

1 UNITED STATES DISTRICT COURT
2
3 CENTRAL DISTRICT OF CALIFORNIA

4 MARIO RUIZ, RAUL GUERRERO,
5 and ROBERT TORRES on behalf of
6 themselves and all others similarly
7 situated,

8 Plaintiffs,

9 v.

10 SHAMROCK FOODS COMPANY,
11 an Arizona Corporation, and DOES
12 1 to 10, inclusive,

13 Defendants.

CASE NO. 2:17-cv-06017-SVW-AFM

~~PROPOSED~~ ORDER APPROVING
STIPULATED PROTECTIVE ORDER

Complaint Filed: August 14, 2017

Trial Date: None Set

14 Based upon the parties' stipulation and good cause showing, the court hereby
15 issues the protective order on the following terms:

16 1. A. PURPOSES AND LIMITATIONS

17 Discovery in this action is likely to involve production of confidential,
18 proprietary or private information for which special protection from public
19 disclosure and from use for any purpose other than prosecuting this litigation may
20 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
21 enter the following Stipulated Protective Order. The parties acknowledge that this
22 Order does not confer blanket protections on all disclosures or responses to
23 discovery and that the protection it affords from public disclosure and use extends
24 only to the limited information or items that are entitled to confidential treatment
25 under the applicable legal principles.

26 B. GOOD CAUSE STATEMENT

27 This action is likely to involve trade secrets, and confidential and proprietary
28 information for which special protection from public disclosure and from use for
any purpose other than prosecution of this action is warranted. Such confidential
and proprietary materials and information consist of, among other things,

1 confidential business or financial information, information regarding confidential
2 business practices, or other confidential research, development, or commercial
3 information (including information implicating privacy rights of employees and
4 other third parties), information otherwise generally unavailable to the public, or
5 which may be privileged or otherwise protected from disclosure under state or
6 federal statutes, court rules, case decisions, or common law. Accordingly, to
7 expedite the flow of information, to facilitate the prompt resolution of disputes over
8 confidentiality of discovery materials, to adequately protect information the parties
9 are entitled to keep confidential, to ensure that the parties are permitted reasonable
10 necessary uses of such material in preparation for and in the conduct of trial, to
11 address their handling at the end of the litigation, and serve the ends of justice, a
12 protective order for such information is justified in this matter. It is the intent of the
13 parties that information will not be designated as confidential for tactical reasons
14 and that nothing be so designated without a good faith belief that it has been
15 maintained in a confidential, non-public manner, and there is good cause why it
16 should not be part of the public record of this case.

17 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
18 SEAL

19 The parties further acknowledge, as set forth in Section 12.3, below, that this
20 Stipulated Protective Order does not entitle them to file confidential information
21 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
22 and the standards that will be applied when a party seeks permission from the court
23 to file material under seal.

24 There is a strong presumption that the public has a right of access to judicial
25 proceedings and records in civil cases. In connection with non-dispositive motions,
26 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
27 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
28 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electrics*,

1 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders
2 require good cause showing), and a specific showing of good cause or compelling
3 reasons with proper evidentiary support and legal justification, must be made with
4 respect to Protected Material that a party seeks to file under seal. The parties' mere
5 designation of Disclosure or Discovery Material as CONFIDENTIAL does not—
6 without the submission of competent evidence by declaration, establishing that the
7 material sought to be filed under seal qualifies as confidential, privileged, or
8 otherwise protectable—constitute good cause.

9 Further, if a party requests sealing related to a dispositive motion or trial,
10 then compelling reasons, not only good cause, for the sealing must be shown, and
11 the relief sought shall be narrowly tailored to serve the specific interest to be
12 protected. *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir.
13 2010). For each item or type of information, document, or thing sought to be filed
14 or introduced under seal in connection with a dispositive motion or trial, the party
15 seeking protection must articulate compelling reasons, supported by specific facts
16 and legal justification, for the requested sealing order. Again, competent evidence
17 supporting the application to file documents under seal must be provided by
18 declaration.

19 Any document that is not confidential, privileged, or otherwise protectable in
20 its entirety will not be filed under seal if the confidential portions can be redacted.
21 If documents can be redacted, then a redacted version for public viewing, omitting
22 only the confidential, privileged, or otherwise protectable portions of the document,
23 shall be filed. Any application that seeks to file documents under seal in their
24 entirety should include an explanation of why redaction is not feasible.

