

1 STINSON LEONARD STREET LLP
2 Michael J. Farrell (Attorney No. 177506)
3 1850 N. Central Avenue, Suite 2100
4 Phoenix, AZ 85004
5 Telephone: (602) 212-8558; E-mail: michael.farrell@stinson.com
6 Michael E. Tucci (Admitted to Appear *Pro Hac Vice*, ECF No. 388)
7 1775 Pennsylvania Avenue, NW, Suite 800
8 Washington, DC 20006
9 Telephone: (202) 728-3010; E-mail: michael.tucci@stinson.com

10 LAW OFFICE OF PHILLIP L. FRAAS
11 Phillip L. Fraas (Admitted to Appear *Pro Hac Vice*, ECF No. 387)
12 1001 G Street, NW, Suite 800
13 Washington, DC 20001
14 Telephone: (202) 280-2411; E-mail: phil@phillipfraaslaw.com

15 Attorneys for Plaintiff GLORIA MORALEZ

16 PHILLIP A. TALBERT
17 Acting United States Attorney
18 JOSEPH B. FRUEH
19 Assistant United States Attorney
20 501 I Street, Suite 10-100
21 Sacramento, CA 95814
22 Telephone: (916) 554-2702

23 Attorneys for Defendant THOMAS J. VILSACK
24 Secretary, U.S. Department of Agriculture

25 UNITED STATES DISTRICT COURT
26 EASTERN DISTRICT OF CALIFORNIA

27 GLORIA PALACIOS MORALEZ,

28 Plaintiff,

v.

THOMAS J. VILSACK, Secretary,
UNITED STATES DEPARTMENT OF
AGRICULTURE,

Defendant.

No. 1:16-cv-00282-AWI-BAM

STIPULATED PROTECTIVE ORDER

1 1. A. 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 disclosure 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 12.3, below, that this
10 Stipulated Protective Order does not entitle them to file confidential information under seal;
11 Local Rules 140 and 141 set forth the procedures that must be followed and the standards that
12 will be applied when a party seeks permission from the court to file material under seal.

13 B. GOOD CAUSE STATEMENT

14 This case involves medical and financial records of the Plaintiff and is likely to involve
15 financial records of individuals not a party to this action, including confidential business records
16 and documents relating to confidential business processes (including information implicating
17 privacy rights of third parties), information otherwise generally unavailable to the public, or
18 which may be privileged or otherwise protected from disclosure under state or federal statutes,
19 court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to
20 facilitate the prompt resolution of disputes over confidentiality of discovery materials, to
21 adequately protect information the parties are entitled to keep confidential, to ensure that the
22 parties are permitted reasonably necessary uses of such material in preparation for and in the
23 conduct of trial, to address their handling at the end of the litigation, and serve the ends of
24 justice, a protective order for such information is justified in this matter. It is the intent of the
25 parties that information will not be designated as confidential for tactical reasons and that
26 nothing be so designated without a good faith belief that it has been maintained in a confidential,
27 non-public manner, and there is good cause why it should not be part of the public record of this
28 case.

1 2. DEFINITIONS

2 2.1 Action: *Moralez v. Vilsack*, No. 1:16-cv-00282-AWI-BAM.

3 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
4 information or items under this Order.

5 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is
6 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
7 of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

8 2.4 Counsel: Counsel of Record and House Counsel (USDA) (as well as their support
9 staff).

10 2.5 Designating Party: a Party or Non-Party that designates information or items that
11 it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

12 2.6 Disclosure or Discovery Material: all items or information, regardless of the
13 medium or manner in which it is generated, stored, or maintained (including, among other
14 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures
15 or responses to discovery in this matter.

16 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent
17 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or
18 as a consultant in this Action.

19 2.8 House Counsel: attorneys who are employees of a party to this Action. House
20 Counsel does not include Counsel of Record or any other outside counsel.

21 2.9 Non-Party: any natural person, partnership, corporation, association, or other
22 legal entity not named as a Party to this action.

23 2.10 Counsel of Record: attorneys who are not employees of a party to this Action but
24 are retained to represent or advise a party to this Action and have appeared in this Action on
25 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party,
26 and includes support staff.

