

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

ANIMAL LEGAL DEFENSE FUND,

Plaintiff,

v.

HORMEL FOODS CORPORATION,

Defendant.

Case No. 2016 CA 004744

Judge Neal E. Kravitz

Next Court Date: Close of Fact Discovery  
Event: February 12, 2018

**PLAINTIFF'S OPPOSED MOTION TO COMPEL**

Plaintiff Animal Legal Defense Fund (ALDF), by and through its undersigned counsel, respectfully moves pursuant to Rule 37 of the Superior Court Rules of Civil Procedure for an Order compelling a complete production of documents in response to certain requests in Plaintiff's First Request for Production of Documents, as modified in the parties' meet and confers.

As explained in the attached Memorandum of Points and Authorities, Plaintiff has been unable to obtain from Defendant, Hormel Foods Corporation (Hormel), the discovery to which it is entitled under the Superior Court Rules, despite numerous attempts, including email exchanges, a telephonic meet and confer, an in-person meet and confer, and the exchange of numerous letters.

Date: December 29, 2017

Respectfully Submitted,

*/s/ Tracy D. Rezvani*

Tracy D. Rezvani (Bar No. 464293)

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### **RULES 12-I(a), 26(h), and 37(a) CERTIFICATIONS**

I, Leah Nicholls, certify pursuant to Rules 12-I(a), 26(h), and 37(a) of the Superior Court Rules of Civil Procedure that counsel for the parties have communicated for a reasonable period of time to resolve the dispute over Hormel's document production described in the attached Memorandum of Points and Authorities. As required by Rule 26(h), this includes having met for a substantial period of time on the phone and in-person to resolve the disputes. Despite Plaintiff's good faith efforts, Hormel has refused to provide the requested discovery, which is required by the Rules. In this manner, as required by Rule 12-I(a), Hormel has made clear that it does not consent to the relief sought in this Motion. I further certify as follows regarding ALDF's good faith efforts to work with Hormel to obtain the discovery sought in this Motion:

1. On September 22, 2017, ALDF's counsel sent Hormel's counsel an email asking Hormel to revise its discovery responses because they were based on a narrow, inaccurate reading of ALDF's Complaint that claimed the only issue in this matter is whether Hormel's labels have been approved by the USDA (rather than whether

Hormel's advertising is false and misleading), an argument that had been considered and rejected by the Court in its order denying Hormel's motion to dismiss.

2. On September 29, 2017, Hormel's counsel responded that they would review their discovery responses in light of ALDF's stated concerns and inquired about setting a meet and confer.
3. On September 29, 2017, ALDF's counsel responded that they believed a meet and confer would be most fruitful once they knew how Hormel would revise its discovery responses, and offered dates for a meet and confer based on the understanding that Hormel would provide revised discovery responses before then.
4. On October 6, 2017, ALDF's counsel sent Hormel's counsel a reminder email that they had failed to follow-up to explain when or how Hormel would revise its discovery responses, and offered additional dates for a meet and confer in light of Hormel's delay in responding.
5. On October 7, 2017, Hormel's counsel responded that Hormel would not revise its discovery responses, and instead stated the parties should meet and confer to determine what Hormel would "agree[] or refuse[] to produce," offering dates for that discussion.
6. On October 10, 2017, ALDF's counsel responded that Hormel's position would encumber the parties reaching a reasonable agreement on the issues because Hormel was entirely "refus[ing] to produce documents in response to numerous requests regarding its production practices when the Court's decision [] recognized that Plaintiff is contending Hormel's advertising combined with its 'use of

hormones and drugs’ and ‘[in]humane’ and ‘[un]sanitary’ production methods violates the CPPA. Order at 5.” Nonetheless, ALDF’s counsel agreed to engage in a telephonic meet and confer on October 12, 2017, to be followed by an in-person meet and confer at a later date.

