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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MIGUEL CHAVEZ, individually
and on behalf of others similarly
situated,

Plaintiff,

v.

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

Defendant.

CASE NO. 5:17-cv-00731-SVW-AFM
~~PROPOSED~~ ORDER APPROVING
STIPULATED PROTECTIVE
ORDER

Removal Date: April 17, 2017

Trial Date: None Set

Based upon the parties’ stipulation and good cause showing, the Court hereby issues the protective order on the following terms:

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 from 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 not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

B. GOOD CAUSE STATEMENT

This action is likely to involve trade secrets, and confidential and proprietary 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, *Miguel*
27 *Chavez, individually and on behalf of others similarly situated, v. Shamrock Foods*
28

1 *Company, an Arizona Corporation, and DOES 1 to 10, Case No. 5:17-cv-00731-*
2 *SVW-AFM.*

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

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

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

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

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

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

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

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

26 2.10 Outside Counsel of Record: Attorneys who are not employees of a
27 party to this Action but are retained to represent or advise a party to this Action and
28

1 have appeared in this Action on behalf of that party or are affiliated with a law firm
2 that has appeared on behalf of that party, and includes support staff.

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

6 2.12 Producing Party: A Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

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

12 2.14 Protected Material: Any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL.”

14 2.15 Receiving Party: A Party that receives Disclosure or Discovery
15 Material from a Producing Party.

16 3. SCOPE

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

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

24 4. DURATION

25 Even after final disposition of this litigation, the confidentiality obligations
26 imposed by this Order shall remain in effect until a Designating Party agrees
27 otherwise in writing or a court order otherwise directs. Final disposition shall be
28 deemed to be the later of (1) dismissal of all claims and defenses in this action, with

1 or without prejudice; and/or (2) final judgment herein after the completion and
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
3 including the time limits for filing any motions or applications for extension of time
4 pursuant to applicable law.

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

15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

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

9 Designation in conformity with this Order requires:

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

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

1 (b) for testimony given in depositions that the Designating Party identifies
2 the Disclosure or Discovery Material on the record, within 30 days of receipt of the
3 deposition transcript all protected testimony.

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

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

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

20 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process under Local Rule 37-1 et seq.

22 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
23 joint stipulation pursuant to Local Rule 37-2.

24 6.4 The burden of persuasion in any such challenge proceeding shall be on
25 the Designating Party. Frivolous challenges, and those made for an improper
26 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
27 parties) may expose the Challenging Party to sanctions. Unless the Designating
28 Party has waived or withdrawn the confidentiality designation, all parties shall

1 continue to afford the material in question the level of protection to which it is
2 entitled under the Producing Party’s designation until the Court rules on the
3 challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with this
7 Action only for prosecuting, defending or attempting to settle this Action. Such
8 Protected Material may be disclosed only to the categories of persons and under the
9 conditions described in this Order. When the Action has been terminated, a
10 Receiving Party must comply with the provisions of section 13 below (FINAL
11 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
16 otherwise ordered by the court or permitted in writing by the Designating Party, a
17 Receiving Party may disclose any information or item designated
18 “CONFIDENTIAL” only to:

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

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

24 (c) 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 (d) the court and its personnel;

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

16 (i) 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.

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

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

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

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

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

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

24 (b) In the event that a Party is required, by a valid discovery request, to
25 produce a Non-Party’s confidential information in its possession, and the Party is
26 subject to an agreement with the Non-Party not to produce the Non-Party’s
27 confidential information, then the Party shall:
28

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

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

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

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

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other
5 protection, the obligations of the Receiving Parties are those set forth in Federal
6 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
7 whatever procedure may be established in an e-discovery order that provides for
8 production without prior privilege review. Pursuant to Federal Rule of Evidence
9 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
10 of a communication or information covered by the attorney-client privilege or work
11 product protection, the parties may incorporate their agreement in the stipulated
12 protective order submitted to the court.

13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
15 person to seek its modification by the Court in the future.

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

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

28 //

1 13. FINAL DISPOSITION

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

20 14. VIOLATION

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

23 IT IS SO ORDERED.

24
25 DATED: 6/6/2017



26 Alexander F. MacKinnon
27 United States Magistrate Judge