EIMER STAHL LLP
NATHAN P. EIMER (*pro hac vice*)
Email: neimer@eimerstahl.com
VANESSA G. JACOBSEN (*pro hac vice*)
Email: vjacobsen@eimerstahl.com
DANIEL D. BIRK (*pro hac vice*)
Email: dbirk@eimerstahl.com
SARAH E. MALKERSON (*pro hac vice*)
Email: smalkerson@eimerstahl.com
224 South Michigan Avenue, Suite 1100
Chicago, IL 60604-2516
Telephone: (312) 660-7600
Fax: (312) 692-1718

Attorneys for Defendant Land O'Lakes, Inc.

[Additional Counsel Appear on Signature Page]

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MATTHEW EDWARDS, GEORGIA BROWNE, and TORAH MONTESSORI SCHOOL, individually and on behalf of all others similarly situated, Plaintiffs, v. NATIONAL MILK PRODUCERS FEDERATION aka COOPERATIVES WORKING TOGETHER; DAIRY FARMERS OF AMERICA, INC.; LAND O'LAKES, INC.; DAIRYLEA COOPERATIVE INC.; and AGRI-MARK, INC., Defendants.	CASE NO.: 3:11-CV-04766-JSW [consolidated with 11-cv-04791-JSW and 11-cv-05253-JSW] CLASS ACTION **JOINT STIPULATION AND [PROPOSED] ORDER RE THE USE OF PREDICTIVE CODING TECHNOLOGY** **ACTION FILED: September 26, 2011**

Plaintiffs and Defendant Land O'Lakes, Inc. (collectively "the Parties" and each, individually, a Party) hereby stipulate, agree, and propose as follows:

I. DEFINITIONS

A. **"Document review corpus"** refers to the body of documents remaining after the exclusion of known system files, incompatible file types (*e.g.*, database files), duplicates, and documents that fall outside the agreed date range.

B. **"Confidence level"** means the statistical reliability of a result and in this instance refers to the likelihood that a measurement reached through sampling is accurate.

C. **"Estimation interval"** refers to the statistical error rate of a measured confidence level.

II. PROTOCOL

The Parties have discussed the methodologies or protocols for the search and review of documents collected from Land O'Lakes and have agreed that Land O' Lakes will utilize Recommind's Axcelerate software for its review workflow and production in this case. Axcelerate incorporates predictive coding (also known as technology-assisted review) functionality, which Land O'Lakes will leverage for a more cost efficient and higher quality review. The Parties agree that the following protocol will be followed to identify potentially responsive documents for review:

1. **Step One – Document Collection**: Land O'Lakes will collect documents in the possession, custody, or control of each custodian agreed upon by the Parties and in additional locations under the possession, custody, or control of Land O'Lakes (such as shared drives or departmental files) immediately upon entry of this order and isolate the document review corpus.

2. **Step Two – Control Set**: After loading the document review corpus into Axcelerate, Land O'Lakes will generate an initial control set of documents. The control set will be a random, statistically valid sampling of documents to estimate the number of responsive documents in the corpus. The control set sample shall be determined using a 95% confidence level and 2% estimation interval. The control set sample will then be reviewed for responsiveness and privilege, and Land O'Lakes will provide Plaintiffs with a tracking report of the results of the control set generation and review. At any point during the predictive coding process, Land O'Lakes' e-discovery liaison will

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meet and confer at Plaintiffs' request to discuss the results and method of the process. Land O'Lakes agrees to confer in good faith regarding the incorporation of any input from Plaintiffs on the application process.

3.   **<u>Step Three – Seed Set and Initial Training</u>**: All responsive documents identified during review of the control set will be included in an initial seed set, which will be used to train Axcelerate to identify other potentially responsive documents in the document review corpus. The seed set also will include responsive documents identified by Land O'Lakes through the use of search and analytical tools, which will include the following:

a)   Approximately 400 documents already identified as responsive by Land O'Lakes;

b)   The 500 most highly ranked[1] responsive documents hit upon by an application of the Boolean search terms selected by Land O'Lakes (listed in Appendix A), excluding documents already contained in (a), above; and

c)   The 500 most highly ranked responsive documents hit upon by application of Boolean search terms selected by Plaintiffs (listed in Appendix A), excluding documents already contained in (a) and (b), above.

Land O'Lakes will provide Plaintiffs with a search hit count of all searches conducted and will produce all non-privileged documents included in the seed set.

4.   **<u>Step Four – Iterative Review and Further Training</u>**: Once Axcelerate has identified and prioritized potentially responsive documents based on the initial training, Land O'Lakes will review a sample set of those documents for responsiveness. The sample set will consist of at least the 500 documents ranked most highly by Axcelerate in order of relevance. After this second round of review, the system will be trained again based on reviewer feedback to identify and prioritize more potentially responsive documents. Land O'Lakes will provide Plaintiffs with tracking data for this round of review.

