

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

JILL M. PIETRINI (CA Bar No. 138335)

2 jpietrini@sheppardmullin.com

1901 Avenue of the Stars, 16th Floor

3 Los Angeles, California 90067

Telephone: (310) 228-3700

4 Facsimile: (310) 228-3701

5 SHANNON S. KING (CA Bar No. 233386)

sking@sheppardmullin.com

6 Four Embarcadero Center, 17th Floor

San Francisco, California 94111

7 Telephone: (415) 434-9100

Facsimile: (415) 434-3947

8 Attorneys for Plaintiff

9 GERAWAN FARMING, INC.

10 SLATER HERSEY & LIEBERMAN LLP

11 JONATHAN P. HERSEY (CA Bar No. 189240)

jhersey@slaterhersey.com

12 SCOTT B. LIEBERMAN (CA Bar No. 208764)

slieberman@slaterhersey.com

13 18301 Von Karman Ave., Suite 1060

Irvine, California 92612

14 Telephone: (949) 398-7500

Facsimile: (949) 398-7501

15 Attorneys for Defendant

16 REHRIG PACIFIC COMPANY

17
18 **UNITED STATES DISTRICT COURT**

19 **EASTERN DISTRICT OF CALIFORNIA**

20 **FRESNO DIVISION**

21 Gerawan Farming, Inc.,

22 Plaintiff,

23 v.

24 Rehrig Pacific Company, and Does 1-10,
25 inclusive,

26 Defendants.

Case No. 11-cv-01273-LJO-BAM

27 **STIPULATED NON-TRIAL CIVIL**
28 **PROTECTIVE ORDER**

1 Plaintiff Gerawan Farming, Inc. and defendant Rehrig Pacific Company (collectively, the
2 “Parties”), by and through their undersigned counsel of record, hereby stipulate and move the
3 Court to enter this Stipulated Non-Trial Civil Protective Order (“Protective Order”) pursuant to
4 Federal Rule of Civil Procedure (FRCP) 26(c) and E.D. Cal. Local Rule 141.1.

5 1. **PURPOSES AND LIMITATIONS**

6 Disclosure and discovery activity in this action involves the production of confidential,
7 proprietary, or private information for which special protection from public disclosure and from
8 use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the
9 Parties hereby stipulate to and petition the court to enter the following Protective Order. The
10 Parties acknowledge that this Protective Order does not confer blanket protections on all
11 disclosures or responses to discovery and that the protection it affords extends only to the limited
12 information or items that are entitled under the applicable legal principles to treatment as
13 confidential. The Parties further acknowledge, as set forth in Section 11 below, that E.D. Cal.
14 L.R. 141 sets forth the procedures that must be followed and reflects the standards that will be
15 applied when a party seeks permission from the court to file material under seal. Pursuant to their
16 obligation under L.R. 141.1(c)(3), the parties submit that their need for protection should be
17 addressed by court order, as opposed to a private agreement between or among the parties, as the
18 Court order will provide a uniform and efficient manner for the production of confidential
19 business information by all existing parties, added parties, and third parties during the course of
20 this action.

21 2. **DEFINITIONS**

22 2.1 Party: any party to this action, including all of its officers, directors, employees,
23 consultants, retained experts, and Counsel (and their respective support staff).

24 2.2 Non-Party: an entity or individual other than a Party, including all of its officers,
25 directors, employees, consultants, retained experts, and Counsel (and their respective support
26 staff).

27 2.3 Counsel: any attorney employed or retained who represents a Party or Non-Party
28 in this action. This definition shall apply to all in-house attorneys and all attorneys of a law firm

1 who receive Confidential or Highly Confidential information as defined herein, regardless of
2 whether any individual attorney has entered an appearance in the case. However, this definition
3 shall not be interpreted to bind any attorney who does not in fact receive Confidential or Highly
4 Confidential information to the terms of this Protective Order.

5 2.4 Disclosure or Discovery Material: all materials, information, documents, and
6 things produced, disclosed, or generated, whether formally or informally, or submitted to the
7 Court in this action, including without limitation testimony at depositions upon oral examination
8 or upon written questions, transcripts of depositions, answers to interrogatories, documents or
9 things produced, information obtained from inspection of premises or things, answers to requests
10 for admission, and any other discovery or disclosure made in this action.

