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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

SILVESTRE SOTO,	)	Case No.: 1:09-cv-00701 - AWI - JLT
	)	
Plaintiff,	)	PROTECTIVE ORDER
	)	
v.	)	
	)	
CASTLEROCK FARMING AND	)	
TRANSPORT, INC, et al.,	)	
	)	
Defendants.	)	

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are 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. This Order does not confer blanket protections on all disclosures or responses to discovery and the protection it affords from public disclosure and use extends only to the limited information or items entitled to confidential treatment under the applicable legal principles. As set forth in Section 13.3, below, this Protective Order does not entitle the parties to file confidential information under seal; Civil Local Rule 141 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

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1 2. DEFINITIONS

2 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information  
3 or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
5 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
6 Civil Procedure 26(c).

7 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as  
8 their support staff).

9 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
10 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

11 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or  
12 manner in which it is generated, stored, or maintained (including, among other things, testimony,  
13 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery  
14 in this matter.

15 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
16 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
17 consultant in this action.

18 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel  
19 does not include Outside Counsel of Record or any other outside counsel.

20 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal  
21 entity not named as a Party to this action.

22 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action  
23 but are retained to represent or advise a party to this action and have appeared in this action on behalf  
24 of that party or are affiliated with a law firm which has appeared on behalf of that party.

25 2.10 Party: any party to this action, including all of its officers, directors, employees,  
26 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

27 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material  
28 in this action.

1           2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,  
2 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,  
3 or retrieving data in any form or medium) and their employees and subcontractors.

4           2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
5 “CONFIDENTIAL.”

6           2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
7 Producing Party.

8           2.15 Action: the case entitled *Soto et al. v. Castlerock Farming and Transport, Inc.*, Case  
9 No. 1:09-CV-00701-AWI-JLT, United States District Court, Eastern District of California.

10          2.16 Class Member: a member of a class that has been certified by the Court in this Action.

11 3.       SCOPE

12           The protections conferred by this Order cover not only Protected Material (as defined above),  
13 but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,  
14 summaries, or compilations of Protected Material; and (3) any testimony, conversations, or  
15 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections  
16 conferred by this Order do not cover the following information: (a) any information that is in the public  
17 domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its  
18 disclosure to a Receiving Party as a result of publication not involving a violation of this Order,  
19 including becoming part of the public record through trial or otherwise; and (b) any information known  
20 to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure  
21 from a source who obtained the information lawfully and under no obligation of confidentiality to the  
22 Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or  
23 order.

24 4.       DURATION

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

1 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time  
2 limits for filing any motions or applications for extension of time pursuant to applicable law.

3 5. MATERIAL PRESUMED CONFIDENTIAL

4 All documents containing the personal information of Defendant's employees, including, but  
5 not limited to, employees' Social Security Numbers, home addresses, home telephone numbers, birth  
6 dates, wages, pay roll and tax information, shall be presumed CONFIDENTIAL and shall be subject to  
7 all applicable terms of this protective order, unless the parties otherwise stipulate in writing.

8 6. DESIGNATING PROTECTED MATERIAL

9 6.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
10 Non-Party that designates information or items for protection under this Order must take care to limit  
11 any such designation to specific material that qualifies under the appropriate standards. The Designating  
12 Party must designate for protection only those parts of material, documents, items, or oral or written  
13 communications that qualify – so other portions of the material, documents, items, or communications  
14 for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

22 6.2 Manner and Timing of Designations. Except as otherwise provided in this Order (*see*,  
23 *e.g.*, Paragraph 5), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies  
24 for protection under this Order must be clearly so designated before the material is disclosed or  
25 produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic documents, but  
28 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party

1 affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion or  
2 portions of the material on a page qualifies for protection, the Producing Party also must clearly  
3 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

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

14 (b) for testimony given in deposition or in other pretrial or trial proceedings, that  
15 the Designating Party identify on the record, before the close of the deposition, hearing, or other  
16 proceeding, all protected testimony.

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

22 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
23 designate qualified information or items does not, standing alone, waive the Designating Party’s right  
24 to secure protection under this Order for such material. Upon timely correction of a designation, the  
25 Receiving Party must make reasonable efforts to assure that the material is treated in accordance with  
26 the provisions of this Order.

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1 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 7.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
3 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
5 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
6 confidentiality designation by electing not to mount a challenge promptly after the original designation  
7 is disclosed.

8 7.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by  
9 providing written notice of each designation it is challenging and describing the basis for each  
10 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite  
11 that the challenge to confidentiality is being made in accordance with this specific paragraph of the  
12 Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the  
13 process by conferring directly (in voice to voice dialogue; other forms of communication are not  
14 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must  
15 explain the basis for its belief that the confidentiality designation was not proper and must give the  
16 Designating Party an opportunity to review the designated material, to reconsider the circumstances,  
17 and, if no change in designation is offered, to explain the basis for the chosen designation. A  
18 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this  
19 meet and confer process first or establishes that the Designating Party is unwilling to participate in the  
20 meet and confer process in a timely manner.

21 7.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
22 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
23 Local Rule 141 within 21 days of the initial notice of challenge or within 14 days of the parties  
24 agreeing the meet and confer process will not resolve their dispute, whichever is earlier. Each such  
25 motion must be accompanied by a competent declaration affirming that the movant has complied with  
26 the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party  
27 to make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
28 shall automatically waive the confidentiality designation for each challenged designation. In addition,

1 the Challenging Party may file a motion challenging a confidentiality designation at any time if there is  
2 good cause for doing so, including a challenge to the designation of a deposition transcript or any  
3 portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent  
4 declaration affirming that the movant has complied with the meet and confer requirements imposed by  
5 the preceding paragraph.

