

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ELISABETH MARTIN, on behalf of
herself, all others similarly situated, and
the general public,

Plaintiff,

v.

MONSANTO COMPANY,

Defendant.

Case No.: 5:16-cv-02168-JFW (SPx)

STIPULATED PROTECTIVE ORDER

1 Plaintiff Elisabeth Martin (“Martin”) and Defendant Monsanto Company
2 (“Monsanto”), by and through their respective counsel, have jointly stipulated to the terms of
3 this Stipulated Protective Order, and with the Court being fully advised as to the same, it is
4 hereby ORDERED:

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

6 Discovery in this action is likely to involve production of confidential, proprietary, or
7 private information for which special protection from public disclosure and from use for any
8 purpose other than prosecuting this litigation may be warranted. Accordingly, the parties
9 hereby stipulate to and petition the Court to enter the following Stipulated Protective Order.
10 The parties acknowledge that this Order does not confer blanket protections on all disclosures
11 or responses to discovery and that the protection it affords from public disclosure and use
12 extends only to the limited information or items that are entitled to confidential treatment
13 under the applicable legal principles. The parties further acknowledge, as set forth in Section
14 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential
15 information under seal; Civil Local Rule 79-5 and Judge John F. Walter’s Standing Order
16 (Dkt. 11) sets forth the procedures that must be followed and the standards that will be applied
17 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 customer and pricing lists, development, commercial,
20 financial, technical and/or proprietary, and personal information for which special protection
21 from public disclosure and from use for any purpose other than prosecution of this action is
22 warranted. Such confidential and proprietary materials and information consist of, among
23 other things, confidential business or financial information, information regarding
24 confidential business practices, or other confidential research, development, or commercial
25 information (including information implicating privacy rights of third parties), information
26 otherwise generally unavailable to the public, or which may be privileged or otherwise
27 protected from disclosure under state or federal statutes, court rules, case decisions, or
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1 common law. Accordingly, to expedite the flow of information, to facilitate the prompt
2 resolution of disputes over confidentiality of discovery materials, to adequately protect
3 information the parties are entitled to keep confidential, to ensure that the parties are
4 permitted reasonable necessary uses of such material in preparation for and in the conduct of
5 trial, to address their handling at the end of the litigation, and serve the ends of justice, a
6 protective order for such information is justified in this matter. It is the intent of the parties
7 that information will not be designated as confidential for tactical reasons and that nothing be
8 so designated without a good faith belief that it has been maintained in a confidential, non-
9 public manner, and there is good cause why it should not be part of the public record of this
10 case.

11 **2. DEFINITIONS**

12 2.1. Action: This pending federal law suit, which is captioned as Case No. 5:16-cv-
13 02168-JFW-SP.

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

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

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

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

23 2.6. Disclosure or Discovery Material: all items or information, regardless of the
24 medium or manner in which it is generated, stored, or maintained (including, among other
25 things, testimony, transcripts, and tangible things), that are produced or generated in
26 disclosures or responses to discovery in this matter.

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

4 2.8. “HIGHLY CONFIDENTIAL” Information or Items: Any Producing Party may
5 designate as “HIGHLY CONFIDENTIAL”: (i) current and future business and marketing
6 plans, except for advertisements or communications that have been disclosed to the public;
7 (ii) research and development activities, including technology, know how and the like, which
8 have not been disclosed to the public; (iii) commercial agreements with third parties
9 containing competitively sensitive information, and the negotiations concerning such
10 agreements, provided that the producing party has taken reasonable steps to keep the terms
11 of such agreements and related negotiations – as distinct from the existence of the commercial
12 relationship – out of the public domain; (iv) non-public communications with United States
13 and foreign patent offices; (v) non-public communications with United States or foreign
14 regulatory agencies; (vi) financial information, including non-public sales information,
15 customer lists, purchases by customers, communications with potential customers, sales
16 projections, profit calculations, income and costs (i.e., production, marketing and overhead));
17 (vii) Confidential Information that a party is required to maintain as confidential under the
18 terms of an agreement or other understanding; and (viii) any other category of information
19 subsequently agreed to by the parties in writing as constituting “HIGHLY CONFIDENTIAL”
20 information

21 2.9. House Counsel: attorneys who are employees of a party to this Action. House
22 Counsel does not include Outside Counsel of Record or any other outside counsel.

