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.	)	1:20-CV-442
DAIRY FARMERS OF AMERICA, INC.,	)	
Defendant.	)	

ORDER

This matter is before the Court upon Defendant Dairy Farmers of America, Inc.'s ("DFA") Motion for Protective Order as to Plaintiffs' Second Requests for Production of Documents. (Docket Entry 52.) For the reasons stated herein, the Court grants in part and denies in part Defendant's motion for a protective order and orders Defendant to respond to Plaintiffs' requests for production as set forth below.

I. BACKGROUND

Food Lion and MDVA filed this action against DFA seeking injunctive relief pursuant to Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 2 of the Sherman Act, 15 U.S.C. § 2. (*See generally* Compl., Docket Entry 1.) Plaintiff Food Lion is a North Carolina limited liability company that operates approximately 600 supermarkets in the Carolinas, making it one of the largest retail purchasers of fluid milk in the region. (Compl. ¶ 1.) Plaintiff MDVA is a dairy cooperative with approximately 950 member farms throughout the Mid-Atlantic and Southeast. (*Id.* ¶ 2.) Defendant DFA is the largest dairy cooperative in the United States, and

as of May 2020, the largest milk producer and largest milk processor in the United States. (*Id.* ¶¶ 3, 95.) Food Lion and MDVA allege that DFA has engaged in anti-competitive conduct that will enable the monopolization of the dairy supply chain. (*See id.* ¶¶ 135-37.) More specifically, Plaintiffs contend that DFA consolidated the dairy industry through the enforcement of a twenty-year non-compete deal (the "Side Note") made in 2001 with the newly merged Dean Foods Company and subsequent supply agreements. (*Id.* ¶¶ 39-49.) Plaintiffs allege that the most recent manifestation of DFA's market consolidation is its May 1, 2020 acquisition of forty-four milk processing plants from Dean's bankruptcy estate ("Asset Sale"), including three plants in the Carolinas. (*Id.* ¶¶ 86-96.) Food Lion and MDVA seek an injunction requiring DFA to divest at least one of these plants. (*Id.* ¶ 173.)

Food Lion and MDVA filed their Complaint on May 19, 2020. (Docket Entry 1.) They then filed a motion to expedite discovery, which the Court granted. (Docket Entries 20, 28.) Food Lion and MDVA served Plaintiffs' First Set of Requests for Production on June 17, 2020. (Ex. 1, Docket Entry 56-1.) Food Lion and MDVA served their Combined Second Set of Requests for Production on July 27, 2020. (Ex. 1, Docket Entry 53-1.) Defendant filed its Motion for Protective Order as to Plaintiffs' Second Requests for Production of Documents on September 1, 2020. (Docket Entry 52.)

II. DISCUSSION

Federal Rule 26 provides general rules regarding the scope of discovery:

> Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

> Information within this scope of discovery need not be admissible in evidence to be discoverable.

Fed. R. Civ. P. 26(b)(1). Discovery rules are to be accorded broad and liberal construction. *See Herbert v. Lando,* 441 U.S. 153, 177 (1979); *Hickman v. Taylor,* 329 U.S. 495, 507 (1947). Nevertheless, upon a showing of good cause, a court may "issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c)(1). "Normally, in determining good cause, a court will balance the interest of a party in obtaining the information versus the interest of his opponent in keeping the information confidential or in not requiring its production." *UAI Tech., Inc. v. Valutech, Inc.*, 122 F.R.D. 188, 191 (M.D.N.C. 1988) (citation omitted).

