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Attorneys for Plaintiffs WESTERN SUGAR
COOPERATIVE, MICHIGAN SUGAR CO., C & H
SUGAR CO., INC., UNITED STATES SUGAR
CORPORATION, AMERICAN SUGAR REFINING,
INC., THE AMALGAMATED SUGAR COMPANY
LLC, IMPERIAL SUGAR COMPANY, MINN-
DAK FARMERS COOPERATIVE, THE
AMERICAN SUGAR CANE LEAGUE U.S.A.,
INC., AND THE SUGAR ASSOCIATION, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WESTERN SUGAR
COOPERATIVE, *et al.*

Plaintiffs,

vs.

ARCHER-DANIELS-MIDLAND
COMPANY, *et al.*

Defendants.

And Related Counterclaim.

Case No. CV11-3473 CBM (MANx)

[Discovery Matter]

**DECLARATION OF ADAM R. FOX IN
SUPPORT OF PLAINTIFFS' MOTION
TO COMPEL DE-DESIGNATION OF
DOCUMENTS THAT DEFENDANTS
HAVE PRODUCED AS
"CONFIDENTIAL" OR "HIGHLY
CONFIDENTIAL – ATTORNEYS'
EYES ONLY"**

Hearing : January 21, 2014
Time: 10:00 a.m.
Place: Courtroom 580
Magistrate Judge Margaret A. Nagle

1 I, Adam R. Fox, declare:

2 1. I am an attorney duly licensed to practice law in the State of California
3 and in the Central District of California and partner in the law firm of Squire
4 Sanders (US) LLP, counsel for Plaintiffs WESTERN SUGAR COOPERATIVE,
5 MICHIGAN SUGAR CO., C & H SUGAR CO., INC., UNITED STATES SUGAR
6 CORPORATION, AMERICAN SUGAR REFINING, INC., THE AMALGAMATED SUGAR
7 COMPANY LLC, IMPERIAL SUGAR COMPANY, MINN-DAK FARMERS COOPERATIVE,
8 THE AMERICAN SUGAR CANE LEAGUE U.S.A., INC., AND THE SUGAR ASSOCIATION,
9 INC. (collectively "Plaintiffs") in this action. I am personally familiar with the facts
10 set forth below and, if called as a witness, could and would testify competently
11 thereto.

12 2. On July 15, 2013, documents were produced for James Rippe
13 ("Rippe"), a consultant to defendants, in response to subpoenas issued and served
14 by Plaintiffs on Rippe and Rippe Lifestyle Institute in October 2012. Also on July
15 15, 2013, documents were produced for John White ("White"), another consultant
16 to defendants, in response to a subpoena served in December 2012. At my
17 direction, word searches of the Rippe and White productions were conducted. The
18 result of these searches was that of the 1,950 documents produced by Rippe, 330
19 contain the word "Confidential" and 1,519 contain the phrase "Highly Confidential
20 – Attorneys' Eyes Only." Of the 4,662 documents produced by White, 867 contain
21 the word "Confidential" and 3,079 contain the phrase "Highly Confidential –
22 Attorneys' Eyes Only." Thus, while these word searches provide just an
23 approximation, around 95% of Rippe's production and 85% of White's production
24 contain documents designated as "Confidential" or "Highly Confidential -
25 Attorneys Eyes Only."

26 3. On March 18, 2013, CRA produced 3,204 pages of documents,
27 bringing the total documents produced by CRA up to 5,732 pages. On August 13,
28 2013, CRA produced 91,193 pages of documents. On August 23, 2013, CRA

1 nearly doubled their prior productions, producing 96,688 pages of documents. On
2 September 4, 2013, CRA produced 392,976 pages of documents. Attached as
3 **Exhibit 45** are true and correct copies of CRA cover letters reflecting the number
4 of pages of each of the foregoing CRA productions, along with the date of the
5 production. As with the Rippe and White productions, word searches of the Corn
6 Refiners Association's ("CRA") production were also conducted at my direction in
7 order to determine the number of documents that were designated "Confidential" or
8 Highly Confidential – Attorneys' Eyes Only." After making the production
9 searchable using Optical Character Recognition software, Plaintiffs applied a two-
10 step query: Plaintiffs first performed a word search for all documents containing
11 the phrase "Highly Confidential – Attorneys' Eyes Only"; Plaintiffs then searched
12 for all documents containing the term "Confidential" but excluding documents
13 previously confirmed as bearing the Attorneys' Eyes Only designation. Plaintiffs'
14 review revealed that, through the CRA's August 23rd production of documents,
15 CRA had designated approximately 34% of its documents "Highly Confidential -
16 Attorneys' Eyes Only" and 64% as "Confidential" – meaning CRA designated
17 around 98% of the total documents it produced as of that date.

