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 CENTRAL DISTRICT OF CALIFORNIA  
 BY *ML* REPORT

10 Attorneys for Defendants Xiamen Kingdomway Group  
 11 Company and Pacific Rainbow International Inc.  
 12 [Additional counsel listed on signature page]

13 **UNITED STATES DISTRICT COURT**  
 14 **CENTRAL DISTRICT OF CALIFORNIA**  
 15 **WESTERN DIVISION**

16 KANEKA CORPORATION, a Japanese corporation,  
 17 )

Case No.: 2:11-cv-02389-~~MRP~~-SS

18 Plaintiff,

~~PROPOSED~~ AMENDED  
 PROTECTIVE ORDER

19 v.

NOTE CHANGES MADE BY THE COURT

20 ZHEJIANG MEDICINE CO., LTD., a Chinese corporation, ZMC-USA, L.L.C., a Texas corporation, XIAMEN

[DEMAND FOR JURY TRIAL]

21 KINGDOMWAY GROUP COMPANY, a Chinese corporation, PACIFIC  
 22 RAINBOW INTERNATIONAL INC., a California corporation, MITSUBISHI  
 23 GAS CHEMICAL COMPANY, INC., a Japanese corporation, MAYPRO  
 24 INDUSTRIES, INC., a New York corporation, and SHENZHOU BIOLOGY  
 25 & TECHNOLOGY CO., LTD., a Chinese corporation,  
 26 )  
 27 )

28 Defendants.

1 **GOOD CAUSE STATEMENT**

2 Good cause exists for the issuance of a protective order because it would  
3 expedite the flow of discovery material, facilitate the prompt resolution of disputes  
4 over confidentiality of discovery materials, adequately protect information – such  
5 as trade secrets – in which the parties have a clear privacy interest and that the  
6 parties are entitled to keep confidential, and ensure that the parties are permitted  
7 reasonably necessary uses of such materials in preparation for trial. The discovery  
8 materials to be exchanged include information relating to the issues underlying the  
9 claims and counterclaims in this litigation, and their exchange would therefore  
10 promote fairness and efficiency.

11 The protective order would also ensure that only materials the parties are  
12 entitled to keep confidential are subject to such treatment in order to protect the  
13 interests of the public. For example, to the extent that segregation of confidential  
14 business information in filed papers is reasonably practicable, efforts will be made  
15 to only file under seal the portions of the papers that contain the confidential  
16 business information. For motions, the parties shall file a public, redacted version  
17 of the motion and supporting papers in addition to the version that is filed under  
18 seal.

19 **PROTECTIVE ORDER**

20 To expedite the flow of discovery material, to facilitate the prompt  
21 resolution of disputes over confidentiality of discovery materials, to adequately  
22 protect information the parties are entitled to keep confidential, to ensure that only  
23 materials the parties are entitled to keep confidential are subject to such treatment,  
24 and to ensure that the parties are permitted reasonably necessary uses of such  
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1 materials in preparation for trial, pursuant to Fed. R. Civ. P. 26(c), it is hereby  
2 STIPULATED<sup>1</sup> AND ORDERED THAT:

3 1. Confidential business information is information that has not been  
4 made public and that concerns or relates to the trade secrets, processes, operations,  
5 style of work, or apparatus, or to the production, sales, shipments, purchases,  
6 transfers, identification of customers, inventories, amount or source of any income,  
7 profits, losses, or expenditures of any person, firm, partnership, corporation, or  
8 other organization, or other information of commercial value, the disclosure of  
9 which is likely to have the effect of causing substantial harm to the competitive  
10 position of the person, firm, partnership, corporation, or other organization from  
11 which the information was obtained.

12 2(a). Any information submitted, in discovery or in a pleading, motion, or  
13 response to a motion either voluntarily or pursuant to order, in this action, which is  
14 asserted by a supplier to contain or constitute confidential business information  
15 shall be so designated by such supplier in writing, or orally at a deposition,  
16 conference or hearing, and shall be segregated from other information being  
17 submitted. Documents shall be clearly and prominently marked on their face with  
18 the legend: "CONFIDENTIAL BUSINESS INFORMATION SUBJECT TO  
19 PROTECTIVE ORDER" or a comparable notice. Such information, whether  
20 submitted in writing or in oral testimony, shall be treated in accordance with the  
21 terms of this protective order.

