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5 Attorneys for Plaintiff/Counter-Defendant Deerpoint Group, Inc.

6 UNITED STATES DISTRICT COURT
 7 EASTERN DISTRICT CALIFORNIA
 8 FRESNO DIVISION

9 * * *

10 Deerpoint Group, Inc., an Illinois Corporation,
 11 Plaintiff,

Case No. 1:14-cv-01503-SAB

12 vs.

STIPULATED PROTECTIVE ORDER

13 Acqua Concepts, Inc. (DBA Ag Water
 14 Chemical of California), a California
 Corporation;

15 Mr. Andres Barrera, an Individual;

16 Mr. Eduardo Erenas, an Individual; and

17 Does 1-10.

18 Defendants.

19 Acqua Concepts, Inc. (DBA Ag Water
 20 Chemical of California), a California
 Corporation,

21 Counterclaimant

22 vs.

23 Deerpoint Group, Inc., an Illinois Corporation,
 24 and Does 1-10,

25 Counter-Defendants

26 **SUBJECT TO THE APPROVAL OF THIS COURT, THE PARTIES HEREBY**

27 **STIPULATE TO THE FOLLOWING PROTECTIVE ORDER:**

Sutton Hague
 Law Corporation
 6715 N. PALM AVENUE
 SUITE 216
 FRESNO, CA 93704

1 **Purposes and Limitations.** Disclosure and discovery activity in this action are likely
2 to involve production of confidential, proprietary, or private information for which special
3 protection from public disclosure and from use for any purpose other than prosecuting this
4 litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the
5 Court to enter the following Stipulated Protective Order. The parties acknowledge that this
6 Order does not confer blanket protections on all disclosures or responses to discovery and that
7 protection it affords extends only to the limited information or items that are entitled under the
8 applicable legal principles to treatment as confidential. The parties further acknowledge, as
9 set forth in Section 10 below, that this Stipulated Protective Order creates no entitlement to
10 file confidential information under seal and that the parties will comply with all applicable
11 local rules in the filing of such confidential information under seal.

12 **1. Definitions.**

13 2.1 Party: Any party to this action, including all of its officers, directors,
14 employees, consultants, retained experts and outside counsel (and their support staff).

15 2.2 Disclosure or Discovery Material: All items or information, regardless of
16 the medium or manner generated, stored or maintained (including, among other things,
17 testimony, transcripts or tangible things) that are produced or generated in disclosures or
18 responses to discovery in this matter.

19 2.3 “Confidential” Information or Items: Information (regardless of how
20 generated, stored or maintained) or tangible things that qualify for protection under standards
21 developed under the California Code of Civil Procedure.

22 2.4 “Highly Confidential–Attorney Eyes Only” Information or Items:
23 Extremely sensitive “Confidential Information or Items” whose disclosure to another party or
24 non-party would create a substantial risk of serious injury that could not be avoided by less
25 restrictive means.

26 2.5 Receiving Party: A party that receives disclosure or discovery material
27 from a producing party.

1 2.6 Producing Party: A party or non-party that produces disclosure or
2 discovery material in this action.

3 2.7 Designating Party: A party or non-party that designates information or
4 items that it produces or in responses to discovery as “Confidential” or “Highly Confidential –
5 Attorney Eyes Only.”

6 2.8 Protected Material: Any disclosure or discovery material that is
7 designated as “Confidential” or as “Highly Confidential – Attorney Eyes Only.”

8 2.9 Outside Counsel: Attorneys who are not employees of a party but who are
9 retained to represent or advise a party in this action.

10 2.10 House Counsel: Attorneys who are employees of a party.

11 2.11 Counsel (without qualifier): Outside counsel and house counsel (as well
12 as their support staffs).

13 2.12 Expert: A person with specialized knowledge or experience in a matter
14 pertinent to the litigation who has been retained by a party or its counsel to serve as an expert
15 witness or as a consultant in this action and who is not a past or a current employee of a party or
16 of a competitor of a party and who, at the time of retention, is not anticipated to become an
17 employee of a party or a competitor of a party. This definition includes a professional jury or
18 trial consultant retained in connection with this litigation.