18 4. By October 18, 2013, Plaintiffs had received document productions
19 from defendants CRA, Archer-Daniels-Midland Company ("ADM"), Cargill, Inc.
20 ("Cargill"), and Tate & Lyle Ingredients Americas, Inc. ("Tate & Lyle"). Again at
21 my direction, Plaintiffs employed the two step word search of those productions in
22 order to determine what percentage of the productions were designated as
23 "Confidential" or "Highly Confidential - Attorneys Eyes Only." Those searches
24 revealed that 92% of CRA's, 85% of Cargill's, 70% of Tate and Lyle's and 27% of
25 ADM's documents were designated "Confidential" or "Highly Confidential -
26 Attorneys' Eyes Only."

27 5. Attached as **Exhibit 1** is a true and correct copy of a document
28 produced by defendant ADM in this action bearing the Bates number

1 ADM0022601 (labeled “Confidential”).¹

2 6. Attached as **Exhibit 2** is a true and correct copy of a document
3 produced by defendant Corn Refiners Association in this action bearing the Bates
4 numbers CRA0117239-CRA0117242 (labeled “Confidential”).

5 7. Attached as **Exhibit 3** is a true and correct copy of a document
6 produced by defendants’ consultant, John White, in this action bearing the Bates
7 numbers WHITE0000199-WHITE0000200 (labeled “Confidential”).

8 8. Attached as **Exhibit 4** is a true and correct copy of a document
9 produced by defendant Corn Refiners Association in this action bearing the Bates
10 numbers CRA0577291-CRA0577292 (labeled “Confidential”).

11 9. Attached as **Exhibit 5** is a true and correct copy of a document
12 produced by defendant Tate & Lyle in this action bearing the Bates number
13 TLIA0002251 (labeled “Highly Confidential – Attorneys’ Eyes Only”).

14 10. Attached as **Exhibit 6** is a true and correct copy of a document
15 produced by defendant Cargill in this action bearing the Bates number
16 CRGL0005884 (labeled “Highly Confidential – Attorneys’ Eyes Only”).

17 11. Attached as **Exhibit 7** is a true and correct copy of a document
18 produced by defendant Cargill in this action bearing the Bates number
19 CRGL0040996 (labeled “Highly Confidential – Attorneys’ Eyes Only”).

20 12. Attached as **Exhibit 8** is a true and correct copy of a document
21 produced by defendant Corn Refiners Association in this action bearing the Bates
22 number CRA0420434 (labeled “Highly Confidential – Attorneys’ Eyes Only”).

23 13. Attached as **Exhibit 9** is a true and correct copy of a document
24 produced by defendant Corn Refiners Association in this action bearing the Bates
25 number CRA0446133 (labeled “Confidential”).

26
27 ¹ For the Court’s convenience, following each document identified by Bates number, we have
28 included its confidentiality designation in a parenthetical to demonstrate whether the documents
were designated as “Confidential” or “Highly Confidential - Attorneys’ Eyes Only.”

1 14. Attached as **Exhibit 10** is a true and correct copy of a document
2 produced by defendants' consultant, John White, in this action bearing the Bates
3 numbers WHITE0000944-WHITE0000949 (labeled "Highly Confidential –
4 Attorneys' Eyes Only").

5 15. Attached as **Exhibit 11** are true and correct copies of documents
6 produced by defendants' consultants, James Rippe and John White, in this action
7 bearing the Bates numbers RIPPE0001070-RIPPE0001072, RIPPE0002222,
8 RIPPE0002692 and WHITE0000416 (all labeled "Highly Confidential – Attorneys'
9 Eyes Only").

10 16. Attached as **Exhibit 12** are true and correct copies of documents
11 produced by defendants' consultants, James Rippe and John White, in this action
12 bearing the Bates numbers RIPPE0000810-RIPPE0000814, RIPPE0001058-
13 RIPPE0001059, RIPPE0001179-RIPPE0001182, RIPPE0001994-RIPPE0001995,
14 WHITE0000076, WHITE0000098-WHITE0000099, and WHITE0000160-
15 WHITE0000161 (all labeled "Highly Confidential – Attorneys' Eyes Only").

