

NOTE: CHANGES MADE BY THE COURT

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11 Attorneys for Defendants
 12 SEA SHEPHERD CONSERVATION SOCIETY
 and PAUL WATSON
 13

14 **UNITED STATES DISTRICT COURT**

15 **CENTRAL DISTRICT OF CALIFORNIA**

16 ADY GIL, an individual, and ADY GIL
 17 WORLD CONSERVATION, a
 California Not-for Profit Corporation,
 18

19 Plaintiffs,

20 v.

21 SEA SHEPHERD CONSERVATION
 SOCIETY, a California corporation,
 22 PAUL WATSON, an individual, FARAH
 SMITH, an individual; and DOES 1
 23 through 20, inclusive,

24 Defendants.
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Case No. CV 14-07049- GW (PLAx)

Assigned to Hon. George H. Wu

**STIPULATION AND
 PROTECTIVE ORDER**

Complaint Filed: June 17, 2014
 Trial Date: Not Assigned

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1 The parties agree that disclosure and discovery activity in the above-
2 captioned litigation may require the disclosure of documents, things, and
3 information (collectively, "Information") in the possession, custody, or control of
4 the named parties in this case, Plaintiffs ADY GIL and ADY GIL WORLD
5 CONSERVATION (collectively "Plaintiffs") and Defendants SEA SHEPHERD
6 CONSERVATION SOCIETY and PAUL WATSON (collectively "Defendants"), as
7 well as other parties who may be added to this case at a later date, and non-parties,
8 which may be protected under constitutional, statutory, or common law rights to
9 privacy, be subject to contractual restrictions, or constitute or contain trade secrets
10 or other confidential research, development, commercial, or proprietary information.

11 Without waiver of objections to the discoverability of any documents, the
12 parties intend to provide a mechanism for the discovery of relevant information,
13 otherwise not objectionable, in a manner which protects all parties, including non-
14 parties to this litigation, from the risk of disclosure of such confidential Information.

15 NOW, WHEREFORE, good cause having been shown, the parties in the
16 above-captioned litigation hereby STIPULATE AND AGREE, and the Court
17 HEREBY ORDERS AS FOLLOWS:

18 1. Introduction and Scope

19 This action involves, among other things, Defendants' business operations,
20 and as such may require the production of information not currently in the public
21 domain which contains confidential and proprietary trade secrets, or other
22 confidential information, including without limitation, employee, business,
23 financial, privacy, donor, and other proprietary information.

24 This Protective Order shall protect against the disclosure of such confidential
25 and private information that should not be publicly available and shall govern any
26 designated record or information produced in this action, including all designated
27 motions and other papers submitted to the Court, all designated deposition
28 testimony, all designated testimony, interrogatory answers, documents and other

1 discovery materials, whether produced informally or in response to interrogatories,
2 requests for admissions, requests for production of documents, subpoenas, or other
3 formal method of discovery.

4 2. Designation – CONFIDENTIAL

5 Each party shall have the right to designate as confidential and subject to this
6 Protective Order anything, information, document, or portion of any document
7 produced or prepared by it in this litigation which the producing party deems to
8 contain trade secrets, know-how, proprietary data, commercially sensitive, or other
9 confidential information, including without limitation, employee, business,
10 financial, privacy, donor, and other proprietary information (“Confidential
11 Information”).

12 This designation shall be made by stamping each page of a document
13 containing Confidential Information with the legend CONFIDENTIAL, at or before
14 production to the receiving party. In the event a party inadvertently produces
15 Confidential Information without such legend, that party shall promptly furnish
16 written notice to the receiving party that the Confidential Information is designated
17 CONFIDENTIAL under this Protective Order along with appropriately labeled
18 copies of the Confidential Information. Such post-production designation of
19 Confidential Information shall not, under any circumstance, be deemed a waiver, in
20 whole or in part, of the right to assert confidentiality or of the protections of this
21 Protective Order, and shall not entitle the receiving party or its attorneys to disclose
22 such information in violation of this Protective Order.