19 2.13 Professional Vendors: Persons or entities that provide litigation support
20 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations;
21 organizing, storing, retrieving data in any form or medium, etc.) and their employees and
22 subcontractors.

23 **3. Scope**. The protections conferred by this Order cover not only protected material
24 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
25 excerpts, summaries or compilations thereof, plus testimony, conversations or presentations by
26 parties or counsel to or in court or in other settings that might reveal protected material.

1 **4. Duration.** Even after the termination of this litigation, the confidentiality
2 obligations imposed by this Order shall remain in effect until a designating party agrees
3 otherwise in writing or a court order otherwise directs.

4 **5. Designating Protected Material.**

5 5.1 Exercise of Restraint and Care in Designating Material for Protection.

6 Each party or non-party that designates information or items for protection under this Order must
7 take care to limit any such designation to a specific material that qualifies under the appropriate
8 standards. A designating party must take care to designate for protection only those parts of
9 material, documents, items or oral or written communications that qualify – so that other portions
10 of the material, documents, items or communications for which protection is not warranted are
11 not swept unjustifiably within the ambit of this Order. Mass, indiscriminate or routinized
12 designations are prohibited. Designations that are shown to be clearly unjustified, or that have
13 been made for an improper purpose (e.g., to unnecessarily encumber or retard the case
14 development process or to impose unnecessary expenses and burdens on other parties), expose
15 the designating party to sanctions. If it comes to the attention of a party or a non-party that
16 information or items that it designated for protection do not qualify for protection at all or do not
17 qualify for the level of protection initially asserted, that party or non-party must promptly notify
18 all other parties that it is withdrawing the mistaken designation.

19 5.2 Manner and Timing of Designations. Except as otherwise provided in this

20 Order (see, e.g., second paragraph of Section 5.2(a) below) or as otherwise stipulated or ordered,
21 material that qualifies for protection under this Order must be clearly so designated before the
22 material is disclosed or produced. Designation in conformity with this Order requires the
23 following:

- 24 a. For information in documentary form (apart from transcripts of
25 depositions or other pretrial or trial proceedings), the producing party
26 should affix the legend “CONFIDENTIAL” or “HIGHLY
27 CONFIDENTIAL – ATTORNEY EYES ONLY” on each page that
contains protected material. If only a portion or portions of the material
on a page qualifies for protection, the producing party must also clearly
identify the protected portion(s) (e.g., by making appropriate markings in
the margins) and must specify, for each portion, the level of protection
being asserted (either “CONFIDENTIAL” or “HIGHLY
28 CONFIDENTIAL – ATTORNEY EYES ONLY”). A party or non-party

1 who makes original documents or materials available for inspection need
2 not designate them for protection until after the inspecting party has
3 indicated which material it would like copied and produced. During the
4 inspection and before the designation, all of the material made available
5 for inspection shall be deemed "HIGHLY CONFIDENTIAL –
6 ATTORNEY EYES ONLY." After the inspecting party has identified the
7 documents it wants copied and produced, the producing party must
8 determine which documents, or portions thereof, qualify for protection
9 under this Order. Before producing the specified documents, the
10 producing party must affix the appropriate legend ("CONFIDENTIAL" or
11 "HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY") on each
12 page that contains protected material. If only a portion of the material on
13 a page qualifies for protection, the producing party must also clearly
14 identify the protected portion (e.g., by making appropriate markings in the
15 margins) and must specify, for each portion, the level of protection being
16 asserted (either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
17 ATTORNEY EYES ONLY").