16 17. Attached as **Exhibit 13** is a true and correct copy of an August 22,
17 2013 meet and confer letter from Plaintiffs' counsel to defendants' counsel with the
18 subject "Document Production of James Rippe, John White, and White Technical
19 Research Group in Response to Subpoena."

20 18. Attached as **Exhibit 14** is a true and correct copy of an August 29,
21 2013 letter from Defendants' counsel in response to Plaintiffs' August 22, 2013
22 meet and confer letter.

23 19. Attached as **Exhibit 15** is a true and correct copy of a September 11,
24 2013 meet and confer letter from Plaintiffs' counsel to Defendants' counsel with
25 the subject "Defendants' designations of documents under the Stipulated Protective
26 Order."

27 20. On September 12, 2013, counsel for Plaintiffs and Counsel for
28 Defendants met and conferred regarding Defendants' confidentiality designations.

1 The parties agreed that each side would examine a subset of randomly selected
2 documents from CRA's production, assess the propriety of the designations and
3 then inform the other about their positions with respect to each document.
4 Plaintiffs conducted their analysis and shared with Defendants a chart summarizing
5 the results.

6 21. Attached as **Exhibit 16** is a true and correct copy of an October 7,
7 2013 follow-up meet and confer letter from Plaintiffs' counsel to Defendants'
8 counsel with the subject "Schedule for Corn Processors' Document Production and
9 Case Schedule."

10 22. Attached as **Exhibit 17** is a true and correct copy of an October 18,
11 2013 letter from defendants' counsel in response to Plaintiffs' October 7, 2013
12 follow-up meet and confer letter.

13 23. Attached as **Exhibit 18** are true and correct copies of the 100
14 documents randomly selected and reviewed by Plaintiffs in compliance with their
15 meet and confer procedure with Defendants.

16 24. Attached as **Exhibit 19** are true and correct copies of documents
17 produced by defendant Corn Refiners Association in this action bearing the Bates
18 numbers CRA0242258-CRA0242260, CRA0261718-CRA0261720, and
19 CRA0262730 (all labeled "Confidential").

20 25. Attached as **Exhibit 20** are true and correct copies of documents
21 produced by defendant Corn Refiners Association in this action bearing the Bates
22 numbers CRA0319943-CRA0319946, CRA0321576-CRA0321577, CRA0325493-
23 CRA0325494, and CRA0378023 (all labeled "Confidential").

24 26. Attached as **Exhibit 21** is a true and correct copy of a document
25 produced by defendant Corn Refiners Association in this action bearing the Bates
26 number CRA0209304 (labeled "Confidential").

27 27. Attached as **Exhibit 22** is a true and correct copy of a document
28 produced by defendant Corn Refiners Association in this action bearing the Bates

1 number CRA0567983 (labeled “Highly Confidential – Attorneys’ Eyes Only”).

2 28. Attached as **Exhibit 23** is a true and correct copy of a document
3 produced by defendant Corn Refiners Association in this action bearing the Bates
4 number CRA0541222 (labeled “Confidential”).

5 29. Attached as **Exhibit 24** is a true and correct copy of a document
6 produced by defendant Corn Refiners Association in this action bearing the Bates
7 number CRA0487213 (labeled “Highly Confidential – Attorneys’ Eyes Only”).

8 30. Attached as **Exhibit 25** is a true and correct copy of a document
9 produced by defendant Cargill in this action bearing the Bates number
10 CRGL0007217 (labeled “Highly Confidential – Attorneys’ Eyes Only”).

11 31. Attached as **Exhibit 26** is a true and correct copy of a document
12 produced by defendant Corn Refiners Association in this action bearing the Bates
13 number CRA0080238 (labeled “Highly Confidential – Attorneys’ Eyes Only”).

14 32. Attached as **Exhibit 27** are true and correct copies of documents
15 produced by defendant Cargill in this action bearing the Bates numbers
16 CRGL0039895 and CRGL0007102 (both labeled “Highly Confidential –
17 Attorneys’ Eyes Only”).

18 33. Attached as **Exhibit 28** is a true and correct copy of a document
19 produced by defendant Corn Refiners Association in this action bearing the Bates
20 numbers CRA0284146-CRA0284148 (Not designated).

