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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

CHAU TRAN,  
  
                    Plaintiff,  
  
          v.  
  
MERCED IRRIGATION  
DISTRICT; and DOES 1 through  
10,  
  
                    Defendants.

Case No.: 1:16-cv-00249-LJO-SAB

**STIPULATED PROTECTIVE ORDER  
FOR STANDARD LITIGATION**

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. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal

1 principles. The parties further acknowledge, as set forth in Section 12.3, below,  
2 that this Stipulated Protective Order does not entitle them to file confidential  
3 information under seal; Civil Local Rule 141 sets forth the procedures that must  
4 be followed and the standards that will be applied when a party seeks permission  
5 from the court to file material under seal.

6 **2. DEFINITIONS**

7 **2.1 Challenging Party:** a Party or Non-Party that challenges the  
8 designation of information or items under this Order.

9 **2.2 “CONFIDENTIAL” Information or Items:** information (regardless  
10 of how it is generated, stored or maintained) or tangible things that the  
11 designating party contends qualifies for protection under Federal Rule of Civil  
12 Procedure 26(c).

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

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

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

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

26 **2.7 House Counsel:** attorneys who are employees of a party to this  
27 action. House Counsel does not include Outside Counsel of Record or any other  
28 outside counsel.

1           2.8 Non-Party: any natural person, partnership, corporation,  
2 association, or other legal entity not named as a Party to this action.

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

7           2.10 Party: any party to this action, including all of its officers, directors,  
8 employees, consultants, retained experts, and Outside Counsel of Record (and  
9 their support staffs).

10          2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
11 Discovery Material in this action.

12          2.12 Professional Vendors: persons or entities that provide litigation  
13 support services (e.g., photocopying, videotaping, translating, preparing exhibits  
14 or demonstrations, and organizing, storing, or retrieving data in any form or  
15 medium) and their employees and subcontractors.

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

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

20    3.    SCOPE

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

1 after its disclosure to a Receiving Party as a result of publication not involving a  
2 violation of this Order, including becoming part of the public record through trial  
3 or otherwise; and (b) any information known to the Receiving Party prior to the  
4 disclosure or obtained by the Receiving Party after the disclosure from a source  
5 who obtained the information lawfully and under no obligation of confidentiality  
6 to the Designating Party. Any use of Protected Material at trial shall be governed  
7 by a separate agreement or order.

8 4. DURATION

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

17 5. DESIGNATING PROTECTED MATERIAL

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

26 Mass, indiscriminate, or routinized designations are prohibited.  
27 Designations that are shown to be clearly unjustified or that have been made for  
28 an improper purpose (e.g., to unnecessarily encumber or retard the case

1 development process or to impose unnecessary expenses and burdens on other  
2 parties) expose the Designating Party to sanctions.

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

7 5.2 Manner and Timing of Designations. Except as otherwise provided  
8 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as  
9 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies  
10 for protection under this Order must be clearly so designated before the material  
11 is disclosed or produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic  
14 documents, but excluding transcripts of depositions or other pretrial or trial  
15 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to  
16 each page that contains protected material. If only a portion or portions of the  
17 material on a page qualifies for protection, the Producing Party also must clearly  
18 identify the protected portion(s) (e.g., by making appropriate markings in the  
19 margins or making visible redactions).

20 A Party or Non-Party that makes original documents or materials available  
21 for inspection need not designate them for protection until after the inspecting  
22 Party has indicated which material it would like copied and produced. During the  
23 inspection and before the designation, all of the material made available for  
24 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has  
25 identified the documents it wants copied and produced, the Producing Party must  
26 determine which documents, or portions thereof, qualify for protection under this  
27 Order. Then, before producing the specified documents, the Producing Party  
28 must affix the "CONFIDENTIAL" legend to each page that contains Protected

1 Material. If only a portion or portions of the material on a page qualifies for  
2 protection, the Producing Party also must clearly identify the protected portion(s)  
3 (e.g., by making appropriate markings in the margins or by making visible  
4 redactions).

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

8 (c) for information produced in some form other than documentary and  
9 for any other tangible items, that the Producing Party affix in a prominent place  
10 on the exterior of the container or containers in which the information or item is  
11 stored the legend "CONFIDENTIAL." If only a portion or portions of the  
12 information or item warrant protection, the Producing Party, to the extent  
13 practicable, shall identify the protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an  
15 inadvertent failure to designate qualified information or items does not, standing  
16 alone, waive the Designating Party's right to secure protection under this Order  
17 for such material. Upon timely correction of a designation, the Receiving Party  
18 must make reasonable efforts to assure that the material is treated in accordance  
19 with the provisions of this Order.

