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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

TYLERTOWN FARM SUPPLY, LLC,  
Plaintiff,  
v.  
ODES UTVS LLC,  
Defendant.

CASE NO.: 2:16-cv-05673-GW-KS  
Hon. Karen L. Stevenson  
**~~PROPOSED~~ STIPULATED  
PROTECTIVE ORDER**

ODES UTVS LLC,  
Counterclaimant,  
v.  
TYLERTOWN FARM SUPPLY, LLC,  
Counterdefendant.

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does

1 not confer blanket protections on all disclosures or responses to discovery and that the  
2 protection it affords from public disclosure and use extends only to the limited  
3 information or items that are entitled to confidential treatment under the applicable  
4 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,  
5 that this Stipulated Protective Order does not entitle them to file confidential  
6 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be  
7 followed and the standards that will be applied when a party seeks permission from  
8 the court to file material under seal.

9       B.     GOOD CAUSE STATEMENT

10       This action is likely to involve disclosure of nonpublic financial information, as  
11 well as customer information, personnel information, and information protected by  
12 privilege, including the right to privacy, non-public pricing lists and other nonpublic  
13 valuable research, development, commercial, financial, technical and/or proprietary  
14 information for which protection from public disclosure and from use for any purpose  
15 other than prosecution of this action is warranted. It is the intent of the parties that  
16 information will not be designated as confidential for tactical reasons and that nothing  
17 be so designated without a good faith belief that it has been maintained in a  
18 confidential, non-public manner, and there is good cause why it should not be part of  
19 the public record of this case.

20     2.     DEFINITIONS

21       2.1    Action: the above captioned lawsuit, styled as *Tylertown Farm Supply,*  
22 *LLC v. Odes UTVs LLC*, Case No. 2:16-cv-05673-GW-KS (C.D. Cal.).

23       2.2    Challenging Party: a Party or Non-Party that challenges the designation  
24 of information or items under this Order.

25       2.3    “CONFIDENTIAL” Information or Items: information (regardless of  
26 how it is generated, stored or maintained) or tangible things that qualify for protection  
27 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good  
28 Cause Statement.

1           2.4    Counsel: Outside Counsel and House Counsel (as well as their support  
2 staff).

3           2.5    Designating Party: a Party or Non-Party that designates information or  
4 items that it produces in disclosures or in responses to discovery as  
5 “CONFIDENTIAL.”

6           2.6    Disclosure or Discovery Material: all items or information, regardless of  
7 the medium or manner in which it is generated, stored, or maintained (including,  
8 among other things, testimony, transcripts, and tangible things), that are produced or  
9 generated in disclosures or responses to discovery in this matter.

10          2.7    Expert: a person with specialized knowledge or experience in a matter  
11 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
12 an expert witness or as a consultant in this Action.

13          2.8    House Counsel: attorneys who are employees of a party to this Action.  
14 House Counsel does not include Outside Counsel.

15          2.9    Non-Party: any natural person, partnership, corporation, association, or  
16 other legal entity not named as a Party to this action.

17          2.10   Outside Counsel: attorneys who are not employees of a party to this  
18 Action but are retained to represent or advise a party to this Action, and includes  
19 support staff.

20          2.11   Party: any party to this Action, including all of its officers, directors,  
21 employees, consultants, retained experts, and Outside Counsel (and their support  
22 staffs).

23          2.12   Producing Party: a Party or Non-Party that produces Disclosure or  
24 Discovery Material in this Action.

25          2.13   Professional Vendors: persons or entities that provide litigation support  
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
27 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
28 and their employees and subcontractors.

1           2.14 Protected Material: any Disclosure or Discovery Material that is  
2 designated as “CONFIDENTIAL.”

3           2.15 Receiving Party: a Party that receives Disclosure or Discovery Material  
4 from a Producing Party.

5 3.     SCOPE

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

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

13 4.     DURATION

14           This Stipulated Protective Order shall become effective, as a stipulation  
15 between the Parties, immediately upon the filing of the Joint Stipulation for Entry of  
16 Stipulated Protective Order, notwithstanding the pendency of approval by the Court,  
17 and the Parties shall treat any Protected Material produced before court approval as  
18 provided herein. In the event the Court modifies this stipulated Protective Order, the  
19 terms of the modified Protective Order shall become effective with respect to all  
20 Protected Material regardless of when it was produced.

21           Even after final disposition of this litigation, the confidentiality obligations  
22 imposed by this Order shall remain in effect until a Designating Party agrees  
23 otherwise in writing or a court order otherwise directs. Final disposition shall be  
24 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with  
25 or without prejudice; and (2) final judgment herein after the completion and  
26 exhaustion of all appeals, re-hearings, remands, trials, or reviews of this Action,  
27 including the time limits for filing any motions or applications for extension of time  
28 pursuant to applicable law.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under this  
4 Order must take care to limit any such designation to specific material that qualifies  
5 under the appropriate standards. The Designating Party must designate for protection  
6 only those parts of materials, documents, items, or oral or written communications  
7 that qualify, so that other portions of the materials, documents, items, or  
8 communications for which protection is not warranted are not swept unjustifiably  
9 within the ambit of this Order.