27 2.11 Party: any party to this Action, including all of its officers, directors, employees,
28 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

1 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
2 Material in this Action.

3 2.13 Professional Vendors: persons or entities that provide litigation support services
4 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
5 organizing, storing, or retrieving data in any form or medium) and their employees and
6 subcontractors.

7 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
8 “CONFIDENTIAL.”

9 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
10 Producing Party.

11 3. SCOPE

12 The protections conferred by this Stipulation and Order cover not only Protected Material
13 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
14 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
15 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
16 Any use of Protected Material at trial shall be governed by the orders of the trial judge. This
17 Order does not govern the use of Protected Material at trial.

18 4. DURATION

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

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
28

1 or Non-Party that designates information or items for protection under this Order must take care
2 to limit any such designation to specific material that qualifies under the appropriate standards.
3 The Designating Party must designate for protection only those parts of material, documents,
4 items, or oral or written communications that qualify so that other portions of the material,
5 documents, items, or communications for which protection is not warranted are not swept
6 unjustifiably within the ambit of this Order.

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

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

14 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
15 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
16 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
17 designated before the material is disclosed or produced.

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic documents, but
20 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
21 Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter "CONFIDENTIAL
22 legend"), to each page that contains protected material. If only a portion or portions of the
23 material on a page qualifies for protection, the Producing Party also must clearly identify the
24 protected portion(s) (e.g., by making appropriate markings in the margins).

25 A Party or Non-Party that makes original documents available for inspection need not
26 designate them for protection until after the inspecting Party has indicated which documents it
27 would like copied and produced. During the inspection and before the designation, all of the
28 material made available for inspection shall be deemed "CONFIDENTIAL." After the

1 inspecting Party has identified the documents it wants copied and produced, the Producing Party
2 must determine which documents, or portions thereof, qualify for protection under this Order.
3 Then, before producing the specified documents, the Producing Party must affix the
4 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a portion or
5 portions of the material on a page qualifies for protection, the Producing Party also must clearly
6 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

7 (b) for testimony given in depositions that the Designating Party identify the
8 Disclosure or Discovery Material warranting protection on the record, before the close of the
9 deposition.

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

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

23 6.2 Meet and Confer. The Challenging Party shall initiate the discovery-disagreement
24 process under Local Rule 251.

25 6.3 The burden of persuasion in any such challenge proceeding shall be on the
26 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass
27 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party
28 to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality

1 designation, all parties shall continue to afford the material in question the level of protection to
2 which it is entitled under the Producing Party's designation until the Court rules on the
3 challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
14 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
15 disclose any information or item designated "CONFIDENTIAL" only to:

16 (a) the Receiving Party's Counsel of Record in this Action, as well as employees of
17 said Counsel of Record to whom it is reasonably necessary to disclose the information for this
18 Action;

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

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

24 (d) the court and its personnel;

25 (e) court reporters and their staff;

26 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to
27 whom disclosure is reasonably necessary for this Action and who have signed the
28 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

1 (g) the author or recipient of a document containing the information or a custodian or
2 other person who otherwise possessed or knew the information;

3 (h) during their depositions, witnesses, and attorneys for witnesses, in the Action to
4 whom disclosure is reasonably necessary, provided that: (1) the deposing party requests that the
5 witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep
6 any confidential information unless they sign the “Acknowledgment and Agreement to Be
7 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court.
8 Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected
9 Material will be separately bound by the court reporter and will not be disclosed to anyone
10 except as permitted under this Stipulated Protective Order; and

11 (i) any mediator or settlement officer, and their supporting personnel, mutually
12 agreed upon by any of the parties engaged in settlement discussions.

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
16 compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,”
17 that Party must:

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

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

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

26 If the Designating Party timely seeks a protective order, the Party served with the
27 subpoena or court order shall not produce any information designated in this action as
28 “CONFIDENTIAL” before a determination by the court from which the subpoena or order

1 issued, unless the Party has obtained the Designating Party's permission. The Designating Party
2 shall bear the burden and expense of seeking protection in that court of its confidential material
3 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
4 Party in this Action to disobey a lawful directive from another court.

