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15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**

18	MATTHEW EDWARDS, et al.)	
19)	Case No. 3:11-CV-04766 JSW
20	Plaintiffs,)	
21)	[consolidated with 3:11-CV-04791-JSW and
22	v.)	3:11-CV-05253-JSW]
23)	
24	NATIONAL MILK PRODUCERS)	STIPULATION AND [PROPOSED]
25	FEDERATION, aka COOPERATIVES)	PRESERVATION ORDER
26	WORKING TOGETHER, et al.,)	
27)	
28	Defendants.)	

1. PURPOSE

This Order will govern preservation of Defendants' electronically stored information

1 (“ESI”) in this case as a supplement to the Federal Rules of Civil Procedure, this Court’s
2 Guidelines for the Discovery of Electronically Stored Information, and any other applicable
3 orders and rules. This Order does not govern preservation of Plaintiffs’ electronically stored
4 information (“ESI”), which will be contained in a separate order.

5 This Order does not address, limit, or determine the relevance, discoverability or
6 admission into evidence of any Record (as defined below), regardless of whether the Record is
7 required to be preserved pursuant to the terms of this Order. A duty to preserve under this
8 Order is not synonymous with a duty to produce.

9 This Order does not expand any record preservation requirements under the Federal
10 Rules of Civil Procedure, and it does not limit any protection provided by Rule 37(f). The
11 Parties do not waive any objections as to the production, discoverability, or confidentiality of
12 documents and electronically stored information (“ESI”) preserved under this Order.

13 This Order does not address the Parties’ respective responsibilities for the costs of
14 retrieving or producing documents or ESI that may be subject to discovery. Some items may
15 be too cost prohibitive to produce, and cost shifting may be necessary.

16 **2. COOPERATION**

17 The Parties are aware of the importance the Court places on cooperation and have
18 committed to cooperate in good faith throughout the matter.

19 **3. PRESERVATION**

20 The Parties have discussed their preservation obligations and needs and agree that
21 preservation of potentially relevant ESI will be reasonable and proportionate. Without any
22 presumption that the following preservation periods are the appropriate time periods for
23 discovery, Defendants agree to preserve only the following:

- 24 a) ESI created or received between January 1, 2002, and December 31, 2012, will be
25 preserved as it presently exists for:
- 26 i. Pricing announcements related to the sale of raw milk; and
 - 27 ii. Paper records, electronic mail, and other electronic records maintained on
28 network-accessible storage devices and/or personal computers related to the
creation, purpose, operation, administration and the effects of the CWT

1 program, including but not limited to the effects on milk supply, the number
2 of milk farms, and milk prices, and any attempts to impede the ability of a
3 farmer who had participated in the program from producing and/or selling
milk again.

4 b) ESI for the period of January 1, 2000 through the present, will be preserved as it
5 presently exists for:

6 i. Transactional data (including pricing data) related to the sale of raw milk.

7 Plaintiffs agree to preserve paper records and ESI as they currently exist covering the same
8 time periods and topics set forth in subsections (a) and (b) above for non-transactional and
9 transactional information, respectively.

10 Given the number of Parties and the wide range of approaches used by the parties to
11 manage records (including the management of ESI and the systems used for its recovery in the
12 event of a disaster), it is not practical to attempt to define a single detailed process that all Parties
13 must follow in order to preserve Records. Instead, a Party may use any reasonable method to
14 preserve Records consistent with a Party's record management systems or ordinary practices.
15 The Parties are required to act in good faith and may not transfer ESI to paper form or
16 downgrade ESI for the primary purpose of increasing the burden of discovery for other Parties.

17 **4. DOCUMENTS PROTECTED FROM DISCOVERY**

18 Notwithstanding any other provision of this Order, the Parties have no obligation to
19 preserve the following:

- 20 a) Voicemail in any form;
- 21 b) Transitory information not otherwise stored as part of business
22 practices, including but not limited to temporary data stored in
23 computers' random access memory ("RAM");
- 24 c) Data created by the normal operation of computer systems, including
25 but not limited to – metadata *not* enumerated within this Order or the
26 Parties' separate Stipulation re ESI Discovery Protocol, cookie files,
27 cache files and temporary system files, and data fragments contained
28 in slack space or unused portions of a hard drive – that could only be
read using forensic recovery tools;
- d) Identical copies, provided at least one copy of a record is preserved
in electronic form or, if nonexistent, in paper form (maintaining the
integrity and organization of the record);
- e) Records filtered out by an automatic spam and/or virus filter, so long

1 as the filtering criteria are reasonable (such criteria to be provided to
2 any other party upon request);

- 3 f) Instant messages, social media postings, and other forms of ESI not
4 normally recorded and preserved in the course of the Party's
5 business operations;
- 6 g) Records, as explained above in Section 3(a)(i)-(ii), created before
7 January 1, 2002, and after December 31, 2012; and
- 8 h) Transactional data, as explained above in Section 3(b)(i), created
9 before January 1, 2000.

10 **5. PERMISSIBLE MODIFICATIONS AND ALTERATIONS OF RECORDS**

11 A Party shall not be in violation of this Order if records are altered as a result of any of
12 the following actions undertaken in good faith (and not for any reason based upon this
13 litigation) and in the ordinary course of business:

- 14 a) Routine maintenance and operation of a Party's computer systems;
- 15 b) Upgrading, loading, reprogramming, customizing, or migrating
16 software, even if such actions modify or alter the way data is
17 maintained, stored or viewed, provided the data itself is not altered;
- 18 c) Inputting, accessing, updating or modifying data in a database,
19 resulting in the database being modified or altered;
- 20 d) Editing, modifying, or taking down an Internet, extranet, or intranet
21 site, as long as a copy of a Defendant's existing public Internet site is
22 preserved within ten (10) business days of the date of entry of this
23 Order;
- 24 e) Editing or revising copies of records that have otherwise been
25 retained pursuant to this Order, as long as the date of the edit or
26 revision is captured and an unedited or unrevised identical version is
27 preserved; and
- 28 f) Collecting ESI, including metadata.

6. MODIFICATION

This Stipulated Order may be modified by a Stipulated Order of the Parties or by the
Court for good cause shown.

IT IS SO STIPULATED, through Counsel of Record.

1 DATED: February 12, 2013

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I, Elaine T. Byszewski, attest that concurrence in the filing of this document has been obtained from each of the other signatories.

1 **IT IS SO ORDERED**

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3
4 Dated: February 14, 2013


Hon. Jeffrey S. White
UNITED STATES DISTRICT JUDGE

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