11 2.5 “Confidential” Information or Items: information (regardless of how generated,
12 stored or maintained) or tangible things including, *inter alia*, any document or thing that the
13 Designating Party believes in good faith constitutes or embodies matter used by it in or pertaining
14 to its business, which matter is not generally known and which the Designating Party would not
15 normally reveal to third parties or would cause third parties to maintain in confidence, and any
16 other information that would qualify as Confidential pursuant to FRCP 26(c) or any other
17 applicable legal standard. Pursuant to L.R. 141.1(c)(2), protection is needed for this information
18 because the unrestricted availability of this information to the general public could seriously
19 compromise the business interests of the Designating Party.

20 2.6 “Highly Confidential — Attorneys’ Eyes Only” Information or Items: extremely
21 sensitive “Confidential Information or Items” whose disclosure to another Party or Non-Party
22 would create a substantial risk of serious injury that could not be avoided by less restrictive means.
23 Highly Confidential — Attorneys’ Eyes Only information includes material or information that
24 constitutes or contains: (1) technical information such as product design and manufacturing
25 techniques or processing information; (2) information within the definition of trade secret; (3)
26 formulae or source code; (4) research and development information; (5) customer lists; (6) sales,
27 cost, pricing, or other financial information; (7) patent license agreements or information that was
28 generated in connection with, or reveals the content of, patent licensing negotiations; (8) plans for

1 strategic business initiatives or marketing plans; (9) manufacturing or distribution agreements; or
2 (10) any other information that contains the Designating Party's trade secrets or other confidential
3 research, development, or commercial or financial information of an extremely sensitive nature
4 that may cause significant competitive harm to the Designating Party if disclosed to persons other
5 than those described in Section 7 below. Pursuant to L.R. 141.1(c)(2), protection is needed for
6 this information because the unrestricted availability of this information to the general public and
7 the Parties themselves could seriously compromise the business interests of the Designating Party.
8 The Parties maintain the designated information in confidence because it is confidential financial
9 information of privately held companies and/or is competitive business information.

10 2.7 Receiving Party: a Party that receives Disclosure or Discovery Material from a
11 Producing Party.

12 2.8 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
13 Material in this action.

14 2.9 Designating Party: a Party or Non-Party that designates information or items that it
15 produces in disclosures or in responses to discovery as "Confidential" or "Highly Confidential —
16 Attorneys' Eyes Only."

17 2.10 Protected Material: any Disclosure or Discovery Material that is designated as
18 "Confidential" or as "Highly Confidential — Attorneys' Eyes Only."

19 2.11 Expert: a person with specialized knowledge or experience in a matter pertinent to
20 the litigation who has been retained by a Party or its Counsel to serve as an expert witness or as a
21 consultant especially for purposes of this action. This definition includes a professional jury or
22 trial consultant retained in connection with this litigation.

23 2.12 Professional Vendors: persons or entities that provide litigation support services
24 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
25 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

26 3. **SCOPE**

27 The protections conferred by this Protective Order cover not only Protected Material, but
28 also any confidential or highly confidential information copied, derived, or extracted therefrom, as

1 well as all copies, excerpts, summaries, abstracts, or compilations thereof, plus deposition
2 testimony and out of court conversations or presentations by any Party or Counsel that reveal
3 Protected Material. This Protective Order shall be binding on the Parties, and their successors,
4 assigns, and employees.

5 4. **DURATION**

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

9 5. **DESIGNATING PROTECTED MATERIAL**

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. In good
11 faith, any Party or Non-Party that produces material or information in this litigation may designate
12 it as either “Confidential” or “Highly Confidential — Attorneys’ Eyes Only” by labeling or
13 marking that material or information in the manner described below in Section 5.2. The
14 Designating Party must take care to limit any such designation to specific material that qualifies
15 under the appropriate standards.