Defendant seeks a protective order from this Court providing that DFA need not respond to Plaintiffs Requests for Production Nos. 25, 26, 27, 29, 31, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50. (Docket Entry 52 at 1.)[1] Defendant asserts that these sixteen requests are overbroad, unduly burdensome, lacking in relevance, and/or disproportionate to the needs of this case. The Court notes at the outset that Plaintiffs have acknowledged that they "bear a significant responsibility for preparing narrow, targeted discovery" considering the expedited discovery schedule that they have requested. (Docket Entry 29 at 29:12-22.) Federal Rule 34 further requires that requests for production "describe with reasonable particularity each item or category of items to be inspected" so that the party to whom the request is directed has "sufficient information . . . to identify responsive documents." Fed. R. Civ. P. 34(b)(1)(A); *Hager v. Graham*, 267 F.R.D. 486, 493 (N.D.W. Va. 2010). Having set forth fundamental

[1] All citations in this Order to documents filed with the Court refer to the page numbers located at the bottom right-hand corner of the documents as they appear on CM/ECF.

principles of discovery and the discovery timeline in this case, the court finds the following as to each request:

Request No. 25

> Request No. 25 seeks:
>
> All documents created since January 1, 2014, concerning or relating to any analyses, studies, strategies, plans, assessments, or reports relating to the supply, sale, or purchase of raw or processed milk in, into, or from the Relevant Area.

(Ex. 1, Docket Entry 53-1 at 13.) DFA contends that this request is overbroad, disproportionate, and improper because it asks for "all documents . . . concerning or relating to" the subject matter. (Docket Entry 54 at 18, citing *Donnelly v. Arringdon Dev., Inc*, No. 1:04CV889, 2005 WL 8167556, at *1 (M.D.N.C. Nov. 8, 2005) (unpublished).) Defendants also challenge the relevance of documents prior to 2017, alleging that Plaintiffs have failed to explain "why or how analyses of market conditions or market shares from 2014 are probative of the markets for raw and processed milk *as they exist today*." (*Id.* (emphasis in original).)

The documents are certainly relevant because Plaintiffs allege that the Asset Sale "was simply the latest action in DFA's multi-year anticompetitive campaign to monopolize the milk supply chain in the relevant market." (Docket Entry 60 at 5-6; *see also* Compl. ¶¶ 165-66.) The year 2014 is relevant as the year in which Dean allegedly notified MDVA that it would be replacing its milk volume with DFA's pursuant to the Side Note. (Compl. ¶¶ 59-62.)

With regard to the breadth of the request, however, in *Donnelly*, this Court held that requests seeking "all documents identified or relied upon in response to [the d]efendant's interrogatories" and any photo "concerning the events and happening alleged in the complaint" were overbroad. 2005 WL 8167556, at *2. The applicable principle from *Donnelly*

is that "broad and undirected requests for all documents which relate in any way to the complaint [should be] stricken as too ambiguous." *Id.* at *2 n.1 (citing *Parsons v. Jefferson-Pilot Corp.*, 141 F.R.D. 408, 412 (M.D.N.C. 1992)). In other words, for a request to meet Rule 34's mandate, it must not be "so open-ended as to call simply for documents related to a claim or defense in this action." Fed. R. Civ. P. 34(b)(1)(A); *Parsons*, 141 F.R.D. at 412. "This test, however, is a matter of degree depending on the circumstances of the case. *Hager*, 267 F.R.D. at 493.

Here, and as compared to *Donnelly*, Plaintiffs request a specific genre of document: those concerning analyses, studies, strategies, plans, assessments, or reports. Accordingly, and contrary to Defendant's arguments, the request is not overly broad merely by requesting "[a]ll documents." It is, however, overbroad as it seeks any such documents "relating to the supply, sale, or purchase of raw or processed milk in, into, or from the Relevant Area." Given that this entire case, and certainly all of DFA's business, involves the supply, sale or purchase of raw or processed milk, this request is effectively a request for all materials "in any way concerning the events and happenings alleged in the complaint." *Donnelly*, 2005 WL 8167556, at *2. Accordingly, Defendant's protective order is granted as to Request No. 25.

Request No. 26

Request No. 26 seeks:

> All documents created since January 1, 2014, concerning or relating to any analyses, studies, strategies, plans, assessments, or reports concerning market conditions, market participants, market shares, or competitors in the production, processing, or sale of raw milk or processed milk in, into, or from the Relevant Area.

(Ex. 1, Docket Entry 53-1 at 13.) Defendant argues that this request, like No. 25, is overbroad, disproportionate, and improperly requests "all documents . . . concerning or relating to" the

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