

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 21-1644 (MN)
)	
UNITED STATES SUGAR)	
CORPORATION, UNITED SUGARS)	
CORPORATION, IMPERIAL SUGAR)	
COMPANY, and LOUIS DREYFUS)	
COMPANY LLC,)	
)	
Defendants.)	

STIPULATED PROTECTIVE ORDER

In the interests of (1) ensuring efficient and prompt resolution of this Action; (2) facilitating discovery by the Parties litigating this Action; and (3) protecting Confidential Information from improper disclosure or use, the Parties stipulate to the provisions set forth below. The Court, upon good cause shown and pursuant to Fed. R. Civ. P. 26(c)(1) and all applicable District of Delaware Local Rules, ORDERS as follows:

A. Definitions

1. “Action” means the above-captioned action pending in this Court, including any related discovery, pretrial, trial, post-trial, or appellate proceedings.

2. “Confidential Information” means the portions of any Investigation Materials or Litigation Materials that contain trade secret or other confidential research, development, or commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(1)(G), or the portions of any document, transcript, or other materials containing such information that have not been published or otherwise made publicly available.

3. “Disclosed” means shown, divulged, revealed, produced, described, transmitted or otherwise communicated, in whole or in part.

4. “Document” means any document or electronically stored information, as the term is used in Fed. R. Civ. P. 34(a).

5. “Investigation” means the pre-Complaint inquiry into the matters at issue in this Action by the United States.

6. “Investigation Materials” means documents, testimony, or other materials that, prior to the filing of this Action, (a) any non-Party Protected Person provided to any Party, either voluntarily or pursuant to compulsory process, relating to the Investigation; (b) any Party provided to any non-Party relating to the Investigation; or (c) any Defendant, or affiliated person or entity, provided to the United States relating to the Investigation.

7. “Litigation Materials” means documents, testimony, or other materials that, after the filing of this Action, (a) any non-Party provides to any Party, either voluntarily or under compulsory process, in connection with and during the pendency of this Action; (b) any Party provides to any non-Party in connection with and during the pendency of this Action; (c) any Defendant provides to the United States in connection with and during the pendency of this Action; or (d) the United States provides to any Defendant in connection with and during the pendency of this Action.

8. “Outside Counsel of Record” means the firm(s) of attorneys representing a Defendant in this proceeding and the professional vendors of such firm(s) that provide litigation support services and to whom disclosure is reasonably necessary for this Action, consistent with ¶ 28(d).

9. “Party” means the United States or any Defendant in this Action. “Parties” means collectively the United States and all Defendants in this Action.

10. “Person” means any natural person, corporate entity, partnership, association, joint venture, governmental entity, or trust.

11. “Protected Person” means any Person, including a Party, that has provided Investigation Materials to a Party or that provides Litigation Materials to a Party.

B. Designation of Confidential Information in Defendants’ Investigation Materials

12. Any materials that a Defendant previously provided to the United States during the Investigation that the Defendant designated as Confidential or for which the Defendant requested confidential treatment, including but not limited to testimony, documents, electronic documents and data, and materials produced pursuant to the Antitrust Civil Process Act, 15 U.S.C. § 1313(c)(3), will be treated as containing Confidential Information, as defined in Paragraph 2 of this Order.

C. Designation of Confidential Information in Non-Party Investigation Materials

13. On December 15, 2021, the Court ordered that the Parties produce their respective Investigation Materials on an outside counsel only basis no later than December 17, 2021. Nothing in this Stipulation modifies that Order.

14. The following procedures govern the process for non-Party Protected Persons to designate as Confidential Information any Investigation Materials, including but not limited to documents or information provided in response to requests under the Antitrust Civil Process Act, 15 U.S.C. §§ 1311-14.

15. Within one business day of the Court's entry of this Order, each Party must send by email, facsimile, or overnight delivery a copy of this Order to each non-Party Protected Person (or, if represented by counsel, the non-Party Protected Person's counsel) that provided Investigation Materials to that Party.

