

purpose of this Litigation and any related appellate proceeding, and not for any other 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 Material.** The Producing Party may designate as “Highly Confidential” (a) any non-public personal information or (b) any Confidential Material that a Producing Party reasonably and in good faith believes to be extremely sensitive confidential and/or proprietary information, the disclosure of which, even if limited to the disclosure of Confidential Material permitted under this Order, would compromise and/or jeopardize the Producing Party’s business interests (“Highly Confidential Material”).

4. **Production of Documents and Other Material Containing Confidential or Highly Confidential Material.** The designation of Confidential Material or Highly Confidential 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” and by marking each page containing any Highly Confidential Material with the words “Highly Confidential.”

(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 or Highly Confidential Material.

(c) In the case of electronically stored information in any form (“Electronic Data”), by designating the Electronic Data as Confidential or Highly Confidential 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 or Highly Confidential Electronic Data to hardcopy form, it shall mark the hardcopy with the appropriate designation. Whenever any Confidential or Highly Confidential 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 and subject to this Protective Order until expiration of that fifteen day period. Any testimony designated Confidential or Highly Confidential 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 or Highly Confidential, 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 or Highly Confidential 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 documents, all files and records subject to the inspection shall be treated as if they had been designated Highly Confidential pursuant to the terms of this Protective Order. Only persons who may access Highly Confidential Material, as identified in Paragraph 7, may participate in an initial inspection.

5. Inadvertent Failure to Designate Material as Confidential or Highly Confidential. The inadvertent failure to designate Material as Confidential or Highly Confidential shall not be deemed a waiver of a claim of confidentiality. Within ten (10) days of discovery of an inadvertent failure to designate Material as Confidential or Highly Confidential, the Producing Party shall provide written notification to all other parties to the Litigation of the appropriate designations and shall produce replacement copies of the Material with the appropriate designations, consistent with the requirements of Paragraph 4 of this Order (governing the manner of marking information designated under this Order). Regardless of whether replacement copies are provided, from receipt of written notification of the appropriate designations, all Parties shall treat the Material in accordance with those designations.

6. Persons Who May Access Confidential Material. Except as provided in Paragraph 10, absent written consent from the Producing Party or unless otherwise directed by the Court, Confidential Material may be disclosed only to the following persons:

- (a) Outside counsel of record for the Parties;
- (b) In-house counsel for the Parties who are actively involved in assisting with the prosecution or defense of this Litigation;
- (c) One designated representative of each Party to the Litigation (i.e., each named plaintiff class representative may designate one person and each named defendant may designate one person) who is actively participating in assisting with the prosecution or defense of this Litigation;
- (d) Actual or potential fact witnesses who are currently employed by the Producing Party, who were employed by the Producing Party at the time the Material was created, or who created or received the Material outside the context of this Litigation;
- (e) Outside experts or consultants who are not regular employees of a Party but are retained on behalf of any of the Parties to assist in the preparation of this case;
- (f) Outside photocopying, graphic production services or litigation support services employed by the Parties or their counsel to assist in this Litigation, and computer service personnel performing duties in relation to a computerized litigation system;
- (g) The Court in this action or any court hearing an appeal from a judgment or order rendered by the Court in this action;
- (h) Court reporters, videographers, stenographers, and court personnel; and
- (i) The direct staff of, and any contract support personnel employed or retained by, any of the foregoing persons, provided that such persons are actively involved in assisting with the prosecution or defense of this Litigation.

7. **Persons Who May Access Highly Confidential Material.** Except as provided in Paragraph 10, absent written consent from the Producing Party or unless otherwise directed by the Court, Highly Confidential Material may be disclosed only to the following persons:

- (a) Outside counsel of record for the Parties;
- (b) Actual or potential fact witnesses who are currently employed by the Producing Party, who were employed by the Producing Party at the time the Material was created, or who created or received the Material outside the context of this Litigation
- (c) Outside experts or consultants who are not regular employees of a Party but are retained on behalf of any of the Parties to assist in the preparation of this case;
- (d) Outside photocopying, graphic production services or litigation support services employed by the Parties or their counsel to assist in this Litigation, and computer service personnel performing duties in relation to a computerized litigation system;
- (e) The Court in this action or any court hearing an appeal from a judgment or order rendered by the Court in this action;
- (f) Court reporters, videographers, stenographers, and court personnel; and
- (g) The direct staff of, and any contract support personnel employed or retained by, any of the foregoing persons, provided that such persons are actively involved in assisting with the prosecution or defense of this Litigation.

