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 17 **Dairy, LLC**

18 **UNITED STATES DISTRICT COURT**  
 19 **EASTERN DISTRICT OF CALIFORNIA**

20 DAIRY, LLC, a Delaware Limited Liability  
 21 Company,  
 22  
 23 Plaintiff/Counterdefendant,  
 24  
 25 vs.  
 26 MILK MOOVEMENT, INC., a foreign  
 27 Corporation, and MILK MOOVEMENT,  
 28 LLC, a Delaware Limited Liability  
 Company,  
 Defendants/Counterclaimants.

Case No. 2:21-cv-02233-WBS-AC

Magistrate Judge Allison Claire

**STIPULATED [PROPOSED] ORDER  
 RE: DISCOVERY OF  
 ELECTRONICALLY STORED  
 INFORMATION**

Complaint Filed: December 2, 2021  
 FAC Filed: February 8, 2022  
 Cross-Complaint Filed: April 27, 2022  
 FACC Filed: July 21, 2022

1           **1.     PURPOSE**

2           This Order will govern discovery of electronically stored information (“ESI”) in this case  
3 as a supplement to the Federal Rules of Civil Procedure, and any other applicable orders and  
4 rules.

5           **2.     COOPERATION**

6           The parties are aware of the importance the Court places on cooperation and commit to  
7 cooperate in good faith regarding discovery of ESI.

8           **3.     PROPORTIONALITY**

9           Parties are expected to use reasonable, good faith and proportional efforts to preserve,  
10 identify and produce relevant information consistent with Fed. R. Civ. P. 26<sup>1</sup>. This includes  
11 identifying appropriate limits to discovery, including limits on custodians, identification of  
12 relevant subject matter, time periods for discovery and other parameters to limit and guide  
13 preservation and discovery issues.

14           **4.     LIAISON**

15           The parties have identified liaisons to each other who are and will be knowledgeable  
16 about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or  
17 have access to those who are, knowledgeable about the technical aspects of e-discovery,  
18 including the location, nature, accessibility, format, collection, search methodologies, and  
19 production of ESI in this matter. The parties will rely on the liaisons, as needed, to confer about  
20 ESI and to help resolve disputes without court intervention.

21           **5.     PRESERVATION**

22           The parties agree that preservation of potentially relevant ESI will be reasonable and  
23 proportionate. To reduce the costs and burdens of preservation and to ensure proper ESI is  
24 preserved, the parties agree that:

- 25           **a)**     The parties have discussed the custodians whose ESI they believe should

26 \_\_\_\_\_  
27 <sup>1</sup> Information can originate in any form, including ESI and paper, and is not limited to information created  
28 or stored electronically.

1 be preserved. The parties shall add or remove custodians consistent with  
2 their obligations under the applicable rules and the principles of  
3 cooperation and proportionality discussed herein;

4 **b)** The parties agree that the following sources of data are not reasonably  
5 accessible and need not be searched, reviewed, or produced, absent a  
6 showing of good cause or court order:

- 7 1. voice messages
- 8 2. duplicative information from another preserved source;
- 9 3. automatically saved versions of documents and emails;
- 10 4. deleted, slack, fragmented, or other data accessible only by  
11 forensics;
- 12 5. systems, server and network logs;
- 13 6. random access memory (RAM), temporary files, or other  
14 ephemeral data;
- 15 7. on-line access data such as temporary internet files, history,  
16 cache, cookies, and the like;
- 17 8. dynamic fields of databases or log files that are not retained in  
18 the usual course of business;
- 19 9. data in metadata fields that are frequently updated automatically,  
20 such as last opened dates;
- 21 10. data stored on mobile devices and tablets that are neither issued  
22 by a Party nor primarily used for conducting business;
- 23 11. data stored on mobile devices and tablets issued by a Party (e.g.,  
24 email, calendars, contact data, and notes) to the extent that such  
25 data is routinely saved elsewhere in another location that the  
26 issuing Party will be searching (e.g., on a server, laptop, desktop  
27 computer, or “cloud” storage); and  
28