23 Any Confidential Information not reduced to documentary, electronic,
24 tangible, or physical form, or which cannot be easily stamped may be designated by
25 providing written notice of such designation and the designation of any storage
26 media shall extend to the contents of such storage media. Materials provided for
27 inspection by a party’s counsel need not be designated as Confidential Information
28 until copies of the materials are requested after inspection and selection by counsel.

1 Making Confidential Information available for inspection shall not constitute a
2 waiver of any claim of confidentiality, or privilege, and all materials provided for
3 inspection by a party's counsel shall be treated as though designated as
4 CONFIDENTIAL at the time of the inspection.

5 3. Limit on Use of Confidential Information

6 Each party and all persons bound by the terms of this Protective Order shall
7 use any Confidential Information governed by this Protective Order only for the
8 purpose of prosecution, defense, or settlement of the above-captioned action; no
9 party or other person shall use any Confidential Information governed by this
10 Protective Order for any purpose other than the prosecution, defense, or settlement
11 of the above-captioned action.

12 4. Material Designated CONFIDENTIAL

13 Except as otherwise provided by written stipulation of the parties, or by
14 further order of the Court, Confidential Information designated as CONFIDENTIAL
15 shall only be disclosed by the receiving party on a need-to-know basis (i.e., for the
16 purposes set forth in Paragraph 3, supra) and only to:

- 17 a. Attorneys who represent the receiving party, including outside
18 litigation and in-house counsel, and employees of such attorneys or law
19 firms with which such attorneys are associated, but only for purposes of
20 this proceeding;
- 21 b. Experts (whether acting as testifying experts or non-testifying
22 consultants) and their staff retained by the receiving party for the
23 purpose of providing advice, an expert opinion and/or testifying at the
24 trial at this matter, and subject to Paragraph 5, infra;
- 25 c. Non-parties specifically retained to assist the attorneys of record or a
26 party in copying or computer coding of documents, organizing, filing,
27 translating, converting, storing or retrieving data, or designing
28 programs for handling data connected with this action, including the

1 performance of such duties in relation to a computerized litigation
2 support system, but only for purposes of performing such services in
3 connection with this litigation;

4 d. Non-party witnesses in connection with their testimony either in
5 deposition or in a court hearing;

6 e. The Court and Court personnel ~~as provided in Paragraphs 10 and 12,~~
7 ~~infra;~~

8 f. The parties to this action, but only for purposes of this proceeding; and

9 g. Author(s), addressee(s), subject(s), and recipient(s) of the Confidential
10 Information.

11 5. Related Documents

12 Confidential Information designated shall include (a) all copies, extracts, and
13 complete or partial summaries prepared from such information; (b) portions of
14 deposition transcripts and exhibits thereto which contain or reflect the content of any
15 such information, copies, extracts, or summaries of it; (c) portions of affidavits,
16 briefs, memoranda, or any other writing filed with the Court and exhibits thereto
17 which contain or reflect the content of any such information, copies, extracts, or
18 summaries of it; and (d) deposition testimony designated in accordance with
19 Paragraph 6, *infra*.

20 6. Designation of Deposition Transcripts

21 Deposition transcripts, or portions thereof, as well as exhibits that have not
22 otherwise been designated pursuant to this Protective Order may be designated as
23 subject to this Protective Order either: (i) At the time of such deposition, in which
24 case the transcript of the designated testimony shall be bound in a separate volume
25 and marked by the reporter, as the designating party may direct; or (ii) Within ten
26 (10) calendar days following receipt of the deposition transcript by providing
27 written notice to the reporter and all counsel of record, in which case all counsel
28 receiving such notice shall mark the copies or portions of the designated transcript

1 in their possession or under their control as directed by the designating party.

2 7. Disclosure to Author or Recipient

3 Notwithstanding any other provisions of this Protective Order, nothing herein
4 shall prohibit counsel for a party from disclosing any document designated as
5 CONFIDENTIAL to any person whom the document clearly identifies as the author
6 or a recipient or the subject of such document and regardless of designation pursuant
7 to this Protective Order, but only for the purposes set forth in Paragraph 4, supra.
8 The person viewing such documents shall not be permitted to retain copies of any of
9 the documents, unless that person is authorized to do so under other provisions of
10 this Protective Order.