22 (b). The Court may determine that information alleged to be confidential  
23 is not confidential, or that its disclosure is necessary for the proper disposition of  
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25  
26 <sup>1</sup> Mitsubishi Gas Chemical Company, Inc., ("MGC") is settling with Kaneka  
27 Corporation and therefore will likely be dismissed from the case soon. Relatedly,  
28 MGC does not sign on to this Stipulated Protective Order. Thus, this Protective  
Order is "stipulated to" by all of the current parties with the exception of MGC.

1 the proceeding, before, during or after the close of a hearing herein. If such a  
2 determination is made by the Court, opportunity shall be provided to the supplier  
3 of such information to argue its confidentiality prior to the time of such ruling.

4 3. In the absence of written permission from the supplier or an order by  
5 the Court, any confidential documents or business information submitted in  
6 accordance with the provisions of paragraph 2 above shall not be disclosed to any  
7 person other than: (i) outside counsel of record for parties to this action, including  
8 necessary secretarial and support personnel assisting such counsel; (ii) qualified  
9 persons taking testimony involving such documents or information and necessary  
10 stenographic and clerical personnel thereof; (iii) technical experts and their staff  
11 who are employed for the purposes of this action (unless they are otherwise  
12 employed by, consultants to, or otherwise affiliated with a non-governmental party,  
13 or are employees of any domestic or foreign manufacturer, wholesaler, retailer, or  
14 distributor of the products, devices or component parts which are the subject of this  
15 action); and (iv) the Court, its employees, and contract personnel who are acting in  
16 the capacity of Court employees, for developing or maintaining the records of this  
17 action or related proceedings for which this information is submitted.

18 3(a) Any party hereto may designate highly confidential business information as  
19 “HIGHLY CONFIDENTIAL INFORMATION; OUTSIDE ATTORNEY’S EYES  
20 ONLY; LIMITED DISCLOSURE.” Subject to paragraph 3(b) below and with  
21 respect to a limited category of information (namely, Plaintiff’s pricing and profits  
22 on reduced CoenzymeQ10 that Magistrate Segal has ordered Plaintiff to produce),  
23 any party hereto may designate extremely sensitive highly confidential business  
24 information for further limited disclosure as “HIGHLY CONFIDENTIAL  
25 INFORMATION; OUTSIDE ATTORNEY’S EYES ONLY; LIMITED  
26 INFORMATION; OUTSIDE ATTORNEY’S EYES ONLY; LIMITED  
27 INFORMATION; OUTSIDE ATTORNEY’S EYES ONLY; LIMITED  
28 INFORMATION; OUTSIDE ATTORNEY’S EYES ONLY; LIMITED

