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20 **UNITED STATES DISTRICT COURT**

21 **EASTERN DISTRICT OF CALIFORNIA**

22 LEONEL ROJAS RIVERA, individually and on) CASE NO. 1:15-CV-00613-JLT  
23 behalf of other persons similarly situated, )

24 Plaintiff, )

25 **[PROPOSED] STIPULATED**  
26 **PROTECTIVE ORDER**

27 vs. )

28 **(Doc. 18)**

AGRESERVES, INC. dba SOUTH VALLEY )  
FARMS; and SOUTH VALLEY ALMOND )  
COMPANY, LLC; and DOES 1 through 10, )

Defendants. )

1 **1. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential, proprietary, or  
3 private information for which special protection from public disclosures and from use for any  
4 purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby  
5 stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties  
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses  
7 to discovery and that the protection it affords from public disclosure and use extends only to the  
8 limited information or items that are entitled to confidential treatment under the applicable legal  
9 principles. The parties further acknowledge, as set forth in Section 10 below, that this Stipulated  
10 Protective Order does not entitle them to file confidential information under seal; Local Rule 141  
11 sets forth the procedures that must be followed and the standards that will be applied when a  
12 party seeks permission from the court to file material under seal.

13 **Good Cause Statement.** This action is likely to involve trade secrets, competitively  
14 sensitive technical, marketing, financial, sales or other confidential or proprietary business  
15 information, private or confidential personal or personnel information, information received in  
16 confidence from third parties, or other information which the producing party otherwise believes  
17 in good faith to be entitled to protection under Rule 26(c)(1)(G) of the Federal Rules of Civil  
18 Procedure. With respect to the foregoing, special protection from public disclosure and from use  
19 for any purpose other than protection of this action is warranted. Such confidential and  
20 proprietary materials and information consist of, among other things, confidential business or  
21 financial information, information regarding confidential business practices, or other confidential  
22 research, development, or commercial information (including information implicating privacy  
23 rights of third parties), information otherwise generally unavailable to the public, or which may  
24 be privileged or otherwise protected from disclosure under state or federal statutes, court rules,  
25 case decisions, or common law.

26 **Accordingly,** to expedite the flow of information, to facilitate the prompt resolution of  
27 disputes over confidentiality of discovery materials, to adequately protect information the parties  
28 are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary

1 uses of such material in preparation for and in the conduct of trial, to address their handling at  
2 the end of the litigation, and serve the ends of justice, a protective order for such information is  
3 justified in this matter. It is the intent of the parties that information will not be designated as  
4 confidential for tactical reasons and that nothing be so designated without a good faith belief that  
5 it has been maintained in a confidential, non-public manner, and there is good cause why it  
6 should not be part of the public record of this case.

7 **2. DEFINITIONS**

8 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
9 information or items under this Order.

10 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
11 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
12 of Civil Procedure 26(c).

13 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well  
14 as their support staff).

15 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
16 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

17 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium  
18 or manner in which it is generated, stored, or maintained (including, among other things,  
19 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
20 responses to discovery in this matter.

21 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
22 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
23 consultant in this action.

24 2.7 In-House Counsel: attorneys who are employees of a party to this action. In-House  
25 Counsel does not include Outside Counsel of Record or any other outside counsel.

26 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal  
27 entity not named as a Party to this action.  
28

1           2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action  
2 but are retained to represent or advise a party to this action and have appeared in this action on  
3 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

4           2.10 Party: any party to this action, including all of its officers, directors, employees,  
5 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

6           2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
7 Material in this action.

8           2.12 Professional Vendors: persons or entities that provide litigation support services  
9 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
10 organizing, storing, or retrieving data in any form or medium) and their employees and  
11 subcontractors.

12           2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
13 “CONFIDENTIAL.”

14           2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
15 Producing Party.