18 b. For testimony given in deposition or in other pretrial or trial proceedings,
19 the party or non-party offering or sponsoring the testimony should identify
20 on the record, before the close of the deposition, hearing, or other
21 proceeding, all protected testimony, and further specify any portions of the
22 testimony that qualify as "CONFIDENTIAL" or "HIGHLY
23 CONFIDENTIAL – ATTORNEY EYES ONLY." When it is impractical
24 to identify separately each portion of testimony that is entitled to
25 protection, and when it appears that substantial portions of the testimony
26 may qualify for protection, the party or non-party that sponsors, offers or
27 gives the testimony may invoke on the record (before the deposition or
28 proceeding is concluded) a right to have up to 20 days from the date of
receipt of the official transcript, to identify the specific portions of the
testimony as to which protection is sought and to specify the level of
protection being asserted ("CONFIDENTIAL" or "HIGHLY
CONFIDENTIAL – ATTORNEY EYES ONLY"). Only those portions of
the testimony that are appropriately designated for protection within the 20
days shall be covered by the provisions of this Order. Transcript pages
containing protected material must be separately bound by the court
reporter, who must affix on each such page the legend
"CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEY
EYES ONLY," as instructed by the party or non-party offering or
sponsoring the witness or presenting the testimony.

21 c. For information produced in some form other than documentary, and for
22 any other tangible items, the producing party should affix in a prominent
23 place on the exterior of the container or containers in which the
24 information or item is stored the legend "CONFIDENTIAL" or "HIGHLY
25 CONFIDENTIAL – ATTORNEY EYES ONLY." If only portions of the
26 information or item warrant protection, the producing party, to the extent
27 practicable, shall identify the protected portions, specifying whether they
28 qualify as "CONFIDENTIAL" or as "HIGHLY CONFIDENTLY –
ATTORNEY EYES ONLY."

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
27 failure to designate qualified information or items as "CONFIDENTIAL" or as "HIGHLY
28 CONFIDENTIAL – ATTORNEY EYES ONLY" does not, standing alone, waive the

1 designating party's right to secure protection under this Order for such material. If material is
2 appropriately designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEY
3 EYES ONLY" after the material was initially produced, the receiving party, on timely
4 notification of the designation, must make reasonable efforts to assure that the material is treated
5 in accordance with this provisions of this Order.

6 **6. Challenging Confidentiality Designations.**

7 6.1 Timing of Challenges. Unless a prompt challenge to a designating party's
8 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary
9 economic burdens or a later significant disruption or delay of the litigation, a party does not
10 waive its right to challenge a confidentiality designation by electing not to mount a challenge
11 promptly after the original designation is disclosed.

12 6.2 Meet and Confer. A party that elects to initiate a challenge to a
13 designating party's confidentiality designation must do so in good faith and must begin the
14 process by conferring directly (in voice to voice dialogue; other forms of communication are not
15 sufficient) with counsel for the designating party. Upon request by the challenging party, the
16 designating party must meet and confer pursuant to this paragraph within five (5) days. In
17 conferring, the challenging party must explain the basis for its belief that the confidentiality
18 designation was not proper and must give the designating party an opportunity to review the
19 designated material, to reconsider the circumstances and, if no change in designation is offered,
20 to explain the basis for the chosen designation. A challenging party may proceed to the next
21 stage of the challenge process only if it has engaged in this meet and confer process first.

22 6.3 Judicial Intervention. A party that elects to press a challenge to a
23 confidentiality designation after considering the justification offered by the designating party
24 may file and serve a motion under applicable local rules that identifies the challenged material
25 and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a
26 competent declaration that affirms the movant has complied with the meet and confer
27 requirements imposed in Section 6.2 above and that sets forth with specificity the justification
28 for the confidentiality designation that was given by the designating party in the meet and confer

1 dialogue. The burden of persuasion in any such challenge proceeding shall be on the designating
2 party. Until the Court rules on the challenge, all parties shall continue to afford the material in
3 question the level of protection to which it is entitled under the producing party's designation.

4 **7. Access to and Use of Protected Material**

5 7.1 Basic Principles. A receiving party may use protected material that is
6 disclosed or produced by another party or by a non-party in connection with this case only for
7 prosecuting, defending or attempting to settle this litigation. Such protected material may be
8 disclosed only to the categories of persons and under the conditions described in this Order.
9 When the litigation has been terminated, a receiving party must comply with the provisions of
10 Section 11 below (Final Disposition). Protected material must be stored and maintained by a
11 receiving party at a location and in a secure manner that ensures that access is limited to the
12 persons authorized under this Order.