1 DISCLOSURE.” Any information which is asserted by a supplier to contain or  
2 constitute “HIGHLY CONFIDENTIAL INFORMATION; OUTSIDE  
3 ATTORNEY’S EYES ONLY; LIMITED DISCLOSURE” shall be so designated  
4 by such supplier in writing, or orally at a deposition conference or hearing, and  
5 shall be segregated from other information being submitted.  
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10 3(b). “HIGHLY CONFIDENTIAL INFORMATION; OUTSIDE ATTORNEY’S  
11 EYES ONLY; LIMITED DISCLOSURE” (“HCILD”), shall not be disclosed to  
12 any person other than outside counsel of record and their staff, along with any  
13 expert designated by a party who needs the information to render his or her  
14 opinion, each of which must provide a signed copy of Attachment A hereto to  
15 opposing counsel before receiving or reviewing any HCILD information. If  
16 HCILD is used in any deposition, both the court reporter and videographer are  
17 required to provide a signed copy of Attachment A, and individuals who have not  
18 signed Attachment A, must be excluded from the deposition. The Parties will  
19 apply to the Court to file any documents containing HCILD under seal. “HIGHLY  
20 CONFIDENTIAL INFORMATION; OUTSIDE ATTORNEY’S EYES ONLY;  
21 LIMITED DISCLOSURE” (“HCILD”), shall not be disclosed to any person other  
22 than six (6) outside counsel of record, two (2) secretarial assistants and two (2)  
23 paralegals, along with any expert designated by a party who needs the information  
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1 to render his or her opinion, each of which must provide a signed copy of  
2 Attachment A hereto to opposing counsel before receiving or reviewing any  
3 HCILD information. HCILD information shall be kept in a separate electronic or  
4 hard copy file, which file will only be accessible by the individuals who have  
5 signed and provided to opposing counsel a copy of Attachment A. If HCILD is  
6 used in any deposition, both the court reporter and videographer are required to  
7 provide a signed copy of Attachment A, and individuals who have not signed  
8 Attachment A, must be excluded from the deposition. The Parties will apply to the  
9 Court to file any documents containing HCILD under seal.  
10  
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13  
14 4. All persons designated in paragraph 3(i)<sup>2</sup> hereby agree (i) to be bound  
15 by the terms thereof; (ii) not to reveal such confidential business information to  
16 anyone other than another person designated in paragraph 3; and (iii) to utilize  
17 such confidential business information solely for purposes of this action.  
18 Confidential business information submitted in accordance with the provisions of  
19 paragraph 2 above shall not be made available to any person designated in  
20 paragraph 3(iii) unless he or she shall have first read this order and shall have  
21 agreed, in writing provided to all parties to this action: (i) to be bound by the terms  
22 thereof; (ii) not to reveal such confidential business information to anyone other  
23 than another person designated in paragraph 3; and (iii) to utilize such confidential  
24 business information solely for purposes of this action.  
25

26  
27 <sup>2</sup> Necessary secretarial and support personnel assisting counsel need not sign onto  
28 the protective order themselves because they are covered by counsel's signing onto  
the protective order.

1           5.     If the Court orders, or if the supplier and all parties to the action agree,  
2 that access to, or dissemination of information submitted as confidential business  
3 information shall be made to persons not included in paragraph 3 above, such  
4 matter shall only be accessible to, or disseminated to, such persons based upon the  
5 conditions pertaining to, and obligations arising from this order, and such persons  
6 shall be considered subject to it, unless the Court finds that the information is not  
7 confidential business information as defined in paragraph 1 hereof.

8           6.     If any papers to be filed with the Court contain confidential business  
9 information, the proposed filing shall be accompanied by an application to file the  
10 papers or the portion thereof containing the protected information (if such portion  
11 is segregable) under seal, and this application shall be directed to the judge to  
12 whom the papers are directed. For motions, the parties shall also file a redacted  
13 version of the motion and supporting papers.

14           When any confidential business information submitted in accordance with  
15 paragraph 2 above is included in an authorized transcript of a deposition or exhibits  
16 thereto, arrangements shall be made with the court reporter taking the deposition to  
17 bind such confidential portions and separately label them “CONFIDENTIAL  
18 BUSINESS INFORMATION SUBJECT TO PROTECTIVE ORDER.” Before a  
19 court reporter or translator receives any such information, he or she shall have first  
20 read this order and shall have agreed to be bound by the terms thereof.

21           Alternatively, he or she shall sign the agreement included as Attachment A hereto.  
22 Copies of each such signed agreement shall be provided to the supplier of such  
23 confidential business information and all parties to this action.

24           7.     The restrictions upon, and obligations accruing to, persons who  
25 become subject to this order shall not apply to any information submitted in  
26 accordance with paragraph 2 above to which the person asserting the confidential  
27 status thereof agrees in writing, or the Court orders, after an opportunity for  
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1 hearing, was publicly known at the time it was supplied to the receiving party or  
2 has since become publicly known through no fault of the receiving party.

3 8. The Court acknowledges that any document or information submitted  
4 as confidential business information pursuant to paragraph 2 above is to be treated  
5 as such within the meaning of Federal Rule of Civil Procedure 26(c), subject to a  
6 contrary ruling, after hearing, by the Court.