16 **3. SCOPE**

17           The protections conferred by this Stipulation and Order cover not only Protected Material  
18 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)  
19 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
20 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
21 However, the protections conferred by this Stipulation and Order do not cover the following  
22 information:

23           (a) any information that is in the public domain at the time of disclosure to a Receiving  
24 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
25 publication not involving a violation of this Order, including becoming part of the public record  
26 through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
27 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
28

1 information lawfully and under no obligation of confidentiality to the Designating Party. Any use  
2 of Protected Material at trial shall be governed by a separate agreement or order.

3 **4. DURATION**

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

11 **5. DESIGNATING PROTECTED MATERIAL**

12 5.1. Exercise of Restraint and Care in Designating Material for Protection.

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

19 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
20 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
21 unnecessarily encumber or retard the case development process or to impose unnecessary  
22 expenses and burdens on other parties) expose the Designating Party to sanctions. If it comes to a  
23 Designating Party's attention that information or items that it designated for protection do not  
24 qualify for protection, that Designating Party must promptly notify all other Parties that it is  
25 withdrawing the mistaken designation.

26 5.2 Manner and Timing of Designations.

27 Except as otherwise provided in this Order (see, e.g., second paragraph of section 5.2(a)  
28 below), or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for

1 protection under this Order must be clearly so designated before the material is disclosed or  
2 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  
6 Party affix the legend “CONFIDENTIAL” to each page that contains protected material. If only  
7 a portion or portions of the material on a page qualifies for protection, the Producing Party also  
8 must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
9 margins). A Party or Non-Party that makes original documents or materials available for  
10 inspection need not designate them for protection until after the inspecting Party has indicated  
11 which material it would like copied and produced. During the inspection and before the  
12 designation, all of the material made available for inspection shall be deemed  
13 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and  
14 produced, the Producing Party must determine which documents, or portions thereof, qualify for  
15 protection under this Order. Then, before producing the specified documents, the Producing  
16 Party must affix the “CONFIDENTIAL” legend to each page that contains Protected Material. If  
17 only a portion or portions of the material on a page qualifies for protection, the Producing Party  
18 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
19 margins).

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

23 (c) for information produced in some form other than documentary and for any other  
24 tangible items, that the Producing Party affix in a prominent place on the exterior of the  
25 container or containers in which the information or item is stored the legend  
26 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
27 the Producing Party, to the extent practicable, shall identify the protected portion(s).

28

1           5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
2 designate qualified information or items does not, standing alone, waive the Designating Party's  
3 right to secure protection under this Order for such material. Upon timely correction of a  
4 designation, the Receiving Party must make reasonable efforts to assure that the material is  
5 treated in accordance with the provisions of this Order.

6 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

13           6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
14 by providing written notice of each designation it is challenging and describing the basis for each  
15 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
16 recite that the challenge to confidentiality is being made in accordance with this specific  
17 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good  
18 faith and must begin the process by conferring directly (in voice to voice dialogue; other forms  
19 of communication are not sufficient) within 14 days of the date of service of notice. In  
20 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
21 designation was not proper and must give the Designating Party an opportunity to review the  
22 designated material, to reconsider the circumstances, and, if no change in designation is offered,  
23 to explain the basis for the chosen designation. A Challenging Party may proceed to the next  
24 stage of the challenge process only if it has engaged in this meet and confer process first or  
25 establishes that the Designating Party is unwilling to participate in the meet and confer process in  
26 a timely manner.

27           6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
28 intervention, the Designating Party shall file and serve a motion to retain confidentiality under

1 Eastern District Local Rule 251 (and in compliance with Eastern District Local Rule 141 and  
2 General Order 164, if applicable) within 21 days of the initial notice of challenge or within 14  
3 days of the parties agreeing that the meet and confer process will not resolve their dispute,  
4 whichever is earlier. Each such motion must be accompanied by a competent declaration  
5 affirming that the movant has complied with the meet and confer requirements imposed in the  
6 preceding paragraph. Failure by the Designating Party to make such a motion including the  
7 required declaration within 21 days (or 14 days, if applicable) shall automatically waive the  
8 confidentiality designation for each challenged designation. In addition, the Challenging Party  
9 may file a motion challenging a confidentiality designation at any time if there is good cause for  
10 doing so, including a challenge to the designation of a deposition transcript or any portions  
11 thereof. Any motion brought pursuant to this provision must be accompanied by a competent  
12 declaration affirming that the movant has complied with the meet and confer requirements  
13 imposed by the preceding paragraph.

