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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

<p>32ND DISTRICT AGRICULTURAL ASSOCIATION, A CALIFORNIA STATE INSTITUTION,</p> <p>Plaintiff,</p> <p>v.</p> <p>OVATIONS FANFARE, L.P., A PENNSYLVANIA LIMITED PARTNERSHIP, DBA SPECTRA FOOD SERVICE AND HOSPITALITY, AN ENTITY OF UNKNOWN FORM AND DOES 1-20, INCLUSIVE,</p> <p>Defendant.</p>

8:20-cv-02049-CJC (JDEx)
STIPULATED PROTECTIVE ORDER

<p>OVATIONS FANFARE, L.P., A PENNSYLVANIA LIMITED PARTNERSHIP, DBA SPECTRA FOOD SERVICE AND HOSPITALITY, AN ENTITY OF UNKNOWN FORM AND DOES 1-20, INCLUSIVE,</p> <p>Counterclaimant,</p> <p>v.</p> <p>32ND DISTRICT AGRICULTURAL ASSOCIATION, A CALIFORNIA STATE INSTITUTION,</p> <p>Counterdefendant.</p>
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Based on the parties' Stipulation (Dkt. 24), and for good cause shown, the Court finds and orders as follows.

1 1. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public
4 disclosure and from use for any purpose other than pursuing this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the
6 Court to enter the following Stipulated Protective Order. The parties
7 acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from
9 public disclosure and use extends only to the limited information or items that
10 are entitled to confidential treatment under the applicable legal principles.

11 2. GOOD CAUSE STATEMENT

12 This action is likely to involve commercial, financial, technical and/or
13 proprietary information for which special protection from public disclosure and
14 from use for any purpose other than prosecution of this action is warranted.
15 Such confidential and proprietary materials and information consist of, among
16 other things, confidential business or financial information, information
17 regarding confidential business practices, or other confidential research,
18 development, or commercial information (including information implicating
19 privacy rights of third parties), information otherwise generally unavailable to
20 the public, or which may be privileged or otherwise protected from disclosure
21 under state or federal statutes, court rules, case decisions, or common law.
22 Accordingly, to expedite the flow of information, to facilitate the prompt
23 resolution of disputes over confidentiality of discovery materials, to adequately
24 protect information the parties are entitled to keep confidential, to ensure that
25 the parties are permitted reasonable necessary uses of such material in
26 preparation for and in the conduct of trial, to address their handling at the end
27 of the litigation, and serve the ends of justice, a protective order for such
28 information is justified in this matter. It is the intent of the parties that

1 information will not be designated as confidential for tactical reasons and that
2 nothing be so designated without a good faith belief that it has been maintained
3 in a confidential, non-public manner, and there is good cause why it should not
4 be part of the public record of this case.

5 3. ACKNOWLEDGMENT OF UNDER SEAL FILING
6 PROCEDURE

7 The parties further acknowledge, as set forth in Section 14.3, below, that
8 this Stipulated Protective Order does not entitle them to file confidential
9 information under seal; Local Civil Rule 79-5 sets forth the procedures that
10 must be followed and the standards that will be applied when a party seeks
11 permission from the court to file material under seal. There is a strong
12 presumption that the public has a right of access to judicial proceedings and
13 records in civil cases. In connection with non-dispositive motions, good cause
14 must be shown to support a filing under seal. See *Kamakana v. City and County*
15 *of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006); *Phillips v. Gen. Motors Corp.*,
16 307 F.3d 1206, 1210-11 (9th Cir. 2002); *Makar-Welbon v. Sony Electronics, Inc.*, 187
17 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require
18 good cause showing), and a specific showing of good cause or compelling
19 reasons with proper evidentiary support and legal justification, must be made
20 with respect to Protected Material that a party seeks to file under seal. The
21 parties' mere designation of Disclosure or Discovery Material as
22 CONFIDENTIAL does not— without the submission of competent evidence
23 by declaration, establishing that the material sought to be filed under seal
24 qualifies as confidential, privileged, or otherwise protectable—constitute good
25 cause.

26 Further, if a party requests sealing related to a dispositive motion or trial,
27 then compelling reasons, not only good cause, for the sealing must be shown,
28 and the relief sought shall be narrowly tailored to serve the specific interest to

1 be protected. See *Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir.
2 2010). For each item or type of information, document, or thing sought to be
3 filed or introduced under seal, the party seeking protection must articulate
4 compelling reasons, supported by specific facts and legal justification, for the
5 requested sealing order. Again, competent evidence supporting the application
6 to file documents under seal must be provided by declaration.

7 Any document that is not confidential, privileged, or otherwise
8 protectable in its entirety will not be filed under seal if the confidential portions
9 can be redacted. If documents can be redacted, then a redacted version for
10 public viewing, omitting only the confidential, privileged, or otherwise
11 protectable portions of the document, shall be filed. Any application that seeks
12 to file documents under seal in their entirety should include an explanation of
13 why redaction is not feasible.

14 4. DEFINITIONS

15 4.1 “Action”: *32nd District Agricultural Association v. Ovarions Fanfare*,
16 *L.P.* (8:20-cv-02049-CJC-JDE)

17 4.2 “Challenging Party”: a Party or Non-Party that challenges the
18 designation of information or items under this Order.

