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13 UNITED STATES DISTRICT COURT
 14 EASTERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,

16 Plaintiff,

17 v.

18 GIBSON WINE CO.,
 19 Defendant.

20 Civil No. 1:15-cv-01900-AWI-SKO

21 **STIPULATION AND ORDER REGARDING**
 22 **CONFIDENTIAL INFORMATION**

23 The parties to this Confidentiality Order have agreed to the terms of this Order;
 24 accordingly, it is ORDERED:

25 **1. Scope.** All materials produced or adduced in the course of discovery, including
 26 initial disclosures, responses to discovery requests, deposition testimony and exhibits, and
 27 information derived directly therefrom (hereinafter collectively “documents”), shall be subject to
 28 this Order concerning Confidential Information as defined below. This Order is subject to the
 Local Rules of this District and the Federal Rules of Civil Procedure on matters of procedure

1 and calculation of time periods.

2 **2. Confidential Information.** As used in this Order, “Confidential Information”
3 means information designated as “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER”
4 by the producing party that falls within one or more of the following categories: (a) information
5 prohibited from disclosure by statute; (b) information that reveals trade secrets; (c) research,
6 technical, commercial, or financial information that the party has maintained as confidential; (d)
7 medical information concerning any individual; (e) personal identity information; (f) income tax
8 returns (including attached schedules and forms), W-2 forms, and 1099 forms; (g) personnel
9 or employment records of an individual; or (h) information in the possession, custody, or control
10 of the United States Environmental Protection Agency that was designated as “Confidential
11 Business Information” and submitted pursuant to 40 C.F.R. Part 2, Subpart B, prior to the
12 commencement of this action. Information or documents that are available to the public may not
13 be designated as Confidential Information.
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17 **3. Designation.**

18 **(a)** A party may designate a document as Confidential Information for protection under
19 this Order by placing or affixing the words “CONFIDENTIAL - SUBJECT TO PROTECTIVE
20 ORDER” on the document and on all copies in a manner that will not interfere with the legibility
21 of the document. As used in this Order, “copies” includes electronic images, duplicates,
22 extracts, summaries, or descriptions that contain the Confidential Information. The marking
23 “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” shall be applied prior to or at the
24 time of the documents are produced or disclosed. Applying the marking “CONFIDENTIAL -
25 SUBJECT TO PROTECTIVE ORDER” to a document does not mean that the document has
26 any status or protection by statute or otherwise except to the extent and for the purposes of this
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1 Order. Any copies that are made of any documents marked “CONFIDENTIAL - SUBJECT TO
2 PROTECTIVE ORDER” shall also be so marked, except that indices, electronic databases, or
3 lists of documents that do not contain substantial portions or images of the text of marked
4 documents and do not otherwise disclose the substance of the Confidential Information are not
5 required to be marked.
6

7 (b) The designation of a document as Confidential Information is a certification by the
8 designating attorney that the document contains Confidential Information as defined in this
9 Order.
10

11 **4. Depositions.** A Party may designate any testimony given in a deposition in this
12 action as confidential under this Order by making a statement on the record during the course of
13 the deposition. No later than the fourteenth day after the transcript is delivered to any party or
14 the witness, and in no event later than 60 days after the testimony was given, within this time
15 period a party may serve a Notice of Designation to all parties of record identifying the specific
16 portions of the transcript that are designated Confidential Information, and thereafter those
17 portions identified in the Notice of Designation shall be protected by the terms of this Order.
18 The failure to serve a timely Notice of Designation waives any designation of deposition
19 testimony as Confidential Information that was made on the record of the deposition, unless
20 otherwise ordered by the Court. The cover page of any deposition transcript containing
21 information designated as confidential shall be marked with the words
22 “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.” Notwithstanding anything to the
23 contrary in this Paragraph 4, in accordance with Paragraph 5(b)(7) of this Order, a party may
24 disclose prior deposition testimony to a witness during his or her deposition.
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28 **5. Protection of Confidential Material.**