## 20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
22 designation of confidentiality at any time. Unless a prompt challenge to a  
23 Designating Party's confidentiality designation is necessary to avoid foreseeable,  
24 substantial unfairness, unnecessary economic burdens, or a significant disruption  
25 or delay of the litigation, a Party does not waive its right to challenge a  
26 confidentiality designation by electing not to mount a challenge promptly after  
27 the original designation is disclosed.  
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1           6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
2 resolution process by providing written notice of each designation it is  
3 challenging and describing the basis for each challenge. To avoid ambiguity as to  
4 whether a challenge has been made, the written notice must recite that the  
5 challenge to confidentiality is being made in accordance with this specific  
6 paragraph of the Protective Order. The parties shall attempt to resolve each  
7 challenge in good faith and must begin the process by conferring directly (in  
8 voice to voice dialogue; other forms of communication are not sufficient) within  
9 14 days of the date of service of notice. In conferring, the Challenging Party  
10 must explain the basis for its belief that the confidentiality designation was not  
11 proper and must give the Designating Party an opportunity to review the  
12 designated material, to reconsider the circumstances, and, if no change in  
13 designation is offered, to explain the basis for the chosen designation. A  
14 Challenging Party may proceed to the next stage of the challenge process only if  
15 it has engaged in this meet and confer process first or establishes that the  
16 Designating Party is unwilling to participate in the meet and confer process in a  
17 timely manner.

18           6.3 Judicial Intervention. If the Parties cannot resolve a challenge  
19 without court intervention, the Challenging Party may file a timely motion  
20 challenging a confidentiality designation if there is good cause for doing so,  
21 including a challenge to the designation of a deposition transcript or any portions  
22 thereof. Any motion brought pursuant to this provision must be accompanied by  
23 a competent declaration affirming that the movant has complied with the meet  
24 and confer requirements imposed by the preceding paragraph.

25           Frivolous challenges, and those made for an improper purpose (e.g., to  
26 harass or impose unnecessary expenses and burdens on other parties) may expose  
27 the Challenging Party to sanctions. Unless the parties agree, all parties shall  
28 continue to afford the material in question the level of protection to which it is

1 entitled under the Producing Party's designation until the court rules on the  
2 challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that  
5 is disclosed or produced by another Party or by a Non-Party in connection with  
6 this case only for prosecuting, defending, or attempting to settle this litigation.  
7 Such Protected Material may be disclosed only to the categories of persons and  
8 under the conditions described in this Order. When the litigation has been  
9 terminated, a Receiving Party must comply with the provisions of section 13  
10 below (FINAL DISPOSITION).

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

14 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
15 otherwise ordered by the court or permitted in writing by the Designating Party,  
16 a Receiving Party may disclose any information or item designated  
17 "CONFIDENTIAL" only to:

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

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

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1 (c) Experts (as defined in this Order) of the Receiving Party to whom  
2 disclosure is reasonably necessary for this litigation and who have signed the  
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants,  
6 mock jurors, and Professional Vendors to whom disclosure is reasonably  
7 necessary for this litigation and who have signed the “Acknowledgment and  
8 Agreement to Be Bound” (Exhibit A);

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

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

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
19 PRODUCED IN OTHER LITIGATION

20 If a Party is served with a subpoena or a court order issued in other  
21 litigation that compels disclosure of any information or items designated in this  
22 action as “CONFIDENTIAL,” that Party must:

23 (a) promptly notify in writing the Designating Party. Such notification  
24 shall include a copy of the subpoena or court order;

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

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

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

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

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

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

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

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

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

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

12 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

22 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
23 PROTECTED MATERIAL

24 When a Producing Party gives notice to Receiving Parties that certain  
25 inadvertently produced material is subject to a claim of privilege or other  
26 protection, the obligations of the Receiving Parties are those set forth in Federal  
27 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
28 whatever procedure may be established in an e-discovery order that provides for

1 production without prior privilege review. Pursuant to Federal Rule of Evidence  
2 502(d) and (e), insofar as the parties reach an agreement on the effect of  
3 disclosure of a communication or information covered by the attorney-client  
4 privilege or work product protection, the parties may incorporate their agreement  
5 in the stipulated protective order submitted to the court.

