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 8 WHOLE FOODS MARKET CALIFORNIA, INC. and  
 MRS. GOOCH’S NATURAL FOOD MARKETS,  
 9 INC.

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA

13 MARY GARRISON and GRACE  
 14 GARRISON, individually, and on behalf of all  
 others similarly situated,

15 Plaintiffs,

16 v.

17 WHOLE FOODS MARKET CALIFORNIA,  
 18 INC., et al.,

19 Defendants.

Case No. 3:14-CV-00334-VC

**STIPULATION AND ~~PROPOSED~~  
 ORDER RE: TREATMENT OF ESI**

21 Plaintiffs MARY GARRISON and GRACE GARRISON, individually, and on behalf of  
 22 all others similarly situated (collectively “Plaintiffs”), on the one hand, and Defendants WHOLE  
 23 FOODS MARKET CALIFORNIA, INC. and MRS. GOOCH’S NATURAL FOOD MARKETS,  
 24 INC. (collectively “Defendants”), by and through their undersigned counsel, hereby enter into  
 25 the following stipulation regarding electronic discovery (“eDiscovery”) issues in this case:

26 **I. PURPOSE**

27 Defendants represent that their preservation efforts for this action have resulted in the  
 28 retention and ongoing storage of substantial amounts of electronically stored information, as

1 defined in Fed. R. Civ. P. 34(a)(1), (the “ESI”). Defendants believe the vast majority of the ESI  
2 is not relevant to any claim or defense in this action. Defendants therefore seek to establish a  
3 reasonable protocol for treatment this ESI so that they need not continue to preserve the  
4 substantial amounts of data that have no relevance to this action.

## 5 **II. DESIGNATION OF E-DISCOVERY LIAISON**

6 To promote communication and cooperation between the Parties, each party shall  
7 designate an eDiscovery Liaison. The eDiscovery Liaison will serve as a conduit of  
8 communications regarding eDiscovery issues among the Parties including specific topics such  
9 as: (1) the party’s electronic systems and capabilities in order to explain these systems and  
10 answer relevant questions; (2) the technical aspects of eDiscovery, including ESI storage,  
11 organization, and format issues;(3) eDiscovery dispute resolution; and (4) general facilitation of  
12 the eDiscovery process.

## 13 **III. PRESERVATION**

14 The parties have discussed their preservation obligations and needs and agree that  
15 preservation of potentially relevant ESI will be reasonable and proportionate. Plaintiffs represent  
16 that they have retained relevant ESI in their possession, custody, or control. Defendants  
17 represent that they have issued ESI retention notices to appropriate custodians and have  
18 undertaken reasonable efforts to preserve relevant ESI in their possession, custody or control.

## 19 **IV. DEVELOPMENT OF SEARCH TERMS**

20 In an effort to cull the broadly preserved ESI down to a reasonable, manageable and cost-  
21 effective review corpus, the Parties agree that certain filters should be applied to all preserved  
22 data in order to identify the ESI most likely to contain highly relevant data.

23 To this end, the Parties will attempt to develop a search methodology to locate potentially  
24 relevant information from the preserved ESI. The Parties shall reach agreement as to the words,  
25 terms, phrases and syntax to be searched.

26 The Parties agree to the following process for the development of search terms:

- 27 • On or before 30 days after entry of this Order, Defendants shall provide to  
28 Plaintiffs a proposed list of search terms and any related parameters.

- 1 • On or before 15 days after receipt of Defendants’ proposed list of search terms  
2 and related parameters, Plaintiffs shall provide any proposed changes.
- 3 • On or before 15 days after receipt of Plaintiffs’ proposed changes, Defendants  
4 shall respond to Plaintiffs indicating agreement or disagreement as to any changes  
5 proposed by Plaintiffs.
- 6 • On or before 10 days after Defendants’ response, the Parties shall submit a joint  
7 letter brief to the Court outlining any disagreements, should any remain.

8 **V. SEARCH TERM METHODOLOGY**

9 **A. General Approach**

10 In general, the process of review and production will consist of (1) loading of ESI within  
11 the scope of relevant materials by agreement of the Parties; (2) further refinement through key  
12 word searching and culling; (3) review by the producing party; and (4) identification by the  
13 producing party of responsive, non-privileged ESI; and (5) production of responsive non-  
14 privileged ESI to the other Parties.

15 The Parties acknowledge and agree that any information identified as a “hit” based upon  
16 the search will be considered only potentially responsive. The Parties at their option may  
17 produce any “hits” with or without attorney review to determine actual responsiveness and  
18 whether any basis exists for withholding the document such as attorney-client privilege or  
19 attorney work product.

20 **B. File Type/Extension Filters**

21 To reduce the likelihood of false search hits that may skew keyword search hit counts,  
22 cause the review of non-reviewable documents, and increase costs of review and production, the  
23 Parties agree to limit the processing, review, and production of loose file and email attachment  
24 data to commonly known user-created ESI file types/extensions, to wit:

25 pdf	dotm	xlam	csv
26 rtf	dotx	xls	pages

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txt	pot	xlsm	keynote
msg	potm	xlsx	numbers
eml	potx	xlt	jpeg
emlx	ppa	xltm	jpg
wpd	ppam	xltx	png
mpp	pps	mpp	gif
zip	ppsm	wk3	bmp
rar	ppsx	wk4	ai
7z	ppt	pub	psd
doc	pptm	pubx	eps
docm	pptx	pubm	
docx	rtf	tif	
dot	vsd	tiff	

**C. Cached Data, Residual Data, RAM and Fragmented Data**

Absent a showing of special need and lack of undue burden or cost, the Parties shall have no obligation to review or produce deleted, shadowed, fragmented, residual data, or documents, cached, temporary files, random access memory (“RAM”) or ESI that would only be preserved by taking constant and repeated forensic (bit stream) image of hard drives and computer memory sticks, neither of which is practical technically or economically.