1 single page TIFF file format. The parties agree to produce natives of Microsoft Excel, audio,  
2 and video files. No party is required to create or generate a written transcript of any audio or  
3 video file for purposes of document productions in this action. If particular documents warrant a  
4 different format, the parties will cooperate to arrange for the mutually acceptable production of  
5 such documents. The parties agree not to degrade the searchability of documents as part of the  
6 document production process. A party is required to produce only a single copy of a responsive  
7 document, and a party may de-duplicate responsive ESI across Custodians so long as an ALL  
8 CUSTODIAN metadata field is populated for such de-duplicated documents as provided for  
9 below. The parties agree to produce the metadata fields identified in Table 1, where such field  
10 information exists for the type of document being produced (e.g., email, non-email electronic  
11 files, scanned hard copy).

12 **a) BATES NUMBERING**

13 Each Bates number will: (i) be unique across the entire document production;  
14 (ii) maintain a consistent length across the entire production (i.e., ABC00000001—with no space  
15 between the prefix and the number, padded to the same number of characters); (iii) contain no  
16 special characters; and (iv) be sequential within a given document. If a Bates number or set of  
17 Bates numbers is skipped in a production, the producing Party will so note in a cover letter,  
18 production slipsheets, or production log accompanying the production. Each production will be  
19 assigned a unique volume production number.

20 **b) PRODUCTION OF HARD COPY DOCUMENTS – FORMAT**

21 Hard copy documents should be scanned as single-page, Group IV, 300 DPI TIFF images  
22 with an .opt image cross-reference file and a delimited database load file (i.e., .dat). The  
23 database load file should contain the following fields: “BEGNO,” “ENDNO,” “PAGES,”  
24 “VOLUME” and “CUSTODIAN.” Multi-page OCR text for each document should also be  
25 provided. The OCR software shall maximize text quality. Settings such as “auto-skewing” and  
26 “auto-rotation” should be turned on during the OCR process.

1 The documents should be logically unitized (i.e., distinct documents shall not be merged  
2 into a single record, and single documents shall not be split into multiple records) and be  
3 produced in the order in which they are kept in the usual course of business. If a folder with hard  
4 copy documents is produced, the label of that folder, if any, shall be scanned and produced along  
5 with the documents in the folder. The foldering relationship among the documents in the folder  
6 should be produced, either by use of a parent-child relationship or otherwise. If any original hard  
7 copy document has attachments, the Parties will scan and produce copies of the attachments in  
8 the same manner as other documents. If any original hard copy document has notes affixed  
9 thereto, the Parties will scan the page(s) of the original hard copy document containing the notes  
10 both with the notes attached and with the notes removed, and produce copies of both versions  
11 unitized together but otherwise in the same manner as other documents.

12 Hard copy documents containing color need not be produced in color in the first instance.  
13 The receiving Party may make a reasonable request for the production of specific documents in  
14 color, by providing (i) a list of the Bates numbers of documents it requests to be produced in  
15 color format; and (ii) an explanation of the need for production in color format. The producing  
16 Party shall not unreasonably deny such requests.

17 **c) PRODUCTION OF ESI**

18 Unless otherwise specifically stated and agreed to the contrary, the Parties agree that only  
19 reasonably accessible ESI will be reviewed and produced. Nothing in this protocol establishes  
20 any agreement as to either the temporal or subject matter scope of discovery in this action.  
21 Should a dispute arise among the Parties in determining and agreeing upon whether a particular  
22 population of ESI or entire ESI data source is inaccessible or needs to be produced, the Parties  
23 will make a good-faith effort to resolve such a dispute amongst themselves before any motion is  
24 filed with the Court.