5.   **<u>Step Five – Review</u>**: Land O'Lakes will then conduct a manual review of all documents identified by Axcelerate as potentially responsive. During this review, the iterative

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[1] Axcelerate ranks returned documents in order of responsiveness to search terms.

process will continue; as more responsive documents are reviewed and coded, they will be used to

further hone the system's ability to identify and prioritize other potentially responsive documents

among the remaining, unreviewed portion of the document review corpus. Newly identified

documents also will be subject to manual review. Review and iterative training will proceed until all

identified documents have been reviewed and the system indicates that the remainder of the

document review corpus is not likely to be responsive. Land O'Lakes will continue to provide

tracking data to Plaintiffs, and all responsive, non-privileged documents will be produced.

6.   **Step Six – Validation**:   After Land O'Lakes has conducted enough rounds of

iterative review and training to generate a conclusion from Axcelerate that the remaining documents

in the document review corpus are not likely to be responsive, Land O'Lakes will perform a

validation test by reviewing a statistically valid and random sampling of unreviewed documents to

confirm that the number of potentially responsive documents in the unreviewed corpus is statistically

insignificant. Using a 99% confidence level and a 1% estimation interval, a random sampling of the

unreviewed documents will be reviewed for responsiveness. If the number of responsive documents

in the validation sampling results in higher than a 1% responsiveness rate, the review process will

continue until the validation test achieves a 1% or less responsiveness rate. All tracking data

regarding the validation process will be provided to the plaintiffs, and any responsive, non-privileged

documents identified during the process will be produced.

THE PARTIES HEREBY STIPULATE AND AGREE TO THE ABOVE TERMS.

DATED: April 16, 2013   Respectfully submitted,

By:/s/ *Matthew S. Kahn*
George A. Nicoud (SBN 106111)
Matthew S. Kahn (SBN 261679)
GIBSON, DUNN & CRUTCHER LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105-2933
Telephone: (415) 393-8200
Fax: (415) 393-8200
tnicoud@gibsondunn.com
mkahn@gibsondunn.com

By:/s/ *Nathan P. Eimer*
Nathan P. Eimer *(pro hac vice)*
Vanessa G. Jacobsen *(pro hac vice)*

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Daniel D. Birk *(pro hac vice)*
Sarah E. Malkerson *(pro hac vice)*
EIMER STAHL LLP
224 South Michigan Avenue, Suite 1100
Chicago, Illinois 60604
Phone: (312) 660-7601
Fax: (312) 692-1718
neimer@eimerstahl.com
vjacobsen@eimerstahl.com
dbirk@eimerstahl.com
smalkerson@eimerstahl.com

Attorneys for Defendant Land O' Lakes, Inc.

By: /s/ Elaine T. Byszewski
Elaine T. Byszewski
HAGENS BERMAN SOBOL SHAPIRO LLP
301 North Lake Avenue, Suite 203
Pasadena, CA 91101
Telephone (213) 330-7150
Facsimile (213) 330-7152
elaine@hbsslaw.com

Steve W. Berman
George W. Sampson
Craig R. Spiegel
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone (206) 623-7292
Facsimile (206) 623-0594
steve@hbsslaw.com
george@hbsslaw.com
craig@hbsslaw.com

Attorneys for the Plaintiffs

ATTESTATION: I, Matthew S. Kahn, attest that concurrence in the filing of this document has been obtained from each of the other signatories.

~~[PROPOSED]~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: ___April 17, 2013___

_____
HONORABLE JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

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JOINT STIPULATION AND PROPOSED ORDER RE THE USE OF PREDICTIVE CODING TECHNOLOGY
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Appendix A: Search Terms

Land O'Lakes' Search Terms

"cooperatives working together"
nmpf OR "national milk producers federation"
herd /10 retir*
cow /10 retir*
cwt AND retir*
"self help"
"herd buyout"
"milk diversion program"
cwt AND beef
cwt /5 program
export /10 assistance
cwt /5 ambassador
cwt AND (independent /5 producer)
cwt AND (independent /5 farmer)
cwt AND (target /10 remov*)
cwt AND cull*
cwt AND slaughter*
cwt AND "field staff"
cwt AND assessment
cwt AND delegate
cwt AND (milk /5 suppl*)
cwt AND (price /10 increas*)
cwt AND contribut*
cooperative /10 individual
cwt AND (cow /5 numbers)
cwt AND "farm id"
cents /5 hundredweight
amount /10 checks
cwt AND bid*
cwt AND "leadership council"
cwt /10 member*
cwt /10 summary
cwt AND presentation

Plaintiffs' Search Terms

buyout
reentry
re-entry
reenter
re-enter
rejoin
re-join
join /10 again
price /10 increase
price /10 rise
price /10 raise
price /10 hike
price /10 stabiliz*
price /10 maintain
price /10 maintenance

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