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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LUIS AGULAR, on behalf of himself and all  
others similarly situated,  
  
Plaintiff,  
  
v.  
  
WAWONA FROZEN FOODS; WAWONA  
EXPORT; WAWONA PACKING CO. LLC.,  
and DOES 1-50, inclusive  
  
Defendants.

Case No. 1:15-CV-00093-TLN-GSA  
STIPULATED PROTECTIVE ORDER  
  
(ECF No. 32)

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted.

Defendant contends Plaintiff may be seeking information that contains highly confidential, trade secret and proprietary information that solely belongs to Defendant Wawona Frozen Foods. Defendant contends Plaintiff is also seeking production of information and documents that may invade privacy rights of third party employees and Defendant Wawona Frozen Foods that are protected by the United States and California constitutions. The information Plaintiff may be seeking may include safety and sanitary practices, formulas, customer lists, production line information and techniques, and other highly confidential information that constitutes trade secret and proprietary information. Plaintiff is also seeking personnel files, pay records, photos, and other private information of third party employees of Defendant Wawona Frozen Foods that are protected by the United States and California constitutions.

Defendants contend protection by the Court concerning these matters is necessary because no remedy will adequately compensate Defendant and its third party employees if the information involved in this litigation is used improperly, is disclosed to the public, or falls into the wrong hands.

1 For example, Defendants contend if Plaintiff and his counsel improperly use Defendant's proprietary  
2 information or violate the privacy rights of third party employees, Plaintiff and his counsel likely do  
3 not have the means to fully compensate Defendant and its employees for such breaches.

4 Accordingly, the parties hereby stipulate to and petition the court to enter the following  
5 Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket  
6 protections on all disclosures or responses to discovery and that the protection it affords from public  
7 disclosure and use extends only to the limited information or items that are entitled to confidential  
8 treatment under the applicable legal principles. The parties further acknowledge, as set forth in  
9 Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential  
10 information under seal; Civil Local Rules sets forth the procedures that must be followed and the  
11 standards that will be applied when a party seeks permission from the court to file material under  
12 seal. Nor does it prevent either party from refusing to produce any document on the grounds of  
13 privilege, relevancy, or any other proper basis, notwithstanding the fact the document might be  
14 covered by the terms of this protective order.

15 2. DEFINITIONS

16 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or  
17 items under this Order.

18 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is  
19 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
20 Civil Procedure 26(c).

21 2.3 Counsel (without qualifier): Outside Counsel and House Counsel

22 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
23 produces in disclosures or in responses to discovery as "CONFIDENTIAL."

24 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium  
25 or manner in which it is generated, stored, or maintained (including, among other things, testimony,  
26 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
27 discovery in this matter.

28 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to

1 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
2 consultant in this action.

3 2.7 House Counsel: attorneys who are employees of a party to this action. House  
4 Counsel does not include Outside Counsel.

5 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal  
6 entity not named as a Party to this action.

7 2.9 Outside Counsel: attorneys (as well as their staff and contractors), who are not  
8 employees of a party to this action but are retained to represent or advise a party to this action.

9 2.10 Party: any party to this action, including all of its officers, directors, employees,  
10 consultants, retained experts, and Outside Counsel.

11 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
12 Material in this action.

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

16 2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
17 “CONFIDENTIAL.”

18 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
19 Producing Party.

### 20 3. SCOPE

21 The protections conferred by this Stipulation and Order cover not only Protected Material (as  
22 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
23 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
24 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
25 However, the protections conferred by this Stipulation and Order do not cover the following  
26 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
27 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
28 publication not involving a violation of this Order, including becoming part of the public record

1 through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
2 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
3 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of  
4 Protected Material at trial shall be governed by a separate agreement or order.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
7 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
8 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and  
9 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion  
10 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the  
11 time limits for filing any motions or applications for extension of time pursuant to applicable law.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
14 Non-Party that designates information or items for protection under this Order must take care to  
15 limit any such designation to specific material that qualifies under the appropriate standards. The  
16 Designating Party must designate for protection only those parts of material, documents, items, or  
17 oral or written communications that qualify – so that other portions of the material, documents,  
18 items, or communications for which protection is not warranted are not swept unjustifiably within  
19 the ambit of this Order.

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

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

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
28 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,

1 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
2 designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents, but  
5 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
6 affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion  
7 or portions of the material on a page qualifies for protection, the Producing Party also must clearly  
8 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

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

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

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 or  
24 containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a  
25 portion or portions of the information or item warrant protection, the Producing Party, to the extent  
26 practicable, shall identify the protected portion(s).

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
28 designate qualified information or items does not, standing alone, waive the Designating Party’s

1 right to secure protection under this Order for such material. Upon timely correction of a  
2 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in  
3 accordance with the provisions of this Order.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
6 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
8 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
9 confidentiality designation by electing not to mount a challenge promptly after the original  
10 designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
12 by providing written notice of each designation it is challenging and describing the basis for each  
13 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
14 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
15 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
16 begin the process by conferring directly (in voice to voice dialogue; other forms of communication  
17 are not sufficient) within 14 days of the date of service of notice. A Challenging Party may proceed  
18 to the next stage of the challenge process only if it has engaged in this meet and confer process first  
19 or establishes that the Designating Party is unwilling to participate in the meet and confer process in  
20 a timely manner.