16 Notwithstanding the above provision, the parties specifically agree that all information
17 contained in non-public databases, including but not limited to current customer databases, may be
18 designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” in its entirety under
19 this Protective Order in order to facilitate document production while properly protecting the
20 sensitive, proprietary information of the parties. If the Receiving Party believes that Protected
21 Material produced pursuant to this section should be de-designated, it must specifically identify to
22 the Designating Party those page(s) or item(s) that it believes should be de-designated. Thereafter,
23 the parties agree to negotiate in good faith, under the guidelines set forth in Section 6.2, below, in
24 an attempt to resolve the issue. If the parties are unable to reach a resolution, the Receiving Party
25 may seek the assistance of the Court under Section 6.3.

26 If it comes to a Party’s or a Non-Party’s attention that Disclosures or Discovery Material
27 that it designated for protection do not qualify for protection at all, or do not qualify for the level
28

1 of protection initially asserted, that Party or Non-Party must promptly notify all other parties that
2 it is withdrawing the mistaken designation.

3 5.2 Manner and Timing of Designations. Except as otherwise provided in this
4 Protective Order (see, e.g., Section 5.2(b)), or as otherwise stipulated or ordered, material that
5 qualifies for protection under this Order must be clearly so designated before the material is
6 disclosed or produced. However, if material is produced inadvertently without a “Confidential” or
7 “Highly Confidential – Attorneys’ Eyes Only” designation, the Producing Party may designate
8 such material by reproducing it with a “Confidential” or “Highly Confidential – Attorneys’ Eyes
9 Only” designation or by alerting the Receiving Party of the designation to be given to such
10 material pursuant to Section 6.3.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (apart from transcripts of depositions or other
13 pretrial or trial proceedings), that the Producing Party affix the legend “Confidential,” “Highly
14 Confidential — Attorneys’ Eyes Only,” or some other similar designation on each page that
15 contains protected material. If only a portion or portions of the material on a page qualifies for
16 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
17 appropriate markings in the margins) and must specify, for each portion, the level of protection
18 being asserted (either “Confidential” or “Highly Confidential — Attorneys’ Eyes Only”), unless to
19 do so would be impractical

20 A Party or Non-Party that makes original documents or materials available for inspection
21 need not designate them for protection until after the inspecting Party has indicated which material
22 it would like copied and produced. During the inspection and before the designation, all of the
23 material made available for inspection will be treated as “Highly Confidential — Attorneys’ Eyes
24 Only.” After the inspecting Party has identified the documents it wants copied and produced, the
25 Producing Party must determine which documents, or portions thereof, qualify for protection
26 under this Order, then, before producing the specified documents, the Producing Party must affix
27 the appropriate legend (“Confidential” or “Highly Confidential — Attorneys’ Eyes Only”) on each
28 page that contains Protected Material. If only a portion or portions of the material on a page

1 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
2 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level
3 of protection being asserted (either “Confidential” or “Highly Confidential — Attorneys’ Eyes
4 Only”).

5 (b) for testimony given in deposition in this civil action, that any Party or Non-Party
6 invoke the provisions of this Protective Order and designate the appropriate level of
7 confidentiality (“Confidential” or “Highly Confidential — Attorneys’ Eyes Only”) in a timely
8 manner. Any Party or Non-Party may designate the testimony as a whole or identify specific
9 portions of the testimony during the deposition as “Confidential” or “Highly Confidential —
10 Attorneys’ Eyes Only.” If a Party or Non-Party that sponsors, offers, or gives testimony does not
11 identify portions of the testimony that qualify as “Confidential or “Highly Confidential –
12 Attorneys’ Eyes Only” or incorrectly identifies portions of the testimony as “Confidential or
13 “Highly Confidential – Attorneys’ Eyes Only” during the deposition, it may, within 15 days of
14 receiving a transcript of the deposition, designate or change the confidentiality designation of the
15 transcript or portions thereof. to identify the specific portions of the testimony as to which
16 protection is sought and to specify the level of protection being asserted. Only those portions of
17 the testimony that are appropriately designated for protection within the 15 days shall be covered
18 by the provisions of this Stipulated Protective Order. During the deposition, parties shall be
19 excluded from testimony designated “Highly Confidential — Attorneys’ Eyes Only,” and
20 deposition testimony witnessed by an opposing party may not be later designated “Highly
21 Confidential — Attorneys’ Eyes Only.”