16. If a non-Party Protected Person determines that this Order does not adequately protect its Confidential Information contained in its Investigation Materials, it may, within 5 business days after receiving a copy of this Order, seek additional protection from the Court for its Confidential Information contained in its Investigation Materials. If a non-Party Protected Person seeks additional protection from the Court during this period, the Investigation Materials for which additional protection has been sought will continue to remain limited to outside counsel only pursuant to Local Rule 26.2 and the Court's December 15, 2021 Order, until the Court has ruled.

17. Any non-Party Protected Person that produced Investigation Materials during the Investigation will have 10 business days after receiving a copy of this Order to designate as Confidential Information any Investigation Materials, to the extent such information constitutes Confidential Information, as defined in this Order. Such designations constitute a representation to the Court that the non-Party Protected Person (and counsel, if any) believes in good faith that the Investigation Materials so designated constitute Confidential Information. Until the time period for designating Investigation Materials contemplated in this Paragraph 17 has lapsed, only Outside Counsel of Record can view non-Party Investigation Materials.

18. Any non-Party Protected Person must designate Investigation Materials as Confidential Information by providing written notice by overnight mail or email to the United States and Defendants that includes (a) copies of the Investigation Materials stamped with the

legend “CONFIDENTIAL” or (b) identification of the document(s) and page number(s), or page and line number for testimony, containing Confidential Information. Counsel for United States and Defendants to be notified are as follows:

For Plaintiff United States:

John Thornburgh
U.S. Department of Justice
450 Fifth Street NW, Suite 7000
Washington, DC 20530
john.thornburgh@usdoj.gov

Tyler Mazur
U.S. Department of Justice
450 Fifth Street NW
Washington, DC 20530
Tyler.Mazur@usdoj.gov

For Defendant United States Sugar Corporation

Amanda P. Reeves
Latham & Watkins LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004
amanda.reeves@lw.com

Lawrence E. Buterman
Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020
lawrence.buterman@lw.com

Elyse M. Greenwald
Latham & Watkins LLP
10250 Constellation Boulevard, Suite 1100
Los Angeles, CA 90067
elyse.greenwald@lw.com

For Defendant United Sugars Corporation:

Peter Schwingler
Stinson LLP
50 South Sixth Street, Suite 2600
Minneapolis, MN 55402
peter.schwingler@stinson.com

For Defendants Louis Dreyfus Company LLC and Imperial Sugar Company:

Christine A. Varney
Peter T. Barbur
David R. Marriott
Timothy G. Cameron
Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019
cvarney@cravath.com
pbarbur@cravath.com
dmarriott@cravath.com
tcameron@cravath.com

Amanda Wait
Vic Domen
Norton Rose Fulbright US LLP
799 9th Street NW
Washington, DC 20001

Darryl Anderson
Norton Rose Fulbright US LLP
1301 McKinney Street, Suite 5100
Houston, TX 77010

Kelly Farnan
Richard, Layton & Finger P.A.
One Rodney Square, 920 North King Street
Wilmington, Delaware 19801

**D. Designation by All Protected Persons of Confidential Information in
Litigation Materials**

19. The following procedures govern the process for all Protected Persons to designate as Confidential Information any Litigation Materials, including but not limited to information

provided in response to requests under Fed. R. Civ. P. 30, 31, 33, 36 or 45, and documents disclosed in response to Fed. R. Civ. P. 33(d), 34(b)(2) and (c), or 45. Any designation of Confidential Information in Litigation Materials constitutes a representation to the Court that the Protected Person (and counsel, if any) believes in good faith that the Litigation Materials so designated constitute Confidential Information.

