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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

ALETA LILLY, on behalf of herself and
all others similarly situated,

Plaintiff,

vs.

CONAGRA FOODS, INC., a Delaware
corporation,

Defendant.

Case No.:

CV12-0225-RGK (SHx)

**STIPULATED CONFIDENTIALITY
AND PROTECTIVE ORDER**

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GOOD CAUSE STATEMENT

WHEREAS, discovery in this action is likely to involve the exchange of confidential and commercially sensitive information, including information regarding proprietary manufacturing processes and product ingredients and formulas, economically sensitive information, personal identifying information of customers, and other competitively sensitive information within the meaning of Federal Rule of Civil Procedure 26(c);

WHEREAS, discovery in this action may involve the exchange of sensitive personal information;

WHEREAS, the Parties have agreed that it is necessary to establish procedures to facilitate the exchange of documents and information in the litigation and to minimize the need for objections or subsequent motions seeking to limit discovery and/or the use of this information, and to facilitate the disposition by this Court of any disputes or problems that may arise in connection with discovery or other use of this information;

WHEREAS, the Parties believe that entry of a protective order pursuant to Federal Rule of Civil Procedure 26(c) would best protect their interests while facilitating discovery in this action; and

WHEREAS, good cause therefore exists under Rule 26(c) of the Federal Rules of Civil Procedure for entry of this Protective Order.

IT IS HEREBY ORDERED as follows by this Court:

The following procedures shall govern the production and exchange of all documents, testimony, interrogatories and responses thereto, and other information produced, given, or exchanged by and among all parties, including third parties subject to discovery in this Action:

1 **I. PURPOSE AND SCOPE**

2 Discovery in this Action may involve disclosure of confidential and
3 constitutionally protected private, business, and financial information. This protective
4 order ("Protective Order") therefore is entered into pursuant to Federal Rule of Civil
5 Procedure 26(c) to protect against unauthorized disclosure of such information, which
6 would cause serious and irreparable harm to the producing party or witness, and to
7 ensure that such information will be used only for purposes of this Action.

8 **II. DESIGNATION OF CONFIDENTIAL INFORMATION**

9 1. Any party to this litigation and any third-party shall have the right to
10 designate as "Confidential" and subject to this Order any information, document, or
11 thing, or portion of any document or thing: (a) that contains trade secrets, competitively
12 sensitive technical, marketing, financial, sales or other confidential business
13 information, or (b) that contains private or confidential personal information, or (c) that
14 contains information received in confidence from third parties, or (d) which the
15 producing party otherwise believes in good faith to be entitled to protection under Rule
16 26(c)(1)(G) of the Federal Rules of Civil Procedure and Local Civil Rule 79-5. Any
17 party to this litigation or any third party covered by this Order, who produces or
18 discloses any Confidential Material, including without limitation any information,
19 document, thing, interrogatory answer, admission, pleading, or testimony, shall mark
20 the same with the foregoing or similar legend: "CONFIDENTIAL" or
21 "CONFIDENTIAL — SUBJECT TO DISCOVERY CONFIDENTIALITY ORDER"
22 (hereinafter "Confidential Material").

23 2. Any party to this litigation and any third-party shall have the right to
24 designate as "Attorneys' Eyes Only" and subject to this Order any information,
25 document, or thing, or portion of any document or thing that contains extremely
26 sensitive business or personal information, the disclosure of which is extremely likely
27 to cause significant harm to an individual or to the business or competitive position of
28 the designating party. Any party to this litigation or any third party who is covered by

1 this Order, who produces or discloses any Attorneys' Eyes Only material, including
2 without limitation any information, document, thing, interrogatory answer, declaration,
3 admission, pleading, or testimony, shall mark the same with the foregoing or similar
4 legend: "ATTORNEYS' EYES ONLY" or "ATTORNEYS' EYES ONLY — SUBJECT
5 TO DISCOVERY CONFIDENTIALITY ORDER" (hereinafter "Attorneys' Eyes Only
6 Material").

7 3. Each party or Non-Party that designates information or items for
8 protection under this Order must take care to limit any such designation to specific
9 material that qualifies under the appropriate standards. The Designating Party must
10 designate for protection only those parts of material, documents, items or oral or
11 written communications that qualify – so that other portions of the material, documents,
12 items or communications for which protection is not warranted are not swept
13 unjustifiably within the ambit of this Order. Mass indiscriminate, or routinized
14 designations are prohibited. Designations that are shown to be clearly unjustified or
15 that have been made for an improper purpose (e.g., to unnecessarily encumber or retard
16 the case development process or to impose unnecessary expenses and burdens on other
17 parties) expose the Designating Party to sanctions. If it comes to a Designating Party's
18 attention that information or items that it designated for protection do not qualify for
19 protection, that Designating Party must promptly notify all other parties that it is
20 withdrawing the mistaken designation.

