

EXHIBIT #1

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Civil Action No.: 5:12-CV-00729-D

TERESA M. SPEAKS, TOBY SPEAKS,)
STANLEY SMITH, EDDIE BROWN, ROBERT)
POINDEXTER, MIKE MITCHELL, ROY L.)
COOK, ALEX SHUGART, H. RANDLE WOOD,)
ROBIN ROGERS and DANIEL LEE NELSON)

Plaintiffs,)

vs.)

U.S. TOBACCO COOPERATIVE, INC. f/k/a)
FLUE-CURED TOBACCO COOPERATIVE)
STABILIZATION CORPORATION,)

Defendants.)

AMENDED CLASS ACTION
COMPLAINT
(Jury Trial Demanded)

NOW COME the Plaintiffs, individually and on behalf of all others similarly situated, and by way of this Amended Complaint against the Defendant, say and allege as follows:

DESCRIPTION OF THE CASE

1. This is an action by the Plaintiffs, on behalf of themselves and the Class they seek to represent, seeking a declaratory judgment and an Order compelling the Defendant to allocate and distribute certain funds to the Plaintiffs and other Class Members or alternatively, to judicially dissolve the Defendant, U.S. Tobacco Cooperative, Inc. f/k/a Flue-Cured Tobacco Cooperative Stabilization Corporation, (“Stabilization”) and thereafter to liquidate and distribute the assets thereof to the Plaintiffs and other Class Members. The Plaintiffs contend that, with the elimination of the price support component of the Federal Tobacco Program (herein “Federal Tobacco Program”), the fundamental purposes for which the Defendant was created, and under which the Plaintiffs and Class Members participated and financed the activities thereof, have ceased to exist, at least for the Plaintiffs and those similarly situated. The Defendant has

accumulated hundreds of millions of dollars of excess revenues through the patronage activities of the Plaintiffs and other Class Members, and have failed and refused to allocate and distribute all funds beyond those reasonably necessary to the continued functions and activities of the Defendant to the Plaintiffs and other Class Members. The actions of the Defendant, its officers and directors, are not supported by principles of sound business judgment, constitute an abuse of the broad discretion vested in the Board of Directors of the Defendant, deprive the Plaintiffs and other Class Members of benefits to which they reasonably expected to receive as Members and as such, the actions of the Defendant are fundamentally unfair to the Plaintiffs and other Class Members, and has the effect of divesting or eliminating the value of the Plaintiffs' and other Class Members' equity in the Defendant.

PARTIES

2. The Plaintiffs are citizens and residents of the State of North Carolina. Plaintiffs, Toby Speaks and his wife, Teresa M. Speaks, are citizens and resident of Surry County, North Carolina and have been members of U.S. Tobacco Cooperative, Inc. f/k/a Flue-Cured Tobacco Cooperative Stabilization Corporation, (hereinafter referred to as "Stabilization") since on or about 1977. Plaintiff Stanley Smith is a citizen and resident of Stokes County, North Carolina and has been a member of Stabilization since on or about 1979. Plaintiff Eddie Brown is a citizen and resident of Stokes County, North Carolina and has been a member of Stabilization since the early 1960's. Plaintiff Robert Poindexter is a citizen and resident of Forsyth County, North Carolina and has been a member of Stabilization since the mid-1960's. Plaintiff Mike Mitchell is a citizen and resident of Surry County, North Carolina and has been a member of Stabilization since the early 1970's. Plaintiff Roy L. Cook is a citizen and resident of Guilford County, North Carolina and has been a member of Stabilization since 1975. Plaintiff Alex Shugart is a citizen and resident of Yadkin County, North Carolina and has been a member of Stabilization since

1975. Plaintiff H. Randle Wood is a citizen and resident of Surry County, North Carolina and has been a member of Stabilization since the early 1970's. Plaintiff Robin Rogers is a citizen and resident of Alexander County, North Carolina and has been a member of Stabilization since 1976. Plaintiff Daniel Lee Nelson is a citizen and resident of Forsyth County, North Carolina and has been a member of Stabilization since 1970.

3. The Defendant Stabilization is a not-for-profit organization which is organized as a marketing association pursuant to the provisions of Chapter 54, Article 19 of the General Statutes of North Carolina. Its principal place of business is located in Wake County, North Carolina.

4. Stabilization is owned by and serves flue-cured tobacco farmers in North Carolina, South Carolina, Virginia, Georgia, Florida and Alabama.

JURISDICTION

5. This Court has diversity jurisdiction over the claims asserted herein on behalf of a class of persons under 28 U.S.C. §1332, as amended in February 2005, by the Class Action Fairness Act ("CAFA"). Plaintiffs are citizens of North Carolina; Defendant is a North Carolina not-for-profit organization which is organized as an agricultural marketing cooperative association with its principal place of business in Wake County, North Carolina. Plaintiffs seek to represent a class of members with well in excess of 100 members, and whose members are also citizens of Virginia, North Carolina, South Carolina, Georgia and Florida. The matter in controversy exceeds \$5,000,000.00, exclusive of interest and cost.

6. By prior written demand to Defendant dated June 19, 2012, Plaintiffs have exhausted all intra-corporate administrative remedies in bringing this action. More than 90 days have passed since Plaintiffs' request to inter alia either allocate or distribute the assets of Stabilization or alternatively to dissolve the cooperative, and Defendant has failed to respond to

or take any actions pursuant to Plaintiffs' demand. Plaintiffs are therefore authorized to bring this action and the Defendant may not object or move to dismiss this complaint on that basis. (See Exhibit A attached hereto and incorporated by reference.)

