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16 **UNITED STATES DISTRICT COURT**

17 **EASTERN DISTRICT OF CALIFORNIA -- FRESNO DIVISION**

18 JOSE MORALES, MANUEL CRUZ, and
19 MARIA CRUZ, on behalf of themselves and
all others similarly situated,
20 Plaintiffs,
21 vs.
22 STEVCO, INC. and FAL, INC. (dba LUCICH
23 FARMS), and DOES 1-20,
24 Defendants.

CASE NO. 1:09-CV-0704- AWI-JLT
ORDER GRANTING STIPULATED
PROTECTIVE ORDER AS MODIFIED
(Doc. 23)

1 **I. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action is likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure 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
7 all disclosures or responses to discovery and that the protection it affords extends only to the
8 limited information or items that are entitled under the applicable legal principles to treatment as
9 confidential. The parties further acknowledge, as set forth in Section 10, below, that this
10 Stipulated Protective Order creates no entitlement to file confidential information under seal; Civil
11 Local Rules sets forth the procedures that must be followed and reflects the standards that will be
12 applied when a party seeks permission from the Court to file material under seal.

13
14 **II. DEFINITIONS**

15 2.1 Party: Any party to this action, including all of its officers, directors, employees,
16 consultants, retained experts, and outside counsel (and their support staff).

17 2.2 Disclosure or Discovery Material: All items or information, regardless of the
18 medium or manner generated, stored, or maintained (including, among other things, testimony,
19 transcripts, or tangible things) that are produced or generated in disclosures or responses to
20 discovery in this matter.

21 2.3 “Confidential” Information or Items: Information (regardless of how generated,
22 stored or maintained) or tangible things that qualify for protection under California law.

23 2.4 Receiving Party: A Party that receives Disclosure or Discovery Material from
24 a Producing Party.

25 2.5 Producing Party: A Party or non-party that produces Disclosure or Discovery
26 Material in this action.

27 2.6 Designating Party: A Party or non-party that designates information or items

1 that it produces in disclosures or in responses to discovery as “Confidential.”

2 2.7 Protected Material: Any Disclosure or Discovery Material that is designated as
3 “Confidential.”

4 2.8 Outside Counsel: Attorneys who are not employees of a Party but who are
5 retained to represent or advise a Party in this action.

6 2.9 House Counsel: Attorneys who are employees of a Party.

7 2.10 Counsel (Without Qualifier): Outside Counsel and House Counsel (as well as their
8 support staffs) or Plaintiffs’ counsel.

9 2.11 Expert: A person with specialized knowledge or experience in a matter pertinent to
10 the litigation who is assisting a Party or its counsel to serve as an expert witness or as a consultant
11 in this action. This definition includes a professional jury or trial consultant retained in connection
12 with this litigation.

13 2.12 Professional Vendors: Persons or entities that provide litigation support services
14 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
15 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

16
17 **III. SCOPE**

18 The protections conferred by this Stipulation and Order cover not only Protected Material
19 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
20 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
21 parties or counsel to or in court or in other settings that might reveal Protected Material.

22
23 **IV. DURATION**

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

1 **V. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
3 or non-party that designates information or items for protection under this Order must take care to
4 limit any such designation to specific material that qualifies under the appropriate standards. A
5 Designating Party must take care to designate for protection only those parts of material,
6 documents, items, or oral or written communications that qualify - so that other portions of the
7 material, documents, items, or communications for which protection is not warranted are not
8 swept unjustifiably within the ambit of this Order.

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

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

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
18 (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
19 material that qualifies for protection under this Order must be clearly so designated before the
20 material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 5.2.1 For information in documentary form (apart from transcripts of depositions
23 or other pretrial or trial proceedings), that the Producing Party affix the legend
24 "CONFIDENTIAL" on each page that contains protected material. If only a portion or portions of
25 the material on a page qualifies for protection, the Producing Party also must clearly identify the
26 protected portion(s) (*e.g.*, by making appropriate markings in the margins) and must specify, for
27 each portion, the level of protection being asserted (either "CONFIDENTIAL").
28

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

12 5.2.2 For testimony given in deposition or in other pretrial or trial proceedings,
13 that the Party or non-party offering or sponsoring the testimony identify on the record, before the
14 close of the deposition, hearing, or other proceeding, all protected testimony. When it is
15 impractical to identify separately each portion of testimony that is entitled to protection, and when
16 it appears that substantial portions of the testimony may qualify for protection, the Party or
17 non-party that sponsors, offers, or gives the testimony may invoke on the record (before the
18 deposition or proceeding is concluded) a right to have up to 20 days to identify the specific
19 portions of the testimony as to which protection is sought. Only those portions of the testimony
20 that are appropriately designated as CONFIDENTIAL within the 20 days shall be covered by the
21 provisions of this Stipulated Protective Order.

22 Transcript pages containing Protected Material must be separately bound by the
23 court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” as
24 instructed by the Party or non-party offering or sponsoring the witness or presenting the
25 testimony.

26 5.2.3 For information produced in some form other than documentary, and for
27 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
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1 container or containers in which the information or item is stored the legend “CONFIDENTIAL.”
2 If only portions of the information or item warrant protection, the Producing Party, to the extent
3 practicable, shall identify the protected portions.