21 **III. USE OF CONFIDENTIAL MATERIAL AND NONDISCLOSURE**

22 1. All Confidential Material shall be used by the receiving party solely for
23 purposes of the prosecution or defense of this Action, shall not be used by the receiving
24 party for any business, commercial, competitive, personal or other purpose, and shall
25 not be disclosed by the receiving party to anyone other than those set forth in Paragraph
26 2 of this Section, unless and until the restrictions herein are removed either by written
27 agreement of counsel for the parties, or by Order of the Court. It is, however,
28 understood that counsel for a party may give advice and opinions to his or her client

1 solely relating to the above-captioned Action based on his or her evaluation of
2 Confidential Material, provided that such advice and opinions shall not reveal the
3 content of such Confidential Material except by prior written agreement of counsel for
4 the parties, or by Order of the Court.

5 2. Confidential Material and the contents of Confidential Material may be
6 disclosed only to the following individuals under the following conditions:

7 a. Outside counsel (herein defined as any attorney at the parties' outside
8 law firms) and relevant in-house counsel for the parties;

9 b. Outside experts or consultants retained by outside counsel for purposes
10 of this Action, provided they have signed a non-disclosure agreement in the form
11 attached hereto and incorporated herein as Exhibit A;

12 c. Secretarial, paralegal, clerical, duplicating and data processing
13 personnel of the foregoing;

14 d. The Court and court personnel;

15 e. Any deponent may be shown or examined on any information,
16 document or thing designated Confidential if it appears that the witness authored or
17 received a copy of it, was involved in the subject matter described therein or is
18 employed by the party who produced the information, document or thing, or if the
19 producing party consents to such disclosure;

20 f. Vendors retained by or for the parties to assist in preparing for pretrial
21 discovery, trial and/or hearings including, but not limited to, court reporters, litigation
22 support personnel, jury consultants, individuals to prepare demonstrative and
23 audiovisual aids for use in the courtroom or in depositions or mock jury sessions, as
24 well as their staff, stenographic, and clerical employees whose duties and
25 responsibilities require access to such materials; and

26 g. The parties.

27 3. Confidential Material received by a party in this Action shall be used
28 only by individuals permitted access to it under Paragraph 2 of this Section.

1 Confidential Material, copies thereof, and the information contained therein, shall not
2 be disclosed in any manner to any other individual, until and unless (a) outside counsel
3 for the party asserting confidentiality waives the claim of confidentiality, or (b) the
4 Court orders such disclosure.

5 4. With respect to any depositions that involve a disclosure of Confidential
6 Material of a party to this Action, such party shall have until thirty (30) days after
7 receipt of the deposition transcript within which to inform all other parties that portions
8 of the transcript are to be designated Confidential, which period may be extended by
9 agreement of the parties. No such deposition transcript shall be disclosed to any
10 individual other than the individuals described in Paragraph 2(a), (b), (c), (d) and (f)
11 above and the deponent during these thirty (30) days, and no individual attending such
12 a deposition shall disclose the contents of the deposition to any individual other than
13 those described in Paragraph 2(a), (b), (c), (d) and (f) above during said thirty (30)
14 days. Upon being informed that certain portions of a deposition are to be designated as
15 Confidential, all parties shall immediately cause each copy of the transcript in its
16 custody or control to be appropriately marked and limit disclosure of that transcript in
17 accordance with Paragraphs 3 and 4.

18 5. Material produced and marked as Attorneys' Eyes Only may be
19 disclosed only to:

20 (a) Outside counsel for the receiving party (herein defined as any attorney at the
21 parties' outside law firms) and relevant in-house counsel for the parties;

22 (b) Outside experts or consultants of the receiving party (i) to whom disclosure
23 is reasonably necessary for this litigation, (ii) who have signed the "Certification RE
24 Confidential Discovery Materials" (Exhibit A), (iii) who have never been employed by,
25 and are not currently employed or performing non-litigation consulting with, any
26 competitors of a party, and (iv) who at the time of executing the "Certification RE
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1 Confidential Discovery Materials,” have no intention of being employed or performing
2 non-litigation consulting with any competitors of a party¹;

3 (c) The court and its personnel;

4 (d) Court reporters and their staff, professional jury or trial consultants, and
5 Professional vendors to whom disclosure is reasonably necessary for this litigation and
6 who have signed the “Certification RE Confidential Discovery Materials”;

7 (e) a witness testifying on behalf of, or employed by, the producing party, the
8 author or recipient of a document containing the information or a custodian or other
9 person who otherwise possessed or knew the information; and

10 (f) Such other persons as counsel for the producing party agrees in advance or as
11 Ordered by the Court.