25 **1. Format**

26 The Parties will produce ESI in single-page, black-and-white, TIFF Group IV, 300 DPI  
27 TIFF images with the exception of spreadsheet and presentation type files, source code, audio  
28

1 and video files, which shall be produced in native format. If an original document contains color  
2 and a reasonable request is made by the receiving Party for the production of specific documents  
3 in color, the receiving Party may request production of such documents in color by providing  
4 (i) a list of the Bates numbers of documents it requests to be produced in color format; and (ii) an  
5 explanation of the need for production in color format. The producing Party shall not  
6 unreasonably deny such requests. The Parties are under no obligation to enhance an image  
7 beyond how it was kept in the usual course of business. TIFFs/JPGs will show any and all text  
8 and images that would be visible to the reader using the native software that created the  
9 document. For example, TIFFs/JPGs of email messages should include the BCC line. If the  
10 image does not accurately reflect the document as it was kept in the usual course of business,  
11 including all comments, edits, tracking, etc., the Parties agree to meet and confer in good faith on  
12 production format options.

13 If a document is produced in native format, a single-page Bates stamped image slip sheet  
14 stating the document has been produced in native format should be provided. Each document  
15 should be named according to the Bates number it has been assigned (and, optionally, also with  
16 the document's confidentiality designation, if any) and should be linked directly to its  
17 corresponding record in the load file using the NATIVELINK field. To the extent that either  
18 Party believes that specific documents or classes of documents, not already identified within this  
19 protocol, should be produced in native format, the Parties agree to meet and confer in good faith.

## 20 **2. De-Duplication**

21 Each Party shall remove exact duplicate documents based on MD5 or SHA-1 hash  
22 values, at the family level. Attachments should not be eliminated as duplicates for purposes of  
23 production, unless the parent email and all attachments are also duplicates. The Parties agree  
24 that an email that includes content in the BCC or other blind copy field shall not be treated as a  
25 duplicate of an email that does not include content in those fields, even if all remaining content  
26 in the email is identical. Removal of near-duplicate documents is not acceptable. De-duplication  
27 will be done across the entire collection (global de-duplication) and the ALL CUSTODIAN field  
28

1 will list each custodian, separated by a semicolon, who was a source of that document. Should  
2 the ALL CUSTODIAN metadata field produced become outdated due to collecting data from  
3 additional custodians, an overlay file providing all the custodians for the affected documents will  
4 be produced prior to substantial completion of the document production.

### 5 **3. Metadata**

6 All ESI will be produced with a delimited, database load file that contains the Metadata  
7 fields listed in Table 1, attached hereto, to the extent such data exists, as kept in the ordinary  
8 course, for a particular document. The Metadata produced should have the correct encoding to  
9 enable preservation of the documents' original language.

### 10 **4. Embedded Objects**

11 Embedded files shall be produced as attachments to the document that contained the  
12 embedded file, with the parent/child relationship preserved. The embedded files will be marked  
13 with a "YES" in the load file under the "Is Embedded" Metadata field. The Parties agree that  
14 logos need not be extracted as separate documents as long as they are displayed in the parent  
15 document.

### 16 **5. Attachments**

17 The Parties agree that if any part of an email or its attachments is responsive, the entire  
18 email and attachments will be produced, except any attachments that must be withheld or  
19 redacted on the basis of privilege. If a document in a family is fully privileged, but is part of a  
20 family that includes at least one other document that is not fully privileged, then the fully  
21 privileged document(s) shall be produced fully redacted so that the family is not broken. The  
22 Parties will meet and confer about whether there is an appropriate basis for withholding a family  
23 document for any reason other than attorney-client or work product privilege. The attachments  
24 will be produced sequentially after the parent email.

### 25 **6. Compressed File Types**

26 Compressed file types (*e.g.*, .ZIP, .RAR, .CAB, .Z) should be decompressed so that the  
27 lowest-level document or file is extracted. To the extent that either Party believes that the  
28



1 container files should be produced in native format, the Parties agree to meet and confer in good  
2 faith.

