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 26 as Trustee for the time being of the Redelinghuys
 27 Familie Trust and Defendant Deborah Mary Redelinghuys
 28 N.O. in her capacity as Trustee for the time being of the
 Redelinghuys Familie Trust

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

INTERNATIONAL FRUIT GENETICS, LLC,
 Plaintiff,

v.

P.E.R. ASSET MANAGEMENT TRUST,
 PIETER EDUARD RETIEF REDELINGHUYS
 N.O., IN HIS CAPACITY AS TRUSTEE FOR
 THE TIME BEING OF THE P.E.R. ASSET
 MANAGEMENT TRUST, AND DEBORAH
 MARY REDELINGHUYS N.O., IN HER
 CAPACITY AS TRUSTEE FOR THE TIME
 BEING OF THE P.E.R. ASSET
 MANAGEMENT TRUST,
 Defendants.

CASE NO. 14-cv-05273-ODW
(MRW)

**STIPULATED PROTECTIVE
ORDER**

The Honorable Otis D. Wright II

AND RELATED COUNTER CLAIM.

1 1. INTRODUCTION

2 1.1 PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may
6 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
7 enter the following Stipulated Protective Order. The parties acknowledge that this
8 Order does not confer blanket protections on all disclosures or responses to
9 discovery and that the protection it affords from public disclosure and use extends
10 only to the limited information or items that are entitled to confidential treatment
11 under the applicable legal principles. The parties further acknowledge, as set forth
12 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
13 file confidential information under seal; Civil Local Rule 79-5 sets forth the
14 procedures that must be followed and the standards that will be applied when a
15 party seeks permission from the court to file material under seal.

16 1.2 GOOD CAUSE STATEMENT

17 This action is likely to involve trade secrets, customer and pricing lists
18 and other valuable research, development, commercial, financial, technical
19 and/or proprietary information for which special protection from public
20 disclosure and from use for any purpose other than prosecution of this action is
21 warranted. Such confidential and proprietary materials and information consist
22 of, among other things, confidential business or financial information,
23 information regarding confidential business practices, or other confidential
24 research, development, or commercial information (including information
25 implicating privacy rights of third parties), information otherwise generally
26 unavailable to the public, or which may be privileged or otherwise protected
27 from disclosure under state or federal statutes, court rules, case decisions, or
28 common law. Accordingly, to expedite the flow of information, to facilitate the

1 prompt resolution of disputes over confidentiality of discovery materials, to
2 adequately protect information the parties are entitled to keep confidential, to
3 ensure that the parties are permitted reasonable necessary uses of such material
4 in preparation for and in the conduct of trial, to address their handling at the
5 end of the litigation, and serve the ends of justice, a protective order for such
6 information is justified in this matter. It is the intent of the parties that
7 information will not be designated as confidential for tactical reasons and that
8 nothing be so designated without a good faith belief that it has been maintained
9 in a confidential, non-public manner, and there is good cause why it should not
10 be part of the public record of this case.

11 2. DEFINITIONS

12 2.1 Action: this pending federal law suit.

13 2.2 Challenging Party: a Party or Non-Party that challenges the
14 designation of information or items under this Order.

15 2.3 “CONFIDENTIAL” Information or Items: information (regardless
16 of how it is generated, stored or maintained) or tangible things that qualify for
17 protection under Federal Rule of Civil Procedure 26(c), and as specified above
18 in the Good Cause Statement.

19 2.4 Counsel: Outside Counsel of Record and House Counsel (as well
20 as their support staff).

21 2.5 Designating Party: a Party or Non-Party that designates
22 information or items that it produces in disclosures or in responses to discovery
23 as “CONFIDENTIAL.”

24 2.6 Disclosure or Discovery Material: all items or information,
25 regardless of the medium or manner in which it is generated, stored, or
26 maintained (including, among other things, testimony, transcripts, and tangible
27 things), that are produced or generated in disclosures or responses to discovery
28 in this matter.

1 2.7 Expert: a person with specialized knowledge or experience in a
2 matter pertinent to the litigation who has been retained by a Party or its counsel
3 to serve as an expert witness or as a consultant in this Action.

4 2.8 House Counsel: attorneys who are employees of a party to this
5 Action. House Counsel does not include Outside Counsel of Record or any
6 other outside counsel.

7 2.9 Non-Party: any natural person, partnership, corporation,
8 association, or other legal entity not named as a Party to this action.

