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 JOHN A. NICOLETTI

14  
 15 UNITED STATES DISTRICT COURT  
 16 EASTERN DISTRICT OF CALIFORNIA

17 EXXONMOBIL OIL CORPORATION,  
 18 Plaintiff,  
 19 v.  
 20 NICOLETTI OIL, INC. *et al.*,  
 21 Defendants.

No. 1:09-cv-01498-OWW-DLB

**STIPULATION AND PROTECTIVE ORDER**

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Judge: Hon. Oliver W. Wanger  
 Courtroom: 3

1           **WHEREAS**, the parties to the above-captioned action (the “Action”) believe that  
2 certain information that is or may be sought by discovery requests or otherwise exchanged by the  
3 parties in this Action may contain trade secret or other confidential research, development, or  
4 commercial information within the meaning of Rule 26(c) of the Federal Rules of Civil  
5 Procedure;

6           **WHEREAS**, the unrestricted disclosure of such confidential and proprietary  
7 information and documents may cause irreparable harm to the producing party;

8           **WHEREAS**, one of the purposes of this Stipulation and [Proposed] Protective  
9 Order is to protect the confidentiality of such information and documents;

10           **WHEREAS**, the Federal Rules of Civil Procedure provide for the issuance of  
11 protective orders limiting the disclosure of certain information in appropriate circumstances; and

12           **WHEREAS**, the parties believe that it would facilitate discovery in this Action to  
13 produce any such information under a protective order made pursuant to Rule 26(c);

14           **THE PARTIES HEREBY STIPULATE AND AGREE**, pursuant to Local Rule  
15 141.1(b)(1), to the following Stipulation and [Proposed] Protective Order (“Stipulation and  
16 Order”) and respectfully request that the Court enter it.

17           1.     Use of Discovery Material. All discovery material (including without  
18 limitation, documents, deposition testimony, physical objects, electronically stored information,  
19 tangible things, discovery responses or any other material of any type whatsoever ) (collectively,  
20 “Material”), whether by voluntary disclosure or pursuant to an order of the Court, in this Action  
21 may be used solely for purposes of prosecution, defense or settlement of this Action, including  
22 appeals, if any.

23           2.     Designation of Material (Other than Testimony) as Confidential or Highly  
24 Confidential. Any party to the Action or other person that provides any Material in this Action  
25 may designate such Material as “Confidential” or “Highly Confidential” by labeling such  
26 Material as “Confidential” or “Highly Confidential—Attorneys-Eyes-Only” at the time it is  
27 produced. A party or person may designate Material as Confidential or Highly Confidential  
28 subsequent to its production by sending a letter to the receiving parties so designating such

1 Material, provided that the party or person sending the letter provides, in the form such Material  
2 was originally produced, the specific replacement pages for its production and labels such  
3 Material as “Confidential” or “Highly Confidential,” and provided that such designation shall  
4 only apply to such Material after actual receipt by the receiving parties of such a letter, and  
5 provided further that the party receiving such a letter shall make reasonable efforts to restrict use  
6 and/or dissemination of any previously provided version(s) of such Material.

7 3. Designation of Certain Testimony as Confidential or Highly Confidential.

8 Any deposition or other testimony (including any exhibits used therein) may be designated as  
9 Confidential or Highly Confidential by any party to the Action or other person that provides such  
10 testimony by any of the following means: (a) stating orally on the record of a deposition or  
11 during the testimony that certain information or testimony is Confidential or Highly  
12 Confidential; or (b) sending written notice to counsel of record for the parties within ten business  
13 days after receipt of the transcript of a deposition or other testimony, designating certain  
14 information or testimony as Confidential or Highly Confidential. All deposition or other  
15 testimony shall be treated as if designated Confidential until the aforementioned ten-day period  
16 expires.

