

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

FOOD LION, LLC, AND MARYLAND
AND VIRGINIA MILK PRODUCERS
COOPERATIVE ASSOCIATION, INC.,

Plaintiffs,

v.

DAIRY FARMERS OF AMERICA, INC.,

Defendant.

1:20-CV-442

PROTECTIVE ORDER

The Court hereby enters the following Protective Order (the “Protective Order”) to prevent the inappropriate dissemination of documents and information produced in the course of discovery, which may include but is not limited to competitively sensitive and confidential information about pricing, budgets, forecasts, strategic plans, cost of production and sale, and other confidential commercial information. Good cause appearing, it is hereby **ORDERED** as follows:

1. **Scope of Order.** This Protective Order governs the use and handling of documents, electronic information in any form, testimony, interrogatory responses and other information, including all copies, excerpts, and summaries thereof (collectively, the “Material”) produced or given by any defendant, plaintiff, or other individual or entity (the “Producing Party”) in pre-trial proceedings in this Litigation. Material produced in this Litigation, including

without limitation Material designated as “Confidential,” “Highly Confidential—Attorney’s Eyes Only,” or “Highly Confidential—Outside Counsel Eyes Only” under the provisions of this Protective Order, and information derived therefrom, shall be used only for the purpose of this Litigation and any related appellate proceeding, and not for any other legal proceeding, business, competitive, personal, private, public, or other purpose whatsoever.

2. **Designation of Confidential Material.** The Producing Party may designate as “Confidential” any Material that it produces in this Litigation which it believes constitutes, contains, reflects or discloses confidential, non-public research and analysis, development or commercial information, or other information for which a good faith claim of need of protection from disclosure can be made under the Federal Rules of Civil Procedure and/or other applicable law (“Confidential Material”). The designations will be made reasonably and in good faith.
3. **Designation of Highly Confidential—Attorney’s Eyes Only Material.** The Producing Party may designate as “Highly Confidential—Attorney’s Eyes Only” (a) any non-public personal information or (b) any Confidential Material that a Producing Party reasonably and in good faith believes to be sensitive confidential and/or proprietary information, the disclosure of which, even if limited to those permitted to receive Confidential Material permitted under this Order, would compromise and/or jeopardize the Producing Party’s business interests (“Highly Confidential--Attorney’s Eyes Only Material”).

4. Designation of Highly Confidential—Outside Counsel Eyes Only Material.

The Producing Party may designate as “Highly Confidential--Outside Counsel Eyes Only” (a) any non-public personal information of a highly sensitive nature or (b) any Confidential or Highly Confidential—Attorney’s Eyes Only Material that a Producing Party reasonably and in good faith believes to be information that would reveal a trade secret, proprietary formula or process, or non-public financial, competitively sensitive commercial, or strategic information, the disclosure of which, even if limited to those permitted to receive Highly Confidential—Attorney’s Eyes Only Material permitted under this Order, would put the Producing Party’s business interests at substantial risk of serious harm (“Highly Confidential—Outside Counsel Eyes Only Material”). This category is intended to be reserved for the most sensitive type of competitive information.

5. Production of Documents and Other Material Containing Confidential, Highly Confidential—Attorney’s Eyes Only, or Highly Confidential—

Outside Counsel Eyes Only Material. The designation of Confidential Material, Highly Confidential—Attorney’s Eyes Only, or Highly Confidential—Outside Counsel Eyes Only Material for the purposes of this Protective Order shall be made in the following manner:

- (a) In the case of documents produced in discovery (including electronic documents produced in TIFF or PDF form), by marking each page containing any Confidential Material with the word “Confidential,” by marking each page containing any Highly Confidential—Attorney’s Eyes Only Material

with the words “Highly Confidential—Attorney’s Eyes Only,” and by marking each page containing any Highly Confidential—Outside Counsel Eyes Only Material with the words “Highly Confidential—Outside Counsel Eyes Only.”

- (b) In the case of written discovery responses, by marking with the appropriate designation both (i) the first or cover page and (ii) each page containing Confidential, Highly Confidential—Attorney’s Eyes Only Material, or Highly Confidential—Outside Counsel Eyes Only.
- (c) In the case of electronically stored information in any form (“Electronic Data”), by designating the Electronic Data as Confidential, Highly Confidential—Attorney’s Eyes Only, or Highly Confidential—Outside Counsel Eyes Only in a cover letter accompanying the production of the Electronic Data. Where feasible, counsel for the Producing Party will also mark the disk, tape or other electronic media on which the Electronic Data is produced with the appropriate designation. If a Party reduces Confidential, Highly Confidential—Attorney’s Eyes Only, or Highly Confidential—Outside Counsel Eyes Only Electronic Data to hardcopy form, it shall mark the hardcopy with the appropriate designation. Whenever any Confidential, Highly Confidential—Attorney’s Eyes Only, or Highly Confidential—

Outside Counsel Eyes Only Electronic Data is copied, all copies shall be marked with the appropriate designation.

- (d) In the case of depositions or other pretrial testimony: (i) by a statement on the record, by counsel, at the time of such disclosure, or (ii) by written notice sent to all counsel of record for the Parties within fifteen business days after receipt of the transcript of the deposition unless the parties agree to an extension of this time period for designation. All transcripts shall be considered Highly Confidential—Outside Counsel Eyes Only and subject to this Protective Order until expiration of that fifteen-day period. Any testimony designated Confidential, Highly Confidential—Attorney’s Eyes Only, or Highly Confidential—Outside Counsel Eyes Only shall be marked and treated in the same manner as documents covered by this Protective Order. All videotapes of depositions shall be clearly labeled Confidential, Highly Confidential—Attorney’s Eyes Only, or Highly Confidential—Outside Counsel Eyes Only, as appropriate pursuant to this Protective Order.
- (e) No confidentiality designations need be made for documents made available for inspection and copying. If the inspecting Party selects any documents for copying, the Producing Party shall, as appropriate, mark the copies as Confidential, Highly Confidential—Attorney’s Eyes Only, or Highly Confidential—Outside Counsel Eyes Only in the manner set forth in subparagraph (a) before producing them to the inspecting Party. During the time between the initial inspection and the production of copies of specified

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