9 2.10 Outside Counsel of Record: attorneys who are not employees of a
10 party to this Action but are retained to represent or advise a party to this Action
11 and have appeared in this Action on behalf of that party or are affiliated with a
12 law firm which has appeared on behalf of that party, and includes support staff.

13 2.11 Party: any party to this Action, including all of its officers,
14 directors, employees, consultants, retained experts, and Outside Counsel of
15 Record (and their support staffs).

16 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
17 Discovery Material in this Action.

18 2.13 Professional Vendors: persons or entities that provide litigation
19 support services (e.g., photocopying, videotaping, translating, preparing exhibits
20 or demonstrations, and organizing, storing, or retrieving data in any form or
21 medium) and their employees and subcontractors.

22 2.14 Protected Material: any Disclosure or Discovery Material that is
23 designated as “CONFIDENTIAL.”

24 2.15 Receiving Party: a Party that receives Disclosure or Discovery
25 Material from a Producing Party.

26 3. SCOPE

27 The protections conferred by this Stipulation and Order cover not only
28 Protected Material (as defined above), but also (1) any information copied or

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or
2 compilations of Protected Material; and (3) any testimony, conversations, or
3 presentations by Parties or their Counsel that might reveal Protected Material.

4 Any use of Protected Material at trial shall be governed by the orders of the
5 trial judge. This Order does not govern the use of Protected Material at trial.

6 4. DURATION

7 Even after final disposition of this litigation, the confidentiality obligations
8 imposed by this Order shall remain in effect until a Designating Party agrees
9 otherwise in writing or a court order otherwise directs. Final disposition shall be
10 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
11 with or without prejudice; and (2) final judgment herein after the completion and
12 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
13 including the time limits for filing any motions or applications for extension of time
14 pursuant to applicable law.

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection.

17 Each Party or Non-Party that designates information or items for protection under
18 this Order must take care to limit any such designation to specific material that
19 qualifies under the appropriate standards. The Designating Party must designate for
20 protection only those parts of material, documents, items, or oral or written
21 communications that qualify so that other portions of the material, documents,
22 items, or communications for which protection is not warranted are not swept
23 unjustifiably within the ambit of this Order.

24 Mass, indiscriminate, or routinized designations are prohibited.

25 Designations that are shown to be clearly unjustified or that have been made for
26 an improper purpose (e.g., to unnecessarily encumber the case development
27 process or to impose unnecessary expenses and burdens on other parties) may
28 expose the Designating Party to sanctions.

1 If it comes to a Designating Party's attention that information or items that
2 it designated for protection do not qualify for protection, that Designating Party
3 must promptly notify all other Parties that it is withdrawing the inapplicable
4 designation.

5 5.2 Manner and Timing of Designations. Except as otherwise provided in
6 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
7 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
8 under this Order must be clearly so designated before the material is disclosed or
9 produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic
12 documents, but excluding transcripts of depositions or other pretrial or trial
13 proceedings), that the Producing Party affix at a minimum, the legend
14 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
15 contains protected material. If only a portion or portions of the material on a page
16 qualifies for protection, the Producing Party also must clearly identify the protected
17 portion(s) (e.g., by making appropriate markings in the margins).

18 A Party or Non-Party that makes original documents available for
19 inspection need not designate them for protection until after the inspecting Party has
20 indicated which documents it would like copied and produced. During the
21 inspection and before the designation, all of the material made available for
22 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
23 identified the documents it wants copied and produced, the Producing Party must
24 determine which documents, or portions thereof, qualify for protection under this
25 Order. Then, before producing the specified documents, the Producing Party must
26 affix the "CONFIDENTIAL legend" to each page that contains Protected Material.

27 If only a portion or portions of the material on a page qualifies for protection,
28 the Producing Party also must clearly identify the protected portion(s) (e.g., by

1 making appropriate markings in the margins).

2 (b) for testimony given in depositions that the Designating Party
3 identify the Disclosure or Discovery Material on the record, before the close of the
4 deposition all protected testimony.

5 (c) for information produced in some form other than documentary
6 and for any other tangible items, that the Producing Party affix in a prominent place
7 on the exterior of the container or containers in which the information is stored the
8 legend “CONFIDENTIAL.” If only a portion or portions of the information
9 warrants protection, the Producing Party, to the extent practicable, shall identify the
10 protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
12 failure to designate qualified information or items does not, standing alone, waive
13 the Designating Party’s right to secure protection under this Order for such
14 material. Upon timely correction of a designation, the Receiving Party must make
15 reasonable efforts to assure that the material is treated in accordance with the
16 provisions of this Order.

