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15 UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA
17 FRESNO DIVISION

18 GERALD CARLIN, JOHN RAHM, PAUL) Case No. 1:09-CV-00430-AWI-GSA
19 ROZWADOWSKI and BRIAN WOLFE,)
20 individually and on behalf of themselves and all) **STIPULATION AND ADDENDUM TO**
21 others similarly situated,) **PROTECTIVE ORDER REGARDING**
22) **THE PRODUCTION OF PROTECTED**
23 Plaintiffs,) **MATERIALS**
24)
25 v.)
26)
27 DAIRYAMERICA, INC.,)
28)
29 Defendant.)

30 The parties' responses to discovery requests in the above-captioned case may require the
31 production of large volumes of electronic and hard copy documents and data in their possession,
32 custody, or control. To expedite the production of responsive information, the parties agree that
33 production may be made subject to the following clawback agreement, and as contemplated by
34 section 11 of the protective order entered in this action (Dkt. No. 129). Disclosure of information

1 subject to a claim of attorney-client privilege or the protection of the attorney work product
2 doctrine during the course of discovery shall be deemed unintentional unless the parties expressly
3 agree otherwise, all discovery responses are made with the express reservation and without
4 waiving, and without intending to waive, the designation of “confidential” as set forth in the
5 protective order entered in this action (Dkt. 129), the protection of the attorney-client privilege, the
6 attorney work product doctrine, state privacy protections or other applicable privileges.

7 Accordingly, plaintiffs GERALD CARLIN, JOHN RAHM, PAUL ROZWADOWSKI and
8 DIANA WOLFE, individually and on behalf of themselves and all others similarly situated, and
9 Defendant DAIRYAMERICA INC., hereby stipulate and agree as follows:

10 1. The disclosure or production of any information or document without inspection or
11 designation of a “CONFIDENTIAL” legend, as contemplated in sec. 5.2 of the protective order
12 entered in this action (Dkt. No. 129), will not be deemed to waive a producing party’s or
13 producing third party’s claim to designate information as Confidential as set forth in section 5.3 of
14 the entered protective order (Dkt. No. 129).

15 2. As used herein, the term “Protected Private Information” means information
16 pertaining to an individual which qualifies for protection from disclosure under California state
17 privacy law. The parties agree not to object to the disclosure of information that pertains to any
18 corporation or other organization on the basis that it constitutes Protected Private Information.
19 The parties further agree not to object to the disclosure of any financial information on the basis
20 that it constitutes Protected Private Information unless such information pertains to the personal
21 financial records of an individual and is unrelated to the pricing of any dairy product.

22 3. The disclosure or production of any information or document that is subject to an
23 objection on the basis of attorney-client privilege, work-product protection, Protected Private
24 Information, or other applicable privileges (collectively, “Protected Information”) will not be
25 deemed to waive a producing party’s or producing third party’s claim to its privileged or protected
26 nature (“Protection”) or estop that party or the privileged holder from designating the information
27 or document as Protected Information at a later date.

1 4. A producing party or producing third party may request the return of any Protected
2 Information by submitting such request in writing, identifying the document and asserting the
3 basis for Protection. In the event that only part(s) of a document or other information is claimed to
4 contain Protected Information, the producing party shall furnish a redacted copy of such
5 document, removing only the part(s) thereof claimed to be Protected Information. The receiving
6 party shall determine in good faith whether to contest the basis for asserting Protection and to
7 either (a) return or destroy all copies of the Protected Information and provide certification to the
8 producing party of same, or (b) provide notification to the producing party in writing of an
9 objection to the assertion of Protection and the grounds for that objection. The receiving party
10 may examine the Protected Information to the extent necessary to determine if the document is
11 Protected. If the receiving party objects to the assertion of Protection, the parties shall meet and
12 confer in accordance with L.R. 251 and the Court's motion practice procedures with regard to
13 discovery disputes. In the event the parties are unable to resolve the dispute, the receiving party
14 may request an informal conference with the Court to seek appropriate relief or move for relief
15 pursuant to Fed. R. Civ. P. 37. The Protected Information subject to dispute shall not be used for
16 any purpose in this litigation until the Court determines its status.

17 5. To the extent a producing party produces personal address or other contact
18 information for an employee, former employee, or member of the producing party, the receiving
19 party expressly agrees not to contact the individual until the producing party has a reasonable
20 opportunity to determine if the individual will be represented by the producing party's counsel.

21 6. Entry of this Stipulation and Addendum to Protective Order does not alter any
22 party's burden in establishing or challenging claims of Protected Information.

23 7. Entry of this Stipulation and Addendum to Protective Order does not waive the
24 right of the receiving party to assert the producing party failed to timely request the return of
25 Protected Information.

26 8. Entry of this Stipulation and Addendum to Protective Order does not alter the
27 obligation of the receiving party to comply with its ethical and legal obligations, as set forth under
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1 applicable law, concerning the receipt of material that obviously appears to be Protected
2 Information.

3 9. Entry of this Stipulation and Addendum to Protective Order does not waive any
4 objection otherwise available to a party or non-party under the Federal Rules of Civil Procedure.

5 10. Entry of this Stipulation and Addendum to Protective Order does not preclude or
6 restrict the right of any party to perform a review for the purpose of identifying Protected
7 Information and withholding documents containing Protected Information in accordance with the
8 Federal Rules of Civil Procedure governing the non-production of documents claimed to be
9 Protected.

10 11. Entry of this Stipulation and Addendum to Protective Order does not otherwise
11 alter the terms of the protective order entered in this action (Dkt. No. 129).

12
13 IT IS SO STIPULATED.

14 DATED: April 9, 2014

Respectfully submitted,

15 _____
16 /s/ Sanjay M. Nangia

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/s/ Anthony D. Phillips (as authorized on April 9, 2014)

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ATTESTATION PURSUANT TO LOCAL RULE 131(E)

I, Sanjay M. Nangia, attest that Andrew D. Phillips, counsel for Plaintiffs and the Proposed Class, authorized me to submit this document on his behalf.

DATED: April 9, 2014

/s/ Sanjay M. Nangia
Sanjay M. Nangia

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ADDENDUM TO PROTECTIVE ORDER

Upon a review of the agreement of the parties outlined above, the Court adopts the stipulation.

IT IS SO ORDERED.

Dated: April 9, 2014

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

DAVIS WRIGHT TREMAINE LLP