17 4. Definition of Confidential Material. A designation of Material as

18 Confidential shall constitute a representation by the party or other person and its counsel that  
19 they believe in good faith that the Material so designated contains or constitutes nonpublic and  
20 confidential proprietary, commercially sensitive or personal information, including but not  
21 limited to: trade secrets, accounting information, unpublished financial data, financial or  
22 investment forecasts or strategies, business or product plans or projections, marketing plans or  
23 strategy, compensation information, appraisals or valuations, proposed strategic transactions or  
24 other business combinations, proprietary technical information and specifications; studies or  
25 analyses by internal or outside experts; customer information, data or lists; confidential financial  
26 data or results; tax data; confidential information regarding assets and liabilities; competitive  
27 analyses; confidential personnel information; personal financial information; personal  
28 information subject to protection under California law; or other commercially or personally

1 sensitive or proprietary information. Correspondence or other documents that quote from,  
2 summarize or paraphrase the substance of Confidential Material shall be treated as Confidential  
3 and shall be labeled as such.

4 5. Restrictions on Disclosure of Material Designated as Confidential.

5 Confidential Material shall not be used or disclosed by any person or entity for any purpose  
6 whatsoever other than the prosecution, defense or settlement of this Action including appeals, if  
7 any. Confidential Material and all information contained therein shall not be disclosed, shown  
8 to, reviewed by, or discussed with, any person except:

9 a. A party to this Action, including those directors, officers, members  
10 and employees of such party directly involved in instructing or assisting counsel in connection  
11 with this Action and any actual or potential party witness;

12 b. The Court, personnel of the Court, and court reporters and  
13 videographers at depositions or other proceedings in this Action;

14 c. Counsel to the parties to this Action (including in-house counsel)  
15 and their employees and agents;

16 d. Special masters;

17 e. Mediators;

18 f. Deponents and witnesses at depositions or other proceedings in  
19 this Action, along with their counsel;

20 g. Persons whom counsel in good faith believe are likely to be called  
21 as deposition, trial, or other witnesses in this Action as well as their counsel, provided, however,  
22 that counsel shall not disclose any Material designated Confidential to any such person unless  
23 counsel in good faith believes the Material to be reasonably related to that person's likely  
24 testimony and, in that event, only to the extent so related;

25 h. Consultants or experts and their staff to the extent deemed  
26 reasonably necessary by counsel for the prosecution, defense or settlement of the Action;

27 i. Outside vendors providing copying and/or exhibit preparation  
28 services in connection with this Action;

1 j. Persons identified in the Material as an author or intended recipient  
2 thereof (or a copy thereof), or persons to whom counsel reasonably and in good faith believes  
3 that such Material was sent or otherwise made available prior to its production in the Action; or

4 k. Any other person only upon written consent of the designating  
5 party or person or their counsel of record or upon order of the Court.

6 With respect to the persons referenced in paragraphs 5(e), (g), (h), (j) and (k), and  
7 with respect to any person referenced in paragraph 5(f) who is not employed by a party in this  
8 Action (a “Non-Party Witness”), prior to the disclosure of any Confidential Material, the  
9 receiving party shall (i) provide that person with a copy of this Stipulation, and (ii) obtain from  
10 that person written agreement to be bound by the terms of this Stipulation in the form attached  
11 hereto as Exhibit A. Notwithstanding anything to the contrary in this paragraph 5, the failure of  
12 a Non-Party Witness to agree to be bound by the terms of this Stipulation shall not preclude  
13 disclosure of Confidential Material to such person on a non-waiver basis if counsel in good faith  
14 believes the Material to be reasonably related to that person’s testimony and, in that event, only  
15 to the extent so related.

16 6. Definition of Highly Confidential Material. A designation of Material as  
17 Highly Confidential shall constitute a representation by the party or other person and its counsel  
18 that they believe in good faith that the Material so designated contains or constitutes highly  
19 confidential information that is: (i) classified by the government; and/or (ii) so sensitive that  
20 even disclosure to the opposing party would be likely to cause competitive or business injury.  
21 Correspondence or other documents that quote from, summarize or paraphrase the substance of  
22 Highly Confidential Material shall be treated as Highly Confidential and shall be labeled as such.