20. Once this Protective Order is entered, whenever discovery is sought from a non-Party in this Action, a copy of this Order must accompany the discovery request or subpoena. Non-Parties must designate any Confidential Information in Litigation Materials that it produces in this Action in the same manner that is set forth in Paragraph 18 of this Order or as otherwise provided by this Order. To the extent a Party sends a discovery request to a non-Party prior to the entry of this Protective Order by the Court, that party must send a copy of this Order to the non-Party within two business days of entry of this Order. For the avoidance of doubt, this Paragraph 20 is not intended to impact or have any effect on the timing for the start of discovery.

21. Testimony. When a Party questions a deponent about a document or information that has been designated by a non-Party Protected Person as containing Confidential Information, the Party asking the questions must designate as Confidential Information the portion(s) of the transcript relating to that designated document or information. All transcripts of depositions taken in this Action after entry of this Order will be treated as Confidential Information in their entirety for 21 calendar days after the date when a complete and final copy of the transcript has been made available to the deponent (or the deponent's counsel, if applicable). Within five business days of receipt of the final transcript, the Party who noticed the deposition must provide the final transcript to the deponent (or the deponent's counsel, if applicable). Within 21 calendar days following receipt of the final transcript, the deponent (or the deponent's counsel, if applicable) may designate

as Confidential Information any portion(s) of the deposition transcript, by page(s) and line(s), and any deposition exhibits, or portion(s) of any exhibit(s), that were produced by the deponent or the deponent's employer. To be effective, designations must be provided in writing to the United States's and Defendants' counsel listed in Paragraph 18 of this Order. Any portion(s) of the transcript or deposition exhibit(s) not designated in the manner required by this Paragraph 21 will not be treated as Confidential Information, even if the document(s) that become the deposition exhibit(s) or information that is the subject of the deposition testimony was subject to a prior designation of confidentiality.

22. Hard-Copy Documents and Information. A Protected Person who designates any document that it produces in this Action as containing Confidential Information must stamp or otherwise mark each page containing Confidential Information with the designation "CONFIDENTIAL" in a manner that will not interfere with legibility. If the entire document is not Confidential Information, the Protected Person must stamp or label only the pages that contain Confidential Information.

23. Electronic Documents and Information. Where a Protected Person produces in this Action documents or information in electronic format, Confidential Information contained in those electronic documents and that information must be designated by the Protected Person for protection under this Order by (a) appending to the file names or designators associated with the electronic document or information an indication of whether the electronic document or information contains Confidential Information, or (b) any other reasonable method for appropriately designating Confidential Information produced in electronic format, including by making designations in reasonably accessible metadata associated with the electronic documents or information. If Confidential Information is produced in electronic format on a disk or other

medium that contains only Confidential Information, the “CONFIDENTIAL” designation may be placed on the disk or other medium. When electronic documents or information are printed for use during a deposition, in a court proceeding, or for provision in printed form to any Person described in Paragraph 28, the Party printing the electronic document or information must affix a “CONFIDENTIAL” label to the printed version and include with the printed version the production number and designation associated with the electronic document or information.

24. Production of documents or information not designated as Confidential Information will not be deemed a waiver of a future claim of confidentiality concerning such documents or information if they are later designated as Confidential Information. If at any time prior to the trial of this Action, a Protected Person realizes that it should have designated as Confidential Information any Investigation Materials or Litigation Materials previously produced in this Action, it may designate such documents or information by notifying the Parties in writing. The Parties must thereafter treat the Investigation Materials or Litigation Materials as designated Confidential Information under the terms of this Order. However, no prior disclosure of documents or information subsequently designated as Confidential Information will violate this Order.

E. Challenges to Designations of Confidential Information

25. Any Party who objects to any designation of Confidential Information may at any time before the trial of this Action provide a written notice to the Protected Person who made the designation and to all Parties stating with particularity the grounds for the objection. All materials objected to must continue to be treated as Confidential Information pending resolution of the dispute either by agreement between the Protected Person and the objecting Party or by the Court.

