

1 Joseph J. Tabacco, Jr. (SBN 75484)  
Christopher T. Heffelfinger (SBN 118058)  
2 Anthony D. Phillips (SBN 259688)  
**BERMAN DeVALERIO**  
3 One California Street, Suite 900  
San Francisco, CA 94111  
4 Telephone: (415) 433-3200  
Facsimile: (415) 433-6382  
5 Email: jtabacco@bermandevalerio.com  
cheffelfinger@bermandevalerio.com  
6 aphillips@bermandevalerio.com

7 [Additional Counsel Listed on Signature Page]  
8 *Counsel for Plaintiffs and the Proposed Class*

9  
10 **UNITED STATES DISTRICT COURT**  
11 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

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13 GERALD CARLIN, JOHN RAHM, PAUL  
14 ROZWADOWSKI and BRYAN WOLFE,  
individually and on behalf of themselves  
15 and all others similarly situated,  
16  
Plaintiffs,  
17  
v.  
18 DAIRYAMERICA, INC. and  
CALIFORNIA DAIRIES, INC.,  
19  
Defendants.

Case No. 1:09 CV 00430-AWI GSA  
**STIPULATED PROTECTIVE ORDER**  
**CLASS ACTION**  
**(Doc. 126)**

1  
2 1. PURPOSES AND LIMITATIONS

3 Disclosure and discovery activity in this action are likely to involve production of  
4 confidential, proprietary, or private information for which special protection from public  
5 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
6 Such information may include, but is not limited to, proprietary business information and trade  
7 secrets or other confidential research or commercial information within the meaning of Fed. R.  
8 Civ. P. 26(c). Public disclosure of such information would expose the Designating Party (as  
9 defined below) to undue competitive disadvantage.

10 The parties request entry of a Court order because these provisions will streamline the  
11 exchange of confidential information and will streamline the prosecution of this litigation.  
12 Additionally, this Stipulated Protective Order provides for judicial intervention in the event the  
13 Parties cannot resolve their disputes about confidentiality designations and because it  
14 contemplates the disclosure of confidential information by and to third parties and establishes a  
15 protocol for doing so.

16 Accordingly, the parties hereby stipulate to and petition the court to enter the following  
17 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket  
18 protections on all disclosures or responses to discovery and that the protection it affords from  
19 public disclosure and use extends only to the limited information or items that are entitled to  
20 confidential treatment under the applicable legal principles. The parties further acknowledge, as  
21 set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to  
22 file confidential information under seal; Civil Local Rule 141 sets forth the procedures that must  
23 be followed and the standards that will be applied when a party seeks permission from the court  
24 to file material under seal.

25 2. DEFINITIONS

26 2.1. Challenging Party: a Party or Non-Party that challenges the designation of  
27 information or items under this Order.  
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1           2.2.   “CONFIDENTIAL” Information or Items: information (regardless of how it is  
2 generated, stored or maintained) or tangible things that qualify for protection under standards  
3 developed under Federal Rule of Civil Procedure 26(c).

4           2.3.   Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
5 well as their support staff).

6           2.4.   Designating Party: a Party or Non-Party that designates information or items that  
7 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

8           2.5.   Disclosure or Discovery Material: all items or information, regardless of the  
9 medium or manner in which it is generated, stored, or maintained (including, among other  
10 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures  
11 or responses to discovery in this matter.

12          2.6.   Expert and/or Consultant: a person with specialized knowledge or experience in  
13 a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
14 expert witness or as a consultant in this action.

15          2.7.   House Counsel: attorneys who are employees of a party to this action. House  
16 Counsel does not include Outside Counsel of Record or any other outside counsel.

17          2.8.   Non-Party: any natural person, partnership, corporation, association, or other  
18 legal entity not named as a Party to this action.

19          2.9.   Outside Counsel of Record: attorneys who are not employees of a party to this  
20 action but are retained to represent or advise a party to this action and have appeared in this  
21 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
22 that party.

23          2.10. Party: any party to this action, including all of its officers, directors, employees,  
24 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

25          2.11. Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
26 Material in this action.

