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22 UNITED STATES DISTRICT COURT
 23 EASTERN DISTRICT OF CALIFORNIA

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

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

**STIPULATION REGARDING
 DISCOVERY OF ELECTRONICALLY
 STORED INFORMATION; ORDER**

1 WHEREAS, the Parties have met and conferred and filed a Joint Status Report and
2 Discovery Plan (ECF No. 22);

3 WHEREAS, the Parties appeared before the Court at a March 2, 2017 status conference
4 and received procedural direction (ECF No. 23);

5 WHEREAS, as set forth in the Joint Status Report and Discovery Plan, the Parties
6 mutually seek to reduce the time, expense and other burdens of discovery of certain
7 electronically stored information and privileged materials, as described further below, and to
8 better define the scope of their obligations with respect to preserving such information and
9 materials; and

10 WHEREAS, the Parties enter into this Stipulation with the request that the Court enter it
11 as an Order,

12 NOW THEREFORE, it is hereby STIPULATED and ORDERED as follows.

13 A. DISCOVERY OF ELECTRONICALLY STORED INFORMATION

14 1. Preservation Not Required for ESI That Is Not Reasonably Accessible.

15 a. Except as provided in subparagraph b below, the Parties need not
16 preserve the following categories of electronically stored information for this litigation:

17 i. Data stored in a backup system for the purpose of system
18 recovery or information restoration, including but not limited to, disaster recovery backup tapes,
19 continuity of operations systems, and data or system mirrors or shadows, if such data are routinely
20 deleted or written over in accordance with an established routine system maintenance practice;

21 ii. Instant messages, such as messages sent on AOL Instant
22 Messenger or Microsoft Communicator;

23 iii. Electronic mail sent to or from a personal digital assistant
24 (“PDA”), smartphone (e.g., BlackBerry, iPhone), or tablet (e.g. iPad) provided that a copy of
25 such email is routinely saved elsewhere;

26 iv. Other electronic data stored on a PDA, smartphone, or
27 tablet such as calendar or contract data or notes, provided that a copy of such information is
28 routinely saved elsewhere;

- v. Logs of calls made from cellular phones;
- vi. Deleted computer files, whether fragmented or whole;
- vii. Data stored in random access memory (“RAM”), cache memory, or in temporary or cache files, including internet history, web browser cache and cookie files, wherever located;
- viii. Data stored on photocopiers, scanners, and fax machines;
- ix. Server, system, or network logs;
- x. Electronic data temporarily stored by scientific equipment or attached devices, provided that the data that is ordinarily preserved as part of a laboratory report is, in fact, preserved in its ordinary location and form; and

b. Notwithstanding subparagraph a. above, if on the date of this Joint Status Report and Discovery Plan any Party has a policy that results in the routine preservation of any of the categories of information identified in subparagraph a, such Party shall continue to preserve such information in accordance with its policy.

c. Nothing in this Stipulation and Order prevents any Party from asserting, in accordance with the Federal Rules of Civil Procedure, that other categories of ESI are not reasonably accessible within the meaning of Rule 26(b)(2)(B).

2. No Discovery. Except as provided in paragraph A.3 below and Part B below, the Parties shall not seek discovery of items that need not be preserved pursuant to paragraphs A.1. above or meta-data.

3. No Offering into Evidence without Disclosure. The Parties shall not offer into evidence for any purpose in this litigation any item that need not be preserved pursuant to paragraphs A.1. above or meta-data, unless the Party has disclosed the item pursuant to Rule 26 with adequate time to allow other Parties to conduct discovery on the item.

B. DISCOVERY PROCEDURE.

The following procedures apply to producing documents or ESI and controls over any prior instructions provided in requests for the production of documents served prior to the date of this Joint Status Report and Discovery Plan. Compliance with these procedures shall constitute

1 compliance with Federal Rule of Civil Procedure 34(b)(2)(e).

2 1. The Parties shall serve all discovery requests and responses on all counsel
3 of record at their email addresses as registered with ECF, with a courtesy copy to be served
4 concurrently via U.S. Mail. Further, the Parties propose that all discovery requests be
5 accompanied by a Word version.

6 2. Documents printed on paper that is 11 x 17 inches or smaller shall be
7 scanned and the files produced on CD-ROM, DVD-ROM, or external hard drive. Documents
8 printed on larger paper may, at the Producing Party's discretion, be produced on paper.
9 Documents produced on paper must be produced as they are kept in the ordinary course of
10 business or must be organized and labeled to correspond to the categories in the request;
11 alternatively, Documents produced on paper must be organized by custodian and maintained in
12 the order in which they appear in the files of the custodian.

13 3. Paper documents that are produced on disc shall be scanned as 300 dpi
14 PDF files, in color if the original is in color.

15 4. Word, WordPerfect, and other word processing files will be converted to
16 searchable PDF files. If the document contains comments or tracked changes that are not part of
17 the ordinary text, the producing Party shall either generate a searchable PDF based on how the
18 document appears when first opened using view settings contained in the file or the producing
19 Party shall produce the native file. If a PDF is produced, the receiving Party shall have the
20 option, after reviewing the produced PDF, to request the native file.

21 5. Microsoft PowerPoint files will be produced in searchable PDFs. The
22 receiving Party may, after reviewing the produced PDFs, request the native files.

23 6. E-mail and attachments should be converted to searchable PDFs. E-mail
24 attachments shall be processed as though they were separate documents, and a cross reference
25 file shall include a field in which the producing Party shall identify, for each e-mail, the Bates
26 range of any attachment.

27 7. If the production includes Microsoft Excel files and other spreadsheets,
28 the producing Party shall either generate searchable PDFs or the native files. If a PDF is

1 produced, the receiving Party may, after reviewing the spreadsheets, request the native files.

2 8. Digital photographs will be produced as full color image files at their
3 original resolution or as PDFs. The receiving Party may, after reviewing the photographs, request
4 the native files along with any associated locational information (such as Global Positioning
5 System (“GPS”) data).

6 9. Before any Party produces any other kinds of electronic data, including
7 data from databases, CAD drawings, GIS data, videos, etc., the Parties will meet and confer to
8 determine a reasonably useable form for the production.

9 10. Except as stated above, a Party need not produce the same ESI in more
10 than one form.

11 11. “Duplicate,” when used to describe either an electronic or hard copy
12 document, means that the document does not show at least one facial change, such as the
13 inclusion of highlights, underlining, marginalia, total pages, attachments, markings, revisions, or
14 the inclusion of tracked changes.

15 a. Deduplication of e-mail. The Parties may use a widely accepted
16 method of deduplication, including comparing the to, from, date, and time fields of e-mails and
17 may only produce one copy from each set of duplicates.

18 b. Deduplication of ESI other than e-mail. With respect to ESI other
19 than e-mail, the Parties may use a widely accepted method of deduplication, such as using MD5
20 or SHA-1 hash values calculated before the files are collected for discovery and need only
21 produce one copy.

22 C. STIPULATION TREATED AS BINDING. The Parties agree to treat the
23 foregoing stipulation as controlling pending the Court’s consideration of it.

24 RESPECTFULLY SUBMITTED,

25 DATED: March 9, 2017

DOWNEY BRAND LLP

26 By: /s/ Robert P. Soran (authorized 03/09/2017)

ROBERT P. SORAN

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

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ORDER

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

DATED: March 23, 2017



UNITED STATES DISTRICT JUDGE