26. If the objecting Party and the Protected Person cannot reach agreement on an objection to a designation of Confidential Information within five business days of the Party’s

written notice, the Protected Person may address the dispute to this Court by filing a motion in accordance with District of Delaware Local Rule 7.1.2 within five business days of the Party's written notice. The Protected Person bears the burden of persuading the Court that the material is Confidential Information within the definition set forth in Paragraph 2 of this Order. If the Protected Person fails to move the Court within the time provided by this Paragraph 26, or if the Court finds the designation of Confidential Information to have been inappropriate, the challenged designation is rescinded. The Parties thereafter will not be required to treat the information as Confidential Information under this Order.

27. This Order does not preclude or prejudice a Protected Person or an objecting Party from arguing for or against any confidentiality designation, establish any presumption that a particular confidentiality designation is valid, or alter the burden of proof that would otherwise apply in a dispute over discovery or disclosure of information.

F. Disclosure of Confidential Information

28. Confidential Information may be disclosed only to the following persons:

(a) the Court and all persons assisting the Court in this Action, including law clerks, court reporters, and stenographic or clerical personnel;

(b) counsel for the United States, including any attorneys, paralegals, other professional personnel (including support and IT staff), and agents or independent contractors retained by the United States to assist in this Action whose functions require access to the information;

(c) Outside Counsel of Record, including any attorneys, paralegals, and other professional personnel (including support and IT staff) assigned to this Action whose functions require access to the information;

(d) outside vendors or service providers (such as copy-service providers and document-management consultants) retained by a Party to assist that Party in this Action, provided that they first execute an Agreement Concerning Confidentiality in the form attached in Appendix A;

(e) any mediator or arbitrator that the Parties engage in this Action or that this Court appoints;

(f) any author, addressee, or recipient of any document or information containing Confidential Information if they previously had lawful access to the document or information;

(g) any Person whom counsel for the United States or Defendants believes in good faith previously received or had access to the document or information, unless the person indicates that he or she did not receive or have previous access to the document or information;

(h) any Person retained by a Party to serve as a testifying or consulting expert in this Action, including employees of the firm with which the expert or consultant is associated or independent contractors who assist the expert's work in this Action, provided that they first execute an Agreement Concerning Confidentiality in the form attached in Appendix A; and

(i) outside trial consultants (including, but not limited to, graphics consultants) retained by a Party to assist that Party in this Action, provided that they first execute an Agreement Concerning Confidentiality in the form attached in Appendix A.

29. Counsel for the Party making a disclosure to a Person identified in Paragraph 28, subparagraphs (d), (h), or (i), of this Order must obtain and retain the signed version of the Agreement Concerning Confidentiality in the form attached in Appendix A for a period of at least one year following the final resolution of this Action.

30. Each Person identified in Paragraph 28 of this Order to whom information designated as Confidential Information is disclosed may not disclose that Confidential Information to any other Person, except as otherwise provided by this Order.

31. Nothing in this Order:

(a) will bar or otherwise restrict counsel from rendering legal advice to his or her client with respect to this matter or generally referring to or relying upon Confidential Information in rendering such advice so long as counsel does not specifically disclose the substance of the Confidential Information;

(b) limits a Protected Person's use or disclosure of its own information designated as Confidential Information;

(c) prevents disclosure of Confidential Information with the consent of the Protected Person that designated the material as confidential;

(d) prevents disclosure by a Party of Confidential Information (i) that is or has become publicly known through no fault of that Party; (ii) lawfully acquired by or known to that Party independent of receipt during the Investigation or in post-complaint discovery in this Action; (iii) previously produced, disclosed, or provided to that Party without an obligation of confidentiality and not by inadvertence or mistake; or (iv) pursuant to a court order; or

(e) prevents the United States's retention, use, or disclosure of Confidential Information outside the context of this Action (i) to the extent permitted or required by law, court order, or regulation; (ii) for law enforcement purposes; or (iii) for the purpose of securing compliance with a Final Judgment in this Action.