21 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
22 intervention, the Designating Party shall file and serve a motion to retain confidentiality under L.R.  
23 251 within 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the  
24 meet and confer process will not resolve their dispute, whichever is earlier. Each such motion must  
25 comply with L.R. 251 and be accompanied by a competent declaration affirming that the movant has  
26 complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the  
27 Designating Party to make such a motion including the required declaration within 21 days (or 14  
28 days, if applicable) shall automatically waive the confidentiality designation for each challenged

1 designation. At least seven days prior to filing its motion, the Designating Party shall prepare its  
2 portion of a Joint Statement pursuant to L.R. 251 and serve it upon the Challenging Party for  
3 addition of its relevant portion.

4 In addition, the Challenging Party may file a motion challenging a confidentiality designation  
5 at any time if there is good cause for doing so, including a challenge to the designation of a  
6 deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be  
7 accompanied by a competent declaration affirming that the movant has complied with the meet and  
8 confer requirements imposed by the preceding paragraph and the motion must comply with L.R.  
9 251.

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

## 17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
19 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
20 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
21 the categories of persons and under the conditions described in this Order. When the litigation has  
22 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
23 DISPOSITION).

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

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by  
27 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
28 information or item designated "CONFIDENTIAL" only to:

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

5 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
6 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
7 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

8 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
9 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement  
10 to Be Bound" (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,  
13 mediators, and Professional Vendors to whom disclosure is reasonably necessary for this litigation  
14 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

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

23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
24 LITIGATION

25 If a Party is served with a subpoena or a court order issued in other litigation that compels  
26 disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party  
27 must:

28 (a) promptly notify in writing the Designating Party. Such notification shall include a



1 copy of the subpoena or court order;

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

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

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

14 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS  
15 LITIGATION

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

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

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

26 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in  
27 this litigation, the relevant discovery request(s), and a reasonably specific description of the  
28 information requested; and

1 (3) make the information requested available for inspection by the Non-Party.

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

9 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

17 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
18 MATERIAL

19 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced  
20 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties  
21 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to  
22 modify whatever procedure may be established in an e-discovery order that provides for production  
23 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
24 parties reach an agreement on the effect of disclosure of a communication or information covered by  
25 the attorney-client privilege or work product protection, the parties may incorporate their agreement  
26 in the stipulated protective order submitted to the court.

27 12. MISCELLANEOUS

28 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek

1 its modification by the court in the future.

2           12.2   Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
3 no Party waives any right it otherwise would have to object to disclosing or producing any  
4 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
5 Party waives any right to object on any ground to use in evidence of any of the material covered by  
6 this Protective Order.

7           12.3   Filing Protected Material. Without written permission from the Designating Party or a  
8 court order secured after appropriate notice to all interested persons, a Party may not file in the  
9 public record in this action any Protected Material. A Party that seeks to file under seal any Protected  
10 Material must comply with Civil Local Rule 141. Protected Material may only be filed under seal  
11 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant  
12 to Civil Local Rule 141, a sealing order will issue only upon a request establishing that the Protected  
13 Material at issue is protected under the applicable law. If a Receiving Party's request to file Protected  
14 Material under seal pursuant to Civil Local Rule 141 is denied by the court, then the Receiving Party  
15 may file the information in the public record unless otherwise instructed by the court.

16           12.4   No Disclosure to Unions or Any other Entity for Any Purposes Unrelated to  
17 this Matter. No disclosure of information shall be made directly or indirectly to any union or any  
18 other entity for any reason, or any purpose not related to this matter.

19

20   13.    FINAL DISPOSITION

21           Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
22 Receiving Party must return all Protected Material to the Producing Party or destroy such material.  
23 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
24 summaries, and any other format reproducing or capturing any of the Protected Material. Whether  
25 the Protected Material is returned or destroyed, the Receiving Party must submit a written  
26 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)  
27 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material  
28 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,

1 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected  
2 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
3 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
4 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant  
5 and expert work product, even if such materials contain Protected Material. Any such archival copies  
6 that contain or constitute Protected Material remain subject to this Protective Order as set forth in  
7 Section 4 (DURATION).

8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9

10 DATED: \_\_\_\_\_  
11 Attorneys for Plaintiff

12

13 DATED: \_\_\_\_\_  
14 Attorneys for Defendant

15

**ORDER**

16

17 The Court has reviewed the stipulation outlined above and adopts it as a stipulated protective  
18 order in this case.<sup>1</sup> To the extent motion practice is required, the parties are advised to review Local  
19 Rules 141, 141.1, 230, and 251.

20 IT IS SO ORDERED.

21

Dated: June 23, 2015

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE

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28 <sup>1</sup> A fully executed version of the stipulation is available on the Court's docket as ECF No. 32. That version also includes the "Exhibit A" referenced in the stipulation.