11 8. Designation of Documents Under Seal

12 Any Confidential Information designated CONFIDENTIAL, if filed with the
13 Court, shall be filed and kept by the Court under seal and shall be made available
14 only to the Court and to persons authorized by this Protective Order. The party filing
15 any paper that reflects, contains, or includes any Confidential Information subject to
16 this Protective Order shall file such paper in accordance with the Federal Rules of
17 Civil Procedure for the filing of documents under seal, as well as the applicable
18 Local Rule of the Central District of California, and shall file such documents in a
19 sealed envelope, or other appropriately sealed container, which indicates the title of
20 the action, the party filing the materials, the nature of the materials filed, and the
21 legend CONFIDENTIAL – FILE UNDER SEAL PURSUANT TO PROTECTIVE
22 ORDER OF THIS COURT. **Good cause for the under seal filing must be shown.**

23 9. Confidentiality of Party's Own Documents

24 No person may disclose any Confidential Information, except as provided in
25 this Protective Order

26 10. Preparation of Witness and Exhibit Designation

27 Any party may mark any Confidential Information designated as
28 CONFIDENTIAL as an exhibit to a deposition, hearing, or other proceeding and

1 examine any witness provided the exhibit and related transcript pages receive the
2 same type of confidentiality designation as the original document.

3 11. Other Protections; Challenge to Confidentiality Designation

4 This Protective Order shall not preclude any party from seeking and
5 obtaining, on an appropriate showing, such additional protection with respect to the
6 confidentiality of Confidential Information, or other discovery material as such
7 party may consider appropriate. No party shall be precluded from: (a) claiming that
8 any Confidential Information is not entitled to the protections of this Protective
9 Order; (b) applying to the Court for an order permitting a disclosure or use of
10 Confidential Information otherwise prohibited by this Protective Order; or (c)
11 applying for an order modifying this Protective Order in any respect. No party shall
12 be obligated to challenge the propriety of any confidentiality designation, and failure
13 to do so shall not preclude a subsequent attack on the propriety of such designation.

14 If any party receiving Confidential Information objects to the classification of
15 such Information and the parties cannot resolve the objection informally, then the
16 objecting party shall notify the producing party in writing of the same. Within 10
17 days thereafter, the producing party may move for an order to determine whether the
18 Information has been properly designated. **The procedure set forth in Local Rule**
19 **37 must be followed.** In such an event, the burden shall remain on the Producing
20 Person to demonstrate that protection of the information is proper. Pending
21 resolution of any such motion, all persons bound by this Protective Order shall
22 continue to treat the Information which is the subject of the motion as
23 CONFIDENTIAL.

24 12. Prior or Public Knowledge

25 The restrictions and obligations set forth herein relating to documents and
26 things marked CONFIDENTIAL shall not apply to any information which the
27 parties agree in writing, or if they are unable to agree, the Court determines: (a) was
28 or becomes public knowledge other than as a result of disclosure by the receiving

1 party; or (b) has come or shall come into the receiving party's lawful possession
2 independently of the producing party. Such restrictions and obligations shall not be
3 deemed to prohibit discussions with any person about any documents or things
4 marked CONFIDENTIAL if that person already had or obtained lawful possession
5 thereof other than pursuant to this Protective Order. Nothing in this Protective
6 Order shall affect or restrict use or disclosure of documents or things obtained other
7 than through discovery pursuant to this Protective Order.

8 13. Limitation of Protective Order

9 This Protective Order does not preclude any party from seeking further relief
10 or protective orders from the Court as may be appropriate.