1           2.12. Professional Vendors: persons or entities that provide litigation support services  
2 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
3 organizing, storing, or retrieving data in any form or medium) and their employees and  
4 subcontractors.

5           2.13. Protected Material: any Disclosure or Discovery Material that is designated as  
6 “CONFIDENTIAL.”

7           2.14. Receiving Party: a Party that receives Disclosure or Discovery Material from a  
8 Producing Party.

9       3.     SCOPE

10           The protections conferred by this Stipulation and Order cover not only Protected  
11 Material (as defined above), but also (1) any information copied or extracted from Protected  
12 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any  
13 testimony, conversations, or presentations by Parties or their Counsel that might reveal  
14 Protected Material. However, the protections conferred by this Stipulation and Order do not  
15 cover the following information: (a) any information that is in the public domain at the time of  
16 disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a  
17 Receiving Party as a result of publication not involving a violation of this Order, including  
18 becoming part of the public record through trial or otherwise; and (b) any information known to  
19 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the  
20 disclosure from a source who obtained the information lawfully and under no obligation of  
21 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed  
22 by a separate agreement or order.

23           However, this Order shall not be construed to cause any Counsel to produce, return,  
24 and/or destroy their attorney work product, or the work product of their co-counsel.

25       4.     DURATION

26           Even after final disposition of this litigation, the confidentiality obligations imposed by  
27 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court  
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1 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all  
2 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after  
3 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this  
4 action, including the time limits for filing any motions or applications for extension of time  
5 pursuant to applicable law.

6 5. DESIGNATING PROTECTED MATERIAL

7 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party  
8 or Non-Party that designates information or items for protection under this Order must take care  
9 to limit any such designation to specific material that qualifies under the appropriate standards.  
10 The Designating Party must designate for protection only those parts of material, documents,  
11 items, or oral or written communications that qualify – so that other portions of the material,  
12 documents, items, or communications for which protection is not warranted are not swept  
13 unjustifiably within the ambit of this Order.

14 If it comes to a Designating Party’s attention that information or items that it designated  
15 for protection do not qualify for protection, that Designating Party must promptly notify all  
16 other Parties that it is withdrawing the mistaken designation.

17 5.2. Manner and Timing of Designations. Except as otherwise provided in this Order  
18 (see, e.g., second paragraph of section 5.3 below), or as otherwise stipulated or ordered,  
19 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly  
20 so designated before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic documents, but  
23 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
24 Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only  
25 a portion or portions of the material on a page qualifies for protection, the Producing Party also  
26 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
27 margins).

1 A Party or Non-Party that makes original documents or materials available for  
2 inspection may, but need not, designate them for protection until after the inspecting Party has  
3 indicated which material it would like copied and produced. During the inspection and before  
4 the designation, all of the material made available for inspection shall be deemed  
5 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied  
6 and produced, the Producing Party may determine which documents, or portions thereof,  
7 qualify for protection under this Order. Then, before producing the specified documents, the  
8 Producing Party must affix the “CONFIDENTIAL” legend to each page that contains Protected  
9 Material. If only a portion or portions of the material on a page qualifies for protection, the  
10 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate  
11 markings in the margins).

12 (b) for testimony given in deposition or in other pretrial or trial proceedings, that  
13 the Designating Party identify on the record, before the close of the deposition, hearing, or other  
14 proceeding, all protected testimony.

15 (c) for information produced in electronic, video or other forms and for any other  
16 tangible items, that the Producing Party affix in a prominent place on the exterior of the  
17 container or containers in which the information or item is stored the legend  
18 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
19 the Producing Party, to the extent practicable, shall identify the protected portion(s).

20 5.3. Inadvertent Failures to Designate. If a Party discovers that it has produced  
21 material that was not designated as Protected Material, the Producing Party may notify all  
22 Parties, in writing, of the error and identify (by Bates number or other individually identifiable  
23 information) the affected documents and their new designation. Thereafter, the material so  
24 designated will be treated as Protected Material. Promptly after providing such notice, the  
25 Producing Party shall provide re-labeled copies of the material to each Receiving Party  
26 reflecting the change in designation. The Receiving Party will replace the incorrectly  
27 designated material with the newly designated materials and will destroy the incorrectly  
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1 designated material. If timely corrected, an inadvertent failure to designate qualified  
2 information or items does not, standing alone, waive the Designating Party's right to secure  
3 protection under this Order for such material. Upon timely correction of a designation, the  
4 Receiving Party must make reasonable efforts to assure that the material is treated in accordance  
5 with the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1. Timing of Challenges. Any Party or Non-Party may challenge a designation of  
8 confidentiality at any time. A Party does not waive its right to challenge a confidentiality  
9 designation by electing not to mount a challenge promptly after the original designation is  
10 disclosed.

