

1 Joseph J. Tabacco, Jr. (SBN 75484)
Christopher T. Heffelfinger (SBN 118058)
2 Anthony D. Phillips (SBN 259688)

BERMAN DeVALERIO

3 One California Street, Suite 900
San Francisco, CA 94111

4 Telephone: (415) 433-3200

Facsimile: (415) 433-6382

5 Email: jtabacco@bermandevalerio.com
cheffelfinger@bermandevalerio.com
6 aphillips@bermandevalerio.com

7 [Additional Counsel Listed on Signature Page]

8 *Counsel for Plaintiffs and the Proposed Class*

9
10 **UNITED STATES DISTRICT COURT**

11 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

12
13 GERALD CARLIN, JOHN RAHM, PAUL
14 ROZWADOWSKI and BRYAN WOLFE,
individually and on behalf of themselves
15 and all others similarly situated,

16 Plaintiffs,

17 v.

18 DAIRYAMERICA, INC. and
CALIFORNIA DAIRIES, INC.,

19 Defendants.
20

Case No. 1:09 CV 00430-AWI (GSA)

**STIPULATION AND ORDER
REGARDING MERITS DISCOVERY**

CLASS ACTION

1 Plaintiffs and defendant DairyAmerica, Inc. (“DairyAmerica” and, collectively with
2 plaintiffs, the “parties”), by and through their respective counsel of record and subject to Court
3 approval, recite and stipulate as follows with respect to the conduct of limited merits discovery
4 prior to adjudication of DairyAmerica’s pending motion to dismiss.

5 **RECITALS**

6 WHEREAS the Court conducted a Scheduling Conference on March 18, 2013;

7 WHEREAS the Court ordered limited discovery to proceed between plaintiffs and
8 DairyAmerica as to the merits of the factual allegations in the case prior to adjudication of
9 DairyAmerica’s pending motion to dismiss;

10 WHEREAS the Court ordered that defendant California Dairies, Inc. has no obligation
11 to provide Initial Disclosures or otherwise respond to, or participate in, discovery pending
12 adjudication of defendants’ motions to dismiss;

13 WHEREAS at the Scheduling Conference, the parties met and conferred respecting the
14 extent of discovery to be undertaken;

15 WHEREAS since the Scheduling Conference, the parties have met and conferred further
16 respecting the extent of discovery to be undertaken;

17 **STIPULATION**

18 Therefore, IT IS HEREBY STIPULATED AND AGREED, by the parties through their
19 respective counsel of record, as follows:

- 20 1. The parties shall file a joint Protective Order by no later than April 26, 2013;
- 21 2. The parties shall file a joint Protocol governing the treatment of electronically-
22 stored information (“ESI”) by no later than May 17, 2013;
- 23 3. DairyAmerica shall disclose to plaintiffs, in writing, the following information
24 by no later than April 26, 2013:
 - 25 a. The names, addresses, and telephone numbers of each individual likely to
26 have discoverable information relevant to the subject matter of this
27 litigation;

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b. The categories and locations of documents, including both paper and electronically-stored documents, in DairyAmerica’s possession, custody, or control likely to contain discoverable information relevant to the subject matter of this litigation including, but not limited to, categories of electronically-stored information previously compiled by DairyAmerica in anticipation of document discovery in this case;

c. The existence of any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in this action or to indemnify or reimburse for payments made to satisfy such judgment.

4. Plaintiffs may serve discovery requests pursuant to Federal Rules of Civil Procedure, rules 26 and 33 through 36, inclusive, on DairyAmerica at any time. DairyAmerica shall have no obligation to provide responses or objections until 30 days after entry of an order denying DairyAmerica’s motion to dismiss, including any subsequent motions to dismiss any amended complaint.

5. Plaintiffs may proceed with discovery of third parties pursuant to the Federal Rules of Civil Procedure, rule 45, except that no third party depositions shall be noticed before entry of an order denying DairyAmerica’s motion to dismiss, including any subsequent motions to dismiss any amended complaint.