7. On October 12, 2017, the parties’ counsel spoke by phone starting at 11 a.m. for approximately an hour and a half regarding Hormel’s objections to producing material in response to ALDF’s discovery requests. The parties discussed at length Hormel’s statements that it would not produce most of the documents requested regarding Hormel’s animal husbandry practices identified in ALDF’s Complaint, which ALDF contends may render Hormel’s advertising false and misleading under the CPPA. They also discussed what documents ALDF believed were relevant regarding Hormel’s slaughter practices and why ALDF sought documents regarding whether Hormel’s slaughter facilities had violated federal law.
8. On October 24, 2017, Hormel’s counsel sent ALDF’s counsel a six-page letter saying that Hormel would only produce documents regarding “its internal policies, standards, or procedures” related to the raising or slaughtering of its animals “with respect to the issues specifically identified in paragraph 44 of Plaintiff’s Complaint.” Hormel claimed any further production would not be “proportional.” Hormel justified its position, in part, on the basis that ALDF had not established that “consumer survey evidence” would show Hormel’s alleged policies and practices would lead a reasonable consumer to find Hormel’s advertising false and misleading under the CPPA. Hormel also stated that it wished to “talk further ... about the documents you are seeking” related to Hormel’s slaughter practices, in

- particular how those practices' "compliance with federal law" (or lack thereof) could be relevant to the matter.
9. On October 25, 2017, the parties' counsel met at the Washington, DC offices of Hogan Lovells starting at 10 a.m. for a more than three and half hour in-person meet and confer. A substantial portion of that meet and confer concerned whether Hormel would produce documents related to the animal husbandry practices ALDF alleged in its Complaint could render Hormel's advertisements false and misleading under the CPPA. ALDF's counsel detailed a list of the practices ALDF believes Hormel engages in that ALDF contends could render Hormel's advertisements false and misleading under the CPPA. ALDF's counsel also explained that to address Hormel's proportionality concerns it was not requesting Hormel search for or produce emails concerning Hormel's policies and practices. Much of the remainder of that meet and confer concerned what documents ALDF sought related to Hormel's slaughter practices. ALDF's counsel pointed to the evidence cited in ALDF's Complaint demonstrating that Hormel hides its true slaughter practices as substantiating ALDF's need for documents beyond Hormel's formal slaughter policies, so that ALDF could understand what is actually occurring. ALDF's counsel further explained that information regarding Hormel's actual practices could be contained within Hormel's records of its violations of federal slaughter law.
  10. On November 2, 2017, Hormel's counsel sent ALDF's counsel an eight-page letter reiterating its earlier statements that, regardless of ALDF's efforts to narrow its requests related to Hormel's animal husbandry practices they are "a vastly

overbroad attempt to seek discovery on nearly every single aspect of Hormel Foods' business." Hormel further stated it believes ALDF is not entitled to information regarding Hormel's policies and practices unless ALDF's "allegations in the complaint" reference "consumer surveys" showing a reasonable consumer would regard Hormel's advertising as false or misleading in light of those alleged the policies and practices. Despite Hormel's claims of overbreadth, Hormel's letter also accurately identified the six specific categories of animal husbandry practices ALDF explained at the in-person meet and confer it believes Hormel engages in and are discoverable in this case. Hormel also acknowledged, without committing to produce any documents, that ALDF explained it sought records regarding Hormel's slaughter "protocols and any gaps between the protocols and current practices," including emails; this is because Hormel had a history of "cover[ing]-up" its actual practices. Hormel also recognized, again without committing to produce any documents, that ALDF sought Hormel's slaughter records regarding its "compliance with federal law ... to demonstrate practices underlying the federal standards" and because "Hormel Foods has raised its compliance with federal law as a 'defense.'"