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

## 21 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

22 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
23 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
24 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
25 to the categories of persons and under the conditions described in this Order. When the litigation  
26 has been terminated, a Receiving Party must comply with the provisions of section 13 below  
27 (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving  
28



1 Party at a location and in a secure manner that ensures that access is limited to the persons  
2 authorized under this Order.

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by  
4 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
5 information or item designated “CONFIDENTIAL” only to:

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

9 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
10 Party to whom disclosure is reasonably necessary for this litigation;

11 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
12 reasonably necessary for this litigation and who have signed the following written assurance to  
13 be bound by this Order:

14 WRITTEN ASSURANCE

15 “I, \_\_\_\_\_ (insert name, business  
16 position and address), declare under penalty of perjury, pursuant to 28 U.S.C. §  
17 1746, that I reside at \_\_\_\_\_, in the  
18 City of \_\_\_\_\_, State of \_\_\_\_\_;  
19 that I have read and fully understand the Order dated \_\_\_\_\_, and am  
20 engaged as a(n) \_\_\_\_\_ (insert description of  
21 position), on behalf of \_\_\_\_\_ in the  
22 preparation and conduct of the action entitled *Leonel Rojas Rivera v. AgReserves,*  
23 *Inc, et al.*, NO. 1:15-CV-00613-JLT (E.D. Cal.); that I am fully familiar with and  
24 agree to comply with and be bound by the provisions of said Protective Order;  
25 and that I will not divulge information concerning this matter to persons other  
26 than those specifically authorized by said Protective Order except as expressly  
27 permitted by the Court on pain of contempt.  
28

1 Dated at \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_,  
2 201\_.”

3 (d) the court and its personnel;

4 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and  
5 Professional Vendors to whom disclosure is reasonably necessary for this litigation;

6 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
7 necessary, unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
8 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
9 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
10 under this Stipulated Protective Order.

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

13 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
14 **LITIGATION**

15 If a Party is served with a subpoena or a court order issued in other litigation that compels  
16 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that  
17 Party must: (a) promptly notify in writing the Designating Party. Such notification shall include a  
18 copy of the subpoena or court order; (b) promptly notify in writing the party who caused the  
19 subpoena or order to issue in the other litigation that some or all of the material covered by the  
20 subpoena or order is subject to this Protective Order. Such notification shall include a copy of  
21 this Stipulated Protective Order; and (c) cooperate with respect to all reasonable procedures  
22 sought to be pursued by the Designating Party whose Protected Material may be affected. If the  
23 Designating Party timely seeks a protective order, the Party served with the subpoena or court  
24 order shall not produce any information designated in this action as “CONFIDENTIAL” before a  
25 determination by the court from which the subpoena or order issued, unless the Party has  
26 obtained the Designating Party’s permission. The Designating Party shall bear the burden and  
27 expense of seeking protection in that court of its confidential material – and nothing in these  
28

1 provisions should be construed as authorizing or encouraging a Receiving Party in this action to  
2 disobey a lawful directive from another court.

3 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
4 **THIS LITIGATION**

5 (a) The terms of this Order are applicable to information produced by a Non-Party in this  
6 action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in  
7 connection with this litigation is protected by the remedies and relief provided by this Order.  
8 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking  
9 additional protections. (b) In the event that a Party is required, by a valid discovery request, to  
10 produce a Non-Party's confidential information in its possession, and the Party is subject to an  
11 agreement with the Non-Party not to produce the Non-Party's confidential information, then the  
12 Party shall: (1) promptly notify in writing the Requesting Party and the Non-Party that some or  
13 all of the information requested is subject to a confidentiality agreement with a Non-Party; (2)  
14 promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation,  
15 the relevant discovery request(s), and a reasonably specific description of the information  
16 requested; and (3) make the information requested available for inspection by the Non-Party. (c)  
17 If the Non-Party fails to object or seek a protective order from this court within 14 days of  
18 receiving the notice and accompanying information, the Receiving Party may produce the Non-  
19 Party's confidential information responsive to the discovery request. If the Non-Party timely  
20 seeks a protective order, the Receiving Party shall not produce any information in its possession  
21 or control that is subject to the confidentiality agreement with the Non-Party before a  
22 determination by the court. The purpose of this provision is to alert the interested parties to the  
23 existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to  
24 protect its confidentiality interests in this court. Absent a court order to the contrary, the Non-  
25 Party shall bear the burden and expense of seeking protection in this court of its Protected  
26 Material.

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1 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
3 Material to any person or in any circumstance not authorized under this Stipulated Protective  
4 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
5 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
6 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were  
7 made of all the terms of this Order, and (d) request such person or persons to execute the Written  
8 Assurance as enumerated in Paragraph 7.2(c) above.

9 **11. INADVERTANT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**  
10 **MATERIAL**

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

20 **12. MISCELLANEOUS**

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
22 seek its modification by the court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
24 no Party waives any right it otherwise would have to object to disclosing or producing any  
25 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,  
26 no Party waives any right to object on any ground to use in evidence of any of the material  
27 covered by this Protective Order.  
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1            12.3 Filing Protected Material. Without written permission from the Designating Party or  
2 a court order secured after appropriate notice to all interested persons, a Party may not file in the  
3 public record in this action any Protected Material. A Party that seeks to file under seal any  
4 Protected Material must comply with Eastern District Local Rule 141 and General Order 164.  
5 Protected Material may only be filed under seal pursuant to a court order authorizing the sealing  
6 of the specific Protected Material at issue. Pursuant to Eastern District Local Rule 141 and  
7 General Order 164, a sealing order will issue only upon a request establishing that the Protected  
8 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection  
9 under the law. If a Receiving Party's request to file Protected Material under seal pursuant to  
10 Eastern District Local Rule 141 and General Order 164 is denied by the court, then the Receiving  
11 Party may file the information in the public record pursuant to Eastern District Local Rule 141(d)  
12 unless otherwise instructed by the court.

13 **13. FINAL DISPOSITION**

14            Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
15 Receiving Party must return all Protected Material to the Producing Party or destroy such  
16 material. As used in this subdivision, “all Protected Material” includes all copies, abstracts,  
17 compilations, summaries, and any other format reproducing or capturing any of the Protected  
18 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must  
19 submit a written certification to the Producing Party (and, if not the same person or entity, to the  
20 Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all  
21 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has  
22 not retained any copies, abstracts, compilations, summaries or any other format reproducing or  
23 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
24 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
25 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work  
26 product, and consultant and expert work product, even if such materials contain Protected  
27 Material. Any such archival copies that contain or constitute Protected Material remain subject to  
28 this Protective Order as set forth in Section 4 (DURATION).

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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4 Dated: September 17, 2015

GRESHAM SAVAGE NOLAN & TILDEN,  
A Professional Corporation

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By: /s/ Jeff Olsen

Richard D. Marca

Jamie Wrage

Jeff Olsen

Attorneys for Defendants,

AGRESERVES, INC. dba SOUTH VALLEY

FARMS

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12 Dated: September 17, 2015

KARASIK LAW FIRM

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By: /s/ Gregory N. Karasik

Gregory N. Karasik

Attorneys for Plaintiff,

LEONEL ROJAS RIVERA

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IT IS SO ORDERED.

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Dated: September 18, 2015

/s/ Jennifer L. Thurston

UNITED STATES MAGISTRATE JUDGE

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