11 6.2. Meet and Confer. A Challenging Party who elects to initiate a challenge to a  
12 Designating Party's Confidentiality designation must do so in good faith and must begin the  
13 process by providing written notice of each designation it is challenging and describing the  
14 basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the  
15 written notice must recite that the challenge to confidentiality is being made in accordance with  
16 this specific paragraph of the Protective Order. The parties shall attempt to resolve each  
17 challenge in good faith and must begin the process by conferring directly (in voice to voice  
18 dialogue; other forms of communication are not sufficient) within 14 days of the date of service  
19 of notice. In conferring, the Challenging Party must explain the basis for its belief that the  
20 confidentiality designation was not proper and must give the Designating Party an opportunity  
21 to review the designated material, to reconsider the circumstances, and, if no change in  
22 designation is offered, to explain the basis for the chosen designation. A Challenging Party may  
23 proceed to the next stage of the challenge process only if it has engaged in this meet and confer  
24 process first or establishes that the Designating Party is unwilling to participate in the meet and  
25 confer process in a timely manner.

26 6.3. Judicial Intervention. If the Parties cannot resolve a challenge without court  
27 intervention, the Designating Party shall file and serve a motion or letter brief with the Court to  
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1 retain confidentiality under Civil Local Rule 230 within 21 days of the initial notice of  
2 challenge or within 14 days of the parties agreeing that the meet and confer process will not  
3 resolve their dispute, whichever is earlier, or otherwise by stipulation. Each such motion must  
4 be accompanied by a competent declaration affirming that the movant has complied with the  
5 meet and confer requirements imposed in the preceding paragraph. Failure by the Designating  
6 Party to make such a motion including the required declaration within 21 days (or 14 days, if  
7 applicable) shall, unless otherwise agreed by stipulation, automatically waive the confidentiality  
8 designation for each challenged designation. In addition, the Challenging Party may file a  
9 motion challenging a confidentiality designation at any time if there is good cause for doing so,  
10 including a challenge to the designation of a deposition transcript or any portions thereof. Any  
11 motion brought pursuant to this provision must be accompanied by a competent declaration  
12 affirming that the movant has complied with the meet and confer requirements imposed by the  
13 preceding paragraph.

14 The burden of persuasion in any such challenge proceeding shall be on the Designating  
15 Party. During the pendency of the meet and confer and motion practice, all parties shall  
16 continue to afford the material in question the level of protection to which it is entitled under the  
17 Producing Party's designation until the court rules on the challenge.

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

19 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed  
20 or produced by another Party or by a Non-Party in connection with this case only for  
21 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
22 disclosed only to the categories of persons and under the conditions described in this Order.  
23 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
24 section 13 below (FINAL DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party at a location and  
26 in a secure manner that ensures that access is limited to the persons authorized under this Order.



1           7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
3 disclose any information or item designated “CONFIDENTIAL” only to:

4           (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
6 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
7 Bound” that is attached hereto as Exhibit A;

8           (b) the officers, directors, and employees (including House Counsel) of the  
9 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
10 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11           (c) Experts and/or Consultants (as defined in this Order) of the Receiving Party  
12 to whom disclosure is reasonably necessary for this litigation and who have signed the  
13 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14           (d) the court and its personnel;

15           (e) court reporters and their staff, professional jury or trial consultants, mock  
16 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation  
17 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18           (f) during their depositions, witnesses in the action to whom disclosure is  
19 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
20 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
21 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must  
22 be separately bound by the court reporter and may not be disclosed to anyone except as  
23 permitted under this Stipulated Protective Order.

