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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION
14

15 MATTHEW EDWARDS, GEORGIA
BROWNE, and TORAH MONTESSORI
16 SCHOOL, individually and on behalf of all
others similarly situated,

17 Plaintiffs,

18 v.

19 NATIONAL MILK PRODUCERS
20 FEDERATION aka COOPERATIVES
WORKING TOGETHER; DAIRY FARMERS
21 OF AMERICA, INC.; LAND O'LAKES,
INC.; DAIRYLEA COOPERATIVE INC.; and
22 AGRI-MARK, INC.,

23 Defendants.
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CASE NO.: 3:11-CV-04766-JSW

[consolidated with 11-cv-04791-JSW
and 11-cv-05253-JSW]

CLASS ACTION

**JOINT STIPULATION AND
[PROPOSED] ORDER RE THE USE
OF PREDICTIVE CODING
TECHNOLOGY**

ACTION FILED: September 26, 2011

1 Plaintiffs and Defendant Land O'Lakes, Inc. (collectively "the Parties" and each, individually,
2 a Party) hereby stipulate, agree, and propose as follows:

3 **I. DEFINITIONS**

4 **A. "Document review corpus"** refers to the body of documents remaining after
5 the exclusion of known system files, incompatible file types (e.g., database files), duplicates,
6 and documents that fall outside the agreed date range.

7 **B. "Confidence level"** means the statistical reliability of a result and in this
8 instance refers to the likelihood that a measurement reached through sampling is accurate.

9 **C. "Estimation interval"** refers to the statistical error rate of a measured
10 confidence level.

11 **II. PROTOCOL**

12 The Parties have discussed the methodologies or protocols for the search and review of
13 documents collected from Land O'Lakes and have agreed that Land O' Lakes will utilize
14 Recommind's Axcelerate software for its review workflow and production in this case. Axcelerate
15 incorporates predictive coding (also known as technology-assisted review) functionality, which Land
16 O'Lakes will leverage for a more cost efficient and higher quality review. The Parties agree that the
17 following protocol will be followed to identify potentially responsive documents for review:

18 1. **Step One – Document Collection**: Land O'Lakes will collect documents in the
19 possession, custody, or control of each custodian agreed upon by the Parties and in additional
20 locations under the possession, custody, or control of Land O'Lakes (such as shared drives or
21 departmental files) immediately upon entry of this order and isolate the document review corpus.

22 2. **Step Two – Control Set**: After loading the document review corpus into Axcelerate,
23 Land O'Lakes will generate an initial control set of documents. The control set will be a random,
24 statistically valid sampling of documents to estimate the number of responsive documents in the
25 corpus. The control set sample shall be determined using a 95% confidence level and 2% estimation
26 interval. The control set sample will then be reviewed for responsiveness and privilege, and Land
27 O'Lakes will provide Plaintiffs with a tracking report of the results of the control set generation and
28 review. At any point during the predictive coding process, Land O'Lakes' e-discovery liaison will

1 meet and confer at Plaintiffs' request to discuss the results and method of the process. Land O'Lakes
2 agrees to confer in good faith regarding the incorporation of any input from Plaintiffs on the
3 application process.

4 3. **Step Three – Seed Set and Initial Training:** All responsive documents identified
5 during review of the control set will be included in an initial seed set, which will be used to train
6 Axcelerate to identify other potentially responsive documents in the document review corpus. The
7 seed set also will include responsive documents identified by Land O'Lakes through the use of search
8 and analytical tools, which will include the following:

- 9 a) Approximately 400 documents already identified as responsive by Land O'Lakes;
10 b) The 500 most highly ranked¹ responsive documents hit upon by an application of the
11 Boolean search terms selected by Land O'Lakes (listed in Appendix A), excluding
12 documents already contained in (a), above; and
13 c) The 500 most highly ranked responsive documents hit upon by application of Boolean
14 search terms selected by Plaintiffs (listed in Appendix A), excluding documents
15 already contained in (a) and (b), above.

16 Land O'Lakes will provide Plaintiffs with a search hit count of all searches conducted and will
17 produce all non-privileged documents included in the seed set.