11. On November 20, 2017, ALDF's counsel sent Hormel's counsel an eleven-page letter explaining why ALDF believes it is entitled to the requested discovery into Hormel's animal husbandry practices. ALDF further explained "Plaintiff generally concurs with your characterization" that ALDF has agreed to limit this discovery to documents related to the six specific types of animal husbandry practices identified in Hormel's letter, "as a compromise to address [Hormel's] concerns

regarding the breadth of the request.” ALDF further explained that it had attempted to provide Hormel detailed examples to illustrate what types of policies and practices would be responsive to each category, but that, of course, those examples “must be modified in light of what you know (and Plaintiff does not) about Hormel’s actual practices.” However, ALDF continued that if Hormel would provide “Plaintiff information that will allow us to further refine the list of discovery” ALDF would review that material and work with Hormel to further narrow the types of documents Hormel should collect and produce. ALDF requested Hormel inform it how it intended to proceed. ALDF further confirmed that it sought documents regarding Hormel’s “true” slaughter practices. ALDF explained it could refine what sorts of documents it seeks if “Hormel will be forthcoming about the types of records it keeps.” In the interim, ALDF explained that records showing “Hormel’s violations of federal law” could reveal Hormel’s actual slaughter practices. Moreover, ALDF explained that records regarding Hormel’s compliance with federal law (or lack thereof) were also relevant because “Hormel has stated it will assert its compliance with federal law as a defense in this action.” ALDF requested that Hormel inform ALDF whether Hormel would produce those documents.

12. On November 28, 2017, ALDF’s counsel sent Hormel’s counsel another letter (four-pages long) asking it to explain what discovery regarding its animal husbandry Hormel would produce. ALDF requested Hormel respond by December 8, 2017.
13. On December 13, 2017, Hormel’s counsel sent ALDF’s counsel a ten-page letter

stating that it would produce none of the documents discussed in the above exchanges. Despite ALDF's offers of compromise described above concerning discovery into Hormel's animal husbandry practices, Hormel fell back on asserting that "Plaintiff's RFPs are not limited in any way by its Complaint and are a vastly overbroad attempt to seek discovery on nearly every single aspect of Hormel Foods' business, which is largely irrelevant to the actual claims ALDF has pled in this case." Regarding documents related to Hormel's actual slaughter practices, Hormel again stated the Complaint "is devoid of allegations" making these requests relevant. Ignoring ALDF's explanation that evidence regarding Hormel's violations of federal law could reveal Hormel's actual slaughter practices, Hormel stated "your attempt to recast the [requests] as solely relating to the alleged underlying practices is disingenuous." Hormel did not address why these documents should not be produced to substantiate Hormel's affirmative defenses that it is in compliance with federal law.

14. Consistent with Hormel's statements above that it would not produce the documents for which ALDF moves, despite ALDF's good faith efforts, no production of the documents has been made. Indeed, to date, Hormel has only produced copies of print and "banner" advertisements at issue in this case.

/s/ Leah Nicholls  
Counsel for ALDF

#### **RULE 5(d) CERTIFICATION**

I, Leah Nicholls, certify pursuant to Rule 5(d) of the Superior Court Rules of Civil

Procedure that the following discovery has occurred to date:

1. On August 9, 2017, Hormel served its *First Set of Requests for Production*.
2. On August 10, 2017, ALDF served its *First Requests for Production*.
3. On September 8, 2017, ALDF served its responses and objections to Hormel's *First Set of Requests for Production*.
4. On September 11, 2017, Hormel served its responses and objections to ALDF's *First Requests for Production*.
5. On October 20, 2017, both parties served on the other their initial sets of Interrogatories and Requests for Admission, and their initial lists of fact witnesses.
6. On October 20, 2017, ALDF served two notices to take depositions of Hormel's corporate representatives.
7. On October 20, 2017, both parties served on the other the first in what the parties agreed would be rolling sets of production. Hormel's production was Bates stamped `HORM_DC00001-HORM_DC00187`. ALDF's production was Bates stamped `ALDF00001-ALDF01583`.
8. On October 24, 2017, Hormel served on ALDF a second production of documents. This production was Bates stamped `HORM_DC00190- HORM_DC00296`.
9. On November 20, 2017, both parties served on the other their responses and objections to the initial set of Interrogatories and Requests for Admission.

/s/ Leah Nicholls  
Counsel for ALDF

**CERTIFICATE OF SERVICE**

I, Tracy D. Rezvani, hereby certify that on this 29th day of December 2017, I filed a copy of the foregoing to be delivered *via* the Court's electronic filing system for service upon all counsel of record.

*/s/ Tracy D. Rezvani*

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