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14
15 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

16 ORGANIC CONSUMERS
17 ASSOCIATION, *et al.*,

18 *Plaintiffs,*

19 v.

20 SANDERSON FARMS, INC., a
Mississippi corporation,

21 *Defendant.*
22

) Case No. 3:17-CV-03592-RS
)
)
)

) **STIPULATION AND [PROPOSED]**
) **ORDER CONCERNING ESI**
) **PRESERVATION AND THE**
) **PROTOCOL FOR PRODUCTION OF**
) **DOCUMENTS**
)
)
)

23 **1. PURPOSE**

24 This Order will govern discovery of electronically stored information (“ESI”) in this
25 case as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the
26 Discovery of Electronically Stored Information, and any other applicable orders and rules.
27
28

1 **2. COOPERATION**

2 The parties are aware of the importance the Court places on cooperation and commit to
3 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the
4 Discovery of ESI.

5 **3. LIAISON**

6 The parties have identified the following counsel as the e-discovery liaisons who are
7 and will be knowledgeable about and responsible for discussing the parties’ respective ESI:

8 For Plaintiffs: Gretchen Elsner

9 For Defendant: Jonathan Jones

10 Each liaison will be, or have access to those who are, knowledgeable about the
11 technical aspects of e-discovery, including the location, nature, accessibility, format,
12 collection, search methodologies, and production of ESI in this matter. Counsel will confer, as
13 needed, about ESI to help resolve disputes without court intervention.

14 **4. PRESERVATION**

15 The parties have discussed their preservation obligations, and confirm that each party
16 has preserved potentially relevant and responsive ESI, including from the relevant time period
17 and for relevant individuals and central data storage repositories. Among the sources of data
18 the parties agree are not reasonably accessible, the parties agree not to preserve the following:
19 mobile phone data, digital voicemail, and instant messaging. The parties also agree not to
20 preserve backup media (including back-up tapes of Network Shares/Home Shares, back-up
21 tapes of email, and disaster recovery tapes) that was created before June 22, 2017.

22 **5. SEARCH**

23 The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if
24 appropriate, they will meet and confer about methods to search ESI in order to identify ESI
25 that is subject to production in discovery and filter out ESI that is not subject to discovery.
26 This shall include a discussion of the areas of discovery, numbers of custodians, types of drives
27 and media to be searched, date ranges, use of search terms (if appropriate), and similar
28 information, if pertinent.

1 **6. DE-DUPLICATION**

2 To the extent that exact duplicate documents (based on MD5 or SHA-1 hash values)
3 reside within a party’s ESI data set, each party may produce only a single copy of a responsive
4 document or record (“Single Production Copy”). Exact duplicates will be identified through
5 calculation of MD5 or SHA-1 hash value and all de-duplication will occur at a family level.

6 **7. PRODUCTION FORMATS**

7 The parties agree to produce documents in either TIFF or native file formats.
8 If particular documents warrant a different format, the parties will cooperate to arrange for the
9 mutually acceptable production of such documents. The parties agree not to degrade the
10 searchability of documents as part of the document production process.

11 **A. Form of Production**

12 The parties will produce all documents as Group IV single page black and white TIFF
13 format files imaged at 300 dpi, except that spreadsheets and media files will be produced as
14 native files, and that emails may be produced as native files. Name each TIFF file with a
15 unique name matching the Bates number labeled on the corresponding page.

16 When processing ESI for review and for production in TIFF format, the producing
17 party will instruct its vendor to force off Auto Date and unhide all hidden objects. UTC should
18 be selected as the time zone.

19 **B. Image Load File**

20 Provide an image load file (e.g., Opticon file or LFP) that contains document
21 boundaries.

22 **C. Excel, Other Spreadsheet Files, Media Files, and E-Mail Files**

23 Microsoft Excel files, files created other spreadsheet programs, and media files (e.g.,
24 video or audio files) shall be produced in native format with corresponding TIFF images of
25 Bates-stamped slip sheets and appropriate confidentiality labeling. Emails may be produced in
26 a native email format, such as MSG or a similar file format. The parties will provide a relative
27 file path or link to the native Excel in the .dat file. The produced file should be named with an
28 appropriate document-level Bates number. Documents that are to be produced in a native

1 format, but that require redactions will be produced as TIFF images with the relevant portions
2 redacted, or if a TIFF image production is not practicable (e.g., the file is a video or very large
3 spreadsheet), as a copy of the native file with the relevant portions replaced with
4 “[REDACTED]” or a similar mark. The produced file should be named with the Bates number
5 of the first page of the corresponding TIFF production of the document (e.g., ABC00001.ppt”).

6 **D. Production of Physical Documents**

7 Documents or records which either were originally generated as or converted into ESI
8 but now only exist in physical hard-copy format, or documents or records that were originally
9 generated in hard-copy format, shall be converted to single-page image files (BLACK AND
10 WHITE Group IV TIFF) and produced following the same protocols set forth herein or
11 otherwise agreed to by the parties. All such documents will be produced with an OCR file as
12 outlined in below.