24           (g) the author or recipient of a document containing the information or a  
25 custodian or other person who otherwise possessed or knew the information.

26           (h) any other person to whom the Designating party agrees in writing or on the  
27 record, and any other person to whom the Court compels access to the Confidential Information.  
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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
2 LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation that  
4 compels disclosure of any information or items designated in this action as  
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification shall  
7 include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to  
9 issue in the other litigation that some or all of the material covered by the subpoena or order is  
10 subject to this Protective Order. Such notification shall include a copy of this Stipulated  
11 Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
13 the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with the  
15 subpoena or court order shall not produce any information designated in this action as  
16 “CONFIDENTIAL” before a determination by the court from which the subpoena or order  
17 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party  
18 shall bear the burden and expense of seeking protection in that court of its confidential material  
19 – and nothing in these provisions should be construed as authorizing or encouraging a  
20 Receiving Party in this action to disobey a lawful directive from another court.

21 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN  
22 THIS LITIGATION

23 (a) The terms of this Order are applicable to information produced by a Non-  
24 Party in this action and designated as “CONFIDENTIAL.” Such information produced by Non-  
25 Parties in connection with this litigation is protected by the remedies and relief provided by this  
26 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking  
27 additional protections.  
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1 (b) In the event that a Party is required, by a valid discovery request, to produce a  
2 Non-Party's confidential information in its possession, and the Party is subject to an agreement  
3 with the Non-Party not to produce the Non-Party's confidential information, then the Party  
4 shall:

5 (1) promptly notify in writing the Requesting Party and the Non-Party  
6 that some or all of the information requested is subject to a confidentiality agreement with a  
7 Non-Party;

8 (2) promptly provide the Non-Party with a copy of the Stipulated  
9 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific  
10 description of the information requested; and

11 (3) make the information requested available for inspection by the Non-  
12 Party.

13 (c) If the Non-Party fails to object or seek a protective order from this court  
14 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
15 produce the Non-Party's confidential information responsive to the discovery request. If the  
16 Non-Party timely seeks a protective order, the Receiving Party shall not produce any  
17 information in its possession or control that is subject to the confidentiality agreement with the  
18 Non-Party before a determination by the court.<sup>1</sup> Absent a  
19 court order to the contrary, the Non-Party shall bear the burden and expense of seeking  
20 protection in this  
21 court of its Protected Material.

22 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
24 Material to any person or in any circumstance not authorized under this Stipulated Protective  
25 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the

26 \_\_\_\_\_  
27 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality  
interests in this court.

1 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
2 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
3 made of all the terms of this Order, and (d) request such person or persons to execute the  
4 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
6 MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
8 produced material is subject to a claim of privilege or other protection, the obligations of the  
9 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
10 provision is not intended to modify whatever procedure may be established in an e-discovery  
11 order that provides for production without prior privilege review. Pursuant to Federal Rule of  
12 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of  
13 a communication or information covered by the attorney-client privilege or work product  
14 protection, the parties may incorporate their agreement in the stipulated protective order  
15 submitted to the court.

16 12. MISCELLANEOUS

17 12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to  
18 seek its modification by the court in the future.

19 12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective  
20 Order no Party waives any right it otherwise would have to object to disclosing or producing  
21 any information or item on any ground not addressed in this Stipulated Protective Order.  
22 Similarly, no Party waives any right to object on any ground to use in evidence of any of the  
23 material covered by this Protective Order.

24 13. Filing Protected Material. Without written permission from the Designating  
25 Party or a court order secured after appropriate notice to all interested persons, a Party may not  
26 file in the public record in this action any Protected Material. A Party that seeks to file under  
27 seal any Protected Material must comply with General Rule 141. Protected Material may only  
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1 be filed under seal pursuant to a written court order, made upon the showing required by  
2 applicable law, authorizing the sealing of the specific Protected Material at issue.

3 14. FINAL DISPOSITION

4 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
5 Receiving Party must return all Protected Material to the Producing Party or destroy such  
6 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,  
7 compilations, summaries, and any other format reproducing or capturing any of the Protected  
8 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
9 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
10 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all  
11 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party  
12 has not retained any copies, abstracts, compilations, summaries or any other format reproducing  
13 or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled  
14 to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
15 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports,  
16 attorney work product, and consultant and expert work product, even if such materials contain  
17 Protected Material. Any such archival copies that contain or constitute Protected Material  
18 remain subject to this Protective Order as set forth in Section 4 (DURATION).