8. **Application of this Protective Order to Persons With Access to Confidential or Highly Confidential Material.**

- (a) Each person given access to Confidential Material or Highly Confidential Material shall be advised that the Confidential Material or Highly Confidential Material

is being disclosed pursuant to and subject to the terms of this Protective Order and may not be disclosed or used other than as set forth in this Protective Order.

(b) All persons allowed access to Confidential or Highly Confidential Material under this Protective Order shall take all necessary steps to insure that access to such Material is restricted to those persons who, by the terms of this Protective Order, are allowed access to the Material. To the extent that a person allowed access to Confidential or Highly Confidential Material creates, develops, establishes, or otherwise maintains, on any computer, network, disk, tape, or other digital or analog machine-readable device, any information, files, databases or programs that contain Confidential Material or Highly Confidential Material, such person shall take all necessary steps to insure that access to any Confidential Material or Highly Confidential Material is restricted to those persons who, by the terms of this Protective Order, are allowed access to the Material.

(c) Before any person described above in Paragraphs 6(e) or 7(c) is given access to Confidential Material or Highly Confidential Material, that person must read and agree in writing, by signing an acknowledgment in the form attached hereto as Exhibit A, to be bound by the provisions of this Protective Order.

(d) Before any other person described in Paragraphs 6 or 7 is shown any Confidential Material or Highly Confidential Material, that person must be shown a copy of this Protective Order and instructed that he or she is bound by its provisions. This requirement does not apply to outside counsel of record for the Parties or to the Court in this action or any court hearing an appeal from a judgment or order rendered by the Court in this action.

9. **Filing Documents Containing Confidential or Highly Confidential Material.**

In the event a party wishes to use any Confidential Material or Highly Confidential Material, or any papers containing or making reference to the contents of such material or information, in any pleading or document filed with the Court in this Litigation, such pleading or document and Confidential Material or Highly Confidential Material shall be filed under seal, consistent with the rules and practices of the Court in which said materials are to be filed, until such time as the Court orders otherwise, or denies permission to file under seal. The sealed material, information or papers shall plainly state on the first page of any bound or stapled document "FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER" and shall be filed only in sealed envelopes on which shall be endorsed the caption of this Litigation, and a statement substantially in the following form:

FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER

This envelope contains documents that are subject to a Protective Order entered by the Court in this action. This envelope shall neither be opened nor the contents revealed except by Order of the Court.

10. **Use of Confidential or Highly Confidential Material at Depositions.** Counsel for any Party wishing to use Confidential or Highly Confidential Material to examine at deposition fact witnesses who are not currently employed by the Producing Party, who were not employed by the producing party at the time the Material was created, and who did not create or receive the Material shall, prior to showing any such Material to the witness during deposition, obtain the witness's written affirmation, by signing an acknowledgment in the form attached hereto as Exhibit B, that the witness has reviewed the Protective Order, agrees to be bound by its provisions (including that the witness may not disclose the information to anyone and may not

use the information for any purpose other than in connection with testimony in this action), understands that breach of this Protective Order could subject the witness to sanctions or damages, and consents to the jurisdiction of this Court for purposes of any action instituted for the breach of this Protective Order.

11. **Use of Confidential or Highly Confidential Material at Trial or Hearing.** The restrictions, if any, that will govern the use of Confidential Material or Highly Confidential Material at trial or hearings will be determined at a later date by the Court, in consultation with the Parties.

12. **No Waiver of Privilege.** If information subject to a claim of attorney-client privilege, work product protection, or any other privilege or immunity is inadvertently produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege, work product protection or other ground for withholding production to which any Producing Party would otherwise be entitled. Any inadvertently produced materials shall be returned promptly to the Producing Party upon request and all copies destroyed.

13. **Removal of Confidential or Highly Confidential Designation.** Any Party may object to the designation of any Material as Confidential or Highly Confidential by giving written notice to the Producing Party (or to the Producing Party directly if no counsel has appeared on its behalf) that it objects to the designation. Such notice shall specifically identify the Material at issue and state the reasons for questioning the confidentiality designation. Within ten (10) business days after such notice, the Objecting and Producing Party shall confer in good faith to attempt to resolve any such dispute. If the Parties are unable to resolve the dispute, the Objecting Party may apply to the Court for a ruling that the Material is not appropriately

designated, giving notice to the Producing Party. If such a motion is made, the Producing Party will have the burden to establish that the designation is proper. Until the Court rules on the motion, the documents shall be treated as Confidential or Highly Confidential, as originally designated.

14. **Modification of the Protective Order.** This Protective Order shall not prevent a Party from applying to the Court for relief therefrom, or from applying to the Court for further or additional Protective Orders.

