

NOTE: CHANGES MADE BY THE COURT

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 15 EVOLUTION FRESH, INC.

16 UNITED STATES DISTRICT COURT  
 17 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

18 GERARDO SALCIDO, individually,  
 19 and on behalf of other members of the  
 20 public similarly situated,

21 Plaintiff,

22 v.

23 EVOLUTION FRESH, INC., an  
 24 unknown business entity; and DOES 1  
 25 through 100, inclusive,

26 Defendants.

Case No. 2:14-cv-09223-SVW (PLAx)

[Assigned to Hon. Stephen V. Wilson]  
**DISCOVERY**

**STIPULATED PROTECTIVE ORDER**

Date Action Filed: October 28, 2014  
 Date Action Removed: December 1, 2014

1 The parties represent that this Stipulated Protective Order is identical in all  
2 material respects to the exemplar Form Protective Order provided online by Magistrate  
3 Judge Paul Abrams, with the exception of the additional language highlighted in Section  
4 4 below.

5 **1. A. PURPOSES AND LIMITATIONS**

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

18 **B. GOOD CAUSE STATEMENT**

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

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

11 **2. DEFINITIONS**

12 2.1 Action: The pending lawsuit, *Salcido v. Evolution Fresh, Inc.*, Case No.  
13 2:14-cv-09223-SVW (PLAx), originally filed in Los Angeles Superior Court as Case  
14 No. BC562036.

15 2.2 Challenging Party: a Party or Non-Party that challenges the designation of  
16 information or items under this Order.

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

21 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their  
22 support staff).

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

26 2.6 Disclosure or Discovery Material: all items or information, regardless of  
27 the medium or manner in which it is generated, stored, or maintained (including, among  
28

1 other things, testimony, transcripts, and tangible things), that are produced or generated  
2 in disclosures or responses to discovery in this matter.

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

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

9 2.9 Non-Party: any natural person, partnership, corporation, association, or  
10 other legal entity not named as a Party to this action.

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

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

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or  
19 Discovery Material in this Action.

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

24 2.14 Protected Material: any Disclosure or Discovery Material that is designated  
25 as "CONFIDENTIAL."

26 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
27 from a Producing Party.

1 **3. SCOPE**

2 The protections conferred by this Stipulation and Order cover not only Protected  
3 Material (as defined above), but also (1) any information copied or extracted from  
4 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
5 Material; and (3) any testimony, conversations, or presentations by Parties or their  
6 Counsel that might reveal Protected Material.

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

9 **4. DURATION**

10 Once a case proceeds to trial, all of the information to be introduced that was  
11 previously designated as confidential or maintained pursuant to this protective order  
12 becomes public and will be presumptively available to all members of the public,  
13 including the press, unless compelling reasons supported by specific factual findings to  
14 proceed otherwise are made to the trial judge in advance of the trial. *See Kamakana v.*  
15 *City and County of Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing  
16 “good cause” showing for sealing documents produced in discovery from “compelling  
17 reasons” standard when merits-related documents are part of court record). Accordingly,  
18 the terms of this protective order do not extend beyond the commencement of the trial  
19 with respect to Protected Material used at trial. With respect to all other Protected  
20 Material, however, even after final disposition of this litigation, the confidentiality  
21 obligations imposed by this Order shall remain in effect until a Designating Party agrees  
22 otherwise in writing or a court order otherwise directs.

23 **5. DESIGNATING PROTECTED MATERIAL**

24 5.1 Exercise of Restraint and Care in Designating Material for Protection.

25 Each Party or Non-Party that designates information or items for protection under this  
26 Order must take care to limit any such designation to specific material that qualifies  
27 under the appropriate standards. The Designating Party must designate for protection  
28 only those parts of material, documents, items, or oral or written communications that

1 qualify so that other portions of the material, documents, items, or communications for  
2 which protection is not warranted are not swept unjustifiably within the ambit of this  
3 Order.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
5 are shown to be clearly unjustified or that have been made for an improper purpose  
6 (e.g., to unnecessarily encumber the case development process or to impose unnecessary  
7 expenses and burdens on other parties) may expose the Designating Party to sanctions.

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

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
12 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
13 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
14 must be clearly so designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

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

23 A Party or Non-Party that makes original documents available for inspection need  
24 not designate them for protection until after the inspecting Party has indicated which  
25 documents it would like copied and produced. During the inspection and before the  
26 designation, all of the material made available for inspection shall be deemed  
27 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants  
28 copied and produced, the Producing Party must determine which documents, or portions

1 thereof, qualify for protection under this Order. Then, before producing the specified  
2 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page  
3 that contains Protected Material. If only a portion or portions of the material on a page  
4 qualifies for protection, the Producing Party also must clearly identify the protected  
5 portion(s) (e.g., by making appropriate markings in the margins).

6 (b) for testimony given in depositions that the Designating Party identify  
7 the Disclosure or Discovery Material on the record, before the close of the deposition.

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

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

## 19 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
24 resolution process under Local Rule 37.1 et seq. Any discovery motion must strictly  
25 comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

26 6.3 Burden. The burden of persuasion in any such challenge proceeding shall  
27 be on the Designating Party. Frivolous challenges, and those made for an improper  
28 purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties)

1 may expose the Challenging Party to sanctions. Unless the Designating Party has  
2 waived or withdrawn the confidentiality designation, all parties shall continue to afford  
3 the material in question the level of protection to which it is entitled under the  
4 Producing Party’s designation until the Court rules on the challenge.