21 34. Attached as **Exhibit 29** is a true and correct copy of a document
22 produced by defendant Corn Refiners Association in this action bearing the Bates
23 number CRA0116420 (labeled “Highly Confidential – Attorneys’ Eyes Only”).

24 35. Attached as **Exhibit 30** is a true and correct copy of a document
25 produced by defendant Corn Refiners Association in this action bearing the Bates
26 numbers CRA0479521-CRA0479522 (labeled “Confidential”).

27 36. Attached as **Exhibit 31** is a true and correct copy of a document
28 produced by defendant Corn Refiners Association in this action bearing the Bates

1 number CRA0437356 (labeled “Highly Confidential – Attorneys’ Eyes Only”).

2 37. Attached as **Exhibit 32** is a true and correct copy of a document
3 produced by defendant Corn Refiners Association in this action bearing the Bates
4 numbers CRA0017397-CRA0017400 (labeled “Confidential”).

5 38. Attached as **Exhibit 33** are true and correct copies of documents
6 produced by defendant Corn Refiners Association in this action bearing the Bates
7 numbers CRA0070602-CRA0070603 (labeled “Confidential”).

8 39. Attached as **Exhibit 34** is a true and correct copy of a May 30, 2012
9 FDA letter denying the Corn Refiners Association’s Petition to call high fructose
10 corn syrup “corn sugar.”

11 40. Attached as **Exhibit 35** is a true and correct copy of a document
12 produced by defendant Corn Refiners Association in this action bearing the Bates
13 numbers CRA0022304-CRA0022306 (labeled “Confidential”).

14 41. Attached as **Exhibit 36** is a true and correct copy of a document
15 produced by defendant Corn Refiners Association in this action bearing the Bates
16 number CRA0433184 (labeled “Confidential”).

17 42. Attached as **Exhibit 37** are true and correct copies of documents
18 produced by defendant Cargill in this action bearing the Bates numbers
19 CRGL0032664 (labeled “Confidential”) and CRGL0039895 (labeled “Highly
20 Confidential – Attorneys’ Eyes Only”), a document produced by defendant Corn
21 Refiners Association in this action bearing the Bates numbers CRA0044985-
22 CRA0044987 (labeled “Confidential”), and documents produced by defendants’
23 consultant, James Rippe, in this action bearing Bates numbers RIPPE 0001762-
24 RIPPE0001763 (labeled “Confidential”), RIPPE0001869-RIPPE0001870 (labeled
25 “Confidential”), RIPPE000398-RIPPE0003987 (labeled “Confidential”), and
26 RIPPE0004405 (labeled “Highly Confidential – Attorneys’ Eyes Only”).

27 43. Attached as **Exhibit 38** is a true and correct copy of a document
28 produced by defendants’ consultant, James Rippe, in this action bearing the Bates

1 numbers RIPPE0002074-RIPPE0002076 (labeled “Highly Confidential –
2 Attorneys’ Eyes Only”).

3 44. Attached as **Exhibit 39** is a true and correct copy of a document
4 produced by defendant Cargill in this action bearing the Bates number
5 CRGL0025003 (labeled “Highly Confidential – Attorneys’ Eyes Only”).

6 45. Attached as **Exhibit 40** is a true and correct copy of a document
7 produced by defendants’ consultant, James Rippe, in this action bearing the Bates
8 number RIPPE0000156 (labeled “Highly Confidential – Attorneys’ Eyes Only”).

9 46. Attached as **Exhibit 41** is a true and correct copy of a document
10 produced by defendant Corn Refiners Association in this action bearing the Bates
11 number CRA0446133 (labeled “Confidential”).

12 47. Attached as **Exhibit 42** is a true and correct copy a letter to the Editor
13 in the Journal *Obesity*.

14 48. Attached as **Exhibit 43** is a true and correct copy of a document
15 produced by defendant Corn Refiners Association in this action bearing the Bates
16 numbers CRA0447234-CRA0447237 (labeled “Confidential”).

17 49. Attached as **Exhibit 44** is a true and correct copy of a document
18 produced by defendant Cargill in this action bearing the Bates numbers
19 CRGL0007727-CRGL0007729 (labeled “Confidential”).

20 50. In compliance with Local Rule 37.2, attached as **Exhibit 46** are true
21 and correct copies of the initial and current scheduling orders in this matter.

22 Executed at Los Angeles, California on this 30th day of December 2013.

23
24 /s/ Adam R. Fox

25 ADAM R. FOX
26
27
28