VENUE

7. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 (b) (1) and (2).

FACTUAL ALLEGATIONS

8. The above-named Plaintiffs are, or at all relevant times have been, producers of flue-cured tobacco and are members of Stabilization.

9. Stabilization is a non-profit cooperative association of flue-cured tobacco farmers that was organized in 1946 as a non-profit marketing association with capital stock, pursuant to Chapter 54, Article 19 of the North Carolina General Statutes. Its mandate under the enabling statute, first enacted in 1921, is "to promote, foster, and encourage the intelligent and orderly producing and marketing of agricultural products through cooperation, and to eliminate speculation and waste; and to make the distribution of agricultural products as direct as can be efficiently done between producer and consumer, and to stabilize the marketing problems of agricultural products..."

10. Until the passage of the Fair and Equitable Tobacco Reform Act of 2004 ("FETRA"), Stabilization's primary function, was to administer the federal price program (the "Federal Tobacco Program") for flue-cured tobacco for the United States Department of Agriculture ("USDA") and the Commodity Credit Corporation ("CCC"). Under this program, CCC made loans that were used to pay to Stabilization's Members for tobacco that failed to sell at auction for more than the minimum support price set by the federal government.

Stabilization's primary function was limited to administrating the Federal Tobacco Program's price support programs from its creation through 2004-2005.

11. Tobacco purchased under the price support program ("Loan Tobacco") was processed and stored by Stabilization for CCC's benefit. As Loan Tobacco was sold, the proceeds were sent to CCC and used to repay the price support loans. Stabilization realized a profit, after repayment of CCC's loans, from the sale of 1967-1973 crops and retained approximately \$26.8 million from that sale as a reserve. These retained amounts were allocated to Stabilization's Members using certificates of interest (the "Certificates of Interest"). Generally, however, Loan Tobacco was sold at a loss, with the result that CCC lost millions of dollars from the federal tobacco programs prior to 1982.

12. For 1982 and later crop years, Congress passed laws to make sure the Federal Tobacco Program was operated at "no net cost" to taxpayers, which laws required that growers pay an annual assessment on each pound of tobacco sold to provide additional protection to CCC against losses on its loans.

13. From and after 1985, all assessment fees paid by Stabilization's Members have been maintained in an account controlled by CCC (the "No Net Cost Account"). Beginning in 1986, retroactive for the 1985 crop year, purchasers of tobacco were also required to pay assessment fees to CCC.

14. Beginning in approximately 1990, CCC agreed to apply grower assessment fees in the No Net Cost Account from the 1982-1984 crop years to repay the crop loans for those years. As the loans were paid off, CCC released the remaining unsold Loan Tobacco from the 1982-1984 crops to Stabilization. Stabilization received net after-tax proceeds of approximately

\$110 million from the sale of this tobacco and retained the proceeds as a further reserve in case the federal tobacco program was ended, or to use for other unforeseen events.

15. Over the years, Stabilization invested the money it received from the sale of the 1967-1973 and 1982-1984 tobacco crops, which substantially increased Stabilization's retained earnings, which, upon information and belief, are currently in excess of \$100 million. In accordance with the provisions of FETRA, CCC also released additional tobacco inventory to Stabilization.

16. The primary method used by Stabilization's Members over the years of its existence and prior to the termination of the Federal Tobacco Program to sell their tobacco was through various auction warehouses located throughout the tobacco region. However, beginning in 2000, many of Stabilization's Members began selling their tobacco under direct contracts with tobacco companies, and not through the auctions.

17. Upon information and belief, tobacco production sold pursuant to direct contracts with the tobacco companies increased dramatically, especially with the end of the Federal Tobacco Program, and the number of independent tobacco auction warehouses within the flue-cured tobacco geographical area substantially decreased. In the year 2001, the Defendant Stabilization initiated two buying stations—one located in Wilson, North Carolina, and one in Statesboro, Georgia—the purpose of which was to encourage a sufficient number of members to stay with the auction system and for Stabilization to show some justification for its continued operation and retention of membership funds.

18. In the years following 2001, Defendant Stabilization has continued to operate these and additional buying stations or marketing centers the cost of which, upon information

and belief, is subsidized by the members' money being held in Stabilization's cash reserves of the Defendant Stabilization.

19. Members of Stabilization enjoyed the option of selling their tobacco either through the direct contract auction marketing system or through the buying stations. Prior to December, 2004, there was no requirement that members of Stabilization, including the Plaintiffs, sell their tobacco only through Stabilization or cease their membership, and thereby forfeit their interests in the equity and reserves of Stabilization.

20. The Plaintiffs herein, and the other similarly situated persons, including former, deceased, and current members of Stabilization, have all either directly participated in, or had the opportunity to participate in, or utilize the services offered by Stabilization. Any tobacco farmer who delivered tobacco to be protected by the Federal Tobacco Program was obligated to become a member of Stabilization, by purchasing a share of stock, before they could take part in the price support program. Membership in Stabilization conveyed certain rights and privileges including, without limitation: nominating and voting on directors; receiving notice of special meetings and annual meetings; inspecting, upon request, Stabilization's records, accounts and books; receiving notice and updates regarding the status of accounts with Stabilization.

