

1 DOWNEY BRAND LLP  
 ROBERT P. SORAN  
 2 ASHLEY M. BOULTON  
 621 Capitol Mall, 18th Floor  
 3 Sacramento, CA 95814-4731  
 Telephone: (916) 444-1000 / Facsimile: (916) 444-2100  
 4

5 Attorneys for Defendants  
 GOOSE POND AG, INC., and FARMLAND MANAGEMENT SERVICES

6 CANNATA, O'TOOLE, FICKES & ALMAZAN  
 7 THERESE Y. CANNATA  
 KIMBERLY A. ALMAZAN  
 8 100 Pine Street, Suite 350  
 San Francisco, CA 94111  
 9 Telephone: 415.409.8900 / Facsimile: 415.409.8904

10 Attorneys for Defendants  
 ROGER J. LAPANT, JR. and J&J FARMS

11 JEFFREY H. WOOD  
 12 Acting Assistant Attorney General  
 ANDREW J. DOYLE  
 13 JOHN THOMAS H. DO  
 United States Department of Justice  
 14 Environmental and Natural Resources Division  
 P.O. Box 7611  
 15 Washington, DC 20044  
 Telephone: (202) 514-4427 (Doyle), (202) 514-2593 (Do)  
 16

17 PHILLIP A. TALBERT  
 United States Attorney  
 18 GREGORY T. BRODERICK  
 Assistant United States Attorney  
 19 501 I Street, Suite 10-100  
 Sacramento, CA 95814  
 20 Telephone: (916) 554-2780

21 Attorneys for the UNITED STATES OF AMERICA

22 UNITED STATES DISTRICT COURT  
 23 EASTERN DISTRICT OF CALIFORNIA

24 UNITED STATES OF AMERICA,  
 25 Plaintiff,  
 26 v.  
 ROGER J. LAPANT, JR., *et al.*,  
 27 Defendants.  
 28

Case No. 2:16-cv-01498-KJM-DB

**STIPULATION REGARDING  
 FEDERAL RULE OF EVIDENCE 502;  
 ORDER**

1 Pursuant to Federal Rule of Civil Procedure 26(c), Federal Rule of Evidence 502, the  
2 Parties' Joint Status Report and Discovery Plan (ECF No. 22), and the Court's direction at the  
3 March 2, 2017 status conference (ECF No. 23), the Parties submit the following stipulation and  
4 proposed Order regarding inadvertent disclosure of privileged information.

5 A. REQUEST FOR ORDER REGARDING PROTECTION OF PRIVILEGES.

6 1. This stipulation and Order invokes the protections afforded by Rule  
7 502(d) of the Federal Rules of Evidence. Accordingly, the provisions in Rule 502(b) will not  
8 apply to the disclosure of communications or information in discovery in this matter.

9 2. The various claims and defenses in this action may require each Party to  
10 review and to disclose potentially voluminous information and documents, including ESI,  
11 through the discovery process. Page-by-page preproduction privilege review may impose an  
12 undue burden on the Parties' resources.

13 3. Each Party is entitled to decide the appropriate degree of care to exercise  
14 in reviewing materials for privilege, taking into account the volume and sensitivity of the  
15 materials, the demands of the litigation, and the resources that the Party can make available.  
16 Irrespective of the care that is actually exercised in reviewing materials for privilege, the Court  
17 hereby orders pursuant to Rule 502(d) of the Federal Rules of Evidence that disclosure of  
18 privileged or protected information or documents in discovery conducted in this litigation will  
19 not constitute or be deemed a waiver or forfeiture—in this or any other federal or state  
20 proceeding—of any claims of attorney-client privilege or work product protection that the  
21 disclosing Party would otherwise be entitled to assert with respect to the information or  
22 documents and their subject matter.

23 4. The Court further orders that because expedited or truncated privilege  
24 review may be necessary for the just, speedy, and inexpensive resolution of this matter, and  
25 because Rule 502(d) does not preserve privileges other than the attorney-client privilege and  
26 work-product protection, the Parties shall not review each and every page of the materials  
27 produced in discovery for all applicable privileges. Accordingly, the disclosure of privileged or  
28 protected information or documents in discovery conducted in this litigation will be deemed

1 unintentional, inadvertent, and compelled by order of this Court. Such disclosure will not  
2 constitute a waiver of the disclosing Party's right to claim any privilege or protection that would  
3 have applied to the information or documents or their subject matter but for the disclosure,  
4 provided only that the Party disclaiming waiver employed procedures reasonably designed to  
5 screen out privileged materials. However, the Parties shall not argue, in this forum or any other,  
6 that any privileges were waived as a result of disclosures in this litigation irrespective of the  
7 procedures used screen out privileged materials.