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
14 otherwise ordered by the Court or permitted in writing by the designating party, a receiving party
15 may disclose any information or item designated CONFIDENTIAL only to:

- 16 a. The receiving party's outside counsel of record in this action, as well as
17 employees of counsel to whom it is reasonably necessary to disclose the
information for this litigation;
- 18 b. The officers, directors and employees (including house counsel) of the
19 receiving party to whom disclosure is reasonably necessary for this
litigation;
- 20 c. Experts (as defined in this Order) of the Receiving party to whom
21 disclosure is reasonably necessary for this litigation;
- 22 d. The Court and its personnel;
- 23 e. During their depositions, witnesses in the action to whom disclosure is
24 reasonable necessary. Pages of transcribed deposition testimony or
25 exhibits to depositions that reveal protected material must be separately
bound by the court reporter and may not be disclosed to anyone except as
permitted under this Order.
- 26 f. The author, addressee, and any recipients of the document or the original
27 source of the information.

28 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEY EYES
ONLY" Information or Items. Unless otherwise ordered by the Court or permitted in writing by

1 the designating party, a receiving party may disclose any information or item designated
2 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” only to:

- 3 a. The receiving party’s outside counsel of record in this action, as well as
4 employees of counsel to whom it is reasonably necessary to disclose the
information for this litigation;
- 5 b. Experts (as defined in this Order to whom disclosure is reasonably
6 necessary for this litigation and who evidence in writing their willingness
to abide by the terms of this Order;
- 7 c. The Court and its personnel; and
- 8 d. The author, addressee, and any recipients of the document or the original
9 source of the information.

10 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –
11 ATTORNEY EYES ONLY” Information or Items to “Experts”

- 12 a. Unless otherwise ordered by the Court or agreed in writing by the
13 designating party, a party that seeks to disclose to an expert (as defined in
14 this Order) any information or item that has been designated “HIGHLY
15 CONFIDENTIAL – ATTORNEY EYES ONLY” first must make a written
16 request to the designating party that (i) identifies the specific HIGHLY
CONFIDENTIAL information that the receiving party seeks permission to
disclose to the expert, (ii) sets forth the full name of the expert and the city
and state of his or her primary residence, (iii) attaches a copy of the
expert’s current resume, and (iv) identifies the expert’s current employer.
- 17 b. A party that makes a request and provides the information specified in
18 Section 7.4(a) may disclose the subject protected material to the identified
19 expert unless, within seven days of delivering the request, the party
receives a written objection from the designating party. Any such
objection must set forth in detail the grounds on which it is based.
- 20 c. A party that receives a timely written objection must meet and confer with
21 the designating party (through direct voice to voice dialogue) to try to
22 resolve the matter by agreement. If no agreement is reached, the party
23 seeking to make the disclosure to the expert may file a motion as provided
24 by applicable local rules seeking permission from the Court to do so. Any
25 such motion must describe the circumstances with specificity, set forth in
26 detail the reasons for which the disclosure to the expert is reasonably
27 necessary, and assess the risk of harm that the disclosure would entail and
28 suggest any additional means that might be used to reduce that risk. In
addition, any such motion must be accompanied by a competent
declaration in which the movant describes the parties’ efforts to resolve the
matter by agreement (i.e., the extent and the content of the meet and confer
discussions) and sets forth the reasons advanced by the designating party
for its refusal to approve the disclosure. In any such proceeding, the party
opposing disclosure to the expert shall bear the burden of providing that the
risk of harm that the disclosure would entail (under the safeguards
proposed) outweighs the receiving party’s need to disclose the protected
material to its expert.