32. In the event of a disclosure of any Confidential Information to any Person not authorized to receive disclosure under this Order, the Party responsible for having made the

disclosure must promptly notify the Protected Person whose material has been disclosed and provide to that Protected Person all known relevant information concerning the nature and circumstances of the disclosure. The disclosing Party must also promptly take all reasonable measures to retrieve the improperly disclosed material and ensure that no further or greater unauthorized disclosure or use of the material is made. Unauthorized disclosure of Confidential Information will not change the confidential status of the disclosed material or waive the right to maintain the disclosed material as containing Confidential Information.

33. Other Proceedings. By entering this Order and limiting the disclosure of Confidential Information in this Action, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any Protected Person or Party subject to this Order who becomes subject to a motion to disclose a Protected Person's Confidential Information pursuant to this Order must promptly notify that Protected Person of the motion so that the Protected Person may have an opportunity to appear and be heard on whether that information should be disclosed.

G. Use of Information Designated Confidential in This Action

34. Except as provided in Paragraph 31 of this Order, all Confidential Information produced by a Party or a non-Party Protected Person as part of this proceeding may be used solely for the conduct of this Action and may not be used for any business, commercial, competitive, personal, or other purpose.

35. Court Filings. If any documents, testimony, or other materials designated under this Order as Confidential Information are included in any pleading, motion, exhibit, or other paper to be filed with the Court, the Party seeking to file must seek a Court order to file such Confidential Information under seal, in accordance with Local Rule 5.1.3. A request for the Court to allow filing

under seal must include the proposed redactions. If this Court grants leave to file a document under seal, the filing Party must file with the Clerk of this Court a redacted version of the filing. Nothing in this Order will restrict the Parties or any interested member of the public from challenging the filing of any Confidential Information under seal.

36. Trial Exhibits. If a Party includes trial exhibits on its exhibit list that contain or discuss information that it has been designated as Confidential Information, at the time exhibit lists are exchanged, the Party must also provide redacted versions of those exhibits. At the time that the Parties exchange objections to trial exhibits, each Party must also (a) provide redacted versions of any exhibits on the opposing Party's exhibit list that contain information that the Party previously designated as Confidential Information and (b) exchange objections to the redacted trial exhibits that were provided with the exhibit lists. Consistent with dates set forth in the Case Management Order, after exchanging redacted versions of the opposing Party's trial exhibits, the Parties must exchange objections to those redactions.

37. Trial. Disclosure at trial of documents and information designated as Confidential Information will be governed pursuant to a separate Court order. The Parties will meet and confer as set forth in the Case Management Order and submit a recommended order outlining those procedures. Absent a ruling by the Court to the contrary, documents, deposition testimony, or other materials or information that have been designated as containing Confidential Information by a Protected Person that appear on a Party's exhibit list or in deposition designations, and that are admitted into evidence at trial, will be disclosed on the public record, and any examination relating to such information likewise will be disclosed on the public record, after compliance with procedures that will be established by the Court.

H. Procedures Upon Termination of This Action

38. The obligations imposed by this Order will survive the termination of this Action unless the Court, which will retain jurisdiction to resolve any disputes arising out of this Order, orders otherwise.

39. Except as provided in Paragraph 31 of this Order, within 90 calendar days after the expiration of the time for appeal of an order, judgment, or decree terminating this Action, all Persons having received information designated as Confidential Information must make a good faith effort to (a) return that material and all copies to the Protected Person (or the Protected Person's counsel, if represented by counsel) that produced it or (b) destroy or delete all such Confidential Information. All Confidential Information returned to the Parties or their counsel by the Court likewise must be disposed of in accordance with this Paragraph 39. Counsel for the Parties will be entitled to retain court papers; deposition, hearing, and trial transcripts; trial exhibits; and work product, provided that the Parties and their counsel do not disclose the portions of those materials containing information designated as Confidential Information except pursuant to Court order or an agreement with the Protected Person that produced the Confidential Information or as otherwise permitted by this Order.