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
5 designate qualified information or items as “Confidential” does not, standing alone, waive the
6 Designating Party’s right to secure protection under this Order for such material. If material is
7 appropriately designated as “Confidential” after the material was initially produced, the Receiving
8 Party, on timely notification of the designation, must make reasonable efforts to assure that the
9 material is treated in accordance with the provisions of this Order.

10
11 **VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s
13 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
14 economic burdens, or a later significant disruption or delay of the litigation, a Party does not
15 waive its right to challenge a confidentiality designation by electing not to mount a challenge
16 promptly after the original designation is disclosed.

17 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating
18 Party’s confidentiality designation must do so in good faith and must begin the process by
19 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
20 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis
21 for its belief that the confidentiality designation was not proper and must give the Designating
22 Party an opportunity to review the designated material, to reconsider the circumstances, and, if no
23 change in designation is offered, to explain the basis for the chosen designation. A challenging
24 Party may proceed to the next stage of the challenge process only if it has engaged in this meet
25 and confer process first.

26 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
27 designation after considering the justification offered by the Designating Party may file and serve
28 a motion that identifies the challenged material and sets forth in detail the basis for the challenge.

1 Each such motion must be accompanied by a competent declaration that affirms that the movant
2 has complied with the meet and confer requirements imposed in the preceding paragraph and that
3 sets forth with specificity the justification for the confidentiality designation that was given by the
4 Designating Party in the meet and confer dialogue. Counsel SHALL participate in a telephonic
5 conference with the assigned Magistrate Judge before filing any such motion unless otherwise
6 excused by the Court.

7 The burden of persuasion in any such challenge proceeding shall be on the Designating
8 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
9 question the level of protection to which it is entitled under the Producing Party's designation.
10

11 **VII. ACCESS TO AND USE OF PROTECTED MATERIAL**

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a non-party in connection with this case only for
14 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
15 disclosed only to the categories of persons and under the conditions described in this Order. When
16 the litigation has been terminated, a Receiving Party must comply with the provisions of
17 section 11, below (FINAL DISPOSITION).

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

20 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
21 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
22 information or item designated CONFIDENTIAL only to:

23 7.2.1 The Receiving Party's Outside Counsel of record in this action, as well as
24 employees of said Counsel to whom it is reasonably necessary to disclose the information for this
25 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached
26 hereto as Exhibit A;

27 7.2.2 The officers, directors, and employees (including House Counsel) of the
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1 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
2 signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

3 7.2.3 Experts (as defined in this Order) of the Receiving Party to whom
4 disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be
5 Bound by Protective Order” (Exhibit A);

6 7.2.4 The Court and its personnel;

7 7.2.5 Court reporters, their staffs, and professional vendors to whom disclosure is
8 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
9 Protective Order” (Exhibit A);

10 7.2.6 During their depositions, witnesses in the action to whom disclosure is
11 reasonably necessary and who have signed the “Agreement to Be Bound by Protective Order”
12 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
13 Protected Material must be separately bound by the court reporter and may not be disclosed to
14 anyone except as permitted under this Stipulated Protective Order.

15 7.2.7 The author of the document or the original source of the information.

16 7.2.8 The employee or ex-employee of Defendant(s) to whom the documents
17 relate.

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19 **VIII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
20 **OTHER LITIGATION.**

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

26 The Receiving Party also must immediately inform in writing the Party who caused the
27 subpoena or order to issue in the other litigation that some or all the material covered by the
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1 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
2 deliver a copy of this Stipulated Protective Order promptly to the party in the other action that
3 caused the subpoena or order to issue.

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

10

11 **IX. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

19

20 **X. FILING PROTECTED MATERIAL**

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

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26 **XI. FINAL DISPOSITION**

27 11. Unless otherwise ordered or agreed in writing by the Producing Party, within sixty
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1 days after the final termination of this action, each Receiving Party must return all Protected
2 Material to the Producing Party. As used in this subdivision, “all Protected Material” includes all
3 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of
4 the Protected Material. With permission in writing from the Designating Party, the Receiving
5 Party may destroy some or all of the Protected Material instead of returning it. Whether the
6 Protected Material is returned or destroyed, the Receiving Party must submit a written certification
7 to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty
8 day deadline that identifies (by category, where appropriate) all the Protected Material that was
9 returned or destroyed and that affirms that the Receiving Party has not retained any copies,
10 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
11 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
12 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product,
13 even if such materials contain Protected Material. Any such archival copies that contain or
14 constitute Protected Material remain subject to this Protective Order as set forth in Section IV
15 (DURATION), above.

16
17 **XII. MISCELLANEOUS**

18 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
19 seek its modification by the Court in the future.

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

25 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

26 DATED: 4/14/2011 /s/ Jeffrey P. Davis

27 DATED: 4/14/2011 /s/ Stan S. Mallison
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ORDER

Based upon the stipulation to the parties, and with the modification made by the Court at paragraph 6.3, the Protective Order is **GRANTED**.

IT IS SO ORDERED.

Dated: April 18, 2011

/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 Stipulated Protective for the case of *Morales et al. v. Stevco, Inc. et al.*, Case No. 1:09-cv-704-AWI-SMS. I agree to comply with and to be bound by all the terms of this Stipulated 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 Stipulated 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 Stipulated 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 Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

_____ **[Printed Name]**

Signature: _____

_____ **[Signature]**