### 3 **7. Structured Data**

4 To the extent a response to discovery requires production of electronic information stored  
5 in a database, the Parties will meet and confer regarding methods of production. The Parties will  
6 consider whether all relevant information may be provided by querying the database for  
7 discoverable information and generating a report in a reasonably usable and exportable electronic  
8 file.

### 9 **8. Encryption**

10 To maximize the security of information in transit, any media on which documents are  
11 produced may be encrypted. In such cases, the producing Party shall transmit the encryption key  
12 or password to the receiving Party under separate cover.

### 13 **9. Redactions**

14 For redacted documents, the producing Party may withhold only the following metadata  
15 (Subject, FileName, and MD5 Hash). OCR text of the redacted image shall be produced. For  
16 spreadsheets that the Parties have agreed to produce in native form, all redactions shall be made  
17 to the native form of the document, to the extent reasonably possible. If the native document  
18 (including its metadata) cannot be adequately redacted, a redacted image of the document may  
19 be produced as provided for herein.

### 20 **10. Interpretation**

21 If there is a conflict between the provisions of this protocol and any protective order  
22 entered in this action, the protective order shall control. Moreover, nothing in this protocol shall  
23 waive or limit any protections afforded the Parties under Federal Rule of Evidence 502.

24 Nothing in this protocol shall be interpreted to require the disclosure of any document  
25 that a Party contends is protected from disclosure by the attorney-client privilege, work-product  
26 doctrine, or any other applicable privilege or protection, nor shall this protocol require the  
27 production of ESI or other documents that are not discoverable under applicable law.







**Table 1: Metadata Fields**

BEGBATES	Beginning Bates Number
ENDBATES	Ending Bates Number
BEGATTACH	Beginning Bates number of the first document in an attachment range
ENDATTACH	Ending Bates number of the last document in attachment range
VOLUME	The production volume associated with the produced file
PAGES	The number of pages of the produced document
ALL CUSTODIAN	Names of all custodians, separated by semicolons, for whom the document was processed whether or not the file was removed upon de-duplication
RECORD TYPE	Populated with Email, Attachment, Paper, or Loose File
FILENAME	Filename of the original native file
FILEEXT	File extension of the original native file
FILESIZE	KB size of the original native file
APPLICATION	Indicates software application that generated the ESI item (e.g., Outlook, Word).
SORTDATE	Date populated at family level using parent set date propagated down through children. Stand-alone documents populated with last mod date
CREATEDATE	Date that a non-email document was created (yyyymmdd format)
CREATETIME	Time that a non-email document was created (hh:mm:ss format)
LASTMODDATE	Last date that a non-email document was modified (yyyymmdd format)
LASTMODTIME	Last time that a non-email document was modified (hh:mm:ss format)
SENTDATE	Sent date of an email message (yyyymmdd format)
SENTTIME	Sent time of an email message (hh:mm:ss format)
RECEIVEDDATE	Received date of an email message (yyyymmdd format)
RECEIVEDTIME	Received time of an email message (hh:mm:ss format)
SUBJECT	Subject line extracted from an email message
AUTHOR	Author field extracted from the metadata of a non-email document
FROM	From field extracted from an email message
TO	To or Recipient field extracted from an email message

1	CC	CC or Carbon Copy field extracted from an email message
2	BCC	BCC or Blind Carbon Copy field extracted from an email message
3	MD5HASH	MD5 (or SHA-1) hash value generated by creating a binary stream of the file
4	THREADID	Keeping Inclusives together as populated by the vendor's threading analytics.
5	Is Embedded	Populate "Yes" for embedded documents
6	DESIGNATION	All Confidentiality designations
7	REDACTED	Populate "Yes" for redacted documents
8	FULLTEXT	Relative path to document text/OCR file if provided in production
9	NATIVELINK	Relative path and filename to produced native file.