21. Upon information and belief, when joining Stabilization, Plaintiffs and the other Class Members entered into a contract appointing Stabilization as the Plaintiffs and the Class Members' agent with respect to the sale of their tobacco. This contract provided in pertinent part:

The undersigned grower of flue-cured tobacco (hereinafter "grower") applies for membership in the Flue-Cured Tobacco Co-operative Stabilization Corporation, a non-profit co-operative organized under co-operative law with its principal office at Raleigh, North Carolina (Hereinafter referred to as the "Stabilization Corporation") and herewith makes payment of \$5.00 to the undersigned agent for one (1) share of common stock.

The grower hereby appoints the Association as his agent to receive, handle and market all or such portion of the flue-cured tobacco produced by or for him as

landlord, tenant or lessee as the grower may elect or choose to deliver to the Association for disposition in accordance with the terms of this contract and the Association accepts such appointment and hereby agrees to act accordingly.

Stabilization Corporation agrees (1) to receive, handle and sell in accordance with the terms of such program as it may announce for the crop of flue-cured tobacco grown in each year such tobacco as the grower may elect to deliver to the Stabilization Corporation, and (2) that in addition to the amount of paid to the grower upon delivery of tobacco, it will distribute to him his pro rata share of any net gains remaining after payment of operating and maintenance costs and expenses and a reasonable deduction for reserves as determined by the Board of Directors.

22. Following execution of the contract and payment for their share of stock, Stabilization mailed the share of stock in the Cooperative and the membership card to the Plaintiffs and other Class Members along with a letter from the General Manager, which provided in pertinent part:

Dear Stockholder:

Enclosed is your stock certificate for a share of stock which you have purchased in Stabilization Corporation, along with an identification card. This share of stock entitles you to a lifetime membership in the cooperative.

This membership cannot be cancelled and the purchase price refunded after use because some tobacco will already have been credited to your account number. Retain this stock certificate and card so that you never need to purchase another membership.

. . . . (emphasis in original)

23. Tobacco farmers who had delivered tobacco to Stabilization, and purchased a share of stock, were guaranteed lifetime membership in Stabilization. Throughout the years the Federal Tobacco Program was in effect, Stabilization's members (including Plaintiffs) participated in the program with Stabilization under these terms and conditions in the aforementioned contract and letter. Plaintiffs and the other members of Stabilization understood and relied upon these terms and conditions

24. The stockholder's equity in Stabilization has historically been allocated and proportioned among the following: common stock, additional paid-in capital, capital equity credits, and retained earnings, and Stabilization publishes annual Condensed Consolidated Balance Sheets to its Members, and upon information and belief, the present total stockholder equity is in excess of \$250,000.00. The Defendant Stabilization, on June 19, 1979 amended the Articles of Incorporation establishing the right of the Defendant Stabilization to maintain a capital reserve for the future conduct of its business.

25. Patronage dividends and per unit capital retained may be allocated and disclosed on either a qualified or nonqualified basis as determined by the board of directors, and the board of directors is required to make said determination prior to the end of the association's fiscal year. Stabilization is required to maintain a record of all holders of capital equity credits or certificates, and all business transacted by the Stabilization with or for its members must be transacted on a cost basis. Stabilization is permitted to create capital from sources other than the patronage, provided compliance with federal and state income taxes are met. See Bylaws, Article XVII, a true and correct copy of which is annexed hereto as Exhibit B.

26. Stabilization, upon information and belief, is required—by law, contract, and otherwise—to properly and equitably allocate the capital equity credits to its members on an annualized basis. However, despite that requirement, Stabilization has unreasonably and improperly failed to properly and equitably allocate and/or distribute capital equity credits to its members on an annualized or any other basis.

27. The Federal Tobacco Program was ended by FETRA, thereby eliminating any price support system for flue cured tobacco. FETRA required repayment of all of CCC's outstanding price support loans and provided for the closeout of the No Net Cost Account.

28. As part of the closeout process, CCC applied substantially all of the assessment fees in the No Net Cost account to satisfy the outstanding price support loans.

29. After paying off the price support loans, CCC released to Stabilization approximately 83.3 million pounds of Loan Tobacco that was still in inventory (the “Ceded Tobacco”), and upon information and belief, Stabilization has sold all, or substantially all, of the Ceded Tobacco, generating approximately \$125 million in additional revenues, thereby increasing its reserves.

30. With the elimination of the Federal Tobacco Program, the principal function of Stabilization ceased to exist, and for substantially all of its Members, including the Plaintiffs, the original expectations of Members for their participation in this farming cooperative ceased.

31. As a result of the termination of the Federal Tobacco Program, the principal purposes surrounding the Plaintiff and other Members necessity to participate in the activities of Stabilization ceased to exist. Alternatively, the reasonable expectations of the Plaintiffs and other class members as members/shareholders of Stabilization have been frustrated, which expectations were known or assumed and concurred in by the other Members of Stabilization, and such frustration was without the fault and beyond the control of the Plaintiffs and other Class Members.

32. By letter dated December 20, 2004, Stabilization notified Plaintiffs and all other members that they would have to sign either an exclusive marketing agreement or a non-exclusive marketing agreement in order to maintain members’ eligibility for 2005 and beyond. Growers who signed exclusive marketing agreements were paid a specified amount, and were eligible for “cash advances.” Those who signed non-exclusive marketing agreements, while not eligible for cash advances, were eligible to continue to use Stabilization’s marketing centers to

sell their tobacco. The December 20, 2004 letter advised members that those failing to renew contracts with Stabilization would receive \$5.00 compensation for his or her outstanding stock certificate and would, thereafter, be removed from the membership rolls. The letter further indicated that Members had no interest in Stabilization's assets above or beyond the \$5.00 payment and constituted notice-in-fact that Stabilization would retain, control, and exercise ownership power over its assets and funds such that Members had no rights to those assets and funds.

