner set forth in Section, IX.A.7 of the original agreement, and the Estate will have the same right to any further payment as the prevailing claimant would have.
- D. “Supplemental Liquidated Award” is a payment of \$18,500 to each Prevailing Claimant.
- E. “Supplemental Liquidated Tax Award” is a payment equal to 15% of the Prevailing Claimant’s Supplemental Liquidated Award, or \$2775.
- F. “Effective Date” is the date upon which an order providing final approval of this Addendum becomes non-appealable, or, in the event of any appeals, upon the date of final resolution of said appeals.

### III. DISTRIBUTION OF SUPPLEMENTAL LIQUIDATED AWARDS

- A. Within fourteen calendar days after this Addendum is approved by the Court, the Claims Administrator shall prepare an accounting of all payments made to Prevailing Claimants and submit it to Class Counsel and the Secretary. Class Counsel will have fourteen calendar days to serve on the Settlement Administrator any objections to the accuracy of the list of Prevailing Claimants, after which the accuracy of the accounting will be deemed confirmed.
- B. Within 60 days of the Effective Date of this Addendum, the Claims Administrator shall send to each Prevailing Claimant a check payable to the Prevailing Claimant in the amount of the Supplemental Liquidated Award, paid from the funds remaining in the Total Compensation Fund. All checks distributed under this Section will be valid for 180 calendar days from the date of issue. The funds corresponding to any check that remains uncashed 181 calendar days from its date of issue will be added to the Trust.
- C. For each Prevailing Claimant who receives a Supplemental Liquidated Award, the Claims Administrator shall send a payment of the individual's Supplemental Liquidated Tax Award from the funds remaining in the Total Compensation Fund to the IRS. The Claims Administrator shall provide the Prevailing Claimant notice that such payment has been made by issuing a Form 1099. Along with payment of the Supplemental Liquidated Tax Awards to the IRS, the Claims Administrator shall provide to the IRS the name, address, and Social Security or Taxpayer Identification Number of each Prevailing Claimant on whose behalf the payment is being made.
- D. Subject to the Court's approval, the parties agree that Supplemental Class Representative Service Awards may be awarded. Class Counsel intend to recommend awards from the Total Compensation Fund in the following amounts:
  - 1. Porter Holder shall receive \$100,000.
  - 2. Marilyn Keepseagle shall receive \$100,000.
  - 3. Claryca Mandan shall receive \$100,000.

The Secretary reserves the right to comment on the amount of the Service Awards. Any payments awarded to these Class Representatives shall be subject to approval by the Court, and any modification or reduction of any award sought by such a Class Member shall not affect the validity of the other terms of this Agreement.

- E. The Claims Administrator shall be compensated for this additional distribution from the remaining Settlement Administration Fund to the extent the amount of funds in that Fund is sufficient for such compensation. To the extent the amount of funds in that Fund is not sufficient for such compensation, any costs for such compensation that cannot be covered by the funds currently in that Fund shall be paid from interest accrued on the Cy Pres Fund.

#### **IV. DISTRIBUTION OF CY PRES FUND**

- A. Within 180 days after this Addendum is approved by the Court, Class Counsel will propose awards to Initial Cy Pres Beneficiaries which, in the aggregate, will total \$38 million from the Total Compensation Fund. Awards to Initial Cy Pres Beneficiaries shall be for the benefit of Native American farmers and ranchers, upon recommendation by Class Counsel and are subject to approval by the Court. Awards to Initial Cy Pres Beneficiaries may not be used for litigation, lobbying, or political activity as those terms are defined by the Internal Revenue Code. Once the Court has approved the Initial Cy Pres Beneficiaries, the Claims Administrator shall send to each Initial Cy Pres Beneficiary, via secure method of disbursement (either wire transfer or a check sent via overnight, trackable, delivery) the amount of the Beneficiary's share of the Cy Pres Fund.
- B. After payments described in section III and in section IV.A are made, and after the Court approves the Trust Document and the Trust's first Board of Trustees and Executive Director, the remainder of the Total Compensation Fund except for any unspent interest that accrued on the settlement funds, will be transferred to the Native American Agriculture Fund (also referred to herein as the Trust).
- C. Interest earned on the Total Compensation Fund or Cy Pres Fund, prior to such funds being transferred to the Primary Cy Pres Beneficiary, may be used to pay any outstanding expenses associated with management of the Total Compensation Fund as well as the administrative and operating expenses of the Trust until the funds referred to in paragraph IV.B above are transferred to the Trust. Until such time as all expenses and taxes associated with creation of the Trust and management of the Total Compensation or Cy Pres Fund have been paid, the interest will be retained in a separate account in order to defray such outstanding expenses, after which the remaining interest will be transferred to the Trust. In the event counsel seek an award of attorneys' fees and costs for work involved in establishing the Trust and modifying the Agreement, such award may be made from interest that has accrued from the Total Compensation Fund, and may only be with approval by the Court upon a properly noticed motion. The Secretary reserves the right to oppose or respond to any motion for an award of attorneys' fees and expenses, and in particular reserves the right to address the entitlement to fees, the amount of fees, or both entitlement and amount, in any opposition or response. After payment of any funds awarded and/or due under this subparagraph are made, any balance in the Total Compensation Fund will be transferred to the Native American Agriculture Fund (also referred to herein as the Trust).

#### **V. PROCEDURES**

- A. Upon execution of this Addendum, the plaintiff class and Ms. Keepseagle will withdraw their pending appeals.

- B. Concurrent with the presentation of this Addendum to the Court for approval, class counsel will submit to the Court for approval the Trust Document and the nominees to serve on the first Board of Trustees for the Trust, as well as an Initial Executive Director.
- C. Class counsel will request that the District Court finally approve this Addendum pursuant to the Settlement Agreement. The Parties agree to take all actions necessary to obtain approval of this Addendum.

December 14, 2015

Respectfully submitted,

For the Plaintiffs:

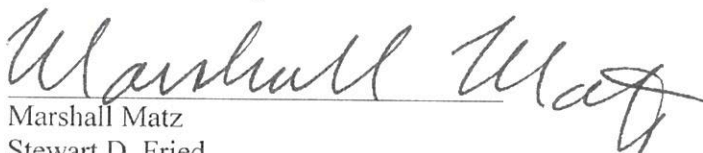
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