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20 UNITED STATES DISTRICT COURT

21 EASTERN DISTRICT OF CALIFORNIA

22 UNITED STATES OF AMERICA,
 23 Plaintiff,

24 v.

25 ROGER J. LAPANT, JR., J&J FARMS,
 GOOSE POND AG, INC. and
 26 FARMLAND MANAGEMENT
 SERVICES,

27 Defendants.
 28

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

**STIPULATION, MOTION, AND
 PROPOSED ORDER TO AMEND
 SCHEDULE & PARTIAL STAY OF
 DISCOVERY**

1 The plaintiff and all of the defendants to this action (“Parties”)—the United States of
2 America and Roger J. LaPant, Jr., dba J&J Farms (“Mr. LaPant”), Goose Pond Ag, Inc., and
3 Farmland Management Services (collectively, “Goose Pond Defendants”)—hereby stipulate,
4 move, and propose that the Court amend the controlling “Scheduling Order,”¹ as set forth in
5 Paragraphs 1 and 2 below. Further, the Parties to this action hereby stipulate, move, and propose
6 that the Court impose a partial stay of discovery under the terms and conditions set forth below
7 in Paragraphs 3 through 6 below.

8 Statement from the United States and the Goose Pond Defendants. The United States
9 and the Goose Pond Defendants submit that good cause supports this stipulation, motion, and
10 proposed Order. (Mr. LaPant did not draft and does not join this paragraph and the next one.)
11 On August 7, 2018, the United States and Goose Pond Defendants reached an agreement in
12 principle to resolve count two of the United States’ complaint, subject to their completion and
13 lodging of a proposed consent decree. The United States and the Goose Pond Defendants
14 expect to complete a proposed consent decree as soon as possible and both share the goal of
15 lodging any proposed consent decree by the end of August, 2018, subject to approval by
16 authorized officials in the Department of Justice. If and when these parties execute a proposed
17 consent decree, it will then be made available for public comment for a period of at least 30
18 days. *See* 28 C.F.R. § 50.7. Next, following the comment period (and assuming no changes to
19 any decree ensue as a result of the comment process), the United States expects to move the
20 Court to enter the decree in October, 2018. The Court’s review period is estimated to take
21 approximately 28 days (depending on the Court’s schedule). The entire process for the United
22 States/Goose Pond Defendants settlement is estimated to take approximately 90 days from
23 August 7, 2018.

24
25 ¹ The Court’s latest scheduling Order dated April 6, 2018 (ECF No. 56), and its prior status and
26 scheduling orders are dated April 7, 2017 (ECF No. 32), June 7, 2017 (ECF No. 49), and
27 December 19, 2017 (ECF No. 52). The United States and Mr. LaPant also have a pending
28 stipulation and proposed Order dated July 27, 2018 (ECF No. 73), that pertains to one narrow
aspect of the scheduling Order; granting that request is consistent with the relief requested
herein.

1 Assuming that a consent decree between the United States and the Goose Pond
2 Defendants is entered in approximately 90 days, no claims against the Goose Pond Defendants
3 would remain pending, and the Goose Pond Defendants would have no need to participate in
4 any of the discovery and litigation proceedings that occur between the United States and Mr.
5 LaPant. However, given the likelihood of settlement between the United States and the Goose
6 Pond Defendants (and the narrowing of potential issues for trial between the United States and
7 Mr. LaPant given the absence of the Goose Pond Defendants), it would likely be wasteful for
8 the Goose Pond Defendants to participate in certain discovery and litigation proceedings.