15. **Copy of Protective Order Must Be Served With Any Subpoena.** When serving any subpoena in this Litigation on a non-party to the Litigation, a copy of this Protective Order shall be included with the subpoena.

16. **Third Party Requests for Confidential or Highly Confidential Material.** If any person receiving Material covered by this Protective Order is subpoenaed in another action or proceeding, served with a document demand, or otherwise requested to provide Material covered by this Protective Order, and such subpoena, document demand, or request seeks Material which was produced or designated as Confidential Material or Highly Confidential Material by any Producing Party, counsel to the person receiving the subpoena, document demand, or request shall give written notice within two (2) business days of said counsel receiving notice of service of the subpoena to counsel for the Producing Party and shall, to the extent permitted by law, withhold production of the Material until any dispute relating to the production of such Material is resolved, and in any event no Material of a Producing Party shall be produced earlier than five (5) business days after delivering written notice to counsel for the Producing Party of an intent to produce.

17. **Intentional or Inadvertent Unauthorized Disclosure of Confidential or Highly Confidential Material.** If any person subject to this Protective Order becomes aware that he or any other person has, either intentionally or inadvertently, disclosed Confidential Material or Highly Confidential Material to someone not authorized to receive such Material under this Protective Order, counsel of record for the Party involved shall immediately inform the Producing Party's counsel of record about the unauthorized disclosure, and also shall use his or her best efforts to obtain the return of all improperly disseminated copies of the Confidential Material or Highly Confidential Material and to prevent any further improper dissemination of the same.

18. **Court Retains Jurisdiction.** This Protective Order shall survive the termination of this litigation. This Court expressly retains jurisdiction over this action for enforcement of the provisions of this Protective Order following the final resolution of this Litigation.

19. **Return or Destruction of Confidential and Highly Confidential Material.** Within sixty (60) days of the termination of this action, including the exhaustion of all appeals, all Confidential Material or Highly Confidential Material supplied by any Producing Party, including any copies thereof, as well as any summaries, notes, extracts, compilations, drawings, or other documents containing Confidential or Highly Confidential Material, shall be returned to the Producing Party or shall be destroyed and their destruction certified in writing unless otherwise agreed in writing by the parties. A copy of the written certification shall be provided to the Producing Party.

20. **Parties May Use Their Own Confidential and Highly Confidential**

Documents. Nothing in this Order shall affect a Party's use or disclosure of its own documents in any way.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Steven M. ...", written over a horizontal line.

Date: April 14, 2008

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION**

_____)	
IN RE SOUTHEASTERN MILK)	Case No. 2:08-MD-1000
ANTITRUST LITIGATION)	
_____)	
THIS DOCUMENT RELATES TO:)	Judge J. Ronnie Greer
ALL CASES.)	Magistrate Judge Dennis H. Inman
_____)	

ACKNOWLEDGMENT

I hereby certify my understanding that Material designated “Confidential” or “Highly Confidential” is being provided to me pursuant to the terms and restrictions of the Protective Order entered in this action by the United States District Court for the Eastern District of Tennessee, Greeneville Division, on _____ (the “Protective Order”). I have read and understand the terms of the Protective Order, I agree to be fully bound by them, and I hereby submit to the jurisdiction of the United States District Court for the Eastern District of Tennessee for the purposes of enforcement of the Protective Order.

Dated: _____

Signature: _____

Name: _____

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
GREENEVILLE DIVISION**

_____)	
IN RE SOUTHEASTERN MILK)	Case No. 2:08-MD-1000
ANTITRUST LITIGATION)	
_____)	
THIS DOCUMENT RELATES TO:)	Judge J. Ronnie Greer
ALL CASES.)	Magistrate Judge Dennis H. Inman
_____)	

ACKNOWLEDGMENT

I hereby affirm, under oath, my understanding that Material designated "Confidential" or "Highly Confidential" is being provided to me pursuant to the terms and restrictions of the Protective Order entered in this action by the United States District Court for the Eastern District of Tennessee, Greeneville Division, on _____ (the "Protective Order"). I have read and understand the terms of the Protective Order, including terms that provide that I will not disclose such Material to anyone or use such Material for any purpose other than in connection with my testimony in this matter. I agree to be fully bound by the provisions of such Protective Order, and I hereby submit to the jurisdiction of the United States District Court for the Eastern District of Tennessee for the purposes of enforcement of the Protective Order. I further acknowledge and understand that any breach of the Protective Order may be punished pursuant to the contempt powers of the Court and could result in an action against the undersigned for any damages caused by any such breach.

Dated: _____

Signature: _____

Name: _____