1 **8. Protected Material Subpoenaed or Ordered Produced in Other Litigation.** If
2 a receiving party is served with a subpoena or an order issued in other litigation that would
3 compel disclosure of any information or items designated in this action as “CONFIDENTIAL”
4 or “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” the receiving party must so
5 notify the designating party, in writing (by e-mail or fax, if possible) immediately and in no
6 event more than three court days after receiving the subpoena or order. Such notification must
7 include a copy of the subpoena or court order. The receiving party also must immediately
8 inform in writing the party who caused the subpoena or order to issue in the other litigation that
9 some or all the material covered by the subpoena or order is the subject of this Order. In
10 addition, the receiving party must deliver a copy of this Order promptly to the party in the other
11 action that caused the subpoena or order to issue. The purpose of imposing these duties is to
12 alert the interested parties to the existence of this Order and to afford the designating party in this
13 case an opportunity to try to protect its confidentiality interests in the court from which the
14 subpoena or order issued. The designating party shall bear the burdens and the expenses of
15 seeking protection in that court of its confidential material – and nothing in these provisions
16 should be construed as authorizing or encouraging a receiving party in this action to disobey a
17 lawful directive from another court.

18 **9. Unauthorized Disclosure of Protected Material.** If a receiving party learns
19 that, by inadvertence or otherwise, it has disclosed protected material to any person or in any
20 circumstance not authorized under this Order, the receiving party must immediately (a) notify in
21 writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all
22 copies of the protected material, (c) inform the person or persons to whom unauthorized
23 disclosures were made of all the terms of this Order, and (d) request such person or persons to
24 agree and acknowledge in writing that they will be bound to the terms of this Order.

25 **10. Filing Protected Material.** Without written permission from the designating
26 party or a court order secured after appropriate notice to all interested persons, a party may not
27 file in the public record in this action any protected material. A party that seeks to file under seal
28 any protected material must comply with applicable local rules.

1 **11. Final Disposition.** Unless otherwise ordered or agreed in writing by the
2 producing party, within four years after the final termination of this action, each receiving party
3 must either return all protected material to the producing party or destroy all such protected
4 material. As used in this subdivision, “all protected material” includes all copies, abstracts,
5 compilations, summaries or any other form of reproducing or capturing any of the protected
6 material. With permission in writing from the designating party, the receiving party must
7 destroy some or all of the protected material instead of returning it. Whether the protected
8 material is returned or destroyed, the receiving party must submit a written certification to the
9 producing party (and, if not the same person or entity, to the designating party) by the 60-day
10 deadline that identifies (by category, where appropriate) all the protected material that was
11 returned or destroyed and that affirms that the receiving party has not retained any copies,
12 abstracts, compilations, summaries or other forms of reproducing or capturing any of the
13 protected material. Notwithstanding this provision, counsel are entitled to retain an archival
14 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
15 work product, even if such materials contain protected material. Any such archival copies that
16 contain or constitute protected material remain subject to this Order as set forth in Section 4
17 (Duration) above.

18 **12. Miscellaneous.**

19 12.1 Right to Further Relief. This Order shall be without prejudice to the right
20 of the parties (i) to bring before the Court at any time the question of whether any particular
21 document or information is confidential or whether its use should be restricted or (ii) to present a
22 motion to the Court under FRCP 26(c) for a separate protective order as to any particular
23 document or information, including restrictions differing from those as specified herein.
24 This Order shall not be deemed to prejudice the parties in any way in any future application for
25 modification of this Order.


26 12.2 Right to Assert Other Objections. This Order is entered solely for the
27 purpose of facilitating the exchange of documents and information between the parties to this
28 action without involving the Court unnecessarily in the process. By stipulating to the entry of this

1 Order, no party waives any right it otherwise would have to object to disclosing or producing any
2 information or item on any ground not addressed in this Order. Similarly, no party waives any
3 right to object on any ground to use in evidence of any of the material covered by this Order.
4

5 **IT IS SO STIPULATED THROUGH COUNSEL OF RECORD.**


7 Dated: August 7, 2015

SUTTON HAGUE LAW CORPORATION

8
9 By  _____
10 BRETT SUTTON
11 Attorneys for Plaintiff/Counter-
12 defendant Deerpoint Group, Inc.

13 Dated: August 7, 2015

DOERKSEN TAYLOR LLP

14
15 By  _____
16 Attorneys for Defendant/Counterclaimant

18 IT IS SO ORDERED

19 Dated: Aug 11, 2015

20  _____
21 United States Magistrate Judge
22 ~~Judge of the Superior Court.~~