23 7. Restrictions on Disclosure of Material Designated as Highly Confidential.  
24 Highly Confidential Material shall not be used or disclosed by any person or entity for any  
25 purpose whatsoever other than the prosecution, defense or settlement of this Action including  
26 appeals, if any. Highly Confidential Material and all information contained therein shall not be  
27 disclosed, shown to, reviewed by, or discussed with, any person except:  
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1 a. Counsel to the parties in this Action (including in-house counsel)  
2 and their employees or agents to whom disclosure is reasonably necessary for the conduct of this  
3 Action;

4 b. Any expert or consultant who is directly retained by a Party or its  
5 counsel in order to assist in the prosecution, defense or settlement of this Action, but only to the  
6 extent that such disclosure is reasonably deemed necessary by such counsel for the performance  
7 of such assistance; provided that such expert or consultant may retain documents containing  
8 Highly Confidential Material only until the conclusion of their assignment in this Action;

9 c. The Court, personnel of the Court, and court reporters and  
10 videographers at depositions or other proceedings in this Action;

11 d. Special masters;

12 e. Mediators;

13 f. Persons identified in the Material as an author or intended recipient  
14 thereof (or a copy thereof), whom counsel reasonably and in good faith believe that such  
15 Material was sent or otherwise made available prior to its production in the Action; or

16 g. Any other person only upon written consent of the designating  
17 party or person or their counsel of record or upon order of the Court.

18 With respect to the persons referenced in paragraphs 7(b), (e), (f) and (g), prior to  
19 the disclosure of any Highly Confidential Material, the receiving party shall (i) provide that  
20 person with a copy of this Stipulation, and (ii) obtain from that person written agreement to be  
21 bound by the terms of this Stipulation in the form attached hereto as Exhibit A.

22 8. Filing Confidential or Highly Confidential Material. All Material  
23 designated Confidential or Highly Confidential that is filed with the Court, including all  
24 depositions or any portions of depositions that contain Confidential or Highly Confidential  
25 information, and all papers (including declaration(s), affidavits, and memoranda of law)  
26 purporting to reflect Confidential or Highly Confidential information shall be filed with the  
27 Court pursuant to Rules 5.2 and 26 of the Federal Rules of Civil Procedure and Local Rule 141.  
28 Confidential or Highly Confidential Material used in any Court proceeding in connection with

1 this action shall not lose its Confidential or Highly Confidential status through such use. To  
2 avoid burdening the Court with an abundance of Material filed under seal, the parties shall confer  
3 in good faith (time permitting) prior to filing documents containing information designated  
4 Confidential or Highly Confidential under seal to agree, wherever possible, to permit the filing of  
5 such Material not under seal. Any waiver by a party of its right to have its Material designated  
6 Confidential or Highly Confidential filed under seal shall not constitute a waiver of  
7 confidentiality for any other purpose, and such Material shall otherwise maintain the protections  
8 provided herein.

9           9.     Receipt of Subpoena. Notwithstanding the foregoing, nothing in this  
10 Stipulation and Order shall prevent any party from complying with any disclosure required by  
11 law, regulation or rule (including any rule of any industry or self-regulatory organization)  
12 whether pursuant to a subpoena or other similar process in connection with a litigation,  
13 arbitration, or other proceeding. If any party in possession of Material designated as  
14 Confidential or Highly Confidential receives a subpoena or other such process or discovery  
15 device seeking production or other disclosure of such Material, if allowed under applicable law,  
16 that party shall give written notice to counsel for the party or person who produced the Material  
17 and designated it as Confidential or Highly Confidential together with a copy of the subpoena or  
18 other process and shall object to producing the Material until an appropriate confidentiality  
19 stipulation or order can be entered into with the requesting party. The party who designated the  
20 Material as Confidential or Highly Confidential shall pay the reasonable costs of that objection,  
21 including reasonable attorneys' fees. Where possible, at least ten business days notice should be  
22 given before production or other disclosure. Nothing herein shall be construed as requiring a  
23 party in possession of Material designated as Confidential or Highly Confidential that receives a  
24 subpoena or other such process or discovery device seeking production or other disclosure of  
25 such Material to challenge or appeal any order requiring production of such Material, to become  
26 subject to any penalties for non-compliance with any subpoena, process, discovery device or  
27 order, or to seek any relief from this Court.