22 (c) for information produced in some form other than documentary, and for any other
23 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
24 or containers in which the information or item is stored the legend “Confidential,” “Highly
25 Confidential — Attorneys’ Eyes Only,” or some other similar designation. If only portions of the
26 information or item warrant protection, the Producing Party, to the extent practicable, shall
27 identify the protected portions, specifying whether they qualify as “Confidential,” “Highly
28 Confidential — Attorneys’ Eyes Only,” or some other similar designation.

(d) The treatment of documents marked “Confidential” or “Highly Confidential — Attorneys’ Eyes Only” in pre-trial proceedings or at trial, or pre-trial or trial testimony that may disclose “Confidential” or “Highly Confidential” information, will be determined at a later date pursuant to the Court’s pre-trial order and/or applicable federal rules of procedure.

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

6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s confidentiality designation must do so in good faith and must begin the process by conferring directly with Counsel for the Designating Party. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

6.3 Resolution by Court or Special Master. A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion that identifies the challenged material and sets forth in detail the basis for

1 the challenge. Such motion may be heard by a special master, if the parties so agree. Each such
2 motion must be accompanied by a competent declaration that affirms that the movant has
3 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
4 forth with specificity the justification for the confidentiality designation that was given by the
5 Designating Party in the meet and confer dialogue. The burden of persuasion in any such
6 challenge proceeding shall be on the Designating Party. Until the Court rules on the challenge, all
7 parties shall continue to afford the material in question the level of protection to which it is
8 entitled under the Producing Party's designation.

9 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
11 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
12 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
13 the categories of persons and under the conditions described in this Order. When the litigation has
14 been terminated, a Receiving Party must comply with the provisions of Section 13 below (FINAL
15 DISPOSITION).

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

18 7.2 Disclosure of "Confidential" Information or Items. Unless otherwise ordered by
19 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
20 information or item designated "Confidential" only to:

21 (a) the Receiving Party's Counsel in this action, as well as employees of said Counsel
22 to whom it is reasonably necessary to disclose the information for this litigation;

23 (b) the officers, directors, and employees of the Receiving Party who have signed the
24 "Consent To Be Bound By Stipulated Protective Order—Confidential Material", attached as
25 Exhibit "A" to the Parties' Stipulated Protective Order (Doc. 40). If such a person leaves the
26 employ of a party during this litigation, access under this provision shall devolve upon the bona
27 fide successor to that person's position of employment, subject to execution of the "Consent To
28 Be Bound By Stipulated Protective Order—Confidential Material (Exhibit A); notwithstanding

1 this succession, all persons who have access to material protected under this protective order shall
2 be bound by its terms, even after leaving the employ of a party.

3 (c) Independent Experts of the Receiving Party to whom disclosure is reasonably
4 necessary for this litigation and who have signed the “Consent To Be Bound By Stipulated
5 Protective Order—Confidential Material” (Exhibit A) and as to whom the procedures set forth in
6 Section 7.4 below have been followed;

7 (d) the Court and its personnel; and

8 (e) court reporters, their staffs, and professional vendors to whom disclosure is
9 reasonably necessary for this litigation;

10 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
11 necessary and who have signed the “Consent To Be Bound By Stipulated Protective Order—
12 Confidential Material” (Exhibit A) or are the authors or recipients of the Confidential Material.
13 [Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
14 must be separately bound by the court reporter and may not be disclosed to anyone except as
15 permitted under this Protective Order]; and

16 (g) the author of the document, the original source of the information, and others who
17 had access to the document or the information at the time it was created or made available, as
18 determined from the face of the document in question, reference information in other documents,
19 or the testimony of other witnesses.

20 7.3 Disclosure of “Highly Confidential — Attorneys’ Eyes Only” Information or Items.