33. Some of the Plaintiffs have already contracted directly with tobacco companies to grow for them. Upon information and belief, other members of Stabilization have already contracted directly with tobacco companies.

34. The net effect of Stabilization's actions was to ensure that any Member who failed to enter into either an exclusive or non-exclusive agreement with Stabilization would lose their interest in the substantial accumulated reserves of Stabilization, together with its retained earnings and margins, generated through the patronage activities of the Plaintiffs and other Class Members.

35. Since the end of the Federal Tobacco Program, the quantity of tobacco sold through or by Stabilization has decreased dramatically. In an effort, in part, to bolster demand for Members' U.S. flue-cured tobacco, in 2005, Stabilization purchased a company that operates a facility in Timberlake, North Carolina (the "Timberlake Facility") for processing tobacco and for the manufacture of tobacco products, including tobacco strips, cut rage, puff stems and cigarettes. Stabilization also owns, through a separate subsidiary, a tobacco storage operation. Plans to purchase this facility began on or around 2003. However, none of Stabilization's present activities, including but not limited to operation of the Timberlake Facility, necessitates

its continued reserve or lack of allocation of millions of dollars that Stabilization does not need to devote to its present activities. Stabilization's present activities do not provide an adequate market, both as to quantity and price, so as to justify the Plaintiffs and other Class Members' continued participation as members of Stabilization, and in fact, puts Stabilization in a position to compete with many of its members, by reason of those members' contracts with tobacco companies. Stabilization has attempted to develop an export market for its Members' tobacco, but that effort has largely been unsuccessful as compared to the efforts of Stabilization's other competitors, and requires Stabilization to potentially absorb tens of millions of dollars in losses in an effort to develop an export market. Upon information and belief, after a token refund of the equity accumulated from its inception, Stabilization intends to retain the amounts realized, including interest, from the sale of the 1967-1973 crops that were allocated to Members using Certificates of Interest.

36. There is no business justification for retaining those funds.

37. Upon information and belief, Stabilization has undertaken significant debts to fund its activities since 2004-2005, including entering into a debt contract with Wachovia Bank.

38. Upon information and belief, Stabilization intends to retain the amounts realized, including interest, by Stabilization from the sale of Loan Tobacco released by CCC, instead of distributing or allocating those funds to the Plaintiffs and other Class Members.

39. There is no business justification for failing to either distribute or allocate those funds.

40. Upon information and belief, Stabilization intends to retain the amounts realized from the sale of the Ceded Tobacco, instead of distributing or allocating those funds to the Plaintiffs and other Class Members.

41. There is no business justification for failing to either distribute or allocate those funds.

42. Upon information and belief, Stabilization, through its Board of Directors, have imposed continued membership requirements that could breach other contractual obligations imposed upon the Plaintiffs and other Class Members by various buyers of their tobacco, and because of Stabilization's inability to otherwise develop a market for flue cured tobacco purchased by it versus that developed by Stabilization's competitors, the Plaintiffs and other Class Members are no longer benefitted from the activities of Stabilization and are unfairly forced to choose between limiting the quantity of tobacco that may be able to sell or forfeiting, by reason of Stabilization's new membership requirements, their right to continue to participate in the activities of Stabilization including those of its Board of Directors in failing to distribute or allocate those funds referenced above.

43. Since December 2004-January 2005, Stabilization has implemented its plan to purge its membership rolls of members that did not enter into new contracts with Stabilization.

44. Stabilization has also implemented its plans to manufacture tobacco products at the Timberlake Facility and to implement its advancement program pursuant to new contracts with select members.

45. To date, upon information and belief, Stabilization has not distributed any additional monies from the unallocated capital reserves to its members (including Plaintiffs) and has not allocated any additional money from its unallocated capital reserves to its members (including Plaintiffs).

46. On January 6, 2005, a group of Stabilization's members filed a lawsuit entitled *Dan Lewis, et al. v. Flue-Cured Tobacco Stabilization Corp.*, 05 CVS 000188 (hereafter "the

Lewis action”) against Stabilization in the Superior Court of Wake County, North Carolina, on behalf of a broad class of individuals, proprietorships, partnerships, corporations and other entities that are or were shareholders and/or members of Stabilization from the date of its inception in 1946 to the present with the undersigned law firm, Shipman & Wright, LLP, as acting as co-counsel for the plaintiff-members (hereafter the Lewis plaintiffs). The Lewis plaintiffs alleged that the fundamental purposes for which Stabilization was created had ceased to exist and that the actions of Stabilization were unfair and would have the effect of divesting or eliminating the value of their equity interests in Stabilization. The Lewis plaintiffs asserted claims for a judicial dissolution of Stabilization or, alternatively, for a distribution of Stabilization’s assets, as well as claims for declaratory judgment, unfair trade practices and injunctive relief.

47. On February 17, 2005, the Chief Justice of the North Carolina Supreme Court entered an Order, pursuant to General Rule of Practice 2.1, designating the Lewis action as an Exceptional Civil Cases and assigned the same to the Honorable John R. Jolly, Jr. for all further proceedings.

48. Stabilization filed its answer in the Lewis action on March 24, 2005. Stabilization asserted numerous defenses in the litigation and denied any wrongdoing or liability whatsoever. Stabilization further denied that the Lewis action could be maintained as a class action.