11 14. Compulsory Service from a Non-Party

12 If a party in possession of Confidential Information designated
13 CONFIDENTIAL is served with a valid subpoena, document request,
14 interrogatories or other compulsory process from a non-party to this Protective
15 Order seeking production or other disclosure of such designated information, such
16 party ("Subpoenaed Party") shall, within five (5) business days, give prompt written
17 notice to counsel for the party who designated the Confidential Information as
18 CONFIDENTIAL identifying the designated information sought and enclosing a
19 copy of the subpoena, request, or interrogatory. The Subpoenaed Party shall make
20 timely objections to the production of the designated information, including by
21 referencing the existence of this Protective Order, and the Designating Party may
22 intervene without opposition from the Subpoenaed Party to object to the production
23 of the designated information. Unless and until such objections are overruled by the
24 Court, or the Court otherwise orders production of the designated information, the
25 Subpoenaed Party shall not produce or divulge the contents of the designated
26 information. Nothing herein shall be construed as requiring the Subpoenaed Party,
27 or any party, to challenge or oppose any court order requiring production of the
28 designated information, or subject itself to the risk of sanctions or penalty arising

1 from non-compliance with any such legal process or court order.

2 15. Return of Designated Information

3 Upon final termination of this action, unless otherwise agreed to in writing by
4 an attorney of record for the designating party, each party shall assemble and return
5 all Confidential Information designated as CONFIDENTIAL including all copies
6 (whether in the possession of the party, counsel, experts, or non-parties), extracts
7 and summaries thereof, to the party from whom the such designated Confidential
8 Information was obtained, except that any documents or copies which contain or
9 constitute attorney’s work product may be retained by counsel, or destroyed.

10 16. Privileged Information

11 The inadvertent production of any privileged information shall not be deemed
12 a waiver or impairment of any claim or privilege or protection afforded to the
13 privileged information. Upon receiving written notice from the producing party that
14 privileged information has been inadvertently produced, the receiving party shall
15 immediately return all such privileged information, and all copies thereof, to the
16 producing party. Such return shall be without prejudice to, and does not waive, any
17 claim by the returning party that the returned document(s) are not protected by a
18 privilege, provided however, that nothing contained in the returned document(s)
19 shall be used by the returning party to establish the alleged lack of privilege.

20 17. Waiver or Termination of Protective Order

21 This Protective Order shall not be deemed a waiver of any party’s right to
22 seek an order compelling discovery with respect to any discovery request; any
23 party’s right to object to any discovery or the production of any information or
24 documents; any party's right to object to the admission of any evidence on any
25 grounds in any proceeding herein; or any party’s right to use its own documents
26 produced in this litigation with complete discretion.

27 No part of the restrictions imposed by this Protective Order may be waived or
28 terminated, except by the written stipulation executed by counsel of record for each

1 designating party, or by an order of the Court for good cause shown. The restrictions
2 provided for herein shall not terminate upon the conclusion of this action, but shall
3 continue until further order of this Court.

4 18. Modification of Protective Order

5 This Protective Order may be modified, and any matter related to it may be
6 resolved, by written stipulation of the parties subject to approval of the Court.

7 19. Destruction of Documents

8 Upon final resolution of this litigation, including all appeals, all Information
9 designated as CONFIDENTIAL shall be destroyed by the party possessing the
10 Information unless the Producing Person requests its return, in which case all the
11 Information shall be returned within 30 days.

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20. Paragraph Captions

The Title Captions for each paragraph are for convenience only, and are not intended to affect or alter the text of the paragraphs or the substance of the Protective Order.

Dated: November 12, 2014

RING BENDER LLLP

By: /s/ Paula Zecchini
Paula L. Zecchini

Dated: November 12, 2014

HARRIS MOURE, PLLC

By: /s/ Charles Moure
Charles Moure

Attorneys for Defendants
SEA SHEPHERD CONSERVATION
SOCIETY and PAUL WATSON

Dated: November 12, 2014

MAZZARELLA & MAZZARELLA

By: /s/ Mark C. Mazzarella
Mark C. Mazzarella

Attorneys for Plaintiffs
ADY GIL and ADY GIL WORLD
CONSERVATION

ORDER

IT IS SO ORDERED.

Dated: November 11, 2014

By: 

Paul L. Abrams
United States Magistrate Judge