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11
12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14 FRESNO DIVISION
15

16 GABRIEL CHAVEZ, JOSE GARCIA,
17 FRANCISCO MURGUIA, JUAN MANUEL
18 BERUMEN and JUAN AGUILERA AYALA, on
19 behalf of themselves and all other similarly situated
20 individuals,

21 PLAINTIFFS,

22 vs.

23 DENIS PETRISSANS AND NANCY
24 PETRISSANS (doing business as "Jai Alai Dairy")

25 DEFENDANTS.
26

27 **1:08-cv-00122-LJO-GSA**

28 **Protective Order**

1 **PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation would be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on all
7 disclosures or responses to discovery and that the protection it affords extends only to the limited
8 information or items that are entitled under the applicable legal principles to treatment as
9 confidential. Further, an employees' right to obtain, review, discuss or disclose under California or
10 Federal Law is not restricted by this order. The parties further acknowledge, as set forth in
11 Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential
12 information under seal; Civil Local Rules sets forth the procedures that must be followed and
13 reflects the standards that will be applied when a party seeks permission from the Court to file
14 material under seal.

15 **I. DEFINITIONS**

16 1.1 **PARTY:** Any party to this action, including all of its officers, directors,
17 employees, consultants, retained experts, and outside counsel (and their support staff).

18 1.2 **DISCLOSURE OR DISCOVERY MATERIAL:** All items or information,
19 regardless of the medium or manner generated, stored, or maintained (including, among other things,
20 testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses
21 to discovery in this matter.

22 1.3 **“CONFIDENTIAL” INFORMATION OR ITEMS:** Information (regardless of
23 how generated, stored or maintained) or tangible things that qualify for protection under California
24 law, and under the standards developed under F.R.Civ.P. 26(c).

25 1.4 **“HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” INFORMATION**
26 **OR ITEMS:** Extremely sensitive “Confidential Information or Items” whose disclosure to another
27 Party or non-party would create a substantial risk of serious injury that could not be avoided by less
28 restrictive means.

1 1.5 **RECEIVING PARTY:** A Party that receives Disclosure or Discovery Material
2 from a Producing Party.

3 1.6 **PRODUCING PARTY:** A Party or non-party that produces Disclosure or
4 Discovery Material in this action.

5 1.7 **DESIGNATING PARTY:** A Party or non-party that designates information or
6 items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly
7 Confidential - Attorneys’ Eyes Only.”

8 1.8 **PROTECTED MATERIAL:** Any Disclosure or Discovery Material that is
9 designated as “Confidential” or as “Highly Confidential - Attorneys’ Eyes Only.”

10 1.9 **OUTSIDE COUNSEL:** Attorneys who are not employees of a Party but who
11 are retained to represent or advise a Party in this action.

12 1.10 **HOUSE COUNSEL:** Attorneys who are employees of a Party.

13 1.11 **COUNSEL (WITHOUT QUALIFIER):** Outside Counsel and House Counsel (as
14 well as their support staffs).

15 1.12 **EXPERT:** A person with specialized knowledge or experience in a matter
16 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert
17 witness or as a consultant in this action and who is not a past or a current employee of a Party or of a
18 competitor of a Party’s and who, at the time of retention, is not anticipated to become an employee
19 of a Party or a competitor of a Party’s. This definition includes a professional jury or trial consultant
20 retained in connection with this litigation.

21 1.13 **Professional Vendors:** Persons or entities that provide litigation support
22 services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or demonstrations;
23 organizing, storing, retrieving data in any form or medium; etc.) and their employees and
24 subcontractors.

25 **II. SCOPE**

26 The protections conferred by this Stipulation and Order cover not only Protected Material (as
27 defined above), but also any information copied or extracted therefrom, as well as all copies,

1 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
2 parties or counsel to or in court or in other settings that might reveal Protected Material.

3 **III. DURATION**

4 Even after the termination of this litigation, the confidentiality obligations imposed by this
5 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
6 otherwise directs.

7 **IV. DESIGNATING PROTECTED MATERIAL**

8 4.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
9 or non-party that designates information or items for protection under this Order must take care to
10 limit any such designation to specific material that qualifies under the appropriate standards. A
11 Designating Party must take care to designate for protection only those parts of material, documents,
12 items, or oral or written communications that qualify - so that other portions of the material,
13 documents, items, or communications for which protection is not warranted are not swept
14 unjustifiably within the ambit of this Order.

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

19 If it comes to a Party's or a non-party's attention that information or items that it designated
20 for protection do not qualify for protection at all, or do not qualify for the level of protection initially
21 asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the
22 mistaken designation.

23 4.2 Manner and Timing of Designations. Except as otherwise provided in this Order
24 (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered, material
25 that qualifies for protection under this Order must be clearly so designated before the material is
26 disclosed or produced.