**D. Other Forms of Electronically Stored Information**

The scope of Defendants’ identification and preservation efforts included custodians’

1 voice mail as well as cell phone voicemail, cell phone text/instant messages. Absent further  
2 agreement of the Parties or a showing of good cause and a lack of undue burden or cost, the  
3 Parties shall have no further obligation to review or produce ESI regarding or relating to (1)  
4 text/instant messaging communications; (2) voicemail messages and system information  
5 including VOIP data; (3) web browser files; (4) personal digital assistants (“PDAs”); and (5)  
6 mobile devices including, but not limited to, smartphone devices.

7 **E. On-Site Inspections**

8 On-site inspections of electronic media under Fed.R.Civ.P. 34(b) shall not be permitted,  
9 except on mutual agreement of the Parties or upon ruling of the Court following a showing of  
10 exceptional circumstances including good cause and specific need. Inspection or testing of  
11 certain types of ESI may raise issues of confidentiality or privacy and such undue intrusiveness  
12 resulting from such inspections shall be guarded against.

13 **F. Spam and/or Virus Filtering**

14 Absent compelling circumstances and upon notice, any message, attachment or other  
15 electronically stored information that has been identified by a spam or virus filter shall be treated  
16 by the Parties as per se non-responsive and the Parties shall not be required to produce such ESI.

17 **VI. PRODUCTION METHODOLOGY**

18 **A. Form of Production**

19 The Stipulated Protective Order entered in this case, (Dkt. 52), provided that, with the  
20 exception of documents to be produced in native format, documents shall be produced in single-  
21 page Tagged Image Format image files (“TIFF”) named with sequential Bates numbering with  
22 each page branded in the lower right-hand corner with sequential bates numbering. At Plaintiffs’  
23 subsequent request, Defendants will endeavor to provide said documents in Portable Document  
24 Format (“PDF”) instead and will meet and confer with Plaintiffs if they deem that not feasible  
25 for any particular production. Spreadsheets, PowerPoint presentations, multimedia (i.e., audio  
26 and video), and similar files shall be produced in native file format named with sequential Bates  
27 numbering, except where image/PDF format is required for purposes of redaction. For all  
28 documents produced in native format, a single-paged placeholder with Bates numbers shall be

1 provided. Each production shall be accompanied by a corresponding electronic delimited text  
2 file using Concordance standard delimiters (“Concordance DAT files”), OPT and/or LFP image  
3 load files, and separate text files containing each document’s extracted text or text generated  
4 through Optical Character Recognition (“OCR”). OCR text will only be provided for documents  
5 with redactions or documents that are hard copy in origin, but all other text will be extracted text.  
6 When available as part of normal processing, ESI productions shall also include available  
7 metadata as listed in Exhibit B to the Stipulated Protective Order.

8 **B. Non-Standard File Handling in Production**

9 During the processing of documents or ESI for production it may become apparent that  
10 some file types are not easily converted from native format into image/PDF files. In such  
11 circumstances, the Parties agree to confer on an appropriate native file protocol. After initial  
12 production in image/PDF file format is complete, the requesting Party must demonstrate  
13 particularized need for production of electronic documents in their native format. If the Parties  
14 are unable to come to an agreement, the Parties agree to seek appropriate relief from the Court  
15 through further stipulation or otherwise.

16 **C. Metadata Production**

17 Nothing herein alters the provisions governing the production of metadata as set forth in  
18 Exhibit B of the Stipulated Protective Order.

19 **D. Claw-back Provision and Non-Waiver Agreement**

20 Provisions regarding “claw back” and “non-waiver” shall be in accordance with Fed. R.  
21 Civ. P. 26 (b)(5), Fed. R. Evid. 502, and paragraph 11 of the Parties’ Stipulated Protective Order  
22 entered in this case. The Parties and the Court recognize that the significant amount of ESI  
23 involved increases the possibility of inadvertent production of materials to which the producing  
24 Party may make a claim of privilege or of protection from discovery as trial preparation material  
25 or some other asserted right. The inadvertent production of such documents or ESI shall not  
26 operate as a waiver of that privilege, protection or right and shall not operate as any subject  
27 matter waiver of that privilege, protection or right.  
28

1 **VII. RELIEF FROM COURT**

2 If the Parties are unable to agree, or need further clarification on any issue relating to the  
3 preservation, collection, or production of electronically stored information, any Party may seek  
4 appropriate relief from the Court through further stipulation or otherwise.

5 **IT IS SO STIPULATED BY COUNSEL OF RECORD.**

6 DATED: April 10, 2015

SEYFARTH SHAW LLP

7 By: /s/ Jay W. Connolly

8 Jay W. Connolly  
9 Giovanna A. Ferrari  
Joseph J. Orzano

10 Attorneys for Defendants  
11 WHOLE FOODS MARKET CALIFORNIA,  
12 INC. and MRS. GOOCH'S NATURAL FOOD  
MARKETS, INC.

13 DATED: April 10, 2015

SCOTT COLE & ASSOCIATES, APC

14 By: /s/ Molly A. Desario

15 Matthew R. Bainer  
Molly a. DeSario

16 Attorneys for Plaintiffs  
17 MARY GARRISON and GRACE  
18 GARRISON, individually and on behalf of all  
other similarly situated

19 **~~PROPOSED~~ ORDER**

20 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

21 DATED: April 14, 2015

22   
23 HON. VINCE CHHABRIA  
United States District Court Judge

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