49. Thereafter, a thorough and comprehensive investigation relating to the claims and the underlying events and transactions alleged in the litigation was undertaken by counsel for the Lewis plaintiffs, including Shipman & Wright, LLP. Evidence adduced through the public record, pre-trial discovery, voluntary document and information exchanges with Stabilization, Stabilization’s responses to the Lewis plaintiffs’ initial written discovery, meetings with

Stabilization's counsel and General Manager, and ongoing meetings and discussions with members of the Settlement Class occurred during this investigation. In addition, there were extensive consultations with experts and authorities in the field of agricultural cooperatives generally, economics and the tobacco industry in particular, and extensive research was undertaken regarding the applicable law with respect to the claims against Stabilization and the potential defenses thereto.

50. Following the filing of the Lewis action, and in light of all of the above considerations, the undersigned counsel conducted extensive discussions and arm's-length negotiations with Stabilization's counsel with respect to a possible compromise and settlement, with a view to settling the issues in dispute and achieving the best relief possible consistent with the interests of a settlement class on the terms set forth in a proposed stipulation of settlement.

51. Based upon the investigation of the undersigned counsel as set forth in part above, and after considering: (a) the substantial benefits that the members of the Settlement Class would receive from a settlement; (b) the attendant risks and costs of litigation; and (c) the desirability of permitting the settlement to be consummated as provided by the terms of a stipulation, the Lewis plaintiffs and their counsel agreed to settle certain claims pursuant to the terms and provisions of the a stipulation of settlement. The Lewis plaintiffs and their counsel carefully considered this Stipulation and concluded and believed that the terms and conditions of the stipulation were fair, reasonable and adequate to the proposed settlement class, and that the settlement was in their best interests.

52. The Lewis plaintiffs respectfully submitted that the Settlement was a fair, reasonable, and adequate compromise of this case and the claims of the proposed class members,

and further merited preliminary approval as a settlement that was in the best interest of Stabilization.

53. In pertinent part, the proposed settlement in the Lewis action provided eligible class members with the following benefits:

(1) A cash settlement fund of at least \$50,000,000.00 for producers who produced and marketed flue-cured tobacco between 1985 and 2005;

(2) Payments for the redemption of Certificates of Interest issued by Stabilization in the approximate amount of \$26,800,000.00 in connection with the sale of the 1967-1973 tobacco crops;

(3) Book allocations of Stabilization's paid-in capital in the approximate amount of \$110,000,000.00;

(4) Book allocations of Stabilization's retained earnings in the approximate amount of \$102,000,000.00; and

(5) Clarification of the terms and conditions of membership in Stabilization.

54. Following entering into the stipulation of settlement agreement, the Lewis plaintiffs filed a Motion for preliminary approval of the proposed class action settlement on September 22, 2005.

55. The preliminary approval hearing was held on November 2, 2005.

56. Thereafter and during the hearing for preliminary approval, a group of attorneys in another lawsuit against Stabilization (*Kay W. Fisher v. v. Flue-Cured Tobacco Stabilization Corp.*, 05 CVS 001938 (hereafter "the Fisher action")) objected to the preliminary approval of the proposed settlement of the Lewis action in pertinent part on their contentions that Stabilization's Board of Directors had committed fraud against its members, and contended that these claims were not adequately addressed by the stipulation of settlement.

57. Following the preliminary approval hearing before Judge Jolly, he took the motion for preliminary approval of the proposed class settlement agreement under advisement.

58. Thereafter on or about September 9, 2005, due to substantial differences between the Lewis Plaintiffs' co-counsel, Shipman & Wright, LLP moved and were allowed to withdraw as counsel of record for the Plaintiffs in the Lewis action, preserving, however, Shipman & Wright, LLP's right (should it seek to do so) to seek appointment as class counsel for Class Members.

59. Following Shipman & Wright, LLP's withdrawal as counsel from the Lewis action, the Lewis plaintiffs and their counsel withdrew from the proposed settlement and consolidated their action against Stabilization with the Fisher plaintiffs.

60. No notice of the proposed settlement was ever sent to the proposed settlement class.

61. Neither the Plaintiffs nor other Class Members were ever given any formal notice of or opportunity to comment upon the fairness of the previous settlement.

62. Having now reviewed that proposed settlement, coupled with Stabilization's inability, despite its efforts, to generate a sufficient market for the quantity of tobacco grown by the Plaintiffs and other Class Members versus those of Stabilization's competitors, the Plaintiffs in this action have reviewed the proposed settlement and now believe it was fair, adequate and reasonable then, and would be fair, reasonable and adequate now.

63. Since September 2005, the Lewis and Fisher actions have been in active litigation with Stabilization, and upon information and belief, have insisted that Stabilization dissolve and/or distribute all of its funds to its Members, both existing and former. The Lewis and Fisher plaintiffs, upon information and belief, have continued to insist that Stabilization's Board of Directors had committed a fraud upon its Members as a whole, despite having failed to develop any evidence to support that allegation.

64. By Order dated March 30, 2012, the fraud claim, the fraud in the inducement claim and the breach of contract accompanied by a fraudulent act claim brought in the consolidated Fisher/Lewis action were dismissed.

65. Upon information and belief, the Lewis and Fisher actions have not been prosecuted, since September, 2005, in a manner that is in the best interests of these Plaintiffs and other Class Members. Despite the lack of an adequate factual or legal basis, counsel for the Fisher and Lewis plaintiffs have continued to pursue certain claims, on behalf of a class, that are contrary to the interests of these Plaintiffs and other Class Members in preserving, not wasting, the assets of Stabilization that the Plaintiffs and other Class Members helped to create, so that those assets can be available for either allocation or distribution to the Plaintiffs and other Class Members.