21 Unless otherwise ordered by the court or permitted in writing by the Designating Party, a
22 Receiving Party may disclose any information or item designated “Highly Confidential —
23 Attorneys’ Eyes Only” only to:

24 (a) the Receiving Party’s Counsel in this action, as well as employees of said Counsel
25 to whom it is reasonably necessary to disclose the information for this litigation;

26 (b) Independent Experts (as defined in this Order) (1) to whom disclosure is reasonably
27 necessary for this litigation, (2) who have signed the “Consent To Be Bound By Stipulated
28 Protective Order—Highly Confidential Material”, attached as Exhibit “B” to the Parties’

1 Stipulated Protective Order (Doc. 40), and (3) as to whom the procedures set forth in Section 7.4,
2 below, have been followed;

3 (c) the Court and its personnel;

4 (d) court reporters, their staffs, and professional vendors to whom disclosure is
5 reasonably necessary for this litigation;

6 (e) during their depositions, witnesses in the action to whom disclosure is reasonably
7 necessary and who authored and/or previously received (prior to this litigation) the information in
8 question or who have signed the “Consent To Be Bound By Stipulated Protective Order—Highly
9 Confidential Material” (Exhibit B) [Pages of transcribed deposition testimony or exhibits to
10 depositions that reveal Protected Material must be separately bound by the court reporter and may
11 not be disclosed to anyone except as permitted under this Protective Order]; and

12 (f) the author of the document or the original source of the information and others who
13 had access to the document or the information at the time it was created or made available, as
14 determined from the face of the document in question, reference information in other documents,
15 or the testimony of other witnesses.

16 Notwithstanding the foregoing, Counsel of the Receiving Party will be permitted to rely
17 upon such information in advising its clients so long as such information is not disclosed. In
18 addition, nothing in this Protective Order shall be deemed to restrict or condition in any manner
19 the use by any Party of documents authored by the Party or its employee(s), or documents
20 received from the opposing Party before this litigation began, except for documents designated
21 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” by the Producing Party.

22 7.4 Procedures for Approving Disclosure to Experts.

23 (a) Unless otherwise ordered by the court or agreed in writing by the Designating
24 Party, a Party that seeks to disclose to an “Expert” (as defined in this Order) any information or
25 item that has been designated “Confidential” or “Highly Confidential — Attorneys’ Eyes Only”
26 first must make a submission to the Designating Party that (1) sets forth the full name of the
27 Expert and the city and state of his or her primary residence, (2) attaches a copy of the Expert’s
28 current resume, (3) identifies the Expert’s past (within the previous five years) and current

1 employers and consultant relationships, and (4) attaches a copy of Exhibit B executed by the
2 Expert.

3 (b) A Party that makes the above submission may disclose the subject Protected
4 Material to the identified Expert unless, within seven (7) court days of delivering the request, the
5 Party receives a written objection from the Designating Party. Any such objection must set forth
6 in detail the grounds on which it is reasonably based, and any objections to disclosures to Experts
7 shall be in good faith.

8 (c) A Party that receives a timely written objection to a disclosure to an Expert must
9 meet and confer with the Designating Party to try to resolve the matter by agreement. If no
10 agreement is reached, the Party seeking to make the disclosure to the Expert may file a motion
11 seeking permission from the Court to do so. Any such motion must describe the circumstances
12 with specificity, set forth in detail the reasons for which the disclosure to the Expert is reasonably
13 necessary, assess the risk of harm that the disclosure would entail and suggest any additional
14 means that might be used to reduce that risk. In addition, any such motion must be accompanied
15 by a competent declaration in which the movant describes the parties' efforts to resolve the matter
16 by agreement (i.e., the extent and the content of the meet and confer discussions) and sets forth the
17 reasons advanced by the Designating Party for its refusal to approve the disclosure.

18 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
19 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
20 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

21 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
22 **OTHER LITIGATION**

23 If a Receiving Party is served with a subpoena or an order issued in other litigation that
24 would compel disclosure of any information or items designated in this action as "Confidential" or
25 "Highly Confidential — Attorneys' Eyes Only," the Receiving Party must so notify the
26 Designating Party, in writing promptly and no more than seven (7) court days after receiving the
27 subpoena or order or before the date scheduled for compliance with the subpoena or order,
28 whichever is earlier. Such notification must include a copy of the subpoena or court order. The

1 Designating Party shall bear the burden and the expenses of obtaining an order from the Court
2 quashing the subpoena, a protective order, and/or such other relief as will protect the confidential
3 nature of the subject information or documents. If such a motion is filed before the requested
4 production date, the Receiving Party shall not produce the subject information or documents
5 requested in the subpoena, discovery request, or order until after such time as the Court rules on
6 the motion to quash the subpoena or motion for protective order. If an order quashing the
7 subpoena or motion for protective order is obtained, the Receiving Party shall comply with the
8 order. If no motion to quash or motion for protective order is filed before the scheduled
9 production date set forth in the subpoena, discovery request, or order, or if the motion to quash the
10 subpoena or motion for protective order is denied, the Receiving Party may comply with the same
11 without being deemed to have violated this Protective Order.