9 Statement from Mr. LaPant. Mr. LaPant was not privy to any of the discussion and/or
10 proposed terms of the pending United States/Goose Pond Defendants settlement. Mr. LaPant
11 therefore joins in this stipulation and supports the proposed order based on information and
12 belief that the United States and Goose Pond Defendants have accurately estimated the timing
13 for completion of their settlement, and that the settlement by its terms will not present an issue
14 requiring new areas of fact and expert discovery for the remaining parties. Further, Mr. LaPant
15 has informed the United States and the Goose Pond Defendants that he supports this stipulation
16 and proposed Order, subject to his continuing concerns about the higher cost, weather, and
17 scheduling challenges of fact and expert depositions outside of California given that, under the
18 new proposed scheduling order, these depositions have to be convened and completed during
19 the Thanksgiving and December holiday period. Mr. LaPant reserves his rights to seek a further
20 amendment to the scheduling order in the event that these time estimates prove unrealistic
21 and/or he is prejudiced by the limitations (and delays) now being imposed on his right to
22 complete fact and expert discovery.

23 Joint statement of the Parties. The Parties stipulate, move, and propose as follows:

- 24 1. All remaining events should be rescheduled as follows:

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Event	Current	Proposed
Close of Discovery	September 21, 2018	Dec. 21, 2018
Dispositive Motions (Heard By)	November 20, 2018	Feb. 22, 2019
Joint Pretrial Statement Due	December 21, 2018	March 25, 2019 (alternatively: May 23, 2019 ²)
<i>Motions in Limine</i> Motion Due	January 12, 2019	April 15, 2019 (alternatively: June 12, 2019)
Opposition Due	January 22, 2019	April 22, 2019 (alternatively: June 21, 2019)
Reply Due	January 29, 2019	April 29, 2019 (alternatively: June 28, 2019)
Heard by Date	February 22, 2019	May 20, 2019 (alternatively: July 5, 2019)
Final Pretrial Conference	January 25, 2019	April 22, 2019 (alternatively: June 27, 2019)
Trial Brief	March 29, 2018	June 24, 2019 (alternatively: Aug. 12, 2019)
Jury Trial (Liability)	April 15, 2019	July 15, 2019 (alternatively: Sept. 3, 2019)
Bench Trial (Remedy)	May 20, 2019	August 19, 2019 (alternatively: Oct. 28, 2019)

2. No later than October 15, 2018, the Parties shall complete their meet and confer regarding the scheduling of all depositions and the “Equipment Inspection”³ such that there is an agreement as to the date and place for each event (including confirmation of availability by any fact or expert witness affiliated with a party). Depositions may start on November 7, 2018, and the Parties are permitted to serve deposition notices and/or subpoenas in accordance with that start date

² The Parties have provided alternative proposed dates if, for example, the Court believes that there should be more time between dispositive motions and trial-related deadlines.

³ The term “Equipment Inspection” refers to the United States’ “First Request to LaPant to Produce Tangible Things” propounded on July 20, 2018. The Parties agree that the Equipment Inspection shall occur prior to any depositions of Gregory House, Matthew Kelley, Paul Squires, Ken Lane, Todd LaPant and Mr. LaPant and no earlier than October 15, 2018.

1 (or earlier upon agreement of the Parties). The Parties reserve the right to move the Court, jointly
2 or unilaterally, to further amend the foregoing schedule based on good cause (e.g., if the United
3 States' and the Goose Pond Defendants' 90-day estimation discussed above is exceeded and risks
4 prejudicing any party). The Parties also reserve their right to oppose any requested amendment.

5 3. From now until the Court enters any consent decree between the United States
6 and the Goose Pond Defendants (or the United States and/or the Goose Pond Defendants notify
7 the Court that their settlement has failed), the Parties shall not: (a) propound or conduct any fact
8 or expert discovery, written, oral, or otherwise, including but not limited to any depositions or
9 any requests or subpoenas for documents, except as set forth in Paragraphs 4 through 6 below;
10 and (b) conduct any law and motion practice, except for motion practice required to complete
11 settlement between the United States and the Goose Pond Defendants (e.g., motion for entry of a
12 proposed consent decree), discovery motions as referenced in Paragraphs 4 and 5 below, and
13 motions to amend or for leave as referenced in Paragraph 2 above or Paragraph 6 below.