6 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
7 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary  
8 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the  
9 Designating Party has waived the confidentiality designation by failing to file a motion to retain  
10 confidentiality as described above, all parties shall continue to afford the material in question the level  
11 of protection to which it is entitled under the Producing Party's designation until the court rules on the  
12 challenge.

13 8. ACCESS TO AND USE OF PROTECTED MATERIAL

14 8.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
15 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
16 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the  
17 categories of persons and under the conditions described in this Order. When the litigation has been  
18 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
19 DISPOSITION).

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

22 8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by  
23 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
24 information or item designated "CONFIDENTIAL" only to:

25 (a) the Receiving Party's Outside Counsel of Record in this action, as well as  
26 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
27 information for this litigation and who have signed the "Acknowledgment and Agreement to Be  
28 Bound" that is attached hereto as Exhibit A;

1 (b) the officers, directors, and employees (including House Counsel) of the  
2 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed  
3 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

7 (d) the court and its personnel;

8 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,  
9 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
10 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

11 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
12 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
13 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
14 deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound  
15 by the court reporter and may not be disclosed to anyone except as permitted under this Protective  
16 Order.

17 (g) the author or recipient of a document containing the information or a custodian  
18 or other person who otherwise possessed or knew the information.

19 (h) A Class Member, but only to the limited extent that his or her individual  
20 personal information is the subject of the Protected Material (i.e., the Class Member may view his or  
21 her own time-keeping and/or compensation data, but may not view any other Class Member’s data  
22 and, to the extent the Protected Material contains information regarding additional persons, the  
23 information regarding the additional persons must be redacted before providing the Protected Material  
24 to the Class Member). In the event that the Protected Material consists of information that the Class  
25 Member would not otherwise be legally entitled to view pursuant to the California Labor Code and/or  
26 the applicable Industrial Welfare Commission Wage Order, then prior to receiving the Protected  
27 Material, the Class Member must have signed the “Class Member Confidentiality Acknowledgment”  
28 (Exhibit B).



1 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
2 LITIGATION

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

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

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

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

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

19 10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
20 LITIGATION

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

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

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

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

6                   3. make the information requested available for inspection by the Non-Party.

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

14 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.

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

22 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
23 PROTECTED MATERIAL.

24                   When a Producing Party gives notice to Receiving Parties that certain inadvertently produced  
25 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties  
26 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to  
27 modify whatever procedure may be established in an e-discovery order that provides for production  
28 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the

1 parties reach an agreement on the effect of disclosure of a communication or information covered by  
2 the attorney-client privilege or work product protection, the parties may incorporate their agreement in  
3 the protective order submitted to the court.

4 13. MISCELLANEOUS

5 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
6 its modification by the court in the future.

7 13.2 Right to Assert Other Objections. Party waives any right it otherwise would have to  
8 object to disclosing or producing any information or item on any ground not addressed in this  
9 Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of  
10 any of the material covered by this Protective Order.

11 13.3 Filing Protected Material. Without written permission from the Designating Party or a  
12 court order secured after appropriate notice to all interested persons, a Party may not file in the public  
13 record in this action any Protected Material. A Party that seeks to file under seal any Protected  
14 Material must comply with Civil Local Rule 141. Protected Material may only be filed under seal  
15 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to  
16 Civil Local Rule 141, a sealing order will issue only upon a request establishing that the Protected  
17 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under  
18 the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local  
19 Rule 141 is denied by the court, then the Receiving Party may file the information in the public record  
20 pursuant to Civil Local Rule 141 unless otherwise instructed by the court.

21 14. FINAL DISPOSITION.

22 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
23 Receiving Party must return all Protected Material to the Producing Party or destroy such material. As  
24 used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
25 summaries, and any other format reproducing or capturing any of the Protected Material. Whether the  
26 Protected Material is returned or destroyed, the Receiving Party must submit a written certification to  
27 the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day  
28 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was

1 returned or destroyed and (2)affirms that the Receiving Party has not retained any copies, abstracts,  
2 compilations, summaries or any other format reproducing or capturing any of the Protected Material.  
3 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion  
4 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and  
5 trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if  
6 such materials contain Protected Material. Any such archival copies that contain or constitute  
7 Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

8 IT IS SO ORDERED.

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10 Dated: July 22, 2013

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE

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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury that I  
have read in its entirety and understand the Protective Order that was issued by the United States  
District Court for the Eastern District of California on in the case of *Soto, et al. v. Castlerock Farming  
and Transport, Inc.*, 1:09-CV-00701-AWI-JLT. I agree to comply with and to be bound by all the  
terms of this Protective Order, and I understand and acknowledge that failure to so comply could  
expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not  
disclose in any manner any information or item that is subject to this Protective Order to any person or  
entity except in strict compliance with the provisions of this Order.

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

Date: \_\_\_\_\_

Printed name: \_\_\_\_\_

1 Signature: \_\_\_\_\_

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3 City and State where sworn and signed: \_\_\_\_\_

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1 **EXHIBIT B**

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3 CLASS MEMBER CONFIDENTIALITY

4 ACKNOWLEDGMENT

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6 I, \_\_\_\_\_ [print or type full name], understand  
7 that I am being shown or provided with documents in connection with a lawsuit called *Soto, et al. v.*  
8 *Castlerock Farming and Transport, Inc.*, 1:09-CV-00701-AWI-JLT that was filed in federal court in  
9 Fresno, California. I understand that these documents are confidential. I understand and promise that I  
10 will not share or disclose these confidential documents to any other persons at any time. I also  
11 understand that if I share or disclose these confidential documents I could be subject to punishment by  
12 the federal court.

13  
14 Date: \_\_\_\_\_

15  
16 Printed name: \_\_\_\_\_

17  
18 Signature: \_\_\_\_\_

19  
20 City and State where signed: \_\_\_\_\_