27 Designation in conformity with this Order requires:

1 4.2.1 For information in documentary form (apart from transcripts of depositions or
2 other pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or
3 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” on each page that contains protected
4 material. If only a portion or portions of the material on a page qualifies for protection, the
5 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
6 markings in the margins) and must specify, for each portion, the level of protection being asserted
7 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”).

8 A Party or non-party that makes original documents or materials available for inspection
9 need not designate them for protection until after the inspecting Party has indicated which material it
10 would like copied and produced. During the inspection and before the designation, all of the
11 material made available for inspection shall be deemed “HIGHLY
12 CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the
13 documents it wants copied and produced, the Producing Party must determine which documents, or
14 portions thereof, qualify for protection under this Order, then, before producing the specified
15 documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
16 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”) at the top of each page that contains
17 Protected Material. If only a portion or portions of the material on a page qualifies for protection,
18 the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
19 markings in the margins) and must specify, for each portion, the level of protection being asserted
20 (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”).

21 4.2.2 For testimony given in deposition or in other pretrial or trial proceedings, that
22 the Party or non-party offering or sponsoring the testimony identify on the record, before the close of
23 the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions
24 of the testimony that qualify as “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.”
25 When it is impractical to identify separately each portion of testimony that is entitled to protection,
26 and when it appears that substantial portions of the testimony may qualify for protection, the Party or
27 non-party that sponsors, offers, or gives the testimony may invoke on the record (before the
28 deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions

1 of the testimony as to which protection is sought and to specify the level of protection being asserted
2 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”). Only
3 those portions of the testimony that are appropriately designated for protection within the 20 days
4 shall be covered by the provisions of this Stipulated Protective Order.

5 Transcript pages containing Protected Material must be separately bound by the court
6 reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY
7 CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-party offering
8 or sponsoring the witness or presenting the testimony.

9 4.2.3 For information produced in some form other than documentary, and for any
10 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
11 container or containers in which the information or item is stored the legend “CONFIDENTIAL” or
12 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” If only portions of the information
13 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected
14 portions, specifying whether they qualify as “Confidential” or as “Highly Confidential - Attorneys’
15 Eyes Only.”

16 4.2.4 For verbal information provided by Defendants’, Defendants’ accountant,
17 Defendants’ banker or other non-parties pursuant to Plaintiffs’ request to review Defendants’
18 financial information, including, but not limited to all conversations, notes or other information
19 produced during such financial inspection(s) is/are deemed to be protected material pursuant to this
20 protective order.

21
22 4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
23 designate qualified information or items as “Confidential” or “Highly Confidential - Attorneys’ Eyes
24 Only” does not, standing alone, waive the Designating Party’s right to secure protection under this
25 Order for such material. If material is appropriately designated as “Confidential” or “Highly
26 Confidential - Attorneys’ Eyes Only” after the material was initially produced, the Receiving Party,
27 on timely notification of the designation, must make reasonable efforts to assure that the material is
28 treated in accordance with the provisions of this Order.

1 **V. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 5.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's
3 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
4 economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive
5 its right to challenge a confidentiality designation by electing not to mount a challenge promptly
6 after the original designation is disclosed.

7 5.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
8 Party's confidentiality designation must do so in good faith and must begin the process by conferring
9 directly (in voice to voice dialogue; other forms of communication are not sufficient) with counsel
10 for the Designating Party. In conferring, the challenging Party must explain the basis for its belief
11 that the confidentiality designation was not proper and must give the Designating Party an
12 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
13 designation is offered, to explain the basis for the chosen designation. A challenging Party may
14 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
15 process first.

16 6.3 Judicial Intervention. Party that elects to press a challenge to a confidentiality
17 designation after considering the justification offered by the Designating Party may file and serve a
18 motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable).

19 **VI. ACCESS TO AND USE OF PROTECTED MATERIAL**

20 6.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
21 or produced by another Party or by a non-party in connection with this case only for prosecuting,
22 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
23 the categories of persons and under the conditions described in this Order. When the litigation has
24 been terminated, a Receiving Party must comply with the provisions of section 11, below (FINAL
25 DISPOSITION).

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

1 6.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
2 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
3 information or item designated CONFIDENTIAL only to:

4 6.2.1 The Receiving Party’s Outside Counsel of record in this action, as well as
5 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
6 litigation and who have signed the “Agreement to Be Bound by Protective Order” that is attached
7 hereto as Exhibit A;

8 6.2.2 The officers, directors, and employees (including House Counsel) of the
9 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
10 the “Agreement to Be Bound by Protective Order” (Exhibit A);

11 6.2.3 Experts (as defined in this Order) of the Receiving Party to whom disclosure
12 is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
13 Protective Order” (Exhibit A);

14 6.2.4 The Court and its personnel;

15 6.2.5 Court reporters, their staffs, and professional vendors to whom disclosure is
16 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
17 Protective Order” (Exhibit A);

18 6.2.6 During their depositions, witnesses in the action to whom disclosure is
19 reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order”
20 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
21 Protected Material must be separately bound by the court reporter and may not be disclosed to
22 anyone except as permitted under this Stipulated Protective Order.

23 6.2.7 The author of the document, the employee to which the document relates, or
24 the original source of the information.

25 6.3 Disclosure of “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”
26 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
27 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
28 CONFIDENTIAL - ATTORNEYS’ EYES ONLY” only to:

1 6.3.1 (a) The Receiving party and the Receiving Party's Outside Counsel of
2 record in this action, as well as employees of said Counsel to whom it is reasonably necessary to
3 disclose the information for this litigation and who have signed the "Agreement to Be Bound by
4 Protective Order" that is attached hereto as Exhibit A;

5 7.3.1 (b) House Counsel of a Receiving Party (1) to whom disclosure is
6 reasonably necessary for this litigation, and (2) who has signed the "Agreement to Be Bound by
7 Protective Order" (Exhibit A);

8 6.3.2 Experts (as defined in this Order) (1) to whom disclosure is reasonably
9 necessary for this litigation and (2) who have signed the "Agreement to Be Bound by Protective
10 Order" (Exhibit A);

11 6.3.3 The Court and its personnel;

12 6.3.4 Court reporters, their staffs, and professional vendors to whom disclosure is
13 reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
14 Protective Order" (Exhibit A); and

15 7.3.5 The author of the document, the employee to which the document relates, or
16 the original source of the information.

17 **VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
18 **PRODUCED IN OTHER LITIGATION.**

19 If a Receiving Party is served with a subpoena or an order issued in other litigation that
20 would compel disclosure of any information or items designated in this action as
21 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY," the
22 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
23 and in no event more than three court days after receiving the subpoena or order. Such notification
24 must include a copy of the subpoena or court order.

25 The Receiving Party also must immediately inform in writing the Party who caused the
26 subpoena or order to issue in the other litigation that some or all the material covered by the
27 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must

1 deliver a copy of this Stipulated Protective Order promptly to the party in the other action that
2 caused the subpoena or order to issue.

3 The purpose of imposing these duties is to alert the interested parties to the existence of this
4 Protective Order and to afford the Designating Party in this case an opportunity to try to protect its
5 confidentiality interests in the court from which the subpoena or order issued. The Designating
6 Party shall bear the burdens and the expenses of seeking protection in that court of its confidential
7 material - and nothing in these provisions should be construed as authorizing or encouraging a
8 Receiving Party in this action to disobey a lawful directive from another court.

9 **VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

17 **IX. FILING PROTECTED MATERIAL**

18 Without written permission from the Designating Party or a court order secured after
19 appropriate notice to all interested persons, a Receiving Party may not file in the public record in this
20 action any Protected Material. A Party that seeks to file under seal any Protected Material must
21 comply with local rules.

22 **X. FINAL DISPOSITION**

23 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after
24 the final termination of this action, each Receiving Party must return all Protected Material to the
25 Producing Party. As used in this subdivision, “all Protected Material” includes all copies, abstracts,
26 compilations, summaries or any other form of reproducing or capturing any of the Protected
27 Material. With permission in writing from the Designating Party, the Receiving Party may destroy
28 some or all of the Protected Material instead of returning it. Whether the Protected Material is

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

10 **XI. MISCELLANEOUS**

11 11.1 Right to Further Relief. Nothing in this Order abridges the right of any person
12 to seek its modification by the Court in the future.

13 11.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
14 Order no Party waives any right it otherwise would have to object to disclosing or producing any
15 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
16 Party waives any right to object on any ground to use in evidence of any of the material covered by
17 this Protective Order.

18 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

19
20 DATED: April 3, 2009

/s/ Stan S. Mallison
STAN S. MALLISON
LAW OFFICES OF MALLISON & MARTINEZ
Attorneys for Plaintiffs

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22
23 DATED: April 3, 2009

/s/ Sue Ann Cercone
SUE ANN CERCONE
MARDEROSIAN, RUNYON, CERCONE,
LEHMAN & ARMO
Attorneys for Defendants

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1 All documents or materials designated as "Confidential" pursuant to this Protective Order,
2 and all papers or documents containing information or materials designated as "Confidential" that
3 are filed with the court for any purposes, shall be filed and served under seal pursuant to Local Rule
4 39-141.

5
6 **ORDER**

7 IT IS SO ORDERED.

8 Dated: April 6, 2009

/s/ Gary S. Austin
United States Magistrate Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of _____ [print or
4 type full address], declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective for the Jai Alai Class Action proceedings. I agree to comply with and to be
6 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that
7 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I
8 solemnly promise that I will not disclose in any manner any information or item that is subject to this
9 Stipulated Protective Order to any person or entity except in strict compliance with the provisions of
10 this Order.

11 I further agree to submit to the jurisdiction of the Federal Court for the Eastern District of
12 California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such
13 enforcement proceedings occur after termination of this action.

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

17
18 Date: _____

19 City and State where sworn and signed: _____

20 Printed name: _____

21 **[Printed Name]**

22 Signature: _____

23 **[Signature]**