12 6. To the extent that any portions of a deposition are to be designated as
13 Attorneys' Eyes Only, all parties shall immediately cause each copy of the transcript in
14 its custody or control to be appropriately marked and limit disclosure of that transcript
15 in accordance with this Order.

16 7. If counsel for a party receiving documents or information designated as
17 Confidential or Attorneys' Eyes Only hereunder objects to such designation of any or
18 all of such items, the following procedure shall apply:

19 a. Counsel for the objecting party shall serve on the designating party or
20 third party a written objection to such designation, which shall identify the documents
21 or information in question. Counsel for the designating party or third party shall
22 respond in writing to such objection within ten (10) days, and shall state with
23 particularity the grounds for asserting that the document or information is Confidential
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25 ¹ Defendant has identified five brands to Plaintiff's Counsel on April 9, 2014, and
26 four related companies on April 10, 2014. It in good faith considers those brands
27 and those companies competitors for the purposes of this Order's provisions. This
28 list shall not be expanded absent written agreement by the Parties or by Order of the
Court.

1 or Attorneys' Eyes Only. If no timely written response is made to the objection, the
2 Confidential or Attorneys' Eyes Only designation will be deemed to be void. If the
3 designating party or nonparty makes a timely response to such objection asserting the
4 propriety of the designation, counsel shall then confer in good faith in an effort to
5 resolve the dispute.

6 b. If a dispute as to a Confidential or Attorneys' Eyes Only designation of a
7 document or item of information cannot be resolved by agreement, the proponent of the
8 designation being challenged shall present the dispute in accordance with the
9 procedures relating to resolution of discovery disputes as set forth in the Federal Rules
10 of Civil Procedure, the Local Rules for the United States District Court for the Central
11 District of California, and the Standing Orders of Judge R. Gary Klausner. The
12 document or information that is the subject of the filing shall be treated as originally
13 designated pending resolution of the dispute.

14 8. Materials designated as Confidential or Attorneys' Eyes Only may be
15 referred to in written discovery requests and responses and in motions, briefs, or other
16 papers filed with the Court, and may be used in depositions, either as exhibits or as the
17 basis for questions. The party filing in the public record the motion, brief, or other
18 paper with the Court shall redact or otherwise exclude from the filing any Confidential
19 or Attorneys' Eyes Only information. Any motion, brief, or other paper filed with the
20 Court referring to the Confidential or Attorneys' Eyes Only information, or any
21 document or paper that contains Confidential or Attorneys' Eyes Only information,
22 which has not been redacted, shall be filed in the manner prescribed by this Court's
23 Local Rules, as follows:

24 "[A] written application and a proposed order shall be presented to the judge
25 along with the document submitted for filing under seal or in camera. The
26 proposed order shall address the sealing of the application and order itself, if
27 appropriate. The original and judge's copy of the document shall be sealed in
28 separate envelopes with a copy of the title page attached to the front of each

1 envelope. Conformed copies need not be placed in sealed envelopes...
2 Applications and proposed orders to seal..., along with the material to be
3 sealed..., shall not be electronically filed but shall be presented to the Clerk for
4 filing in paper format, in the manner prescribed by Local Rule 79-5. . . . [A]
5 Notice of Manual Filing shall first be electronically filed identifying the
6 materials being manually filed. A copy of the Notice of Manual Filing, together
7 with its NEF (see L.R. 5-3.2.1), shall be presented with the documents presented
8 for filing.”

9 C.D. Cal. Local Rule 79-5.1.

10 9. If the need arises during trial or at any hearing before the Court for any
11 party to disclose Confidential or Attorneys' Eyes Only information, it may do so only
12 after giving notice to the producing party and as directed by the Court.

13 10. To the extent consistent with applicable law, the inadvertent or
14 unintentional disclosure of Confidential Material or of Attorneys' Eyes Only Material
15 that should have been designated as such, regardless of whether the information,
16 document or thing was so designated at the time of disclosure, shall not be deemed a
17 waiver in whole or in part of a party's claim of confidentiality, either as to the specific
18 information, document or thing disclosed or as to any other material or information
19 concerning the same or related subject matter. Such inadvertent or unintentional
20 disclosure may be rectified by notifying in writing counsel for all parties to whom the
21 material was disclosed that the material should have been designated Confidential or
22 Attorneys' Eyes only within a reasonable time after disclosure. Such notice shall
23 constitute a designation of the information, document or thing as Confidential Material
24 or Attorneys' Eyes Only Material under this Protective Order.