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: April 26, 2013

Respectfully submitted,

**BERMAN DeVALERIO**

By: /s/ Anthony D. Phillips  
Anthony D. Phillips

Joseph J. Tabacco, Jr.  
Christopher T. Heffelfinger  
One California Street, Suite 900  
San Francisco, CA 94104  
Telephone: (415) 433-3200  
Facsimile: (415) 433-6382  
Email: jtabacco@bermandevalerio.com  
cheffelfinger@bermandevalerio.com  
aphillips@bermandevalerio.com

Benjamin D. Brown (SBN 202545)  
Daniel A. Small  
Victoria S. Nugent  
**COHEN MILSTEIN SELLERS  
& TOLL, PLLC**  
1100 New York Avenue, N.W.  
Suite 500, West Tower  
Washington, DC 20005  
Telephone: (202) 408-4600  
Facsimile: (202) 408-4699  
Email: bbrown@cohenmilstein.com  
dsmall@cohenmilstein.com  
vnugent@cohenmilstein.com

George F. Farah  
**COHEN MILSTEIN SELLERS  
& TOLL, PLLC**  
88 Pine Street  
14th Floor  
New York, NY 10005  
Telephone: (212) 838-7797  
Facsimile: (212) 838-7745  
Email: gfarah@cohenmilstein.com

Lynn L. Sarko  
Mark A. Griffin  
Juli E. Farris  
**KELLER ROHRBACK L.L.P.**  
1201 Third Avenue, Suite 3200  
Seattle, WA 98101  
Telephone: (206)-623-1900  
Facsimile: (206)-623-3384  
Email: lsarko@kellerrohrback.com  
mgriffin@kellerrohrback.com

jfarris@kellerrohrback.com

Ron Kilgard  
**KELLER ROHRBACK P.L.C.**  
3101 North Central Avenue, Suite 1400  
Phoenix, AZ 85012  
Telephone: (602)-248-0088  
Facsimile: (602)-248-2822  
Email: rkilgard@kellerrohrback.com

*Counsel for Plaintiffs and the Proposed Class*

Dated: April 26, 2013

**DAVIS WRIGHT TREMAINE LLP**

By: /s/ Allison A. Davis (as authorized on 4/26/13)  
Allison A. Davis

Sanjay M. Nangia  
505 Montgomery Street,  
Suite 800  
San Francisco, CA 94111-6533  
Telephone: (415) 276-6500  
Facsimile: (415) 276-6599  
Email: allisondavis@dwt.com  
sanjaynangia@dwt.com

Charles M. English, Jr.  
**DAVIS WRIGHT TREMAINE LLP**  
1919 Pennsylvania Avenue, N.S., Suite 800  
Washington, D.C. 20006-3401  
Telephone: (202) 973-4272  
Facsimile: (202) 973-4499  
Email: chipEnglish@dwt.com

Christopher D. Bell  
**BAKER MANOCK & JENSEN, PC**  
5260 North Palm Avenue,  
Fourth Floor  
Fresno, CA 93704  
Telephone: (559) 432-5400  
Facsimile: (549) 432-5620  
Email: cbell@bakermanock.com

*Counsel for Defendant DairyAmerica, Inc.*

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Dated: April 26, 2013

**HANSON BRIDGETT LLP**

By: /s/ Lawrence M. Cirelli (as authorized on 4/26/13)  
Lawrence M. Cirelli

John J. Vlahos  
425 Market Street, Suite 2600  
San Francisco, CA 94105  
Telephone: (415) 777-3200  
Facsimile: (415) 541-9366  
Email: lcirelli@hansonbridgett.com  
jvlahos@hansonbridgett.com

*Counsel for Defendant California Dairies, Inc.*

**ORDER**

Upon a review of the stipulation outlined above, the Court adopts the protective order.

IT IS SO ORDERED.

Dated: April 30, 2013

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE