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LAND O'LAKES, INC.
7

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10

11 LAND O'LAKES, INC.,
12 Plaintiff,
13

14 v.

15 DAIRYAMERICA, INC.;
16 SILLIKER, INC.; and
DOES 1 through 50, inclusive,
17 Defendants.

Case No. 1:15-CV-01937-DAD-MJS
STIPULATED PROTECTIVE ORDER

18 1. PURPOSES AND LIMITATIONS
19

20 Disclosure and discovery activity in this action are likely to involve production of
21 confidential, proprietary, or private information for which special protection from public
22 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
23 Accordingly, the parties hereby stipulate to and petition the court to enter the following
24 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket
25 protections on all disclosures or responses to discovery and that the protection it affords from
26 public disclosure and use extends only to the limited information or items that are entitled to
27 confidential treatment under the applicable legal principles. The parties further acknowledge, as
28 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file

1 confidential information under seal; Civil Local Rule 141 sets forth the procedures that must be
2 followed and the standards that will be applied when a party seeks permission from the court to
3 file material under seal.

4 2. DEFINITIONS

5 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
6 information or items under this Order.

7 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
8 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
9 of Civil Procedure 26(c) or that is not generally known, that has commercial value, or that the
10 Producing Party would not normally reveal to third parties or would cause third parties to
11 maintain in confidence, that a Party believes in good faith contains or comprises proprietary
12 information, trade secrets, financial information or other private or sensitive information.

13 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
14 well as their support staff).

15 2.4 Designating Party: a Party or Non-Party that designates information or items that
16 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

17 2.5 Disclosure or Discovery Material: all items or information, regardless of the
18 medium or manner in which it is generated, stored, or maintained (including, among other things,
19 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
20 responses to discovery in this matter.

21 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent
22 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as
23 a consultant in this action.

24 2.7 House Counsel: attorneys who are employees of a party to this action. House
25 Counsel does not include Outside Counsel of Record or any other outside counsel.

26 2.8 Non-Party: any natural person, partnership, corporation, association, or other
27 legal entity not named as a Party to this action.

28 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this

1 action but are retained to represent or advise a party to this action and have appeared in this
2 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
3 that party (and their support staff).

4 2.10 Party: any party to this action, including all of its officers, directors, employees,
5 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

6 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
7 Material in this action.

8 2.12 Professional Vendors: persons or entities that provide litigation support services
9 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
10 organizing, storing, or retrieving data in any form or medium) and their employees and
11 subcontractors.

12 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
13 “CONFIDENTIAL.”

14 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a
15 Producing Party.

16 3. SCOPE

17 The protections conferred by this Stipulation and Order cover not only Protected Material
18 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
19 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
20 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
21 However, the protections conferred by this Stipulation and Order do not cover the following
22 information: (a) any information that is in the public domain at the time of disclosure to a
23 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
24 a result of publication not involving a violation of this Order, including becoming part of the
25 public record through trial or otherwise; and (b) any information known to the Receiving Party
26 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
27 obtained the information lawfully and under no obligation of confidentiality to the Designating
28 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations imposed by
3 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
4 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
5 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
6 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
7 action, including the time limits for filing any motions or applications for extension of time
8 pursuant to applicable law.

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
11 or Non-Party that designates information or items for protection under this Order must take care
12 to limit any such designation to specific material that qualifies under the appropriate standards.
13 The Designating Party must designate for protection only those parts of material, documents,
14 items, or oral or written communications that qualify – so that other portions of the material,
15 documents, items, or communications for which protection is not warranted are not swept
16 unjustifiably within the ambit of this Order.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
18 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
19 unnecessarily encumber or retard the case development process or to impose unnecessary
20 expenses and burdens on other parties) expose the Designating Party to sanctions.

21 If it comes to a Designating Party’s attention that information or items that it designated for
22 protection do not qualify for protection that Designating Party must promptly notify all other
23 Parties that it is withdrawing the mistaken designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
25 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
26 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
27 designated before the material is disclosed or produced.

28 Designation in conformity with this Order requires:

1 (a) for information in documentary form (e.g., paper or electronic documents, but
2 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
3 Party affix the legend “CONFIDENTIAL” to each page that contains protected material.

4 A Party or Non-Party that makes original documents or materials available for inspection
5 need not designate them for protection until after the inspecting Party has indicated which
6 material it would like copied and produced. During the inspection and before the designation, all
7 of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the
8 inspecting Party has identified the documents it wants copied and produced, the Producing Party
9 must determine which documents, or portions thereof, qualify for protection under this Order.
10 Then, before producing the specified documents, the Producing Party must affix the
11 “CONFIDENTIAL” legend to each page that contains Protected Material. If only a portion or
12 portions of the material on a page qualifies for protection, the Producing Party also must clearly
13 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

14 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
15 Designating Party identify on the record, before the close of the deposition, hearing, or other
16 proceeding, or within 10 days of receiving a certified copy of the deposition transcript, all
17 protected testimony. All deposition transcripts in their entirety will be treated as
18 “CONFIDENTIAL” Pursuant to this Order, unless otherwise agreed to in writing by the Parties
19 to this Order, until the Designating Party either timely identifies the protected testimony as
20 indicated in the preceding sentence, or until the time period for identifying the protected
21 testimony has expired without any testimony being designated as protected testimony.
22 Transcripts containing Protected Material shall contain an obvious demarcation on the title page
23 that the transcript contains Protected Material. The Designating Party shall inform the court
24 reporter of these requirements.

25 (c) for information produced in some form other than documentary and for any other
26 tangible items, that the Producing Party affix in a prominent place on the exterior of the
27 container or containers in which the information or item is stored the legend
28 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,

1 the Producing Party, to the extent practicable, shall identify the protected portion(s).

2 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
3 designate qualified information or items does not, standing alone, waive the Designating Party's
4 right to secure protection under this Order for such material. Upon timely correction of a
5 designation, the Receiving Party must make reasonable efforts to assure that the material is
6 treated in accordance with the provisions of this Order.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
9 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
10 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
11 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
12 challenge a confidentiality designation by electing not to mount a challenge promptly after the
13 original designation is disclosed.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
15 process by providing written notice of each designation it is challenging and describing the basis
16 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
17 notice must recite that the challenge to confidentiality is being made in accordance with this
18 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
19 good faith and must begin the process by conferring directly within 14 days of the date of service
20 of notice. In conferring, the Challenging Party must explain the basis for its belief that the
21 confidentiality designation was not proper and must give the Designating Party an opportunity to
22 review the designated material, to reconsider the circumstances, and, if no change in designation
23 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
24 the next stage of the challenge process only if it has engaged in this meet and confer process first
25 or establishes that the Designating Party is unwilling to participate in the meet and confer
26 process in a timely manner.

27 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
28 intervention, the Designating Party shall file and serve a motion to retain confidentiality under

1 Civil Local Rules 141.1 and 251 and (and in compliance with Civil Local Rule 141, if
2 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties
3 agreeing that the meet and confer process will not resolve their dispute, whichever is later. Each
4 such motion must be accompanied by a competent declaration affirming that the movant has
5 complied with the meet and confer requirements imposed in the preceding paragraph. Failure by
6 the Designating Party to make such a motion including the required declaration within the 21
7 days, (or 14 days as set forth above), whichever is later, shall automatically waive the
8 confidentiality designation for each challenged designation. In addition, the Challenging Party
9 may file a motion challenging a confidentiality designation at any time if there is good cause for
10 doing so, including a challenge to the designation of a deposition transcript or any portions
11 thereof. Any motion brought pursuant to this provision must be accompanied by a competent
12 declaration affirming that the movant has complied with the meet and confer requirements
13 imposed by the preceding paragraph.