I. Right to Seek Modification

40. Nothing in this Order limits any Person, including members of the public, a Party, or a Protected Person, from seeking further or additional protections for any of its materials or modification of this Order upon motion duly made pursuant to the Rules of this Court, including, without limitation, an order that certain material not be produced at all or are not admissible evidence in this Action or in any other proceeding. Further, nothing in this Order limits the right of any Party or Protected Person from seeking relief from the Court to modify this Order.

J. The Privacy Act

41. Any order of this Court requiring the production of any document, information, or transcript of testimony constitutes a court order within the meaning of the Privacy Act, 5 U.S.C. § 552a(b)(11).

K. Persons Bound by This Order

42. This Order is binding on the Parties to this Action, and their attorneys, successors, personal representatives, administrators, assigns, parents, subsidiaries, divisions, affiliates, employees, agents, retained consultants and experts, and any persons or organizations over which the Parties have control.

AGREED TO:

UNITED STATES ATTORNEY'S OFFICE DISTRICT OF
DELAWARE

/s/ Shamoor Anis

Laura D. Hatcher (#5098)
Chief, Civil Division
Shamoor Anis
1313 North Market Street, Suite 400
Wilmington, DE 19801
(302) 573-6205
laura.hatcher@usdoj.gov
shamoor.anis@usdoj.gov

Attorneys for Plaintiff United States of America

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Jack B. Blumenfeld

Jack B. Blumenfeld (#1014)
Brian P. Egan (#6227)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@morrisonichols.com
began@morrisonichols.com

Attorneys for Defendant United States Sugar Corporation

HOGAN MCDANIEL

/s/ Daniel K. Hogan

Daniel K. Hogan (#2814)
Daniel C. Kerrick (#5027)
1311 Delaware Avenue, Suite 1
Wilmington, DE 19806
(302) 656-7540
dkhogan@dkhogan.com
dckerrick@dkhogan.com

*Attorneys for Defendant United Sugars
Corporation*

December 23, 2021

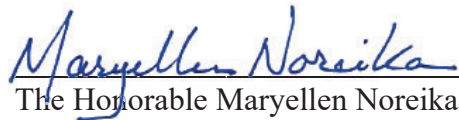
RICHARDS, LAYTON & FINGER, P.A.

/s/ Kelly E. Farnan

Kelly E. Farnan (#4395)
One Rodney Square
Wilmington, DE 19801
(302) 651-7700
farnan@rlf.com

*Attorneys for Defendants Imperial Sugar
Company and Louis Dreyfus Company LLC*

SO ORDERED this 3rd day of January 2022.



The Honorable Maryellen Noreika
United States District Judge

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 21-1644 (MN)
)	
UNITED STATES SUGAR)	
CORPORATION, UNITED SUGARS)	
CORPORATION, IMPERIAL SUGAR)	
COMPANY, and LOUIS DREYFUS)	
COMPANY LLC,)	
)	
Defendants.)	

AGREEMENT CONCERNING CONFIDENTIALITY

I, _____, am employed by _____ as _____.

I hereby certify that:

1. I have read the Protective Order entered in the above-captioned action, and understand its terms.
2. I agree to be bound by the terms of the Protective Order entered in the above-captioned action. I agree to use the information provided to me only as explicitly provided in this Protective Order.
3. I understand that my failure to abide by the terms of the Protective Order entered in the above-captioned action will subject me, without limitation, to civil and criminal penalties for contempt of Court.

4. I submit to the jurisdiction of the United States District Court for the District of Delaware solely for the purpose of enforcing the terms of the Protective Order entered in the above-captioned action and freely and knowingly waive any right I may otherwise have to object to the jurisdiction of said Court.

SIGNATURE

DATE