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9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11 **FRESNO DIVISION**

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

15 Plaintiffs,

16 v.

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

Defendants.

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

CLASS ACTION

**STIPULATION AND ORDER
REGARDING DEPOSITIONS OF
CALIFORNIA DAIRIES' FORMER
EMPLOYEES AND OF NON-PARTIES
BIMEMILLER AND ELLINGSWORTH**

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1 WHEREAS, on May 12, 2017, this Court permitted the parties to file a stipulation and
2 proposed order modifying the current schedule to take the depositions of non-parties
3 Lani Ellingsworth and Candice Bimemiller and three current or former employees of Defendant
4 California Dairies until such time as Plaintiffs' motion to amend the complaint is resolved (Doc.
5 428).

6 WHEREAS, on November 14, 2016, the parties submitted a Stipulation Governing
7 Discovery Issues (Doc. 368). Per that stipulation, the parties agreed to, among other things, stay
8 all deposition discovery pending either Judge Ishii's denial of Plaintiffs' anticipated motion to
9 amend the complaint or the filing of Defendants' answer to that amended complaint, except for
10 the depositions of Ellingsworth, Bimemiller, and three current or former California Dairies
11 employees. The stipulation expressly states that those depositions would be permitted to proceed
12 "to help facilitate settlement." *Id.*

13 WHEREAS, on December 5, 2016, the Court issued an order on that stipulation, the
14 Order Granting in Part and Denying in Part Proposed Order Governing Discovery Issues (Doc.
15 371) ("Discovery Order"), permitting those five depositions to proceed per the parties'
16 agreement and, further, requiring them to be taken by June 30, 2017. Additionally, the Court
17 limited document and written discovery to the claims and parties upheld in the Third Amended
18 Complaint, thereby staying document and written discovery regarding the additional allegations
19 in Plaintiffs' proposed Fourth Amended Complaint until resolution of the motion to amend.

20 WHEREAS, after the Court's Discovery Order was issued, and pursuant to settlement
21 discussions, Plaintiffs shared with Defendants their draft proposed Fourth Amended Complaint.
22 The parties proceeded with a private mediation on December 20, 2016, after which settlement
23 discussions continued through the mediator for many weeks. No settlement was reached. On
24 February 9, 2017, Plaintiffs filed their motion to amend the complaint. Through the proposed
25 Fourth Amended Complaint, Plaintiffs seek to add a California class of dairy farmers, add two
26 new defendants (Dairy Farmers of America and Land O'Lakes), and add allegations and claims
27 based in part on information contained in the declarations of Ellingsworth and Bimemiller. The
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1 motion to amend has now been fully briefed and was taken under submission by Judge Ishii on
2 May 8, 2017.

3 WHEREAS, in accordance with the Court's Discovery Order, DairyAmerica issued
4 subpoenas for the depositions of non-parties Ellingsworth and Bimemiller, and Plaintiffs issued
5 notices for the depositions of three former California Dairies employees. Further, the parties
6 appeared for an informal telephonic conference before the Court on Wednesday, May 3, 2017, to
7 discuss the Ellingsworth and Bimemiller depositions, which were subject to motions to quash
8 filed by their respective attorneys.

9 WHEREAS, since that informal telephonic conference, the parties have met and
10 conferred further and have agreed that the interests of efficiency, economy, and expediency
11 would be best served by postponing all five depositions until such time as Judge Ishii denies
12 Plaintiffs' motion to amend or Defendants file their answers to the Fourth Amended Complaint.¹
13 There is good cause for this postponement that applies equally to all five depositions. In their
14 proposed Fourth Amended Complaint, Plaintiffs seek to add a class of California dairy farmers,
15 add two new defendants, and add allegations and claims against Defendants based in part on
16 information contained in the declarations of Ellingsworth and Bimemiller. Accordingly, since
17 the scope of Plaintiffs' claims is subject to change, and additional parties may be added to the
18 case, the parties wish to postpone all depositions until such time as the scope of claims and
19 parties is resolved. Furthermore, in accordance with and since the Court's December 5, 2016
20 order, the parties were not required to respond to written discovery relating to the potential
21 additional allegations in the proposed Fourth Amended Complaint, which would likely be
22 addressed in each of the five depositions at issue.

23 WHEREAS, the parties believe and agree that postponing all five depositions is the most
24 efficient and expedient way to proceed under the circumstances, and the least burdensome to the
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26 ¹ Plaintiffs have also met and conferred with counsel for non-parties Ellingsworth and
27 Bimemiller, and in the interests of efficiency and to avoid undue burden including potential
28 multiple depositions, they support this agreement to postpone the depositions of their clients.

1 deponents, all of whom are former employees of Defendants and therefore subject to subpoena.
2 If the depositions take place prior to the decision on the motion to amend the complaint, the
3 deponents may be subject to multiple depositions due to the unresolved nature of the pleadings
4 and parties, and the parties may not have the benefit of certain written discovery relevant to an
5 amended complaint in conducting such depositions.

6 WHEREAS, this modification of the scheduling order is sought only for purposes of
7 efficiency and not for purposes of delay.

8 IT IS STIPULATED, subject to court approval, that the June 30, 2017 deadline to take
9 the depositions of Ms. Ellingsworth, Ms. Bimemiller, and three depositions of current or former
10 California Dairies employees be vacated. Within fourteen days of either an answer to the Fourth
11 Amended Complaint or an order denying leave to file a Fourth Amended Complaint, the parties
12 shall submit a proposed schedule for taking these depositions with the status report and proposed
13 amended scheduling order.

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15 DATED: May 17, 2017

Respectfully submitted,

BERMAN DeVALERIO

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Dated: May 17, 2017

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Dated: May 17, 2017

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ORDER

For the reasons provided in the parties' stipulation, the June 30, 2017 deadline to take the depositions of Ms. Ellingsworth, Ms. Bimemiller, and three depositions of current or former California Dairies employees is vacated. Within fourteen days of either an answer to the Fourth Amended Complaint or an order denying leave to file a Fourth Amended Complaint, the parties shall submit a proposed schedule for taking the depositions with a status report.

The remainder of the December 5, 2016 order (ECF No. 371) remains in effect.

IT IS SO ORDERED.

Dated: May 17, 2017

/s/ Eric P. Grogan
UNITED STATES MAGISTRATE JUDGE