66. The Plaintiffs' interests and those of other Class Members are not being adequately represented in the Fisher and Lewis action.

67. With the passage of the Class Action Fairness Act ("CAFA"), the law of class action litigations has changed since the Fisher and Lewis actions were filed.

68. The statute of limitations for the Plaintiffs' claims in this action were tolled with the filing of the Lewis/Fisher actions, and until any ruling on any motions for class certification. *See, Scarvey v. First Federal Savings & Loan Ass'n. of Charlotte*, 146 N.C. App. 33, 555 S.E.2d 655 (2001); Wade v. Danek Medical, Inc., 182 F.3d 281 (4th Cir. 1999).

CLASS ACTION ALLEGATIONS

69. The Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 68.

70. The Plaintiffs bring this action on behalf of themselves and all others similarly situated. The Class is defined as follows:

All individuals, proprietorships, partnerships, corporations, and other entities that are or were shareholders and/or members of U.S. Tobacco at any time during the Class Period, without any exclusion, including any heirs, representatives, executors, powers-of-attorney, successors, assigns, or others purporting to act for or on their behalf with respect to U.S. Tobacco and/or the Settled Claims (as defined in the Stipulation and Agreement of Class Action Compromise, Settlement and Release, filed contemporaneously herewith).

Absent class members are referred to herein as the “Class” or “Class Members.”

71. The Class Members are so numerous, and so geographically dispersed, that the individual joinder of all members is impracticable. While the exact number of Class Members is unknown to the Plaintiffs at this time, it is ascertainable through appropriate discovery and upon information and belief, numbers in the hundreds of thousands.

72. Common questions of law and fact exist as to all members of the Class, and they predominate over any questions that affect only individual Class Members. The questions of law and fact that are common to the Class, and which predominate over any individualized issues, include but are not limited to the following:

- (a) Whether Stabilization failed to allocate and identify the total equity of the Defendant Flue-Cured among the members on a yearly basis;
- (b) Whether Stabilization violated and breached its fiduciary duty to the Plaintiffs;
- (c) Whether Stabilization, by and through its corporate officers and agents, have intentionally and/or negligently breached the Plaintiffs’ contractual rights and interest and property rights in violation of the By-Laws, Articles of Incorporation, federal and state statutes, and North Carolina and United States Constitutional prohibitions;
- (d) Whether the Plaintiffs are entitled to a judicial dissolution of said corporate entity;
- (e) Whether the reasonable expectations of the members of Stabilization have been met or have been frustrated and no longer exist;

- (f) Whether the Members of Stabilization are entitled to an allocation of the capital reserves of Stabilization and whether Stabilization should allocate the capital reserves to its members for the years in which the capital reserves were generated;
- (g) Whether Stabilization should make a distribution of the capital reserves to the members for the years in which the capital reserves were generated; and
- (h) Whether Defendant Stabilization has acted without business justification or otherwise unreasonably failed to allocate and distribute capital earnings, income, etc... to its members, and whether that conduct is unlawful or violative of Class Members common law and statutory rights.

73. The Plaintiffs will fairly and adequately represent the interests of the absent Class Members, in that the Plaintiffs have no conflicts with any other Class Members that would interfere with their zealous pursuit of these claims on behalf of Class Members. Furthermore, the Plaintiffs have retained competent counsel who are experienced in class action litigation.

74. Class action treatment is superior to the alternatives, if any, for the fair and efficient adjudication of the controversy described herein, because it permits a large number of persons to prosecute their common claims in a single forum simultaneously, efficiently and without unnecessary duplication of evidence and effort. Class treatment will also permit the adjudication of claims by Class Members who could not afford to individually litigate these claims against a large corporate defendant.

75. The Plaintiffs' claims are typical of the claims of all Class Members, in that they are each members/shareholders of Stabilization, and they seek a declaration as to Stabilization's continued existence and purpose. Consequently, the Plaintiffs' legal claims are the same as those of any other Class Member, and the relief they seek is the same as that of any other Class Member.

76. If class members were required to pursue individual litigation, it would be unduly burdensome to the Federal and state Courts within which individual litigation would proceed. Individual litigation would magnify the delay and expense to all parties in the Court system of resolving a controversy engineered by Stabilization in their course of conduct with respect to the Plaintiffs, and present the possibility, if not probability, of inconsistent results. By contrast, the class action device presents less management difficulty and provides the benefit of unitary adjudication, economies of scale, and comprehensive supervision by a single Court. Concentrating this litigation into one form would aid judicial economy and efficiency, promote parity among the claims of individual class members and result in judicial consistency. Notice of the pendency of this action and any resolution thereof can be provided to class members by direct notice, which is the best notice practicable.

77. The prosecution of this matter as an opt-out class action would significantly reduce the possibilities of repetitive litigation thereby providing redress for class members who would not or could not otherwise prosecute this complex litigation on an individual basis. Plaintiffs and class members envision no unusual difficulty in the management of class action.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF **(Declaratory Judgment – 28 U.S.C. §2201)**

78. The allegations contained in paragraphs 1 through 77 of the Amended Complaint are incorporated herein by reference.

79. The Federal Declaratory Judgment Act provides this Court with the power, in any “case of actual controversy within its jurisdiction,” to “declare the rights and other legal relations of any interest party seeking such declaration, whether or not further relief is or could be sought.”

80. Declaratory relief, as sought herein, will serve a useful purpose in clarifying and settling the legal relations at issue in this case.

81. Declaratory relief, as sought herein, will terminate and afford relief from the uncertainty, insecurity and controversy giving rise to this proceeding.

82. There exists a case of actual controversy between the Plaintiffs and other Class Members regarding: (a) whether, with the enactment of FETRA, which eliminated the Federal Tobacco Program, the primary function of Stabilization (administering the price support component of the Federal Tobacco Program) ceased to exist; (b) whether the basis upon which Plaintiffs and other members joined and patronized Stabilization since its inception came to an end and no longer exists; (c) whether the reasonable expectations of the Plaintiffs and other class members as members/shareholders of Stabilization have been frustrated, which expectations were known or assumed and concurred in by the other shareholders of Stabilization, and such frustration was without the fault and beyond the control of the Plaintiffs and other Class Members; (d) whether Stabilization the Plaintiffs and other Class Members are entitled to an allocation and distribution of any funds presently held by Stabilization beyond those reasonably necessary to fund the current activities of Stabilization; (e) alternatively, whether the Plaintiffs and other Class Members are entitled to a judicial dissolution of Stabilization and a liquidation and distribution of its assets to the Plaintiffs and Class Members; (f) Whether the Plaintiffs and Class Members are entitled to an allocation of the capital reserves of Stabilization and whether Stabilization should allocate the capital reserves to its members for the years in which the capital reserves were generated; (g) Whether Stabilization should make a distribution of the capital reserves to the members for the years in which the capital reserves were generated; and (h) Whether Stabilization has failed to exercise reasonable business judgment in its failure to

allocate and distribute capital earnings, income, etc... to the Plaintiff and other Class Members, and whether such failure is violative of Class Members common law and statutory rights.

83. The Federal Declaratory Judgment Act gives this Court the discretion to issue its declaratory judgment, balanced by considerations of federalism, efficiency, and comity.

84. After consideration of the various factors that apply when a Court considers whether to exercise jurisdiction over the Plaintiffs' request for declaratory relief: (a) The State of North Carolina has no strong interest in having the issues decided solely in its courts. The questions of state law involved are not difficult, complex or unsettled, and instead, the Plaintiffs contend, involve routine application of settled principles of law. Consideration of the issues, both legally and factually, will necessitate, the Plaintiffs allege, consideration of both State and Federal law. (b) This case involves both interstate commerce and the interests of many states outside of North Carolina. Members of Stabilization reside in Virginia, South Carolina, Georgia and Florida. Stabilization is doing business through its contracts with its members in those states and through its marketing centers in Danville, Virginia; Mullins, South Carolina and Nashville, Georgia. Additionally, Stabilization is undertaking both the sale of tobacco to international markets and the sale of tobacco through its distributors to customers in numerous states outside of North Carolina, including but not limited to Tennessee, Alabama, Wisconsin, Illinois, Iowa, New York, Montana, Washington, Oregon, Alaska, California, New Jersey, Delaware, Louisiana, Kentucky, Maine, New Hampshire, Rhode Island, Vermont, Connecticut, Massachusetts, Indiana, Michigan, Ohio, West Virginia, Pennsylvania, South Carolina, Virginia, Georgia, and Florida. (c) The State of North Carolina and its courts cannot resolve the issues stated herein more efficiently than the Federal Courts. The Lewis and Fisher actions have been pending for more than seven (7) years; there have been substantial delays in the resolution of

substantive and dispositive motions, prior to reaching the issues of class certification; the Lewis and Fisher actions have been fixated on issues not in the best interests of these Plaintiffs and other Class Members; and no trial has been conducted or scheduled. The claims of in this proceeding can satisfactorily be adjudicated here, and considering the efficient use of all court resources, this Court can best resolve the matters at issue here. Upon information and belief, this Court, regardless of its decision on the substantive issues contained herein, can resolve this case much quicker and with far greater efficiency than the State Court in North Carolina. (d) There will be no unnecessary entanglement between the state and federal courts by this Court undertaking consideration of the issues herein contained. There is no factual question at issue in the State Court that only the State Court can resolve. While there are some legal issues that overlap, the other factors favor this Court exercising jurisdiction over this dispute. As previously stated, the Lewis and Fisher actions have been fixated on other issues, including fraud, that are not contained in this action, which seeks as its principal relief, allocation and distribution, and not dissolution (as in Fisher and Lewis). (e) This action is not mere “procedural fencing.” This action is not being used to provide a different or more favorable forum in a race for res judicata or to obtain a federal hearing in a case not otherwise removable. As previously stated, CAFA was not effective when the Lewis action was filed, and this case may properly be filed in this Court pursuant to the provisions of CAFA. The Plaintiffs in this case might have filed this action in North Carolina State Court, but have chosen to proceed in this Court, as they are permitted to do.

85. The Plaintiffs and Class Members have the right, therefore, to have this Court issue its declaratory judgment on this and any other issues that might arise during this course of this litigation.

SECOND CLAIM FOR RELIEF
(Distribution to Members – N.C.G.S. §55A-13-02(c))

86. The allegations contained in paragraphs 1 through 85 of the Amended Complaint are realleged and incorporated herein by reference as if fully set forth.

87. Stabilization may lawfully make allocations and distributions to the Plaintiffs and other Class Members.

88. Allocating and distributing those funds, referenced above, will not render Stabilization unable to pay its debts as they become due in the usual course of business.

89. Allocating and distributing those funds, referenced above, will not result in Stabilization's total assets being less than the sum of its total liabilities.

90. The Cooperative Marketing Act under which Stabilization was created was originally passed to give farmer producers leverage to act in cooperation to deal with large manufacturers of tobacco products. Prior to the end of the Federal Tobacco Program, such leverage was required. However, with the end of the Federal Tobacco Program, no such continued leverage exists, and Stabilization is now merely a competitor of others that are providing tobacco to manufacturers.

91. Stabilization is supposed to feature, among other things, democratic control and voting, and upon information and belief, a substantial majority of Stabilization's Members, or those who would otherwise be entitled thereto overwhelmingly support an allocation and distribution to the Plaintiffs and other Class Members. However, Stabilization and its Board of Directors have never put this issue to a vote of its Members.

92. One of the other features of a cooperative marketing association, including Stabilization, is the distribution of economic benefits on an equal basis to its members. Prior to the end of the Federal Tobacco Program, by necessity, all Members derived equal economic

benefit from Stabilization's administration of the price support program. However, with the end of the Federal Tobacco Program, members are no longer receiving a distribution of economic benefits on an equal basis. While the Plaintiffs and other Class Members undoubtedly appreciate the efforts of Stabilization, Stabilization is only able to provide economic benefits to a small percentage of its current and former members, and has developed a market for only a small percentage of the flue cured tobacco grown.

93. Stabilization has been successful in deriving net profits from its business activities, and those profits should have already been allocated and distributed to the Plaintiffs and other Class Members as either "patronage dividends" or "equity credits."

94. In failing to allocate and distribute its net profits to the Plaintiffs and other Class Members, Stabilization has failed to follow sound business judgment and has otherwise abused its discretion, have acted arbitrarily, unfairly and unreasonably.

95. Upon information and belief, Stabilization has retained amounts reasonably believed to be in excess of \$250,000,000.00, without allocation or distribution, amounts well in excess of any sums reasonably needed by Stabilization to fund its current activities. Neither Stabilization nor its Board of Directors could have reasonably believed, in the exercise of sound business judgment that retention of all these monies was or is necessary.

96. Plaintiffs and Class Members are entitled to have the earnings retained by Stabilization allocated and distributed to the Plaintiffs and other Class Members.

ALTERNATIVE THIRD CLAIM FOR RELIEF
(Judicial dissolution – N.C.G.S. § 55A-14-30, et seq.)

97. The Plaintiffs incorporate herein by reference the allegations contained in paragraphs 1 through 96.

98. With the enactment of FETRA, the Federal Tobacco Program was eliminated, thereby eliminating the principal and historical purpose and function of Stabilization. Accordingly, as set forth above, the basis upon which Plaintiffs and other members joined, or were required to join, and patronize Stabilization since its inception came to an end and no longer exists.

99. Alternatively, the reasonable expectations of the Plaintiffs and other class members as members/shareholders of Stabilization have been frustrated, which expectations were known or assumed and concurred in by the other shareholders of Stabilization, and such frustration was without the fault and beyond the control of the Plaintiffs and other Class Members. Under all of the circumstances, the Plaintiffs and other Class Members are entitled to equitable relief.

100. The current and proposed future business activities of Stabilization involves speculative efforts on the part of Stabilization to compete in an open market economy for the purchase of flue cured tobacco, and placed Stabilization in the position of being in active competition with the Plaintiffs and other Class Members, who are under contract with tobacco companies, as Stabilization intends to sell accumulated inventories/stocks of tobacco in the open market.

101. As an alternative to the Plaintiffs' Second Claim for Relief, Plaintiffs are entitled to a dissolution of the Defendant Stabilization upon the following reasons:

- (a) Liquidation is reasonably necessary for the protection of the rights or interest of the complaining shareholders;
- (b) The corporate assets are being misapplied or wasted;
- (c) The Board of Directors is acting oppressively and adverse to the interests of its members;
- (d) The corporation is no longer able to carry out its purposes; and
- (e) Basic fairness to the complaining Plaintiffs and other Class Members compels dissolution.

102. The interest and rights of these Plaintiffs and other shareholders will forever be barred an subject to a substantial reduction in value if Stabilization is not dissolved, or alternatively, if there is not a distribution or allocation of any sums not determined to be reasonably necessary to the current and future business activities of Stabilization.

WHEREFORE, the Plaintiffs pray the Court as follows:

1. For an Order certifying this action as an “opt out” class action under Rule 23(a) and (b) of the Federal Rules of Civil Procedure, and designating the Plaintiffs as the representative for the Class and their counsel as Class Counsel.

2. That this Court enters its Declaratory Judgment on the matters set forth in the Plaintiffs’ First Claim for Relief and on other issues that may arise prior to the trial of this matter.

3. That the Court, in furtherance of its Declaratory Judgment, orders the Defendant to allocate and distribute to the Plaintiffs and other Class Members all sums not determined to be reasonably necessary to the current and future business activities of Stabilization.

4. That alternatively, this Court orders a judicial dissolution of the Defendant, and a liquidation and distribution of its assets after providing for the payment of all of its creditors.

5. That to the extent the Court determines that Plaintiffs and Class Members are entitled to the same, that they recover pre-judgment and post-judgment interest, costs and attorneys’ fees, if and as allowed by law.

6. That a jury be impaneled to try all factual issues in dispute.

Respectfully submitted this the ____ day of _____, 2017.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I have this day served the foregoing **AMENDED CLASS ACTION COMPLAINT** on all parties to this action by using the CM/ECF System, which will send notification of such filing to the following:

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This the ____ day of _____, 2017.

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