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

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

22 10. **INADVERTENT DISCLOSURE OF PROTECTED MATERIAL**

23 Nothing in this Protective Order shall require production of information which the Parties
24 or any Non-Party contend is protected from disclosure by the attorney-client privilege or the work
25 product immunity. If information subject to a claim of attorney-client privilege or work product
26 immunity is nevertheless inadvertently produced, such production shall in no way prejudice or
27 otherwise constitute a waiver of, or estoppel as to, any claim of privilege or work product
28 immunity for such information. If a Party has inadvertently produced to the other Party

1 information subject to claim of immunity or privilege, the other Party upon request shall promptly
2 return the information for which a claim of inadvertent production is made. The Party returning
3 such information may then move the Court for an Order compelling production of such
4 information, but the motion shall not assert as a ground for production the fact or circumstances of
5 the inadvertent production.

6 **11. FILING PROTECTED MATERIAL**

7 Without written permission from the Designating Party or a court order secured after
8 appropriate notice to all interested persons, a Party may not file in the public record in this action
9 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
10 with L.R. 141.

11 **12. PRESENTATION AT TRIAL**

12 A Party seeking to protect “Confidential” or “Highly Confidential — Attorney’s Eyes
13 Only” information at trial will be permitted to seek such protection from the Court. Nothing in
14 this Protective Order shall be construed as an admission by the Receiving Party that such
15 protection is necessary at trial.

16 **13. FINAL DISPOSITION**

17 Unless otherwise ordered or agreed in writing by the Producing Party, within ninety (90)
18 days after the final termination of this action, each Receiving Party must return all Protected
19 Material to the Producing Party. As used in this subdivision, “all Protected Material” includes all
20 copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of
21 the Protected Material, except those materials containing attorney-client privileged
22 communications or attorney work product. The Receiving Party may destroy some or all of the
23 Protected Material instead of returning it. Whether the Protected Material is returned or destroyed,
24 the Receiving Party must submit a written certification to the Producing Party (and, if not the same
25 person or entity, to the Designating Party) by the ninety (90) day deadline that identifies (by
26 category, where appropriate) all the Protected Material that was returned or destroyed and that
27 affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or
28 other forms of reproducing or capturing any of the Protected Material. Notwithstanding this

1 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers,
2 transcripts, legal memoranda, correspondence or attorney work product, even if such materials
3 contain Protected Material. Any such archival copies that contain or constitute Protected Material
4 remain subject to this Protective Order as set forth in Section 4, above.

5 14. MISCELLANEOUS

6 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
7 seek its modification by the Court in the future.

8 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
9 Order no Party waives any right it otherwise would have to object to disclosing or producing any
10 information or item on any ground not addressed in this Protective Order. Similarly, no Party
11 waives any right to object on any ground to use in evidence of any of the material covered by this
12 Protective Order.

13 14.3 Acknowledgement. The parties acknowledge that the Court may change the terms
14 of this Protective Order upon its own motion, after notice to the parties and an opportunity to be
15 heard.

16 STIPULATED and AGREED to this 30th day of November, 2012.

17 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP SLATER HERSEY & LIEBERMAN LLP

18
19 By: /s/ Shannon S. King
Shannon S. King
20 Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4109
21 sking@sheppardmullin.com

By: /s/ Scott B. Lieberman
Scott B. Lieberman
18301 Von Karman Avenue, Suite 1060
Irvine, CA 92612
slieberman@slaterhersey.com

22 Attorneys for Plaintiff
23 Gerawan Farming, Inc.

Attorneys for Defendant
Rehrig Pacific Company

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

Based on the Stipulation of the Parties (Doc. 40), the Court enters the above Stipulated Protective Order.

IT IS SO ORDERED.

Dated: December 19, 2012

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	