18 4. **Step Four – Iterative Review and Further Training:** Once Axcelerate has
19 identified and prioritized potentially responsive documents based on the initial training, Land
20 O'Lakes will review a sample set of those documents for responsiveness. The sample set will consist
21 of at least the 500 documents ranked most highly by Axcelerate in order of relevance. After this
22 second round of review, the system will be trained again based on reviewer feedback to identify and
23 prioritize more potentially responsive documents. Land O'Lakes will provide Plaintiffs with tracking
24 data for this round of review.

25 5. **Step Five – Review:** Land O'Lakes will then conduct a manual review of all
26 documents identified by Axcelerate as potentially responsive. During this review, the iterative
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¹ Axcelerate ranks returned documents in order of responsiveness to search terms.

1 process will continue; as more responsive documents are reviewed and coded, they will be used to
2 further hone the system's ability to identify and prioritize other potentially responsive documents
3 among the remaining, unreviewed portion of the document review corpus. Newly identified
4 documents also will be subject to manual review. Review and iterative training will proceed until all
5 identified documents have been reviewed and the system indicates that the remainder of the
6 document review corpus is not likely to be responsive. Land O'Lakes will continue to provide
7 tracking data to Plaintiffs, and all responsive, non-privileged documents will be produced.

8 6. **Step Six – Validation:** After Land O'Lakes has conducted enough rounds of
9 iterative review and training to generate a conclusion from Axcelerate that the remaining documents
10 in the document review corpus are not likely to be responsive, Land O'Lakes will perform a
11 validation test by reviewing a statistically valid and random sampling of unreviewed documents to
12 confirm that the number of potentially responsive documents in the unreviewed corpus is statistically
13 insignificant. Using a 99% confidence level and a 1% estimation interval, a random sampling of the
14 unreviewed documents will be reviewed for responsiveness. If the number of responsive documents
15 in the validation sampling results in higher than a 1% responsiveness rate, the review process will
16 continue until the validation test achieves a 1% or less responsiveness rate. All tracking data
17 regarding the validation process will be provided to the plaintiffs, and any responsive, non-privileged
18 documents identified during the process will be produced.

19 THE PARTIES HEREBY STIPULATE AND AGREE TO THE ABOVE TERMS.

20 DATED: April 16, 2013

21 Respectfully submitted,

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Attorneys for the Plaintiffs

ATTESTATION: I, Matthew S. Kahn, attest that concurrence in the filing of this document has been obtained from each of the other signatories.

[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____

HONORABLE JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

Appendix A: Search Terms

Land O'Lakes' Search Terms

1
2
3 “cooperatives working together”
4 nmpf OR “national milk producers federation”
5 herd /10 retir*
6 cow /10 retir*
7 cwt AND retir*
8 “self help”
9 “herd buyout”
10 “milk diversion program”
11 cwt AND beef
12 cwt /5 program
13 export /10 assistance
14 cwt /5 ambassador
15 cwt AND (independent /5 producer)
16 cwt AND (independent /5 farmer)
17 cwt AND (target /10 remov*)
18 cwt AND cull*
19 cwt AND slaughter*
20 cwt AND “field staff”
21 cwt AND assessment
22 cwt AND delegate
23 cwt AND (milk /5 suppl*)
24 cwt AND (price /10 increas*)
25 cwt AND contribut*
26 cooperative /10 individual
27 cwt AND (cow /5 numbers)
28 cwt AND “farm id”
cents /5 hundredweight
amount /10 checks
cwt AND bid*
cwt AND “leadership council”
cwt /10 member*
cwt /10 summary
cwt AND presentation

Plaintiffs' Search Terms

buyout
reentry
re-entry
reenter
re-enter
rejoin
re-join
join /10 again
price /10 increase
price /10 rise
price /10 raise
price /10 hike
price /10 stabiliz*
price /10 maintain
price /10 maintenance

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2013, I electronically filed the foregoing with the Clerk of Court, using the CM/ECF system, which will send notification of such filing to the e-mail addresses registered as denoted on the attached Electronic Service List.

Respectfully submitted,

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ELECTRONIC SERVICE LIST

EDWARDS, ET AL. V. NATIONAL MILK PRODUCERS FEDERATION, ET AL.

Case No. 11-CV-04766-JSW

[consolidated with 11-CV-04791-JSW and 11-CV-05253-JSW]

Courtroom: 11 [Hon. Jeffrey S. White]

Northern District Of California

San Francisco Division

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