25 11. When the inadvertent or mistaken disclosure of any information,
26 document or thing protected by privilege or work-product immunity is discovered by
27 the producing party and brought to the attention of the receiving party, the receiving
28 party's treatment of such material shall be in accordance with Federal Rule of Civil

1 Procedure 26. Such inadvertent or mistaken disclosure of such information, document
2 or thing shall not constitute a waiver by the producing party of any claims of privilege
3 or work-product immunity. However, nothing herein restricts the right of the receiving
4 party to challenge the producing party's claim of privilege if appropriate within a
5 reasonable time after receiving notice of the inadvertent or mistaken disclosure.

6 **IV. NON-CONFIDENTIAL INFORMATION**

7 1. No information that is in the public domain or which is already known
8 by the receiving party through proper means or which is or becomes available to a party
9 from a source other than the party asserting confidentiality, rightfully in possession of
10 such information on a non-confidential basis, shall be deemed or considered to be
11 Confidential Material or Attorneys' Eyes Only Material under this Protective Order.

12 2. This Protective Order shall not deprive any party of its right to object to
13 discovery by any other party or on any otherwise permitted ground.

14 **V. TERMINATION OF ACTION AND RETURN OF INFORMATION**

15 1. This Protective Order shall survive the termination of this Action and
16 shall remain in full force and effect unless modified by an Order of this Court or by the
17 written stipulation of the parties filed with the Court.

18 2. Within 120 days after final conclusion of this litigation, each party or
19 other individual subject to the terms hereof shall be under an obligation to certify,
20 under oath, that they have either returned to opposing counsel or destroyed all originals
21 and unmarked copies of documents and things containing Confidential Material and
22 Attorneys' Eyes only Material and to destroy, should such source so request, all copies
23 of Confidential Material and Attorneys' Eyes only Material that contain and/or
24 constitute attorney work product as well as excerpts, summaries and digests revealing
25 Confidential Material and Attorneys' Eyes Only Information; provided, however, that
26 counsel may retain complete copies of all transcripts and pleadings including any
27 exhibits attached thereto for archival purposes, subject to the provisions of this
28 Protective Order. To the extent a party requests the return of Confidential Material and

1 Attorneys' Eyes Only Information from the Court after the final conclusion of the
2 litigation, including the exhaustion of all appeals therefrom and all related proceedings,
3 the party shall file a motion seeking such relief.


4 **VI. MISCELLANEOUS**

5 1. Nothing in this Order abridges the right of any person to seek its
6 modification by the Court in the future.

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Done and Ordered this ⁴~~5~~ day of April, 2014.


The Honorable ~~██████████~~
U.S. ~~██████████~~ Judge Stephen J. Hillman
Magistrate

Accepted and agreed:

Dated: April 4, 2014

FINKELSTEIN THOMPSON LLP

By: /s/Rosemary M. Rivas

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Dated: April 4, 2014

YOKA & SMITH, LLP

By: /s/Alice Chen Smith

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Attorneys for Defendant,
ConAgra Foods, Inc.

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I declare under penalty of perjury, under the laws of the State of California and the United States of America, that the foregoing is true and correct. Executed this _____ day of _____, 20__, at _____.

DATED: _____ BY: _____

Signature

Title

Address

City, State, Zip

Telephone Number

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PROOF OF SERVICE
ALETA LILLY v. CONAGRA FOODS, INC.
USDC Case No.: CV12-0225-RGK (SHx)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 445 South Figueroa St., 38th Floor, Los Angeles, California 90071.

On April 10, 2014, I served the foregoing document(s) described as **STIPULATED CONFIDENTIALITY AND PROTECTIVE ORDER** on the interested party or parties in this action by placing [] the original and/or [X] a true copy thereof, enclosed in a sealed envelope, and addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

[] (BY E-MAIL) I caused such attachments to be delivered by e-mail on April 10, 2014, to the offices of the addressees.


[X] (BY E-FILING) (USDC) I caused such document to be sent electronically to the court; electronic filing constitutes service upon the parties who have consented to electronic service.

[] (BY FACSIMILE) I sent this document via facsimile, number(s) as listed on the mailing list above, on _____.

[] (BY MAIL) I deposited such envelope via U.S. Postal Service in Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 10, 2014, at Los Angeles, California.



Diana Calle

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PROOF OF SERVICE
ALETA LILLY v. CONAGRA FOODS, INC.
USDC Case No.: CV12-0225-RGK (SHx)

MISC.33028

SERVICE LIST

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