1 **(a) General Protections.** Unless otherwise ordered by the Court or permitted in
2 writing by the producing party who designated Confidential Information, Confidential
3 Information shall not be used or disclosed by the parties, counsel for the parties or any other
4 persons identified in subparagraph (b) for any purpose whatsoever other than in this litigation,
5 including any appeal thereof, except as required by applicable law and regulations and except that
6 the United States may disclose Confidential Information to other federal agencies for criminal
7 law enforcement purposes. As provided by 40 C.F.R. 2.209(d), the procedural requirements of
8 40 C.F.R. Part 2 need not be complied with in (1) making a determination regarding whether
9 documents shall be deemed and stamped as Confidential Information for the purposes of this
10 Order, and (2) disclosing documents or other materials or information.
11

12 **(b) Limited Third-Party Disclosures.** The parties and counsel for the parties shall
13 not disclose or permit the disclosure of any Confidential Information to any third person or
14 entity except as set forth in subparagraphs (1)-(9). Subject to these requirements, the following
15 categories of persons may be allowed to review Confidential Information:
16

17 **(1) Counsel.** Counsel for the parties and employees of counsel who have
18 responsibility for the action (including but not limited to paid or unpaid, temporary or permanent
19 law clerks, paralegals, and administrative or clerical personnel);
20

21 **(2) Parties.** Individual parties and employees of a party but only to the extent
22 counsel determines in good faith that the employee's assistance is reasonably necessary to the
23 conduct of the litigation in which the information is disclosed;
24

25 **(3) The Court and its personnel.**
26

27 **(4) Court Reporters and Recordors.** Court reporters and recorders engaged
28 for depositions;

1 **(5) Contractors.** Those persons specifically engaged for the limited purpose of
2 making copies of documents or organizing or processing documents, including outside vendors
3 hired to process electronically stored documents;
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5 **(6) Consultants and Experts.** Consultants, investigators or experts employed
6 by the parties or counsel for the parties to assist in the preparation and trial of this action but
7 only after such persons have completed the certification contained in Attachment A,
8 “Acknowledgment of Understanding and Agreement to Be Bound.” Such certifications shall be
9 retained by Counsel and need not be produced unless requested and after the deadline for making
10 expert disclosures;
11

12 **(7) Witnesses at depositions.** During their depositions, witnesses in this action
13 to whom disclosure is reasonably necessary. Witnesses shall not retain a copy of documents
14 containing Confidential Information, except witnesses may receive a copy of all exhibits marked
15 at their depositions in connection with review of the transcripts. Pages of transcribed deposition
16 testimony or exhibits to depositions that are designated as Confidential Information pursuant to
17 the process set out in this Order must be separately bound by the court reporter and may not be
18 disclosed to anyone except as permitted under this Order.
19

20 **(8) Author or recipient.** The author or recipient of the document (not including
21 a person who received the document in the course of litigation); and
22

23 **(9) Others by Consent.** Other persons only by written consent of the producing
24 party or upon order of the Court and on such conditions as may be agreed or ordered.
25

26 **(c) Control of Documents.** Counsel for the parties shall make reasonable efforts to
27 prevent unauthorized or inadvertent disclosure of Confidential Information. Counsel shall
28 maintain the originals of the forms signed by persons acknowledging their obligations under this

1 Order for a period of three years after the termination of the case.

2 **6. Inadvertent Failure to Designate.** An inadvertent failure to designate a document
3 as Confidential Information does not, standing alone, waive the right to so designate the
4 document; provided, however, that a failure to serve a timely Notice of Designation of
5 deposition testimony as required by this Order, even if inadvertent, waives any protection for
6 deposition testimony. If a party designates a document as Confidential Information after it was
7 initially produced, the receiving party, on notification of the designation, must make a
8 reasonable effort to assure that the document is treated in accordance with the provisions of this
9 Order. No party shall be found to have violated this Order for failing to maintain the
10 confidentiality of material during a time when that material has not been designated Confidential
11 Information, even where the failure to so designate was inadvertent and where the material is
12 subsequently designated Confidential Information.
13

14 **7. Filing of Confidential Information.** This Order does not, by itself, authorize the
15 filing of any document under seal. Any party wishing to file a document designated as
16 Confidential Information in connection with a motion, brief, or other submission to the Court
17 must comply with Local Rule 141.
18

19 **8. No Greater Protection of Specific Documents.** Except on privilege grounds not
20 addressed by this Order, no party may withhold information from discovery on the ground that it
21 requires protection greater than that afforded by this Order unless the party moves for an order
22 providing such special protection.
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24 **9. Challenges by a Party to Designation as Confidential Information.** The
25 designation of any material or document as Confidential Information is subject to challenge by
26 any party. The following procedure shall apply to any such challenge.
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1 **(a) Meet and Confer.** A party challenging the designation of Confidential Information
2 must do so in good faith and must begin the process by conferring directly with counsel for the
3 designating party. In conferring, the challenging party must explain the basis for its belief that
4 the confidentiality designation was not proper and must give the designating party an
5 opportunity to review the designated material, to reconsider the designation, and, if no change in
6 designation is offered, to explain the basis for the designation. The designating party must
7 respond to the challenge within ten (10) business days, except for a response to challenge to
8 documents or information referenced in Paragraph 2(h), which shall be made within forty-five
9 (45) days.
10

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12 **(b) Judicial Intervention.** A party that elects to challenge a confidentiality
13 designation may file and serve a motion that identifies the challenged material and sets forth in
14 detail the basis for the challenge. Each such motion must be accompanied by a competent
15 declaration that affirms that the movant has complied with the meet and confer requirements of
16 this procedure. The burden of persuasion in any such challenge proceeding shall be on the
17 designating party. Until the Court rules on the challenge, all parties shall continue to treat the
18 materials as Confidential Information under the terms of this Order.
19

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21 **10. Action by the Court.** Applications to the Court for an order relating to materials or
22 documents designated Confidential Information shall be by motion. Nothing in this Order or
23 any action or agreement of a party under this Order limits the Court's power to make orders
24 concerning the disclosure of documents produced in discovery or at trial.
25

26 **11. Use of Confidential Documents or Information at Trial.** Nothing in this
27 Order shall be construed to affect the use of any document, material, or information at any trial
28 or hearing. A party that intends to present or that anticipates that another party may present

1 Confidential Information at a hearing or trial shall bring that issue to the Court's and parties'
2 attention by motion or in a pretrial memorandum without disclosing the Confidential
3 Information. The Court may thereafter make such orders as are necessary to govern the use of
4 such documents or information at trial.
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6 **12. Confidential Information Subpoenaed or Ordered Produced in Other**
7 **Litigation.**

8 (a) If a receiving party is served with a subpoena or an order issued in other litigation
9 that would compel disclosure of any material or document designated in this action as
10 Confidential Information, the receiving party must so notify the designating party, in writing,
11 immediately and in no event more than three court days after receiving the subpoena or order.
12 Such notification must include a copy of the subpoena or court order.
13

14 (b) The receiving party also must immediately inform in writing the party who caused
15 the subpoena or order to issue in the other litigation that some or all of the material covered by
16 the subpoena or order is the subject of this Order. In addition, the receiving party must deliver a
17 copy of this Order promptly to the party in the other action that caused the subpoena to issue.
18

19 (c) The purpose of imposing these duties is to alert the interested persons to the
20 existence of this Order and to afford the designating party in this case an opportunity to try to
21 protect its Confidential Information in the court from which the subpoena or order issued. The
22 designating party shall bear the burden and the expense of seeking protection in that court of its
23 Confidential Information, and nothing in these provisions should be construed as authorizing or
24 encouraging a receiving party in this action to disobey a lawful directive from another court.
25 The obligations set forth in this paragraph remain in effect while the party has in its possession,
26 custody, or control Confidential Information by the other party to this case.
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1 **13. Challenges by Members of the Public to Sealing Orders.** A party or interested
2 member of the public has a right to challenge the sealing of particular documents that have been
3 filed under seal, and the party asserting confidentiality will have the burden of demonstrating the
4 propriety of filing under seal.
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6 **14. Obligations on Conclusion of Litigation.**