5 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
6 LITIGATION

7 (a) The terms of this Order are applicable to information produced by a Non-Party in
8 this Action and designated as "CONFIDENTIAL." Such information produced by Non-Parties
9 in connection with this litigation is protected by the remedies and relief provided by this Order.
10 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
11 additional protections.

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

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

18 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
19 Order in this Action, the relevant discovery request(s), and a reasonably specific description of
20 the information requested; and

21 (3) make the information requested available for inspection by the Non-Party,
22 if requested.

23 (c) If the Non-Party fails to seek a protective order from this court within 14 days of
24 receiving the notice and accompanying information, the Receiving Party may produce the Non-
25 Party's confidential information responsive to the discovery request. If the Non-Party timely
26 seeks a protective order, the Receiving Party shall not produce any information in its possession
27 or control that is subject to the confidentiality agreement with the Non-Party before a
28

1 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
2 burden and expense of seeking protection in this court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
12 MATERIAL

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

22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
24 seek its modification by the Court in the future.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
2 Order no Party waives any right it otherwise would have to object to disclosing or producing any
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
4 no Party waives any right to object on any ground to use in evidence of any of the material
5 covered by this Protective Order.

6 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
7 Material must comply with Local Rules 140 and 141. Protected Material may only be filed under
8 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.
9 If a Party's request to file Protected Material under seal is denied by the court, then the Receiving
10 Party may file the information in the public record unless otherwise instructed by the court.

11 13. FINAL DISPOSITION

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

1 14. Any violation of this Order may be punished by any and all appropriate measures
2 including, without limitation, contempt proceedings and/or monetary sanctions.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 Dated: September 1, 2016

LAW OFFICE OF PHILLIP L. FRAAS
STINSON LEONARD STREET LLP
Michael E. Tucci
Michael J. Farrell

7 By: /s/ Michael E. Tucci

8 MICHAEL E. TUCCI

9 Attorneys for Plaintiff
10 GLORIA P. MORALEZ

11 Dated: September 1, 2016

PHILLIP A. TALBERT
Acting United States Attorney

13 By: /s/ Joseph B. Frueh (as authorized on September 1, 2016)

14 JOSEPH B. FRUEH
Assistant United States Attorney

15 Attorneys for Defendant
16 THOMAS J. VILSACK
Secretary, U.S. Department of Agriculture

17 EXHIBIT A

18 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

19 I, _____[print or type full name], of
20 _____[print or type full address], declare under penalty of perjury that I have read in
21 its entirety and understand the Stipulated Protective Order that was issued by the United States
22 District Court for the Eastern District of California on [date] in the case of Moralez v. Vilsack,
23 No. 1:16-cv-00282-AWI-BAM. I agree to comply with and to be bound by all the terms of this
24 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
25 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
26 not disclose in any manner any information or item that is subject to this Stipulated Protective
27 Order to any person or entity except in strict compliance with the provisions of this Order.
28

1 I further agree to submit to the jurisdiction of the United States District Court for the
2 Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective
3 Order, even if such enforcement proceedings occur after termination of this action. I hereby
4 appoint _____[print or type full name] of
5 _____[print or type full address and telephone number] as
6 my California agent for service of process in connection with this action or any proceedings
7 related to enforcement of this Stipulated Protective Order.

8
9 Date: _____

10
11 City and State where sworn and signed: _____.

12
13 Printed Name: _____

14 Signature: _____

15
16 **ORDER**

17
18 The Court has reviewed the stipulated protective order filed on September 1, 2016. (Doc.
19 397). For good cause appearing, and pursuant to the Stipulated Protective Order filed by Plaintiff
20 Gloria Moralez and Defendant Thomas J. Vilsack, U.S. Department of Agriculture Secretary, IT IS
21 HEREBY ORDERED that the parties' Stipulated Protective Order is APPROVED in its entirety.

22
23 IT IS SO ORDERED.

24 Dated: September 2, 2016

25 /s/ Barbara A. McAuliffe
26 UNITED STATES MAGISTRATE JUDGE