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

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

18 5.2 Manner and Timing of Designations. Except as otherwise provided in  
19 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
21 under this Order must be clearly so designated before the material is disclosed or  
22 produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic  
25 documents, but excluding transcripts of depositions or other pretrial or trial  
26 proceedings), that the Producing Party affix at a minimum, the legend  
27 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that  
28 contains protected material. If only a portion or portions of the material on a page

1 qualifies for protection, the Producing Party also must clearly identify the protected  
2 portion(s) (e.g., by making appropriate markings in the margins).

3         A Party or Non-Party that makes original documents available for inspection  
4 need not designate them for protection until after the inspecting Party has indicated  
5 which documents it would like copied and produced. During the inspection and  
6 before the designation, all of the material made available for inspection shall be  
7 deemed “CONFIDENTIAL.” After the inspecting Party has identified the documents  
8 it wants copied and produced, the Producing Party must determine which documents,  
9 or portions thereof, qualify for protection under this Order. Then, before producing  
10 the specified documents, the Producing Party must affix the “CONFIDENTIAL  
11 legend” to each page that contains Protected Material. If only a portion or portions of  
12 the material on a page qualifies for protection, the Producing Party also must clearly  
13 identify the protected portion(s) (e.g., by making appropriate markings in the  
14 margins).

15                 (b) for testimony given in depositions, within thirty calendar days of  
16 the close of the deposition, counsel for the deponent and any Party shall be entitled to  
17 designate specific testimony or exhibits as “CONFIDENTIAL.” If counsel for the  
18 deponent or Party fails to designate the transcript or exhibits as “CONFIDENTIAL”  
19 within the above-described thirty-day period, any Party shall be entitled to treat the  
20 transcript or exhibits as non-Protected Material.

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

27         5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
28 failure to designate qualified information or items does not, standing alone, waive the

1 Designating Party’s right to secure protection under this Order for such material.  
2 Upon timely correction of a designation, the Receiving Party must make reasonable  
3 efforts to assure that the material is treated in accordance with the provisions of this  
4 Order.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
7 designation of confidentiality at any time that is consistent with the Court’s  
8 Scheduling Order.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
10 resolution process under Local Rule 37.1 *et seq.*

11 6.3 The burden of persuasion in any such challenge proceeding shall be on  
12 the Designating Party. Frivolous challenges, and those made for an improper purpose  
13 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
14 expose the Challenging Party to sanctions. Unless the Designating Party has waived  
15 or withdrawn the confidentiality designation, all parties shall continue to afford the  
16 material in question the level of protection to which it is entitled under the Producing  
17 Party’s designation until the Court rules on the challenge.

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
20 disclosed or produced by another Party or by a Non-Party in connection with this  
21 Action only for prosecuting, defending, or attempting to settle this Action. Such  
22 Protected Material may be disclosed only to the categories of persons and under the  
23 conditions described in this Order. When the Action has been terminated, a Receiving  
24 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

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1           7.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless  
2 otherwise ordered by the court or permitted in writing by the Designating Party, a  
3 Receiving Party may disclose any information or item designated  
4 “CONFIDENTIAL” only to:

5           (a)    the Receiving Party’s Outside Counsel, as well as employees of  
6 said Outside Counsel to whom it is reasonably necessary to disclose the information  
7 for this Action;

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

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

13          (d)    the court and its personnel;

14          (e)    court reporters and their staff;

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

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

20          (h)    any mediator or settlement officer, and their supporting personnel,  
21 mutually agreed upon by any of the parties engaged in settlement discussions.

22    8.    PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
23 OTHER LITIGATION

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

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



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

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

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

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

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

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

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

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

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

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

14 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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

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

7 12. MISCELLANEOUS

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

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

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

21 13. FINAL DISPOSITION


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

1 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
2 (by category, where appropriate) all the Protected Material that was returned or  
3 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
4 abstracts, compilations, summaries or any other format reproducing or capturing any  
5 of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
6 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
7 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
8 reports, attorney work product, and consultant and expert work product, even if such  
9 materials contain Protected Material. Any such archival copies that contain or  
10 constitute Protected Material remain subject to this Protective Order as set forth in  
11 Section 4 (DURATION).

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

15  
16 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

17  
18 DATED: January 4, 2017

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22 \_\_\_\_\_  
23 Hon. Karen L. Stevenson  
24 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 *Tylertown Farm Supply, LLC v. Odes UTVS LLC*,  
Case No. 2:16-cv-05673-GW-KS. 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: \_\_\_\_\_