6 12. MISCELLANEOUS

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of  
8 any person to seek its modification by the court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
10 Protective Order no Party waives any right it otherwise would have to object to  
11 disclosing or producing any information or item on any ground not addressed in  
12 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
13 any ground to use in evidence of any of the material covered by this Protective  
14 Order.

15 12.3 Filing Protected Material. Without written permission from the  
16 Designating Party or a court order secured after appropriate notice to all  
17 interested persons, a Party may not file in the public record in this action any  
18 Protected Material. A Party that seeks to file under seal any Protected Material  
19 must comply with Civil Local Rule 141. Protected Material may only be filed  
20 under seal pursuant to a court order authorizing the sealing of the specific  
21 Protected Material at issue. Pursuant to Civil Local Rule 141, a sealing order will  
22 issue only upon a request establishing that the Protected Material at issue is  
23 privileged, protectable as a trade secret, or otherwise entitled to protection under  
24 the law.

25 13. FINAL DISPOSITION

26 Within 60 days after the final disposition of this action, as defined in  
27 paragraph 4, each Receiving Party must return all Protected Material to the  
28 Producing Party or destroy such material. As used in this subdivision, “all

1 Protected Material” includes all copies, abstracts, compilations, summaries, and  
2 any other format reproducing or capturing any of the Protected Material.  
3 Whether the Protected Material is returned or destroyed, the Receiving Party  
4 must submit a written certification to the Producing Party (and, if not the same  
5 person or entity, to the Designating Party) by the 60 day deadline that (1)  
6 identifies (by category, where appropriate) all the Protected Material that was  
7 returned or destroyed and (2) affirms that the Receiving Party has not retained  
8 any copies, abstracts, compilations, summaries or any other format reproducing  
9 or capturing any of the Protected Material. Notwithstanding this provision,  
10 Counsel are entitled to retain an archival copy of all pleadings, motion papers,  
11 trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
12 deposition and trial exhibits, expert reports, attorney work product, and  
13 consultant and expert work product, even if such materials contain Protected  
14 Material. Any such archival copies that contain or constitute Protected Material  
15 remain subject to this Protective Order as set forth in Section 4 (DURATION).

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17  
18 DATED: 1/3/2017 /s/Larry D. Murray  
19 Attorneys for Plaintiff

20  
21  
22 DATED: 1/3/2017 /s/Naomi C. Pontious  
23 Attorneys for Defendant

24 **ORDER**

25 Pursuant to the stipulation of the parties, IT IS HEREBY ORDERED  
26 that:

- 27 1. The protective order is entered;  
28 2. The parties are advised that pursuant to the Local Rules of the

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United States District Court, Eastern District of California, any documents which are to be filed under seal will require a written request which complies with Local Rule 141; and

- 3. The party making a request to file documents under seal shall be required to show good cause for documents attached to a nondispositive motion or compelling reasons for documents attached to a dispositive motion. Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-78 (9th Cir. 2009).

IT IS SO ORDERED.

Dated: January 4, 2017

  
UNITED STATES MAGISTRATE JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
5 that I have read in its entirety and understand the Stipulated Protective Order that  
6 was issued by the United States District Court for the Northern District of  
7 California on [date] in the case of *Chau v. Merced Irrigation District*, Case No.  
8 1:16-cv-00249-LJO-SAB. I agree to comply with and to be bound by all the  
9 terms of this Stipulated Protective Order and I understand and acknowledge that  
10 failure to so comply could expose me to sanctions and punishment in the nature  
11 of contempt. I solemnly promise that I will not disclose in any manner any  
12 information or item that is subject to this Stipulated Protective Order to any  
13 person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District  
15 Court for the Northern District of California for the purpose of enforcing the  
16 terms of this Stipulated Protective Order, even if such enforcement proceedings  
17 occur after termination of this action.

18 I hereby appoint \_\_\_\_\_ [print or type full name]  
19 of \_\_\_\_\_ [print or type full address  
20 and telephone number] as my California agent for service of process in  
21 connection with this action or any proceedings related to enforcement of this  
22 Stipulated Protective Order.

23  
24 Date: \_\_\_\_\_

25 City and State where sworn and signed: \_\_\_\_\_

26 Printed name: \_\_\_\_\_

27 Signature: \_\_\_\_\_

28