14 The burden of persuasion in any such challenge proceeding shall be on the Designating
15 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
16 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
17 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
18 file a motion to retain confidentiality as described above, all parties shall continue to afford the
19 material in question the level of protection to which it is entitled under the Producing Party's
20 designation until the court rules on the challenge.

21 7. ACCESS TO AND USE OF PROTECTED MATERIAL

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
23 or produced by another Party or by a Non-Party in connection with this case only for
24 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
25 disclosed only to the categories of persons and under the conditions described in this Order.
26 When the litigation has been terminated, a Receiving Party must comply with the provisions of
27 section 13 below (FINAL DISPOSITION).

28 Protected Material must be stored and maintained by a Receiving Party at a location and

1 in a secure manner that ensures that access is limited to the persons authorized under this Order.

2 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
3 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
4 disclose any information or item designated “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
6 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
7 information for this litigation;

8 (b) the officers, directors, independent contractors, agents, and employees (including
9 House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
10 litigation;

11 (c) insurers of the Receiving Party or their counsel to whom disclosure is reasonably
12 necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be
13 Bound” (Exhibit A);

14 (d) experts (as defined in this Order) of the Receiving Party to whom disclosure is
15 reasonably necessary for this litigation and who have signed the “Acknowledgment and
16 Agreement to Be Bound” (Exhibit A);

17 (e) the court and its personnel;

18 (f) court reporters and their staff;

19 (g) professional jury or trial consultants, and mock jurors, to whom disclosure is
20 reasonably necessary for this litigation and who have signed the “Acknowledgment and
21 Agreement to Be Bound” (Exhibit A);

22 (h) During their depositions, witnesses in the action to whom disclosure is reasonably
23 necessary, and (i) who have signed the “Acknowledgment and Agreement to Be Bound” attached
24 hereto as Exhibit A; or (ii) who Outside Counsel for the deposing Party has made a good faith
25 effort to have sign, unless otherwise agreed by the Designating Party or ordered by the Court.

26 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected
27 Material must be separately bound by the court reporter and may not be disclosed to anyone
28 except as permitted under this Stipulated Protective Order.

1 (i) the author or recipient of a document containing the information or a custodian or
2 other person who otherwise possessed or knew the information.

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
4 LITIGATION

5 If a Party is served with a subpoena or a court order issued in other litigation that compels
6 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
7 Party must:

8 (a) promptly notify in writing the Designating Party, e.g. within 2 business days.
9 Such notification shall include a copy of the subpoena or court order;

10 (b) promptly notify in writing the party who caused the subpoena or order to issue in
11 the other litigation that some or all of the material covered by the subpoena or order is subject to
12 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
13 and

14 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
15 Designating Party whose Protected Material may be affected.

16 If the Designating Party timely seeks a protective order, the Party served with the
17 subpoena or court order shall not produce any information designated in this action as
18 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
19 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party
20 shall bear the burden and expense of seeking protection in that court of its confidential material;
21 -all parties shall bear their own costs to enforce or oppose any such designation and nothing in
22 these provisions should be construed as authorizing or encouraging a Receiving Party in this
23 action to disobey a lawful directive from another court.

24 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
25 LITIGATION

26 (a) The terms of this Order are applicable to information produced by a Non-Party in
27 this action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in
28 connection with this litigation is protected by the remedies and relief provided by this Order.

1 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
2 additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to produce a
4 Non-Party's confidential information in its possession, and the Party is subject to an agreement
5 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

6 (1) promptly notify in writing the Requesting Party and the Non-Party that some
7 or all of the information requested is subject to a confidentiality agreement with a Non-Party;

8 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
9 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
10 the information requested; and

11 (3) make the information requested available for inspection by the Non-Party.