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
19 designation of confidentiality at any time that is consistent with the Court’s
20 Scheduling Order.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
22 resolution process (and, if necessary, file a discovery motion) under Local Rule
23 37.1 et seq.

24 6.3 The burden of persuasion in any such challenge proceeding shall be on
25 the Designating Party. Frivolous challenges, and those made for an improper
26 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
27 parties) may expose the Challenging Party to sanctions. Unless the Designating
28 Party has waived or withdrawn the confidentiality designation, all parties shall

1 continue to afford the material in question the level of protection to which it is
2 entitled under the Producing Party’s designation until the Court rules on the
3 challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with this
7 Action only for prosecuting, defending, or attempting to settle this Action. Such
8 Protected Material may be disclosed only to the categories of persons and under the
9 conditions described in this Order. When the Action has been terminated, a
10 Receiving Party must comply with the provisions of section 13 below (FINAL
11 DISPOSITION).

12 Protected Material must be stored and maintained by a Receiving Party at a
13 location and in a secure manner that ensures that access is limited to the persons
14 authorized under this Order.

15 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
16 otherwise ordered by the court or permitted in writing by the Designating Party, a
17 Receiving Party may disclose any information or item designated
18 “CONFIDENTIAL” only to:

19 (a) the Receiving Party’s Outside Counsel of Record in this Action,
20 as well as employees of said Outside Counsel of Record to whom it is reasonably
21 necessary to disclose the information for this Action;

22 (b) the officers, directors, and employees (including House
23 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
24 Action;

25 (c) Experts (as defined in this Order) of the Receiving Party to
26 whom disclosure is reasonably necessary for this Action and who have signed the
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

28 (d) the Court and its personnel;

1 (e) court reporters and their staff;
2 (f) professional jury or trial consultants, mock jurors, and
3 Professional Vendors to whom disclosure is reasonably necessary for this Action
4 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
5 A);

6 (g) the author or recipient of a document containing the information
7 or a custodian or other person who otherwise possessed or knew the information;

8 (h) during their depositions, witnesses, and attorneys for witnesses,
9 in the Action to whom disclosure is reasonably necessary provided: (1) the
10 deposing party requests that the witness sign the form attached as Exhibit 1 hereto;
11 and (2) they will not be permitted to keep any confidential information unless they
12 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless
13 otherwise agreed by the Designating Party or ordered by the court. Pages of
14 transcribed deposition testimony or exhibits to depositions that reveal Protected
15 Material may be separately bound by the court reporter and may not be disclosed to
16 anyone except as permitted under this Stipulated Protective Order; and

17 (i) any mediator or settlement officer, and their supporting
18 personnel, mutually agreed upon by any of the parties engaged in settlement
19 discussions.

20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
21 IN OTHER LITIGATION

22 8.1 If a Party is served with a subpoena or a court order issued in other
23 litigation that compels disclosure of any information or items designated in this
24 Action as “CONFIDENTIAL,” that Party must:

25 (a) promptly notify in writing the Designating Party. Such
26 notification shall include a copy of the subpoena or court order;

27 (b) promptly notify in writing the party who caused the
28 subpoena or order to issue in the other litigation that some or all of the material

1 covered by the subpoena or order is subject to this Protective Order. Such
2 notification shall include a copy of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought
4 to be pursued by the Designating Party whose Protected Material may be
5 affected.

6 8.2 If the Designating Party timely seeks a protective order, the Party
7 served with the subpoena or court order shall not produce any information
8 designated in this action as “CONFIDENTIAL” before a determination by the court
9 from which the subpoena or order issued, unless the Party has obtained the
10 Designating Party’s permission. The Designating Party shall bear the burden and
11 expense of seeking protection in that court of its confidential material and nothing
12 in these provisions should be construed as authorizing or encouraging a Receiving
13 Party in this Action to disobey a lawful directive from another court.

14 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
15 PRODUCED IN THIS LITIGATION

16 (a) The terms of this Order are applicable to information produced by a
17 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
18 produced by Non-Parties in connection with this litigation is protected by the
19 remedies and relief provided by this Order. Nothing in these provisions should be
20 construed as prohibiting a Non-Party from seeking additional protections.