6. DairyAmerica shall conduct further investigation into the existence of discoverable information pertaining to inspections, investigations and/or audits conducted by the United States Department of Agriculture, Office of the Inspector General, at defendant DairyAmerica’s offices in 2007 and 2008. The parties shall meet and confer further with respect to the production of any such discoverable material, which shall not be delayed pending resolution of DairyAmerica’s motion to dismiss.

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1 DATED: March 29, 2013

Respectfully submitted,

2 **BERMAN DeVALERIO**

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4 By: /s/ Anthony D. Phillips
5 Anthony D. Phillips

6 Joseph J. Tabacco, Jr.
7 Christopher T. Heffelfinger
8 One California Street, Suite 900
9 San Francisco, CA 94104
10 Telephone: (415) 433-3200
11 Facsimile: (415) 433-6382
12 Email: jtabacco@bermandevalerio.com
13 cheffelfinger@bermandevalerio.com
14 aPhillips@bermandevalerio.com

15 Benjamin D. Brown (SBN 202545)
16 Daniel A. Small
17 Victoria S. Nugent
18 **COHEN MILSTEIN SELLERS**
19 **& TOLL, PLLC**
20 1100 New York Avenue, N.W.
21 Suite 500, West Tower
22 Washington, DC 20005
23 Telephone: (202) 408-4600
24 Facsimile: (202) 408-4699
25 Email: bbrown@cohenmilstein.com
26 dsmall@cohenmilstein.com
27 vnugent@cohenmilstein.com

28 George F. Farah
29 **COHEN MILSTEIN SELLERS**
30 **& TOLL, PLLC**
31 88 Pine Street
32 14th Floor
33 New York, NY 10005
34 Telephone: (212) 838-7797
35 Facsimile: (212) 838-7745
36 Email: gfarah@cohenmilstein.com

37 Lynn L. Sarko
38 Mark A. Griffin
39 Juli E. Farris
40 **KELLER ROHRBACK L.L.P.**
41 1201 Third Avenue, Suite 3200
42 Seattle, WA 98101
43 Telephone: (206)-623-1900
44 Facsimile: (206)-623-3384
45 Email: lsarko@kellerrohrback.com
46 mgriffin@kellerrohrback.com
47 jfarris@kellerrohrback.com

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Ron Kilgard
KELLER ROHRBACK P.L.C.
3101 North Central Avenue, Suite 1400
Phoenix, AZ 85012
Telephone: (602)-248-0088
Facsimile: (602)-248-2822
Email: rkilgard@kellerrohrback.com

Counsel for Plaintiffs and the Proposed Class

Dated: March 29, 2013

DAVIS WRIGHT TREMAINE LLP

By: /s/ Charles M. English (as authorized on 3/29/13)
Charles M. English

Allison A. Davis
505 Montgomery Street,
Suite 800
San Francisco, CA 94111-6533
Telephone: (415) 276-6500
Facsimile: (415) 276-6599
Email: chipenglish@dwt.com
allisondavis@dwt.com

Christopher D. Bell
BAKER MANOCK & JENSEN, PC
5260 North Palm Avenue,
Fourth Floor
Fresno, CA 93704
Telephone: (559) 432-5400
Facsimile: (549) 432-5620
Email: cbell@bakermanock.com

Counsel for Defendant DairyAmerica, Inc.

1 **ORDER**

2 **IT IS HEREBY ORDERED that:**

3 Limited discovery into the merits of the allegations in the above-captioned litigation
4 shall proceed in accordance with the stipulation of the parties, as set forth above.

5 Other than the discovery described above, no other merits discovery shall take place
6 between DairyAmerica and plaintiffs until such time as the Court enters an order denying
7 DairyAmerica's motion to dismiss, including any subsequent motion to dismiss any amended
8 complaint.

9 No discovery shall take place between defendant California Dairies, Inc. and plaintiffs
10 until such time as the Court enters an order denying California Dairies, Inc.'s motions to
11 dismiss, including any subsequent motion to dismiss any amended complaint.

12 Any further merits discovery shall commence following the Court ordered status
13 conference with a schedule agreed to by the parties or by order of the Court.

14 No discovery shall take place with respect to class certification until further order of the
15 Court expressly permitting such discovery to proceed.

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18 IT IS SO ORDERED.

19 Dated: April 3, 2013

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE