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**NOTE CHANGES MADE BY THE COURT**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

<p>THEODORE DEAN, SLAVA VANOUS, CLAIR HARPSTER AND RANDOLPH DANIELS-KOLIN INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>CHINA AGRITECH, INC., YU CHANG, YAU-SING TANG, GENE MICHAEL BENNETT, XIAO RONG TENG, MING FANG ZHU, ZHENG "ANNE" WANG, CHARLES LAW, LUN ZHANG DAI AND HAI LIN ZHANG,</p> <p style="text-align: center;">Defendants.</p>
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Case No.: 11-CV- 01331  
(RGK) (PJWx)

~~[PROPOSED]~~  
CONFIDENTIALITY ORDER

**DISCOVERY MATTER**

*Note Court's changes at pp. 10-11.*

*Under seal filings are governed by  
Local Rule 79-5. This protective order  
does not authorize under seal filings.*

~~[PROPOSED] CONFIDENTIALITY ORDER~~

*Anyone wishing to file a document under seal  
must comply with L.R. 79-5*

1 For good cause appearing for the entry of this Confidentiality Order under  
2 Federal Rule of Civil Procedure 26(c),

3 It is hereby ORDERED that:

4 1. This Confidentiality Order shall govern the handling, disclosure and  
5 use of all information that is furnished orally, in writing, by visual inspection or  
6 otherwise, by, through or on behalf of any party or any third party (the "Producing  
7 Party") to any other party (the "Receiving Party") in connection with discovery to  
8 be conducted in the above-entitled action (the "Litigation").

9 2. "Confidential Information," as used herein, means information of any  
10 type, kind or character which is designated "Confidential" by any of the parties to  
11 the action or other person(s) producing the information (including nonparties),  
12 whether it be a document, information contained in a document, information  
13 revealed during a deposition, information revealed in an interrogatory answer or  
14 otherwise. In designating information as "Confidential," the Producing Party will  
15 make such designation only as to that information that it in good faith believes is  
16 confidential within the meaning of Rule 26(c) of the Federal Rules of Civil  
17 Procedure and as further defined below. Information or material which is available  
18 to the public, including press releases, public documents filed with the Securities  
19 and Exchange Commission, and the like shall not be classified as "Confidential."  
20 Confidential Information includes or constitutes, but is not limited to, sensitive and  
21 nonpublic business personnel information, including financial or tax information,  
22 addresses, phone numbers and Social Security numbers; trade secrets; sensitive  
23 proprietary or confidential research, development, commercial non-public financial  
24 information, commercially sensitive information or personal information. The  
25 parties will make a good-faith effort to use the "Confidential" designation only  
26 when needed.

27 3. "Highly Confidential - Attorneys' Eyes Only Information" describes  
28 extremely sensitive Confidential Information disclosure of which to a party or non-

1 party would create substantial risk of serious injury that could not be avoided by  
2 less restrictive means. The parties will make a good-faith effort to use the “Highly  
3 Confidential - Attorneys’ Eyes Only” designation only when needed.

4 4. Confidential Information or Highly Confidential - Attorneys’ Eyes  
5 Only Information produced or exchanged in the course of this litigation shall be  
6 used solely for the purpose of prosecuting, defending or attempting to settle this  
7 Litigation and for no other purpose whatsoever, and shall not be disclosed to any  
8 person except in accordance with the terms hereof.

9 5. Except by agreement between the parties or further order of this Court,  
10 information designated as Confidential Information under this Confidentiality  
11 Order shall not be disclosed to any person other than the following:

12 (a) Counsel representing the named parties in the litigation,  
13 including in-house counsel and co-counsel, paralegals, clerks, secretaries, and other  
14 persons employed or retained by the named parties’ counsel to assist counsel in the  
15 preparation of this litigation (collectively referred to as a party’s “legal team”);

16 (b) Counsel representing any insurer or indemnitor of any  
17 Defendant, including the insurer’s or indemnitor’s legal team;

18 (c) The named parties, including officers or employees of any party  
19 to this action that are assisting counsel in the prosecution or defense of this  
20 Litigation;

21 (d) Actual or potential independent experts or consultants;

22 (e) Any person who authored, or has previously received or is  
23 reasonably believed to have been provided access to the material in the ordinary  
24 course of his or her business;

25 (f) Any actual or potential deponent or witness, including former  
26 employees, officers, or agents of a party (and clerical employees associated with the  
27 deponent or witness), provided that there is a reasonable basis to believe that such  
28 person will possess relevant information or knowledge regarding such material or

1 will give relevant testimony regarding the material, and for the purposes of  
2 refreshing recollection or impeachment;

3 (g) Any court reporter or other person involved in recording  
4 deposition testimony in this litigation by any means and acting in that capacity;

5 (h) The Court (and any appellate court) and any persons employed  
6 by the Court whose duties require access to the Confidential Information, including  
7 court personnel, jurors and alternate jurors; and

8 (i) The person(s) (including third parties) who produced the  
9 particular Confidential Information in question, and any officer, employee, or agent  
10 of such producer.

11 6. Except by agreement between the parties or further order of this Court,  
12 information designated as Highly Confidential - Attorneys' Eyes Only under this  
13 Confidentiality Order shall not be disclosed to any person other than the following:

14 (a) The Court and any Court staff and administrative personnel;

15 (b) Counsel for any party to this Litigation, including support staff  
16 of such counsel;

17 (c) Any court reporter employed in this Litigation and acting in that  
18 capacity;

19 (d) Expert or consultants retained by counsel to assist in the  
20 preparation of this Litigation or to testify at trial or at any other proceeding in this  
21 Litigation;

22 (e) Any person identified as having authored or previously received  
23 such information designated as Highly Confidential-Attorneys' Eyes only and

24 (f) Actual or potential witnesses whose testimony is being taken  
25 before trial, at any hearing, or at trial or whose testimony is reasonably anticipated  
26 to be taken before trial, at any hearing, or at trial where the Highly Confidential-  
27 Attorneys' Eyes Only Information is reasonably anticipated to relate to the  
28 witnesses' testimony. Such disclosure shall be limited to fact witnesses whose

1 identity has previously been disclosed before the date of testimony, whether by  
2 notice of deposition, trial witness lists, or otherwise. Witnesses shown Highly  
3 Confidential-Attorneys' Eyes Only Information shall not be allowed to retain  
4 copies.

5         7. Counsel desiring to reveal Confidential Information or Highly  
6 Confidential-Attorneys' Eyes Only Information to any of the persons referred to in  
7 Paragraphs 5 or 6 shall inform such person that the material is subject to a  
8 confidentiality order and shall provide such person with a copy of this  
9 Confidentiality Order before disclosure of any material designated as Confidential.  
10 Any person who receives this Confidentiality Order and is provided with any  
11 material designated as Confidential or Highly Confidential-Attorneys' Eyes Only  
12 shall execute an Acknowledgment in the form attached as Exhibit A hereto and  
13 agree to be bound by this Confidentiality Order and to be subject to the jurisdiction  
14 of this Court for any proceedings related to the enforcement of this Confidentiality  
15 Order. Counsel for the party who provided the Confidential Information or Highly  
16 Confidential-Attorneys' Eyes Only Information to the persons listed in Paragraph 5  
17 or 6 shall retain all original signed certificates obtained from any person pursuant to  
18 this Paragraph. Executed Exhibits A shall not be discoverable except as required to  
19 enforce this Order or as otherwise allowed under the Federal Rules of Civil  
20 Procedure and case law interpreting those rules.

21         8. Information designated Confidential or Highly Confidential-Attorneys'  
22 Eyes Only under this Confidentiality Order also may be disclosed if: the party or  
23 non-party making the designation consents to such disclosure; the Court, after  
24 notice to all affected persons, allows such disclosure or the party to whom  
25 Confidential Information or Highly Confidential-Attorneys' Eyes Only Information  
26 has been produced thereafter becomes obligated to disclose the information in  
27 response to a lawful subpoena, provided that the subpoenaed party gives prompt  
28 notice to counsel for the party which made the designation, and permits counsel for

1 that party sufficient time to intervene and seek judicial protection from the  
2 enforcement of this subpoena, including without limitation entry of an appropriate  
3 protective order in the action in which the subpoena was issued.

4 9. (a) Documents produced in this action may be designated as  
5 “Confidential” or “Highly Confidential-Attorneys’ Eyes Only” by marking each  
6 page of the document(s) so designated with a stamp stating “Confidential” or  
7 “Highly Confidential-Attorneys’ Eyes Only.” The “Confidential” or “Highly  
8 Confidential-Attorneys’ Eyes Only” designation shall be stamped in a size and  
9 location which makes the designation readily apparent and in a manner which does  
10 not conceal or affect the legibility or content of the document. The “Confidential”  
11 or “Highly Confidential-Attorneys’ Eyes Only” designation shall be affixed to any  
12 document produced or generated in the course of this litigation which mentions,  
13 discusses, or comments upon any Confidential Information or Highly Confidential-  
14 Attorneys’ Eyes Only Information. In lieu of marking the original of a document, if  
15 the original is not produced, the Producing Party may mark the copies that are  
16 produced or exchanged. Originals shall be preserved for inspection.

17 (b) Any Confidential Information or Highly Confidential-Attorneys’  
18 Eyes Only Information that is not reduced to documentary, tangible, or physical  
19 form, and that is otherwise not readily designated as “Confidential” or “Highly  
20 Confidential-Attorneys’ Eyes Only” pursuant to the preceding paragraph, may be  
21 designated “Confidential” or “Highly Confidential-Attorneys’ Eyes Only” by  
22 informing counsel for the parties in writing that it is “Confidential” or “Highly  
23 Confidential-Attorneys’ Eyes Only.”

24 10. (a) Any deposition transcript or videotaped (or otherwise recorded)  
25 deposition containing Confidential Information or Highly Confidential-Attorneys’  
26 Eyes Only Information shall be marked on the cover “Confidential” or “Highly  
27 Confidential-Attorneys’ Eyes Only” and shall indicate as appropriate within the  
28 transcript and on the videotape or other recording that the Information has been so

1 designated. Information (including exhibits) disclosed at the deposition of a party  
2 or one of its present or former officers, directors, employees, agents or independent  
3 experts retained by counsel for the purpose of this litigation, or (b) the deposition of  
4 a nonparty (which information pertains to a party) may be designated by any party  
5 as Confidential Information or Highly Confidential-Attorneys' Eyes Only  
6 Information by indicating on the record at the deposition that the relevant portions  
7 of the testimony are Confidential Information or Highly Confidential-Attorneys'  
8 Eyes Only Information and are subject to the provisions of this Confidentiality  
9 Order. Counsel may make a blanket designation of a deposition in its entirety  
10 during a deposition. Designating counsel thereafter shall designate specific pages  
11 of the transcript or parts thereof as Confidential or Highly Confidential-Attorneys'  
12 Eyes Only no later than 30 days after receipt of the final deposition transcript, after  
13 which time any blanket designation of a deposition in its entirety shall expire.

14 (b) At deposition, the disclosing party shall notify the reporter on the  
15 record if any Confidential Information or Highly Confidential-Attorneys' Eyes  
16 Only Information produced by a nonparty is disclosed. Any party or producing  
17 nonparty may also designate information disclosed at such deposition as  
18 Confidential Information or Highly Confidential-Attorneys' Eyes Only Information  
19 by notifying the reporter, all counsel of record, and any other affected person in  
20 writing within thirty (30) days of receipt of the transcript that the relevant portions  
21 of the transcript and the corresponding portions of any recording of the deposition  
22 should be treated as Confidential Information or Highly Confidential-Attorneys'  
23 Eyes Only Information. If such "Confidential" or "Highly Confidential-Attorneys'  
24 Eyes Only" designation is made, the court reporter shall be directed to affix the  
25 appropriate legend on the cover page and on all Confidential or Highly  
26 Confidential-Attorneys' Eyes Only pages of the transcript, and to each copy thereof  
27 (including any recording). Until thirty (30) days have passed after the receipt of  
28 any transcript, the entire transcript and any recording of the deposition shall be

1 deemed to contain Confidential Information or Highly Confidential-Attorneys'  
2 Eyes Only Information. The parties may modify this procedure for any particular  
3 deposition through agreement on the record at such deposition, without further  
4 order of the Court. If filed with the Court, those portions of a deposition containing  
5 Confidential Information or Highly Confidential-Attorneys' Eyes Only  
6 Information, either in testimony or exhibits, shall be filed with the Clerk of the  
7 Court under seal in the manner provided in paragraph 14.

8 (c) The Designating Party shall be responsible for all additional  
9 costs or fees charged by the court reporting agency or company in order to comply  
10 with the Designating Party's designations. For example, if the price of obtaining a  
11 transcript or videotape of a deposition is increased by virtue of the Designating  
12 Party's request to treat certain information Confidential or Highly Confidential-  
13 Attorneys' Eyes Only, the Designating Party shall pay to the party requesting the  
14 transcript or videotape the difference between the price with the designation and the  
15 price without the designation.

16 11. If a party receiving Confidential Information or Highly Confidential-  
17 Attorneys' Eyes Only Information learns that, by inadvertence or otherwise, it has  
18 disclosed such Information to any person or in any circumstance not authorized by  
19 this Confidentiality Order, that party must immediately (a) notify in writing the  
20 party making the designation of the unauthorized disclosure, (b) use its best efforts  
21 to retrieve all copies of the Confidential Information or Highly Confidential-  
22 Attorneys' Eyes Only Information, (c) inform the person or persons to whom  
23 unauthorized disclosures were made of all the terms of this Confidentiality Order  
24 and (d) request such person or persons to execute the Acknowledgement attached as  
25 Exhibit A.

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1           12. (a) Documents unintentionally produced without designation as  
2 “Confidential” or “Highly Confidential-Attorneys’ Eyes Only” may be retroactively  
3 designated by notice in writing of each document by Bates number if designated as  
4 such within thirty (30) days after the Producing Party discovers the Confidential  
5 Information or Highly Confidential-Attorneys’ Eyes Only Information is  
6 undesignated and shall be treated appropriately from the date written notice of the  
7 designation is provided to the receiving person(s).

8           (b) The Producing Party shall be obligated to provide replacement  
9 copies of any redesignated documents or materials with appropriate labeling to the  
10 receiving person(s) within ten days of the date of the written notice of the  
11 redesignation, unless otherwise agreed. Upon receipt of a copy of the redesignated  
12 documents or materials, the receiving person(s) shall promptly destroy, cause to be  
13 destroyed, or return all copies of the documents or materials in their possession or  
14 reasonably retrievable which do not bear the new designation, unless otherwise  
15 agreed. Upon specific written request to the receiving person(s), within thirty days  
16 after receipt of the redesignated documents or materials, the receiving party shall  
17 certify in writing that all copies lacking the designation have been destroyed or  
18 returned. The Receiving Party shall make a good faith effort to notify each non-  
19 party to whom the Receiving Party provided redesignated documents or materials  
20 of the redesignation and provide the non-party with replacement copies of any  
21 redesignated documents or materials. The Receiving Party shall also provide the  
22 Producing Party with the names and contact information of each non-party to whom  
23 the Receiving Party provided redesignated documents or materials. The parties to  
24 this litigation shall have no responsibility, duty, or liability, if a non-party receiving  
25 person fails to destroy any documents that have been later re-designated or provides  
26 a certification pursuant to this paragraph.

27           (c) In the event that two copies of a document or information are produced  
28 under different designations, the more restrictive designation shall apply, provided

1 that the redesignation is set forth in writing by the Producing Party. Should the  
2 receiving party notice any such discrepancy, it shall promptly bring it to the  
3 Producing Party's attention.

4 13. Other than as specifically provided for herein, this  
5 Confidentiality Order does not affect any legal right or privilege related to the  
6 documents and information subject to this Order, and nothing in this Order shall be  
7 construed as a waiver by any party of the right to object to the subject matter of any  
8 request for discovery in this action or to the admissibility of any evidence. Nothing  
9 in this Order is intended to constitute an agreement regarding the scope of  
10 discovery. The entry of this Order shall not be construed as ordering any party to  
11 produce any documents or provide any information, and shall not constitute a ruling  
12 that any documents or information which may exist are relevant in any way to the  
13 issues raised in this action; nor shall the entry of this Order, standing alone, be  
14 construed as a waiver by any party of any privilege or immunity with respect to any  
15 document or information. Nothing contained in this Order or any designation of  
16 confidentiality hereunder or any failure to make such designation shall be used or  
17 characterized by any party as an "admission" by a party or a party opponent.

18 14. (a) A party shall not be obligated to challenge the propriety of a  
19 designation as "Confidential" or "Highly Confidential-Attorneys' Eyes Only" at the  
20 time made, and a failure to do so shall not preclude a subsequent challenge thereto.  
21 Failure to object to a designation of confidentiality shall not constitute or be  
22 construed as an admission nor raise an inference that the documents designated as  
23 "Confidential" or "Highly Confidential-Attorneys' Eyes Only" constitute or contain  
24 confidential, proprietary information or any trade secret. A failure to challenge the  
25 propriety of any designation by any party or nonparty does not constitute a waiver  
26 or in any way preclude a subsequent challenge in this or any other action to the  
27 propriety of such designation.

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1 (b) In the event a party objects to the “Confidential” or “Highly  
2 Confidential-Attorneys’ Eyes Only” designation under this Confidentiality Order  
3 by a producing person of any document (or part thereof), the objecting party shall  
4 consult with the Producing Party to attempt to resolve their differences, and the  
5 objecting party shall provide the Producing Party with written notice of its  
6 disagreement and specifically identify the information or restriction on access that  
7 is disputed. The objecting party shall simultaneously provide a copy of this signed  
8 writing to each party in this litigation. If, despite good-faith effort, the parties are  
9 unable to reach resolution through the meet and confer process within five court  
10 days thereafter, the Producing Party shall have ten days to move the Court for  
11 protection pursuant to Rule 26(c) of the Federal Rules of Civil Procedure; otherwise  
12 the document or information shall lose its Confidential or Highly Confidential-  
13 Attorneys’ Eyes Only designation. In any such motion, the Producing Party has the  
14 burden of establishing that the “Confidential” or “Highly Confidential-Attorneys’  
15 Eyes Only” designation is proper. If a motion is made, any documents or other  
16 materials that have been designated “Confidential” or “Highly Confidential-  
17 Attorneys’ Eyes Only” shall be treated as Confidential Information or Highly  
18 Confidential-Attorneys’ Eyes Only Information until such time as the Court rules  
19 that such material should not be treated as Confidential Information or Highly  
20 Confidential-Attorneys’ Eyes Only Information.

21 (c) The parties may, by stipulation, provide for exceptions to this  
22 Order, and any party may seek an order of this Court modifying this Confidentiality  
23 Order. Unless and until otherwise ordered by the Court, or agreed to in writing by  
24 the parties (and when appropriate, nonparties), all Confidential Information or  
25 Highly Confidential-Attorneys’ Eyes Only Information shall be treated as such and  
26 shall not be disclosed except under the terms of this Order.

27 14. In the event that counsel for any party decides to file with or submit to  
28 the Court any Confidential Information or Highly Confidential-Attorneys’ Eyes

*L.R. 79-5 governs under seal filings. Counsel must apply under L.R. 79-5 to file a document under seal.*

1 Only Information, the following procedures shall be used:

2 (a) All Information subject to confidential treatment in accordance  
3 with the terms of this Order that is filed with the Court and any pretrial pleading,  
4 motions, or other papers filed with the Court disclosing any Confidential  
5 Information or Highly Confidential-Attorneys' Eyes Only Information shall be filed  
6 under seal and kept under seal until further order of this Court.

7 (b) The parties agree to refrain from including Confidential  
8 Information Highly Confidential-Attorneys' Eyes Only Information in the titles of  
9 the documents filed with the Court so that, in all instances, the titles of the  
10 documents—and the Court's docket sheet reflecting those titles—may remain  
11 public.

12 (c) All filings to be filed under seal, in whole or in part, must be so  
13 designated by the party making the filing. Each document that is filed under seal  
14 will be filed pursuant to Local Rule 79-5 of the Central District of California.

15 (d) If any person fails to file protected information under seal, the  
16 Producing Party or any party claiming confidentiality for the documents or  
17 information may request that the Court place the filed documents or information  
18 under seal.

19 (e) If Confidential Information Highly Confidential-Attorneys'  
20 Eyes Only Information must be provided to answer an interrogatory or request for  
21 admission, counsel for the responding party should, at the time the response is  
22 served, designate that portion of the response that shall be deemed Confidential  
23 Information or Highly Confidential-Attorneys' Eyes Only Information for purposes  
24 of this Confidentiality Order. All answers to interrogatories or requests for  
25 admission designated as "Confidential" or "Highly Confidential-Attorneys' Eyes  
26 Only" shall be covered by the terms of this Order, shall be designated as  
27 "Confidential" or "Highly Confidential-Attorneys' Eyes Only" as set forth herein,  
28 and shall only be disclosed as provided by this Order.

1           15. Neither the provisions of this Confidentiality Order nor the filing of  
2 any material under seal shall prevent use in the Litigation of any Confidential  
3 Information, either in open court, at any hearing, or at trial, provided that the party  
4 desiring to use the material gives the relevant producer reasonable advance notice  
5 that the disclosing party is substantially likely to use the Confidential Information  
6 in open court. There is no obligation to disclose the exact Confidential documents  
7 likely to be used. Inclusion of any Confidential documents or other information in  
8 any filing with the Court is a prima facie indication that it is substantially likely that  
9 Confidential Information will be used in open court. As to these documents, no  
10 other notice is required.

11           16. Nothing herein shall impose any restriction on the use or disclosure by  
12 a party of its own Information. Such disclosures shall not affect any Confidential  
13 or Highly Confidential-Attorneys' Eyes Only designation made under the terms of  
14 this Confidentiality Order so long as the disclosure is made in a manner that is  
15 reasonably calculated to maintain the confidentiality of the information. This  
16 Confidentiality Order shall not prevent or otherwise restrict counsel from rendering  
17 advice to their clients, and in the course thereof, relying on examination of stamped  
18 Confidential Information. Nor shall this Confidentiality Order be construed to  
19 prevent any party, its counsel, or its legal team from making use as they see fit of  
20 information that was available to the public. Moreover, no party shall designate as  
21 "Confidential" or "Highly Confidential-Attorneys' Eyes Only" any document or  
22 information which has previously been made publicly available. In the event,  
23 however, that a non-party provides Information that was generated by a party to this  
24 Confidentiality Order and that party believes that the Information is proprietary and  
25 Confidential or Highly Confidential-Attorneys' Eyes Only, the party may request  
26 that all copies of such information be stamped with whatever designation the party  
27 believes is appropriate within the provisions of this Order.

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**Exhibit A**

**ACKNOWLEDGMENT OF CONFIDENTIALITY ORDER**

I hereby acknowledge that I will be receiving Confidential Information or Highly Confidential-Attorneys' Eyes Only Information pursuant to the terms of a Confidentiality Order entered in the action entitled *Dean v. China Agritech, Inc.*, Civil Action No. 11-CV- 01331 (C.D. Cal.) on \_\_\_\_\_. I have been given a copy of, and have read and understand the Confidentiality Order and I agree to be bound by the terms and conditions of that Order. I understand that: (i) I am to make no copies of any such Confidential Information or Highly Confidential-Attorneys' Eyes Only Information except as is necessary for use in the above-referenced action; and (ii) such Confidential Information or Highly Confidential-Attorneys' Eyes Only Information and any copies thereof are Confidential Information or Highly Confidential-Attorneys' Eyes Only Information to remain in my personal custody until I have completed my assigned duties, whereupon they are to be returned to counsel who provided me with such Confidential Information or Highly Confidential-Attorneys' Eyes Only Information. I agree not to disseminate any information derived from such Confidential Information or Highly Confidential-Attorneys' Eyes Only Information to anyone, or make disclosure of any such information, except for the purposes of the above-referenced proceedings or as permitted by the Confidentiality Order or by further order of the Court.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_