19 4.3 “CONFIDENTIAL” Information or Items: information (regardless
20 of how it is generated, stored, or maintained) or tangible things that qualify for
21 protection under Federal Rule of Civil Procedure 26(c), and as specified above
22 in the Good Cause Statement.

23 4.4 “Counsel”: Outside Counsel of Record and House Counsel (as well
24 as their support staff).

25 4.5 “Designating Party”: a Party or Non-Party that designates
26 information or items that it produces in disclosures or in responses to discovery
27 as “CONFIDENTIAL.”

28 4.6 “Disclosure or Discovery Material”: all items or information,

1 regardless of the medium or manner in which it is generated, stored, or
2 maintained (including, among other things, testimony, transcripts, and tangible
3 things), that are produced or generated in disclosures or responses to discovery.

4 4.7 “Expert”: a person with specialized knowledge or experience in a
5 matter pertinent to the litigation who has been retained by a Party or its counsel
6 to serve as an expert witness or as a consultant in this Action.

7 4.8 “House Counsel”: attorneys who are employees of a party to this
8 Action. House Counsel does not include Outside Counsel of Record or any
9 other outside counsel.

10 4.9 “Non-Party”: any natural person, partnership, corporation,
11 association, or other legal entity not named as a Party to this action.

12 4.10 “Outside Counsel of Record”: attorneys who are not employees of
13 a party to this Action but are retained to represent a party to this Action and
14 have appeared in this Action on behalf of that party or are affiliated with a law
15 firm that has appeared on behalf of that party, including support staff.

16 4.11 “Party”: any party to this Action, including all of its officers,
17 directors, employees, consultants, retained experts, and Outside Counsel of
18 Record (and their support staffs).

19 4.12 “Producing Party”: a Party or Non-Party that produces Disclosure
20 or Discovery Material in this Action.

21 4.13 “Professional Vendors”: persons or entities that provide litigation
22 support services (e.g., photocopying, videotaping, translating, preparing
23 exhibits or demonstrations, and organizing, storing, or retrieving data in any
24 form or medium) and their employees and subcontractors.

25 4.14 “Protected Material”: any Disclosure or Discovery Material that is
26 designated as “CONFIDENTIAL.”

27 4.15 “Receiving Party”: a Party that receives Disclosure or Discovery
28 Material from a Producing Party.

1 5. SCOPE

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

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

10 6. DURATION

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

21 7. DESIGNATING PROTECTED MATERIAL

22 7.1 Exercise of Restraint and Care in Designating Material for
23 Protection. Each Party or Non-Party that designates information or items for
24 protection under this Order must take care to limit any such designation to
25 specific material that qualifies under the appropriate standards. The
26 Designating Party must designate for protection only those parts of material,
27 documents, items, or oral or written communications that qualify so that other
28 portions of the material, documents, items, or communications for which

1 protection is not warranted are not swept unjustifiably within the ambit of this
2 Order.

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

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

12 7.2 Manner and Timing of Designations. Except as otherwise provided
13 in this Order, or as otherwise stipulated or ordered, Disclosure of Discovery
14 Material that qualifies for protection under this Order must be clearly so
15 designated before the material is disclosed or produced.

16 Designation in conformity with this Order requires:

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

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

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

8 (b) for testimony given in depositions that the Designating Party
9 identifies the Disclosure or Discovery Material on the record, before the close
10 of the deposition all protected testimony.

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

17 7.3 Inadvertent Failures to Designate. If timely corrected, an
18 inadvertent failure to designate qualified information or items does not,
19 standing alone, waive the Designating Party’s right to secure protection under
20 this Order for such material. Upon timely correction of a designation, the
21 Receiving Party must make reasonable efforts to assure that the material is
22 treated in accordance with the provisions of this Order.

23 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

24 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
25 designation of confidentiality at any time that is consistent with the Court’s
26 Scheduling Order.

27 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
28 resolution process under Local Rule 37-1 et seq.

1 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
2 joint stipulation pursuant to Local Rule 37-2.

3 8.4 The burden of persuasion in any such challenge proceeding shall be
4 on the Designating Party. Frivolous challenges, and those made for an
5 improper purpose (e.g., to harass or impose unnecessary expenses and burdens
6 on other parties) may expose the Challenging Party to sanctions. Unless the
7 Designating Party has waived or withdrawn the confidentiality designation, all
8 parties shall continue to afford the material in question the level of protection to
9 which it is entitled under the Producing Party's designation until the Court
10 rules on the challenge.

11
12 9. ACCESS TO AND USE OF PROTECTED MATERIAL

13 9.1 Basic Principles. A Receiving Party may use Protected Material that
14 is disclosed or produced by another Party or by a Non-Party in connection with
15 this Action only for prosecuting, defending, or attempting to settle this Action.
16 Such Protected Material may be disclosed only to the categories of persons and
17 under the conditions described in this Order. When the Action has been
18 terminated, a Receiving Party must comply with the provisions of section 15
19 below (FINAL DISPOSITION).

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

23 9.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
24 otherwise ordered by the court or permitted in writing by the Designating
25 Party, a Receiving Party may disclose any information or item designated
26 "CONFIDENTIAL" only to:

27 (a) the Receiving Party's Outside Counsel of Record in this
28 Action, as well as employees of said Outside Counsel of Record to whom it is

1 reasonably necessary to disclose the information for this Action;

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

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

8 (d) the court and its personnel;

9 (e) court reporters and their staff;

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

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

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

27 (i) any mediators or settlement officers and their supporting
28 personnel, mutually agreed upon by any of the parties engaged in settlement

1 discussions.

2 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
3 PRODUCED IN OTHER LITIGATION

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

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

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

13 (c) cooperate with respect to all reasonable procedures sought to be
14 pursued by the Designating Party whose Protected Material may be affected. If
15 the Designating Party timely seeks a protective order, the Party served with the
16 subpoena or court order shall not produce any information designated in this
17 action as “CONFIDENTIAL” before a determination by the court from which
18 the subpoena or order issued, unless the Party has obtained the Designating
19 Party’s permission or the Party is otherwise legally obligated to produce. The
20 Designating Party shall bear the burden and expense of seeking protection in
21 that court of its confidential material and nothing in these provisions should be
22 construed as authorizing or encouraging a Receiving Party in this Action to
23 disobey a lawful directive from another court.

24 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO
25 BE PRODUCED IN THIS LITIGATION

26 (a) The terms of this Order are applicable to information produced
27 by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
28 information produced by Non-Parties in connection with this litigation is

1 protected by the remedies and relief provided by this Order. Nothing in these
2 provisions should be construed as prohibiting a Non-Party from seeking
3 additional protections.

4 (b) In the event that a Party is required, by a valid discovery
5 request, to produce a Non-Party's confidential information in its possession,
6 and the Party is subject to an agreement with the Non-Party not to produce the
7 Non-Party's confidential information, then the Party shall:

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

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

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

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

25 12. UNAUTHORIZED DISCLOSURE OF PROTECTED
26 MATERIAL

27 If a Receiving Party learns that, by inadvertence or otherwise, it has
28 disclosed Protected Material to any person or in any circumstance not

1 authorized under this Stipulated Protective Order, the Receiving Party must
2 immediately (a) notify in writing the Designating Party of the unauthorized
3 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
4 Protected Material, (c) inform the person or persons to whom unauthorized
5 disclosures were made of all the terms of this Order, and (d) request such
6 person or persons to execute the “Acknowledgment an Agreement to Be
7 Bound” attached hereto as Exhibit A.

8 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
9 OTHERWISE PROTECTED MATERIAL

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

20 14. MISCELLANEOUS

21 14.1 Right to Further Relief. Nothing in this Order abridges the right of
22 any person to seek its modification by the Court in the future.

23 14.2 Right to Assert Other Objections. By stipulating to the entry of this
24 Protective Order, no Party waives any right it otherwise would have to object to
25 disclosing or producing any information or item on any ground not addressed
26 in this Stipulated Protective Order. Similarly, no Party waives any right to
27 object on any ground to use in evidence of any of the material covered by this
28 Protective Order.

1 14.3 Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Local Civil Rule 79-5. Protected
3 Material may only be filed under seal pursuant to a court order authorizing the
4 sealing of the specific Protected Material. If a Party’s request to file Protected
5 Material under seal is denied by the court, then the Receiving Party may file the
6 information in the public record unless otherwise instructed by the court.

7 15. FINAL DISPOSITION

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

27 16. VIOLATION

28 Any violation of this Order may be punished by appropriate measures

1 including, without limitation, contempt proceedings, monetary sanctions, or
2 both.

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4 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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6 DATED: September 09, 2021

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JOHN D. EARLY
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1 I, _____ [print or type full name], of
 2 _____ [print or type full address], declare
 3
 4 under penalty of perjury that I have read in its entirety and understand the
 5 Stipulated Protective Order that was issued by the United States District Court
 6 for the Central District of California on _____ [date] in the case of *32nd*
 7 *District Agricultural Association v. Ovarions Fanfare, L.P.* (8:20-cv-02049-CJC-
 8 JDE). I agree to comply with and to be bound by all the terms of this Stipulated
 9 Protective Order and I understand and acknowledge that failure to so comply
 10 could expose me to sanctions and punishment in the nature of contempt. I
 11 solemnly promise that I will not disclose in any manner any information or
 12 item that is subject to this Stipulated Protective Order to any person or entity
 13 except in strict compliance with the provisions of this Order.
 14

15 I further agree to submit to the jurisdiction of the United States District
 16 Court for the Central District of California for the purpose of enforcing the
 17 terms of this Stipulated Protective Order, even if such enforcement proceedings
 18 occur after termination of this action.

19 I hereby appoint _____ [print or type full
 20 name] of _____ [print or type full address and
 21 telephone number] as my California agent for service of process in connection
 22 with this action or any proceedings related to enforcement of this Stipulated
 23 Protective Order.
 24

25 Dated: _____

26 City and State where sworn and signed: _____

27 Printed Name: _____

28 Signature: _____