25 2. DEFINITIONS

26 2.1 Action: This pending class action in this Court entitled, *Mario Ruiz,*
27 *Raul Guerrero, and Robert Torres on behalf of themselves and all others similarly*
28 *situated, v. Shamrock Foods Company, an Arizona Corporation, and DOES 1 to*

1 10, Case No. 2:17-cv-06017-SVW-AFM.

2 2.2 Challenging Party: a Party or Non-Party that challenges the
3 designation of information or items under this Order.

4 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
5 how it is generated, stored or maintained) or tangible things that qualify for
6 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
7 the Good Cause Statement.

8 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
9 their support staff).

10 2.5 Designating Party: a Party or Non-Party that designates information or
11 items that it produces in disclosures or in responses to discovery as
12 “CONFIDENTIAL.”

13 2.6 Disclosure or Discovery Material: all items or information, regardless
14 of the medium or manner in which it is generated, stored, or maintained (including,
15 among other things, testimony, transcripts, and tangible things), that are produced
16 or generated in disclosures or responses to discovery in this matter.

17 2.7 Expert: a person with specialized knowledge or experience in a matter
18 pertinent to the litigation who has been retained by a Party or its counsel to serve as
19 an expert witness or as a consultant in this Action.

20 2.8 House Counsel: attorneys who are employees of a party to this Action.
21 House Counsel does not include Outside Counsel of Record or any other outside
22 counsel.

23 2.9 Non-Party: any natural person, partnership, corporation, association or
24 other legal entity not named as a Party to this action.

25 2.10 Outside Counsel of Record: attorneys who are not employees of a
26 party to this Action but are retained to represent or advise a party to this Action and
27 have appeared in this Action on behalf of that party or are affiliated with a law firm
28 that has appeared on behalf of that party, and includes support staff.

1 2.11 Party: any party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this Action.

6 2.13 Professional Vendors: persons or entities that provide litigation
7 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 2.14 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL.”

12 2.15 Receiving Party: a Party that receives Disclosure or Discovery
13 Material from a Producing Party.

14 3. SCOPE

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

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

22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations
24 imposed by this Order shall remain in effect until a Designating Party agrees
25 otherwise in writing or a court order otherwise directs. Final disposition shall be
26 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
27 or without prejudice; and/or (2) final judgment herein after the completion and
28 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,

1 including the time limits for filing any motions or applications for extension of time
2 pursuant to applicable law.

3 Once a case proceeds to trial, information that was designated as
4 CONFIDENTIAL or maintained pursuant to this protective order used or
5 introduced as an exhibit at trial becomes public and will be presumptively available
6 to all members of the public, including the press, unless compelling reasons
7 supported by specific factual findings to proceed otherwise are made to the trial
8 judge in advance of the trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing
9 “good cause” showing for sealing documents produced in discovery from
10 “compelling reasons” standard when merits-related documents are part of court
11 record). Accordingly, the terms of this protective order do not extend to information
12 used or introduced as an exhibit at trial.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

27 If it comes to a Designating Party’s attention that information or items that it
28 designated for protection do not qualify for protection, that Designating Party must

1 promptly notify all other Parties that it is withdrawing the inapplicable designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in
3 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
4 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
5 under this Order must be clearly so designated before the material is disclosed or
6 produced.

7 Designation in conformity with this Order requires:

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

15 A Party or Non-Party that makes original documents available for inspection
16 need not designate them for protection until after the inspecting Party has indicated
17 which documents it would like copied and produced. During the inspection and
18 before the designation, all of the material made available for inspection shall be
19 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
20 documents it wants copied and produced, the Producing Party must determine
21 which documents, or portions thereof, qualify for protection under this Order. Then,
22 before producing the specified documents, the Producing Party must affix the
23 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
24 portion of the material on a page qualifies for protection, the Producing Party also
25 must clearly identify the protected portion(s) (e.g., by making appropriate markings
26 in the margins).

27 (b) for testimony given in depositions that the Designating Party
28 identifies the Disclosure or Discovery Material on the record, within 30 days of

1 receipt of the deposition transcript all protected testimony.