1                   10.    Return of Confidential Material upon Termination of this Action. All  
2 Confidential and Highly Confidential Material or other papers containing such information  
3 remain the property of, and under the custody and control of the party or other person producing  
4 that Material, subject to further order of the Court. Upon the conclusion of this Action  
5 (including compliance with any judgment and any appeals relating to this Action), the receiving  
6 parties shall (i) return to the producing parties or persons all copies of Material designated as  
7 Confidential or Highly Confidential that was produced pursuant to this Stipulation and Order  
8 (including all copies, abstracts, and summaries of the Material) or (ii) destroy such Material and  
9 certify to the producing party or person in writing that all such Material has been destroyed.  
10 Notwithstanding the foregoing, each law firm representing a party to the action may retain copies  
11 of pleadings, discovery, briefs, motions, memoranda and any other paper filed in this Action,  
12 correspondence exchanged in this Action, copies of all deposition and other transcripts with  
13 exhibits and copies of any attorney work product.

14                   11.    Privileged Information. No party hereto intends to produce any Material  
15 that is protected by the attorney-client privilege, the work product doctrine or other lawful  
16 immunity from disclosure. In the event that such Material is produced, there shall be no waiver  
17 of the applicable privilege or immunity, and the party producing it may request its return from  
18 the other parties, who will immediately cease to use such Material and will within ten days return  
19 or destroy all copies of such Material and all documents paraphrasing, summarizing, referencing  
20 or otherwise using such Material. In such event, if any party that received such Material wishes  
21 to challenge its protected status, it may make a motion to the Court seeking to compel production  
22 of such Material, but such motion shall not rely upon the fact that the Material was previously  
23 produced to that party and shall be briefed and decided as though the Material had never been  
24 produced.

25                   12.    Disputes. If a party that receives any Material produced in accordance  
26 with this Order disagrees with respect to its designation as Confidential or Highly Confidential,  
27 in full or in part, it shall notify the producing party or person in writing, and the recipient and the  
28 producing party or person will thereupon confer in good faith within five business days of



1 receiving such notice as to the status of the subject Material proffered within the context of this  
2 Order. If the recipient and producing party or person are unable to agree upon the status of the  
3 subject Material, either the recipient or the producing party or person may raise the issue of such  
4 designation with the Court, provided, however, that no challenge to the designation of any  
5 Material shall be brought unless the challenging party intends in good faith to (a) file the  
6 challenged Material or to (b) use the challenged Material for the purpose of prosecution, defense  
7 or settlement of this Action in a manner that would otherwise be prohibited. In connection with  
8 any such proceeding, the burden of showing that information sought to be protected as  
9 confidential shall remain with the party or person claiming confidentiality. Until agreement is  
10 reached by the parties or an Order of the Court is issued changing the designation, all Material  
11 about which the dispute exists shall be treated as originally designated by the producing party.  
12 Nothing in this Stipulation and Order shall limit the ability of the producing party to use or  
13 disclose its own Material produced in this Action as it deems appropriate.

14           13.    No Waiver. No party to this Action shall be obligated to challenge the  
15 propriety of any Confidential or Highly Confidential designation, and failure to do so shall not  
16 preclude a subsequent challenge as to the propriety of such designation and shall not constitute  
17 an admission that any information is in fact confidential or proprietary information or merits the  
18 designation Confidential or Highly Confidential. Nothing contained in this Stipulation and  
19 Order shall be construed as a waiver by a party of any objections to the disclosure of any  
20 information that it considers not subject to discovery or to the authenticity or admissibility at trial  
21 of any evidentiary material.



**EXHIBIT A**

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

EXXONMOBIL OIL CORPORATION,

Plaintiff,

v.

NICOLETTI OIL, INC. *et al.*,

Defendants.

No. 1:09-cv-01498-OWW-DLB

**AGREEMENT TO ABIDE BY  
STIPULATION AND PROTECTIVE  
ORDER**

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Judge: Hon. Oliver W. Wanger  
Courtroom: 3