7 **(a) Order Continues in Force.** Unless otherwise agreed or ordered, this Order shall
8 remain in force after dismissal or entry of final judgment not subject to further appeal.
9

10 **(b) Obligations at Conclusion of Litigation.** Within ninety (90) days after
11 dismissal or entry of final judgment not subject to further appeal and subject to federal
12 recordkeeping requirements and other legal obligations, all Confidential Information and
13 documents marked “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” under this
14 Order, including copies as defined in Paragraph 3(a), above, shall be returned to the producing
15 party unless: (1) the document has been offered into evidence or filed without restriction as to
16 disclosure; (2) the parties agree to destruction to the extent practicable in lieu of return; or (3) as
17 to documents bearing the notations, summations, or other mental impressions of the receiving
18 party, that party elects to destroy the documents and certifies to the producing party that it has
19 done so.
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22 **(c) Retention of Work Product and one set of Filed Documents.** Notwithstanding
23 the above requirements to return or destroy documents, counsel may retain (1) attorney work
24 product, including an index that refers or relates to designated Confidential Information so long
25 as that work product does not duplicate verbatim substantial portions of Confidential
26 Information, and (2) one complete set of all documents filed with the Court including those filed
27 under seal. Any retained Confidential Information shall continue to be protected under this
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1 Order. An attorney may use his or her work product in subsequent litigation, provided that its
2 use does not disclose or use Confidential Information.

3 **(d) Deletion of Documents filed under Seal from Electronic Case Filing (ECF)**
4 **System.** Filings under seal shall be deleted from the ECF system only upon order of the Court.

5 **15. Order Subject to Modification.** This Order shall be subject to modification by
6 the Court on its own initiative or on motion of a party or any other person with standing
7 concerning the subject matter.

8 **16. No Prior Judicial Determination.** This Order is entered based on the
9 representations and agreements of the parties and for the purpose of facilitating discovery.
10 Nothing herein shall be construed or presented as a judicial determination that any document or
11 material designated Confidential Information by counsel or the parties is entitled to protection
12 under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as the
13 Court may rule on a specific document or issue.

14 **17. Persons Bound.** This Order shall take effect when entered and shall be binding
15 upon all counsel of record and their law firms, the parties, and persons made subject to this
16 Order by its terms.

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1 WE SO MOVE
2 and agree to abide by the
3 terms of this Order

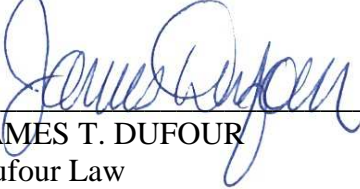
4
5 /s/ Sheila McAnaney

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22 *Attorneys for Plaintiff United States*

WE SO MOVE
and agree to abide by the
terms of this Order



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*Attorneys for Defendant Gibson Wine
Company*

ORDER

IT IS SO ORDERED.

Dated: May 4, 2016

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

1 **ATTACHMENT A**

2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF CALIFORNIA

4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 GIBSON WINE CO.,

8 Defendant.

Civil No. 1:15-cv-01900-AWI-SKO

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10
11 **ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

12 The undersigned hereby acknowledges that he/she has read the Confidentiality Order
13 dated _____ in the above-captioned action and attached hereto, understands the
14 terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction
15 of the United States District Court for the Eastern District of California in matters relating to the
16 Confidentiality Order and understands that the terms of the Confidentiality Order obligate
17 him/her to use materials designated as Confidential Information in accordance with the Order
18 solely for the purposes of the above-captioned action, and not to disclose any such Confidential
19 Information to any other person, firm or concern.
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22 The undersigned acknowledges that violation of the Confidentiality Order may result in
23 penalties for contempt of court.
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25 Name: _____

26 Job Title: _____

27 Employer: _____

28 Business Address: _____

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Dated: _____

Signature: _____