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

8 5.3 Inadvertent Failures to Designate. If timely corrected upon discovery,
9 an inadvertent failure to designate qualified information or items does not, standing
10 alone, waive the Designating Party's right to secure protection under this Order for
11 such material. Upon timely correction of a designation, the Receiving Party must
12 make reasonable efforts to assure that the material is treated in accordance with the
13 provisions of this Order.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
16 designation of confidentiality at any time that is consistent with the Court's
17 Scheduling Order.

18 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
19 resolution process under Local Rule 37-1 et seq.

20 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
21 joint stipulation pursuant to Local Rule 37-2.

22 6.4 The burden of persuasion in any such challenge proceeding shall be on
23 the Designating Party. Frivolous challenges, and those made for an improper
24 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
25 parties) may expose the Challenging Party to sanctions. Unless the Designating
26 Party has waived or withdrawn the confidentiality designation, all parties shall
27 continue to afford the material in question the level of protection to which it is
28 entitled under the Producing Party's designation until the Court rules on the

1 challenge.

2 7. ACCESS TO AND USE OF PROTECTED MATERIAL

3 7.1 Basic Principles. A Receiving Party may use Protected Material that is
4 disclosed or produced by another Party or by a Non-Party in connection with this
5 Action only for prosecuting, defending or attempting to settle this Action. Such
6 Protected Material may be disclosed only to the categories of persons and under the
7 conditions described in this Order. When the Action has been terminated, a
8 Receiving Party must comply with the provisions of section 13 below (FINAL
9 DISPOSITION).

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

13 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
14 otherwise ordered by the court or permitted in writing by the Designating Party, a
15 Receiving Party may disclose any information or item designated
16 “CONFIDENTIAL” only to:

- 17 (a) where the Receiving Party is a named plaintiff, to other named
18 plaintiffs (Mario Ruiz, Raul Guerrero and/or Robert Torres) in this action;
- 19 (b) the Receiving Party’s Outside Counsel of Record in this Action, as
20 well as employees of said Outside Counsel of Record to whom it is reasonably
21 necessary to disclose the information for this Action;
- 22 (c) the officers, directors, and employees (including House Counsel) of
23 the Receiving Party to whom disclosure is reasonably necessary for this Action;
- 24 (d) Experts (as defined in this Order) of the Receiving Party to whom
25 disclosure is reasonably necessary for this Action and who have signed the
26 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 27 (e) the court and its personnel;
- 28 (f) court reporters and their staff;

1 (g) 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 (h) an individual who authored or has personal knowledge of that
5 information provided that individual (1) has signed the form attached as Exhibit A
6 hereto, and (2) is not permitted to keep any confidential information, unless
7 otherwise agreed by the Designating Party or ordered by the court;

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

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

18 7.3. Putative Class Member Information. Contact information and any
19 other identifying information for putative class members provided in this action
20 shall only be used for purposes of pre-class certification discovery in this action,
21 and for no other reason. If the class is certified, however, the information may be
22 used during the pendency of this action, but solely for the purpose of this litigation.

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

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

28 (a) promptly notify in writing the Designating Party. Such notification

1 shall include a copy of the subpoena or court order;

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

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

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

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

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

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

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

1 agreement with a Non-Party;

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

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

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

16 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

25 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
26 PROTECTED MATERIAL

27 When a Producing Party gives notice to Receiving Parties that certain
28 inadvertently produced material is subject to a claim of privilege or other

1 protection, the obligations of the Receiving Parties are those set forth in Federal
2 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
3 whatever procedure may be established in an e-discovery order that provides for
4 production without prior privilege review. Pursuant to Federal Rule of Evidence
5 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
6 of a communication or information covered by the attorney-client privilege or work
7 product protection, the parties may incorporate their agreement in the stipulated
8 protective order submitted to the court.

9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by the Court in the future.

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

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

24 13. FINAL DISPOSITION

25 After the final disposition of this Action, as defined in paragraph 4, within 60
26 days of a written request by the Designating Party, each Receiving Party must
27 return all Protected Material to the Producing Party or destroy such material. As
28 used in this subdivision, "all Protected Material" includes all copies, abstracts,

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

15 14. VIOLATION

16 Any violation of this Order may be punished by appropriate measures
17 including, without limitation, contempt proceedings and/or monetary sanctions.

18 DATED: 11/15/2017



Alexander F. MacKinnon
United States Magistrate Judge