21 (b) In the event that a Party is required, by a valid discovery request, to
22 produce a Non-Party’s confidential information in its possession, and the Party is
23 subject to an agreement with the Non-Party not to produce the Non-Party’s
24 confidential information, then the Party shall:

25 (1) promptly notify in writing the Requesting Party and the Non-
26 Party that some or all of the information requested is subject to a confidentiality
27 agreement with a Non-Party;

28 (2) promptly provide the Non-Party with a copy of the Stipulated

1 Protective Order in this Action, the relevant discovery request(s), and a reasonably
2 specific description of the information requested; and

3 (3) make the information requested available for inspection by the
4 Non-Party, if requested.

5 (c) If the Non-Party fails to seek a protective order from this court within
6 14 days of receiving the notice and accompanying information, the Receiving Party
7 may produce the Non-Party's confidential information responsive to the discovery
8 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
9 not produce any information in its possession or control that is subject to the
10 confidentiality agreement with the Non-Party before a determination by the court.
11 Absent a court order to the contrary, the Non-Party shall bear the burden and
12 expense of seeking protection in this court of its Protected Material.

13 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
15 Protected Material to any person or in any circumstance not authorized under this
16 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
17 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
18 to retrieve all unauthorized copies of the Protected Material, (c) inform the person
19 or persons to whom unauthorized disclosures were made of all the terms of this
20 Order, and (d) request such person or persons to execute the "Acknowledgment and
21 Agreement to Be Bound" that is attached hereto as Exhibit A.

22 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
23 PROTECTED MATERIAL

24 When a Producing Party gives notice to Receiving Parties that certain
25 inadvertently produced material is subject to a claim of privilege or other
26 protection, the obligations of the Receiving Parties are those set forth in Federal
27 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
28 whatever procedure may be established in an e-discovery order that provides for

1 production without prior privilege review. Pursuant to Federal Rule of Evidence
2 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
3 of a communication or information covered by the attorney-client privilege or work
4 product protection, the parties may incorporate their agreement in the stipulated
5 protective order submitted to the court.

6 12. MISCELLANEOUS

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
8 person to seek its modification by the Court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this
10 Protective Order no Party waives any right it otherwise would have to object to
11 disclosing or producing any information or item on any ground not addressed in this
12 Stipulated Protective Order. Similarly, no Party waives any right to object on any
13 ground to use in evidence of any of the material covered by this Protective Order.

14 12.3 Filing Protected Material. A Party that seeks to file under seal any
15 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
16 only be filed under seal pursuant to a court order authorizing the sealing of the
17 specific Protected Material at issue. If a Party's request to file Protected Material
18 under seal is denied by the court, then the Receiving Party may file the information
19 in the public record unless otherwise instructed by the court.

20 13. FINAL DISPOSITION

21 After the final disposition of this Action, as defined in paragraph 4, within 60
22 days of a written request by the Designating Party, each Receiving Party must
23 return all Protected Material to the Producing Party or destroy such material. As
24 used in this subdivision, "all Protected Material" includes all copies, abstracts,
25 compilations, summaries, and any other format reproducing or capturing any of the
26 Protected Material. Whether the Protected Material is returned or destroyed, the
27 Receiving Party must submit a written certification to the Producing Party (and, if
28 not the same person or entity, to the Designating Party) by the 60 day deadline that

1 (1) identifies (by category, where appropriate) all the Protected Material that was
2 returned or destroyed and (2) affirms that the Receiving Party has not retained any
3 copies, abstracts, compilations, summaries or any other format reproducing or
4 capturing any of the Protected Material. Notwithstanding this provision, Counsel
5 are entitled to retain an archival copy of all pleadings, motion papers, trial,
6 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
7 and trial exhibits, expert reports, attorney work product, and consultant and expert
8 work product, even if such materials contain Protected Material. Any such archival
9 copies that contain or constitute Protected Material remain subject to this Protective
10 Order as set forth in Section 4 (DURATION).

11 14. Any violation of this Order may be punished by any and all appropriate
12 measures including, without limitation, contempt proceedings and/or monetary
13 sanctions.

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15 Dated: August 3, 2015.

CARLE, MACKIE, POWER & ROSS LLP

16
17 By: /s/ RICHARD C. O'HARE
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1 Dated: August 3, 2015.

DLA PIPER LLP (US)

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Redelinghuys Familie Trust and Defendant
Deborah Mary Redelinghuys N.O. in her
capacity as Trustee for the time being of the
Redelinghuys Familie Trust

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.



Dated: August 4, 2015

HON. MICHAEL R. WILNER
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of *International Fruit Genetics, LLC vs. P.E.R. Asset Management Trust, et al.*, Case No. 14-cv-05273-ODW (MRW). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____