14 4. This stipulation, motion, and proposed Order does not prohibit the following
15 discovery (and any related motion to compel or similar discovery motion) at any time:

- 16 a. Interrogatories solely between the United States and Mr. LaPant;
- 17 b. Requests for admission solely between the United States and Mr. LaPant;
- 18 c. Requests for documents solely between the United States and Mr. LaPant; and
- 19 d. Subpoena for documents and electronically stored information from third parties,
20 provided that the third party is not either affiliated with the Goose Pond
21 Defendants (i.e. current employee or affiliated business entity), is not a former
22 employee, retained expert, or confidential consultant, and the subpoena does not
23 otherwise seek documents that contain information in the possession or control of
24 the subpoenaed third party, which is asserted to be privileged or protected from
25 disclosure by the Goose Pond Defendants.⁴

24
25 ⁴ To facilitate implementation of this provision, the Parties further agree that any party wishing
26 to serve a subpoena during the stay period shall first provide seven days advance written notice
27 to all other parties, prior to service of any such subpoena. No such subpoena may be served
28 without leave of Court if the Goose Pond Defendants notify the other parties in writing, within
the seven day period, that the proposed subpoena is directed to a party that is either affiliated
with the Goose Pond Defendants (i.e. current employee or affiliated business entity), or is a
former employee, retained expert, or confidential consultant, or the subpoena otherwise seeks
documents that contain information in the possession or control of the subpoenaed third party,
which is asserted to be privileged or protected from disclosure by the Goose Pond Defendants.

1 5. This stipulation, motion, and proposed Order does not prohibit the United States
2 and Mr. LaPant from taking any action to address or resolve disputes regarding any outstanding
3 or future discovery requests solely between themselves, including any pending discovery
4 motions or matters currently the subject of discussion among the Parties.

5 6. The Parties reserve their right to seek leave of Court for any appropriate relief
6 from or related to the restrictions on discovery set forth in this stipulation, motion, and proposed
7 Order upon a showing of good cause. By the same token, the Parties reserve their right to
8 oppose any request for relief.

9 STIPULATED AND RESPECTFULLY SUBMITTED,

10 DATED: August 21, 2018

DOWNEY BRAND LLP

11 By: /s/ Robert P. Soran (authorized 08/21/2018)

12 ROBERT P. SORAN

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

14 CANNATA, O'TOOLE, FICKES & ALMAZAN LLP

15 By: /s/ Therese Y. Cannata (authorized 08/21/2018)

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17 MCGREGOR W. SCOTT

18 United States Attorney

19 By: /s/ Gregory T. Broderick

20 GREGORY T. BRODERICK

21 Assistant United States Attorney
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1 **ORDER**

2 Upon due consideration, and good cause shown, the Court approves and enters
3 Paragraphs 1 through 6 of the foregoing stipulation and motion with the following modifications:

Event	Current Deadline	New Deadline
All discovery completed	September 21, 2018	Dec. 21, 2018
Last day to hear dispositive motions	November 20, 2018	Feb. 22, 2019
Joint Pretrial Statement Due	December 21, 2018	May 23, 2019
<i>Motions in Limine</i> Motion Due	January 12, 2019	To be set at upon resolution of dispositive motions or at further scheduling conference.
Opposition Due	January 22, 2019	
Reply Due	January 29, 2019	
Heard by Date	February 22, 2019	
Final Pretrial Conference	January 25, 2019	To be set at upon resolution of dispositive motions or at further scheduling conference.
Trial Brief	March 29, 2018	To be set at upon resolution of dispositive motions or at further scheduling conference.
Jury Trial (Liability)	April 15, 2019	To be set at upon resolution of dispositive motions or at further scheduling conference.
Bench Trial (Remedy)	May 20, 2019	To be set at upon resolution of dispositive motions or at further scheduling conference.

25
26 In all other respects, the Court’s prior Status and Scheduling Orders remain in effect.

27 DATED: August 31, 2018.

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UNITED STATES DISTRICT JUDGE