

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION**

UNITED STATES OF AMERICA)	
)	
<i>Plaintiff,</i>)	
)	
vs.)	
)	
SUIZA FOODS CORPORATION)	Civil Action No. 99-CV-130
)	
d/b/a Louis Trauth Dairy,)	
Land O' Sun Dairy, and)	
Flav-O-Rich Dairy, and)	
)	
BROUGHTON FOODS COMPANY,)	
)	
d/b/a Southern Belle Dairy)	
)	
<i>Defendants.</i>)	

**UNITED STATES' MOTION FOR THE FILING OF CERTAIN DOCUMENTS
UNDER SEAL PURSUANT TO PROTECTIVE ORDER**

Whereas, the Court in this matter entered a Protective Order on March 22, 1999, governing the pretrial designation and use of confidential information in this action;

And whereas, defendants have asked, pursuant to Section C(4) of that Order, that the deposition testimony of Tracy Noll, Exhibit No. 25 which the plaintiff previously filed in this matter in support of its Motion for a Preliminary Injunction and cited in its memorandum, at 33-34, in support of its Motion for the same, be given an interim designation of "confidential," pending defendants' determination of confidentiality of particular pages and lines pursuant to Section C(5) of the Order;

And whereas, documents so designated, if filed with the Court, shall be filed,

pursuant to Section H of that Order, under seal pending Section C(5) designations;

Plaintiff respectfully moves this Court for an Order directing the Clerk of the Court to file under seal the following documents which the plaintiff has previously filed in support of its Motion for a Preliminary Injunction in this matter: Exhibit No. 25 and the Memorandum of United States in Support of Its Motion For Preliminary Injunction. A redacted, public, version of the Memorandum is being filed contemporaneously with this Motion.

Finally, plaintiff notes that Mr. Noll's testimony was obtained by plaintiff pursuant to the Antitrust Civil Process Act, 15 U.S.C. §1311, et. seq., which also provides that such testimony may be disclosed in connection with any case (15 U.S.C. §1313(d)(1)) and that it was used pursuant to those provisions; moreover, if and when defendants designate particular pages and lines of Mr. Noll's testimony as confidential pursuant to Section C(5) of the Order, the plaintiff preserves its right, pursuant to Section I of the Order, to apply to the Court for a ruling that such pages and lines are not entitled to confidential treatment.

A proposed Order is attached. This motion is made by the United States at the request of the defendants and pursuant to the Protective Order; a supporting memorandum is therefore not attached.

Respectfully submitted,

_____/s/_____
James K. Foster
U.S. DEPARTMENT OF JUSTICE
Antitrust Division
1401 H Street, NW, Suite 4000
Washington, DC 20530
(202)307-0001

CERTIFICATE OF SERVICE

This will certify that a true and correct copy of the foregoing, together with a copy of any Order or Judgment the United States proposes in connection therewith, has been served by hand to:

Suiza Foods Corporation
c/o Paul T. Denis, Esq.
Myles R. Hansen, Esq.
ARNOLD & PORTER
555 Twelfth Street, N.W.
Washington, D.C. 20004

And, as agreed between plaintiff and recipient, by telecopier and by Federal Express to:

Broughton Foods Company
c/o Thomas J. Murray, Esq.
Daniel J. Konrad, Esq.
HUDDLESTON, BOLEN, BEATTY, PORTER & COPEN
611 Third Avenue
Suite 4000
Huntington, WV 25722

On this the 24 day of March, 1999.

_____/s/_____
JAMES K. FOSTER
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Antitrust Division
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