12 (c) If the Non-Party fails to object or seek a protective order from this court within
13 14 days of receiving the notice and accompanying information, the Receiving Party may produce
14 the Non-Party's confidential information responsive to the discovery request. If the Non-Party
15 timely seeks a protective order, the Receiving Party shall not produce any information in its
16 possession or control that is subject to the confidentiality agreement with the Non-Party before a
17 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
18 burden and expense of seeking protection in this court of its Protected Material.

19 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
21 Material to any person or in any circumstance not authorized under this Stipulated Protective
22 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
23 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
24 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
25 made of all the terms of this Order, and (d) request such person or persons to execute the
26 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

27 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
28 MATERIAL

1 When a Producing Party gives notice to Receiving Parties that certain inadvertently
2 produced material is subject to a claim of privilege or other protection, the obligations of the
3 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
4 provision is not intended to modify whatever procedure may be established in an e-discovery
5 order that provides for production without prior privilege review. Pursuant to Federal Rule of
6 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
7 communication or information covered by the attorney-client privilege or work product
8 protection, the parties may incorporate their agreement in the stipulated protective order
9 submitted to the court.

10 12. MISCELLANEOUS

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
12 seek its modification by the court in the future.

13 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
14 Order no Party waives any right it otherwise would have to object to disclosing or producing any
15 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
16 no Party waives any right to object on any ground to use in evidence of any of the material
17 covered by this Protective Order.

18 12.3 Filing Protected Material. Without written permission from the Designating Party
19 or a court order secured after appropriate notice to all interested persons, a Party may not file in
20 the public record in this action any Protected Material. A Party that seeks to file under seal any
21 Protected Material must comply with Civil Local Rule 141. Protected Material may only be filed
22 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
23 issue. If a Receiving Party's request to file Protected Material under seal is denied by the Court,
24 then the Receiving Party may file the information in the public record unless otherwise instructed
25 by the Court.

26 13. FINAL DISPOSITION

27 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
28 Receiving Party must return all Protected Material to the Producing Party or destroy such

1 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
2 compilations, summaries, and any other format reproducing or capturing any of the Protected
3 Material that are reasonably accessible (law firm electronic backups for disaster recovery
4 purposes, for instance, would not be considered reasonably accessible). Whether the Protected
5 Material is returned or destroyed, the Receiving Party must submit a written certification to the
6 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day
7 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
8 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
9 abstracts, compilations, summaries or any other format reproducing or capturing any of the
10 Protected Material that is reasonably accessible. Notwithstanding this provision, Counsel are
11 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
12 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports,
13 attorney work product, and consultant and expert work product, even if such materials contain
14 Protected Material. Any such archival copies that contain or constitute Protected Material remain
15 subject to this Protective Order as set forth in Section 4 (DURATION).

16
17 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

18 Dated: September 21, 2017

STOEL RIVES LLP

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20 By: /s/ Jonathan A. Miles

Seth D. Hilton
Jonathan A. Miles
Attorneys for Plaintiff
LAND O’LAKES, INC.

1 Dated: September 21, 2017

DUANE MORRIS LLP

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By: /s/ Justin J. Fields (as authorized on 9/19/17)
Denis F. Shanagher
Justin J. Fields
Attorneys for Defendant,
DAIRYAMERICA, INC.

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7 Dated: September 21, 2017

DAVIS WRIGHT TREMAINE LLP

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By/s/ Charles English (as authorized on 9/19/17)
Allison A. Davis
Charles M. English
Attorneys for Defendant,
DAIRYAMERICA, INC.

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13 Dated: September 21, 2017

REED SMITH LLP

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By: /s/ Francisca Mok (as authorized on 9/20/17)
Francisca M. Mok
Attorneys for Defendant
SILLIKER, INC.

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ORDER

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20 The terms of the parties' Stipulated Protective Order are accepted and made
21 the Order of this Court.

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IT IS SO ORDERED.

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Dated: September 22, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on _____ in the case of *LAND O’LAKES, INC. v. DAIRYAMERICA, INC., et al.*, Case No. 1:15-CV-01937-DAD-MJS. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____