5 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
7 disclosed or produced by another Party or by a Non-Party in connection with this Action  
8 only for prosecuting, defending, or attempting to settle this Action. Such Protected  
9 Material may be disclosed only to the categories of persons and under the conditions  
10 described in this Order. When the Action has been terminated, a Receiving Party must  
11 comply with the provisions of section 13 below (FINAL 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 otherwise  
16 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
17 may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

26 (d) the court and its personnel;

27 (e) court reporters and their staff;



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

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

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

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

17 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
18 **IN OTHER LITIGATION**

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

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

24 (b) promptly notify in writing the party who caused the subpoena or order  
25 to issue in the other litigation that some or all of the material covered by the subpoena or  
26 order is subject to this Protective Order. Such notification shall include a copy of this  
27 Stipulated Protective Order; and  
28

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

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

11 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**  
12 **PRODUCED IN THIS LITIGATION**

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

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

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

25 (2) promptly provide the Non-Party with a copy of the Stipulated  
26 Protective Order in this Action, the relevant discovery request(s), and a reasonably  
27 specific description of the information requested; and  
28

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

3 (c) If the Non-Party fails to seek a protective order from this court within  
4 14 days of receiving the notice and accompanying information, the Receiving Party may  
5 produce the Non-Party's confidential information responsive to the discovery request.  
6 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce  
7 any information in its possession or control that is subject to the confidentiality  
8 agreement with the Non-Party before a determination by the court. Absent a court order  
9 to the contrary, the Non-Party shall bear the burden and expense of seeking protection in  
10 this court of its Protected Material.

11 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

20 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
21 **PROTECTED MATERIAL**

22 When a Producing Party gives notice to Receiving Parties that certain  
23 inadvertently produced material is subject to a claim of privilege or other protection, the  
24 obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
25 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
26 may be established in an e-discovery order that provides for production without prior  
27 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
28 parties reach an agreement on the effect of disclosure of a communication or

1 information covered by the attorney-client privilege or work product protection, the  
2 parties may incorporate their agreement in the stipulated protective order submitted to  
3 the court.

4 **12. MISCELLANEOUS**

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
6 person to seek its modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
8 Protective Order no Party waives any right it otherwise would have to object to  
9 disclosing or producing any information or item on any ground not addressed in this  
10 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
11 ground to use in evidence of any of the material covered by this Protective Order.

12 12.3 Filing Protected Material. A Party that seeks to file under seal any  
13 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
14 only be filed under seal pursuant to a court order authorizing the sealing of the specific  
15 Protected Material at issue; **good cause must be shown in the request to file under**  
16 **seal**. If a Party's request to file Protected Material under seal is denied by the court, then  
17 the Receiving Party may file the information in the public record unless otherwise  
18 instructed by the court.

19 **13. FINAL DISPOSITION**

20 After the final disposition of this Action, within 60 days of a written request by  
21 the Designating Party, each Receiving Party must return all Protected Material to the  
22 Producing Party or destroy such material. As used in this subdivision, "all Protected  
23 Material" includes all copies, abstracts, compilations, summaries, and any other format  
24 reproducing or capturing any of the Protected Material. Whether the Protected Material  
25 is returned or destroyed, the Receiving Party must submit a written certification to the  
26 Producing Party (and, if not the same person or entity, to the Designating Party) by the  
27 60 day deadline that (1) identifies (by category, where appropriate) all the Protected  
28 Material that was returned or destroyed and (2) affirms that the Receiving Party has not

1 retained any copies, abstracts, compilations, summaries or any other format reproducing  
2 or capturing any of the Protected Material. Notwithstanding this provision, Counsel are  
3 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and  
4 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,  
5 expert reports, attorney work product, and consultant and expert work product, even if  
6 such materials contain Protected Material. Any such archival copies that contain or  
7 constitute Protected Material remain subject to this Protective Order as set forth in  
8 Section 4 (DURATION).

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

11 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

12 Dated: February 10, 2015

13 AKIN GUMP STRAUSS HAUER & FELD LLP  
14 GREGORY W. KNOPP  
15 MARK R. CURIEL  
16 GALIT A. KNOTZ  
17 JONATHAN S. CHRISTIE

18 By s/ Mark R. Curiel  
19 Mark R. Curiel<sup>1</sup>  
20 Attorneys for Defendant  
21 EVOLUTION FRESH, INC.

22 Dated: February 10, 2015

23 LAWYERS FOR JUSTICE, PC  
24 EDWIN AIWAZIAN  
25 JILL J. PARKER  
26 ARBY AIWAZIAN

27 By s/ Jill J. Parker  
28 Jill J. Parker  
Attorneys for Plaintiff  
Gerardo Salcido

29 **FOR GOOD CAUSE SHOWN, IT IS ORDERED.**

30 Dated: February 12, 2015

31 By Paul L. Abrams  
32 Hon. Paul L. Abrams  
33 United States Magistrate Judge

34 \_\_\_\_\_  
35 <sup>1</sup> Pursuant to Local Rule 5-4.3.4(a)(2), the filing party has obtained the  
36 authorization and approval of all signatories listed to file this stipulation.

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty  
5 of perjury that I have read in its entirety and understand the Stipulated Protective Order  
6 that was issued by the United States District Court for the Central District of California  
7 on [date] in the case of *Salcido v. Evolution Fresh, Inc.*, Case No. 2:14-cv-09223-SVW  
8 (PLAx). I agree to comply with and to be bound by all the terms of this Stipulated  
9 Protective Order and I understand and acknowledge that failure to so comply could  
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise  
11 that I will not disclose in any manner any information or item that is subject to this  
12 Stipulated Protective Order to any person or entity except in strict compliance with the  
13 provisions of this Order.

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

22 Date: \_\_\_\_\_

23 City and State where sworn and signed: \_\_\_\_\_

24  
25 Printed name: \_\_\_\_\_

26  
27 Signature: \_\_\_\_\_