13 **E. OCR and Extracted Text Files (.TXT Files):**

14 Non-native ESI shall be produced with multi-page searchable Extracted Text or OCR
15 text. For documents that were originally stored as native electronic files and which do not have
16 redactions, the extracted, full text from the body of each document will be produced. For
17 documents that were originally stored as native electronic files and which have redactions,
18 OCR text will be produced from the redacted image(s) associated with each document.

19 **F. Production Media**

20 Documents shall be produced on CD-ROM, DVD, external hard drive (with standard
21 PC compatible interface), .ftp site, or such other readily accessible computer or electronic
22 media as the parties may hereafter agree upon (the “Production Media”). Each item of
23 Production Media shall include: (1) the production date, and (2) the Bates number range of the
24 materials contained on such Production Media item.

25 **G. Document Metadata**

26 The parties agree to produce extracted metadata for each document in the form of a .dat
27 file, and include the following fields, as shown in the table below. If specific fields cannot be
28 provided for a particular document because, e.g., the field is unavailable or contains privileged

1 information, the field should be left blank. When a metadata field includes a date, the date
 2 shall be provided in the following format in separate fields as specified below: mm/dd/yyyy or
 3 HH:mm:ssZ.
 4

Field	Description
Bates_Begin	The Bates label of the first page of the document.
Bates_End	The Bates label of the last page of the document.
Attach_Begin	The Bates label of the first page of a family of documents (<i>e.g.</i> , email and attachment).
Attach_End	The Bates label of the last page of a family of documents (<i>e.g.</i> , email and attachment).
File Name	The filename of an attachment or stand-alone e-file.
Subject	The document or email subject line.
Custodian	The custodian(s) of the document.
Filename Extension	The original filename extension suffix (<i>e.g.</i> , .doc, .pps., .jpeg, .txt, .xls).
Sent_Date	For email, the sent date of the message.
Sent_Time	For email, the sent time of the message.
Create_Date	For efiles or attachments, the document's creation date or operating system creation date.
Create_Time	For efiles or attachments, the document's creation time or operating system creation time.
Modified_Date	For efiles or attachments, document's last modified date or operating system last modified date.
Modified_Time	For efiles or attachments, the document's last modified time or operating system last modified time.
Author	The author of a stand-alone efile or attachment.
From	The sender of an email message
To	The recipients of an email message, in a semi-colon delimited multi-value list.
CC	The copyee(s) of an email message, in a semi-colon delimited multi-value list.
BCC	The blind copyee(s) of an email message, in a semi-colon delimited, multi-value list.
MD5	The calculated MD5 hash value of the document
Native_File	The file path to the location of the native file if produced natively.

AEO Conf_Desig	The confidentiality designation, if any, for the document pursuant to any protective order in the case.
TextPath	The location of the extracted text or OCR text being produced

Notwithstanding the foregoing, the parties will meet and confer in good faith as necessary prior to the production of documents, with technical experts as needed, to clarify or resolve any issues (*e.g.*, definitions of metadata fields, inconsistencies, and burden) concerning the production of metadata.

H. Attachments

Email attachments must be mapped to their parent by the Document or Production number. BeginAttach and EndAttach fields must be populated for parent documents.

8. DOCUMENTS PROTECTED FROM DISCOVERY

a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-protected document, whether inadvertent or otherwise, is not a waiver of privilege or protection from discovery in this case or in any other federal or state proceeding. For example, the mere production of privileged or work-product-protected documents in this case as part of a mass production is not itself a waiver in this case or in any other federal or state proceeding.

b) The parties have agreed upon a “quick peek” process pursuant to Fed. R. Civ. P. 26(b)(5) and reserve rights to assert privilege as follows:

- The Producing Party shall notify the Receiving Party in writing within ten business days after discovery of an inadvertent production or disclosure.
- Such inadvertently produced or disclosed documents or information, including all copies thereof, shall be returned to the Producing Party immediately upon request, and the Receiving Party shall immediately destroy any notes or other writing or recordings that summarize, reflect, or discuss the content of such privileged or Protected Information.
- No use shall be made of such documents or information during deposition or at trial, nor shall such documents or information be provided to anyone who

1 did not already have access to them prior to the request by the Producing Party
2 that they be returned.

- 3 • In the case of an inadvertently produced or disclosed document, the Producing
4 Party shall include the Discovery material in a privilege log identifying such
5 inadvertently produced or disclosed document.
- 6 • The Receiving Party may move the Court for an Order compelling production
7 of any inadvertently produced or disclosed document or information, but the
8 motion shall not assert as a ground for production the fact of the inadvertent
9 production or disclosure, nor shall the motion disclose or otherwise use the
10 content of the inadvertently produced document or information (beyond any
11 information appearing on the above-referenced privilege log) in any way in
12 connection with any such motion.

13 c) Communications involving trial counsel that post-date the filing of the original
14 complaint (June 22, 2017) need not be placed on a privilege log. Communications may be
15 identified on a privilege log by category, rather than individually, if appropriate.

16 **9. MODIFICATION**

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

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20 **IT IS SO STIPULATED**, through Counsel of Record, on this 19th day of March, 2018.
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1 Dated: March 19, 2018

/s/ Kim E. Richman

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IT IS ORDERED that the forgoing Agreement is approved.

Dated: 3/19/18



THE HONORABLE RICHARD SEEBORG