7 9. Unless a designation of confidentiality has been withdrawn, or a  
8 determination has been made by the Court that information designated as  
9 confidential, is no longer confidential, the Court shall take all necessary and proper  
10 steps to preserve the confidentiality of, and to protect each supplier's rights with  
11 respect to, any confidential business information designated by the supplier in  
12 accordance with paragraph 2 above, including, without limitation: (a) notifying the  
13 supplier promptly of (i) any inquiry or request by anyone for the substance of or  
14 access to such confidential business information, other than those authorized  
15 pursuant to this order, (ii) any proposal to redesignate or make public any such  
16 confidential business information; and (b) providing the supplier at least seven  
17 days after receipt of such inquiry or request within which to take action before the  
18 Court, or otherwise to preserve the confidentiality of and to protect its rights in,  
19 ~~and to, such confidential business information.~~

20 10(a). Any party may challenge a designation of confidentiality at any time  
21 in a manner that complies with Civil Local Rules 37-1 and 37-2. Unless a prompt  
22 challenge to a supplier's confidentiality designation is necessary to avoid  
23 foreseeable, substantial unfairness, unnecessary economic burdens, or a significant  
24 disruption or delay of the litigation, a party does not waive its right to challenge a  
25 confidentiality designation by electing not to mount a challenge promptly after the  
26 original designation is disclosed.

27 (b) The recipient shall initiate the dispute resolution process by providing  
28 written notice of each designation it is challenging and describing the basis for



1 each challenge. To avoid ambiguity as to whether a challenge has been made, the  
2 written notice must recite that the challenge to confidentiality is being made in  
3 accordance with this specific paragraph of the Protective Order. The parties shall  
4 attempt to resolve each challenge in good faith and must begin the process by  
5 conferring directly (in voice to voice dialogue; other forms of communication are  
6 not sufficient). In conferring, the recipient must explain the basis for its belief that  
7 the confidentiality designation was not proper and must give the supplier an  
8 opportunity to review the designated material, to reconsider the circumstances,  
9 and, if no change in designation is offered, to explain the basis for the chosen  
10 designation. A recipient may proceed to the next stage of the challenge process  
11 only if it has engaged in this meet and confer process first or establishes that the  
12 supplier is unwilling to participate in the meet and confer process in a timely  
13 manner.

14 (c) If the parties cannot resolve a challenge without court intervention,  
15 the supplier shall file and serve a motion to retain confidentiality under Civil Local  
16 Rule 7 and in compliance with Civil Local Rules 37-1 and 37-2 (and also in  
17 compliance with Civil Local Rule 79-5, if applicable) within 15 days after the  
18 supplier objects to the recipient's notice of challenge. Each such motion must be  
19 accompanied by a competent declaration affirming that the movant has complied  
20 with the meet and confer requirements imposed in the preceding paragraph, and  
21 must be accompanied by a Joint Stipulation pursuant to Civil Local Rule 37-2.  
22 ~~Failure by the supplier to make such a motion including the required declaration~~  
23 ~~within 15 days shall automatically waive the confidentiality designation for each~~  
24 ~~challenged designation. In addition, the recipient may file a motion challenging a~~  
25 ~~confidentiality designation at any time if there is good cause for doing so,~~  
26 ~~including a challenge to the designation of a deposition transcript or any portions~~  
27 ~~thereof. Any motion brought pursuant to this provision must be accompanied by a~~  
28

*STAS*  
*See LR 37 Br timing.*  
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1 competent declaration affirming that the movant has complied with the meet and  
2 confer requirements imposed by the preceding paragraph.

3 The burden of persuasion in any such challenge proceeding shall be on the  
4 supplier. Frivolous challenges and those made for an improper purpose (e.g., to  
5 harass or impose unnecessary expenses and burdens on other parties) may expose  
6 the recipient to sanctions. Unless the supplier has waived the confidentiality  
7 designation by failing to file a motion to retain confidentiality as described above,  
8 all parties shall continue to afford the material in question confidential until the  
9 court rules on the challenge.