8           5. If a Party determines that it has produced a document upon which it  
9 wishes to make a claim of privilege, the producing Party shall, within 14 days of making such  
10 determination, give all counsel of record notice of the claim of privilege. The notice shall  
11 identify each such document and the date it was produced. If the producing Party claims that  
12 only a portion of a document is privileged, the producing Party shall provide, along with the  
13 notice of the claim of privilege, a new copy of the document with the allegedly privileged  
14 portions redacted. Any Party that complies with this paragraph will be deemed to have taken  
15 reasonable steps to rectify disclosures of privileged or protected information or materials.

16           6. If a Party identifies a document that appears on its face or in light of facts  
17 known to the Party to be subject to another Party's claim of privilege, the Party identifying the  
18 potential claim of privilege is under a good-faith obligation to notify the Party holding the  
19 potential claim of privilege. Such notification shall not waive the identifying Party's ability to  
20 subsequently challenge any assertion of privilege with respect to the identified document. If the  
21 Party holding the potential claim of privilege wishes to assert a claim of privilege, it shall  
22 provide notice in accordance with paragraph 5 above within five business days of receiving  
23 notice from the identifying Party.

24           7. Upon receiving notice of a claim of privilege on a produced document,  
25 the receiving Party must, in accordance with Fed. R. Civ. P. 26(b)(5)(B), promptly sequester the  
26 specified information and any copies it has and may not use or disclose the information, except  
27 as provided by Fed. R. Civ. P. 26(b)(5)(B), until the claim is resolved. Copies of privileged  
28 documents or information that have been stored on electronic media that is not reasonably

1 accessible, such disaster recovery backup media, are adequately sequestered as long as they are  
2 not restored; if such data is restored, the receiving Party must take steps to re-sequester the  
3 restored information. If the receiving Party disclosed the information before being notified, it  
4 must take reasonable steps to prevent further use of such information until the claim is resolved.

5           8. If a Party wishes to dispute a claim of privilege asserted under this Order,  
6 such Party shall, within 14 days, move the Court for an order compelling disclosure of the  
7 information. The Party shall follow the procedures described in Fed. R. Civ. P. 26(b)(5)(B).  
8 Pending resolution of the motion, the Parties shall not use the challenged information for any  
9 other purpose and shall not disclose it to any person other than those required by law to be  
10 served with a copy of the sealed motion.

11           9. The Parties may stipulate to extend the time periods specified in  
12 paragraphs 5, 6, and 8 above.

13           10. Nothing in this Order overrides any attorney's ethical responsibilities to  
14 refrain from examining or disclosing materials that the attorney knows or reasonably should  
15 know to be privileged and to inform the disclosing Party that such materials have been  
16 produced.

17           11. The Party wishing to assert a claim of privilege retains the burden, upon  
18 challenge pursuant to paragraph 8, of establishing the applicability of the claimed privilege.  
19 This Order does not preclude a Party from voluntarily waiving any claims of privilege. The  
20 provisions of Rule 502(a) of the Federal Rules of Evidence apply when a Party uses privileged  
21 information to support a claim or defense. No assertions of privilege pursuant to this  
22 Stipulation may be made more than 14 days after the filing of final witness and exhibit lists (and  
23 other filings required in support of the final pretrial conference).

24           12. Unless this Court orders otherwise for good cause shown, each Party  
25 shall bear the costs of producing its own documents.

26           B. STIPULATION TREATED AS BINDING. The Parties agree to treat the  
27 foregoing stipulation as controlling pending the Court's consideration of it.

28 /////

1 RESPECTFULLY SUBMITTED,

2 DATED: March 9, 2017

DOWNEY BRAND LLP

3

By: /s/ Robert P. Soran (authorized 03/09/17)

4

ROBERT P. SORAN

Attorneys for Defendants GOOSE POND AG, INC.,  
and FARMLAND MANAGEMENT SERVICES

5

6

CANNATA, O'TOOLE, FICKES & ALMAZAN LLP

7

By: /s/ Kimberly A. Almazan (authorized 03/09/17)

8

KIMBERLY A. ALMAZAN

Attorneys for Defendants ROGER J. LAPANT, Jr.,  
and J&J FARMS

9

10

PHILLIP A. TALBERT

United States Attorney

11

By: /s/ Gregory T. Broderick

12

GREGORY T. BRODERICK

Assistant United States Attorney

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

ORDER

In accordance with the foregoing stipulation and good cause appearing,  
IT IS SO ORDERED.

DATED: March 23, 2017



---

UNITED STATES DISTRICT JUDGE