23 2.10. Non-Party: any natural person, partnership, corporation, association, or other
24 legal entity not named as a Party to this action.

25 2.11. Outside Counsel of Record: attorneys who are not employees of a party to this
26 Action but are retained to represent or advise a party to this Action and have appeared in this
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1 Action on behalf of that party or are affiliated with a law firm which has appeared on behalf
2 of that party, and includes support staff.

3 2.12. Party: any party to this Action, including all of its officers, directors, employees,
4 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

5 2.13. Producing Party: a Party or Non-Party that produces Disclosure or Discovery
6 Material in this Action.

7 2.14. Professional Vendors: persons or entities that provide litigation support services
8 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
9 organizing, storing, or retrieving data in any form or medium) and their employees and
10 subcontractors.

11 2.15. Protected Material: any Disclosure or Discovery Material that is designated as
12 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”.

13 2.16. Receiving Party: a Party that receives Disclosure or Discovery Material from a
14 Producing Party.

15 3. SCOPE

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

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

23 4. DURATION

24 Even after final disposition of this litigation, the confidentiality obligations imposed
25 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a
26 court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal
27 of all claims and defenses in this Action, with prejudice; and (2) final judgment herein after
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1 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this
2 Action, including the time limits for filing any motions or applications for extension of time
3 pursuant to applicable law.

4 **5. DESIGNATION PROTECTED MATERIAL**

5 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party
6 or Non-Party that designates information or items for protection under this Order must take
7 care to limit any such designation to specific material that qualifies under the appropriate
8 standards. The Designating Party must designate for protection only those parts of material,
9 documents, items, or oral or written communications that qualify so that other portions of the
10 material, documents, items, or communications for which protection is not warranted are not
11 swept unjustifiably within the ambit of this Order.

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

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

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

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents,
25 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
26 Producing Party affix at a minimum, the legend "CONFIDENTIAL" or "HIGHLY
27 CONFIDENTIAL," to each page that contains protected material. If only a portion or
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1 portions of the material on a page qualifies for protection, the Producing Party also
2 must clearly identify the protected portion(s) (e.g., by making appropriate markings in
3 the margins).

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

16 (c) for testimony given in depositions that the Designating Party identify the
17 Disclosure or Discovery Material on the record, before the close of the deposition all
18 protected testimony.

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

25 5.3. Inadvertent Failures to Designate. An inadvertent failure to designate qualified
26 information or items does not, standing alone, waive the Designating Party’s right to secure
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1 protection under this Order for such material. The Receiving Party must make reasonable
2 efforts to assure that the material is treated in accordance with the provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 6.1. Timing of Challenges. Any Party or Non-Party may challenge a designation of
5 confidentiality at any time that is consistent with the Court’s Scheduling Order.

6 6.2. Meet and Confer. The Challenging Party shall initiate the dispute resolution
7 process under Local Rule 37.1 et seq.

8 6.3. The burden of persuasion in any such challenge proceeding shall be on the
9 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
10 harass or impose unnecessary expenses and burdens on other parties) may expose the
11 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the
12 confidentiality designation, all parties shall continue to afford the material in question the
13 level of protection to which it is entitled under the Producing Party’s designation until the
14 Court rules on the challenge.

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

16 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed
17 or produced by another Party or by a Non-Party in connection with this Action only for
18 prosecuting, defending, or attempting to settle this Action. Such Protected Material may be
19 disclosed only to the categories of persons and under the conditions described in this Order.
20 When the Action has been terminated, a Receiving Party must comply with the provisions of
21 section 13 below (FINAL DISPOSITION).

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

25 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
26 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
27 disclose any information or item designated “CONFIDENTIAL” only to:

1 (a) the officers, directors, and employees of the Receiving Party to whom
2 disclosure is reasonably necessary for this Action;

3 (b) any counsel working on this action on behalf of any party, including House
4 Counsel, and all paralegal assistants, secretarial, stenographic and clerical employees
5 working under the direct supervision of such counsel;

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

9 (d) the court and its personnel;

10 (e) court reporters and their staff;

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

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

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

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

1 7.3. Disclosure of “HIGHLY CONFIDENTIAL” Information or Items. HIGHLY
2 CONFIDENTIAL material may only be disclosed to the persons listed in subsections (b)
3 through (i) of the preceding paragraph.

4 **8. PROTECTED MATERIAL SUBPOENAED PRODUCED IN OTHER**
5 **LITIGATION**

6 If any Party has obtained Confidential Information under the terms of this Order and
7 receives a request to produce such Confidential Information by subpoena or other compulsory
8 process commanding the production of such Confidential Information, such Party shall
9 promptly notify the Designating Party, including in such notice the date set for the production
10 of such subpoenaed information and shall object to the production of such materials on the
11 grounds of the existence of this Order.

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

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

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

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

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

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

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

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

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

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

23 The inadvertent production of privileged or otherwise protected material shall be
24 governed by the Court's Order Regarding the Inadvertent Disclosure of Privileged
25 Information in this Action.

1 **12. MISCELLANEOUS**

2 12.1. Right to Further Relief. Nothing in this Order abridges the right of any person
3 to seek its modification by the Court in the future.

4 12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective
5 Order, no Party waives any right it otherwise would have to object to disclosing or producing
6 any information or item on any ground not addressed in this Stipulated Protective Order.
7 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
8 material covered by this Protective Order.

9 12.3. Filing Protected Material. A Party that seeks to file under seal any Protected
10 Material must comply with Civil Local Rule 79-5 and Judge John F. Walter’s Standing Order
11 (Dkt. 11). Protected Material may only be filed under seal pursuant to a court order
12 authorizing the sealing of the specific Protected Material at issue. If a Party’s request to file
13 Protected Material under seal is denied by the court, then the Receiving Party may file the
14 information in the public record unless otherwise instructed by the court.

15 **13. FINAL DISPOSITION**

16 After the final disposition of this Action, as defined in paragraph 4, within 60 days of
17 a written request by the Designating Party, each Receiving Party must return all Protected
18 Material to the Producing Party or destroy such material. As used in this subdivision, “all
19 Protected Material” includes all copies, abstracts, compilations, summaries, and any other
20 format reproducing or capturing any of the Protected Material. Whether the Protected
21 Material is returned or destroyed, the Receiving Party must submit a written certification to
22 the Producing Party (and, if not the same person or entity, to the Designating Party) by the
23 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material
24 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any
25 copies, abstracts, compilations, summaries or any other format reproducing or capturing any
26 of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
27 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
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1 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
2 product, and consultant and expert work product, even if such materials contain Protected
3 Material. Any such archival copies that contain or constitute Protected Material remain
4 subject to this Protective Order as set forth in Section 4 (DURATION).

5 **14. VIOLATIONS**

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

8
9 **STIPULATED AND AGREED TO on January 14, 2017.**

10 ELISABETH MARTIN

11
12 By: /s/ Jack Fitzgerald*

13 MONSANTO COMPANY

14
15 By: /s/ John J. Rosenthal

16
17 **Pursuant to Local Rule 5-4.3.4(a)(2)(i), Jack Fitzgerald hereby attests that concurrence in*
18 *the filing of this document and its contents was obtained from all signatures listed.*

19
20
21 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED:**

22
23 

24
25 Hon. Magistrate Judge Sheri Pym
26 United States Magistrate Court Judge

27 **DATED:** January 30, 2017

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 of perjury that I have
5 read in its entirety and understand the Stipulated Protective Order that was issued by the
6 United States District Court for the Central District of California on [date] in the case of
7 Elisabeth Martin v. Monsanto Company, 5:16-cv-02168-JFW-SP. I agree to comply with and
8 to be bound by all the terms of this Stipulated Protective Order and I understand and
9 acknowledge that failure to so comply could expose me to sanctions and punishment in the
10 nature of contempt. I solemnly promise that I will not disclose in any manner any information
11 or item that is subject to this Stipulated Protective Order to any person or entity except in strict
12 compliance with the provisions of this Order.

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

20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____

23 Signature: _____