10 11. Prior to the initial disclosure to a proposed expert of any confidential  
11 information submitted in accordance with paragraph 2, the party proposing to use  
12 such expert shall make a written request to the supplier that (1) sets forth the full  
13 name of the expert and the city and state of his or her primary residence, (2)  
14 attaches a copy of the expert's current resume, (3) identifies the expert's current  
15 employer(s), (4) identifies each person or entity to whom the expert has provided  
16 professional services, including in connection with a litigation, at any time during  
17 the preceding five years, and (5) identifies (by name and number of the case, filing  
18 date, and location of court) any litigation in connection with which the expert has  
19 offered expert testimony, including through a declaration, report, or testimony at a  
20 deposition or trial, during the preceding five years. The preceding paragraph  
21 applies to both testifying and non-testifying/consulting experts. If the supplier  
22 objects to the disclosure of such confidential business information to such  
23 proposed expert as inconsistent with the language or intent of this order or on other  
24 grounds, it shall notify the recipient in writing of its objection and the grounds  
25 therefore within 10 business days. If the supplier fails to object within 10 business  
26 days, it shall be deemed to have consented to the disclosure.

27 12. If confidential business information submitted in accordance with  
28 paragraph 2 is disclosed to any person other than in the manner authorized by this

1 protective order, the party responsible for the disclosure must immediately bring  
2 all pertinent facts relating to such disclosure to the attention of the supplier and the  
3 Court and, without prejudice to other rights and remedies of the supplier, make  
4 every effort to prevent further disclosure by it or by the person who was the  
5 recipient of such information.

6 13. The parties hereby stipulate, subject to the terms of this Stipulated  
7 Protective Order, that (i) all discovery taken in the now-terminated investigation  
8 before the U.S. International Trade Commission, *Certain Coenzyme Q10 Products*  
9 *and Methods for Making Same*, Inv. No. 337-TA-790 (“the ITC proceeding”), may  
10 be used as though taken in this action, (ii) all confidential business information  
11 obtained in the ITC proceeding may be kept and used in this action, and (iii)  
12 documents containing all confidential business information may be transferred  
13 from ITC counsel for each party to counsel of record in this action, including local  
14 counsel and newly appointed counsel. Prior to transferring any confidential  
15 business information obtained during the ITC Proceeding to this action that  
16 includes the confidential business information of a non-party supplier, the parties  
17 will obtain consent to transfer and use such confidential business information from  
18 the supplier. For avoidance of any doubt, the parties agree that Agility IP Law, ITC  
19 counsel for Xiamen Kingdomway Group Company and Pacific Rainbow  
20 International Inc., may transfer documents containing the parties’ confidential  
21 business information to Mei & Mark LLP, counsel of record for Xiamen  
22 Kingdomway Group Company and Pacific Rainbow International Inc. in this  
23 action, subject to the terms of this Stipulated Protective Order.

24 14. Within 60 days after the final termination of this action including all  
25 subsequent appeals, if any, each recipient of confidential business information that  
26 is subject to this order shall assemble and return to the supplier all items containing  
27 such information submitted in accordance with paragraph 2 above, including all  
28 copies of such matter which may have been made. Alternatively, by the 60 day

1 deadline, the parties subject to this order may, with the written consent of the  
2 supplier, destroy all items containing confidential business information and certify  
3 to the supplier (or his counsel) that such destruction has taken place.

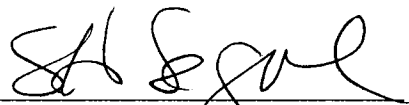
4 15. If any confidential business information which is supplied in  
5 accordance with paragraph 2 above is supplied by a nonparty to this action, such a  
6 nonparty shall be considered a "supplier" as that term is used in the context of this  
7 order.

8 16. Each nonparty supplier shall be provided a copy of this order by the  
9 party seeking information from said supplier.

10 17. Nothing in this Order shall be construed as authorizing a party to  
11 disobey a lawful subpoena issued in another action.

12  
13 PURSUANT TO STIPULATION, IT IS SO ORDERED.

14 DATED: November 16, 2016

15   
16 \_\_\_\_\_  
17 Suzanne H. Segal  
18 United States Magistrate Judge

19 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

20 Dated: November 14, 2016

21 Respectfully Submitted,

22  
23  
24 /s/ Keith D. Nowak  
25 Keith D. Nowak, Esq.  
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~~PROPOSED~~ AMENDED PROTECTIVE ORDER – CASE NO. 2:11-cv-02389-MRP-SS