

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

EDWINA PINON, individually and on behalf
of all persons similarly situated,

Plaintiff,

vs.

TRISTAR PRODUCTS, INC., DOES 1-10,
inclusive,

Defendant.

CASE NO. 1:16-CV-00331-DAD-SAB
**STIPULATED PROTECTIVE ORDER;
ORDER**

1. PURPOSE AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information, including, but not limited to, sensitive commercial, financial and/or business records, for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties, defendant, TRISTAR PRODUCTS, and plaintiffs, EDWINA PINON, individually and on behalf of all persons similarly situated, hereby stipulate to and petition the court to enter the following Stipulated Protective Order.

The parties acknowledge this Stipulation and 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

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

5 2. DEFINITIONS

6 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
7 information or items under this Order.

8 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
9 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
10 of Civil Procedure 26(c).

11 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
12 well as their support staff).

13 2.4 Designating Party: a Party or Non-Party that designates information or items that it
14 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

15 2.5 Disclosure or Discovery Material: all items or information, regardless of the
16 medium or manner in which it is generated, stored, or maintained (including, among other things,
17 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
18 responses to discovery in this matter.

19 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
20 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
21 consultant in this action.

22 2.7 House Counsel: attorneys who are employees of a party to this action. House
23 Counsel does not include Outside Counsel of Record or any other outside counsel.

24 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal
25 entity not named as a Party to this action.

26

27

28

1 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this
2 action but are retained to represent or advise a party to this action and have appeared in this action
3 on 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: (a) any information that is in the public domain at the time of disclosure to a
23 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
24 result of publication not involving a violation of this Order, including becoming part of the public
25 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
26 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained

27
28

1 the information lawfully and under no obligation of confidentiality to the Designating Party. Any
2 use 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 this
5 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
6 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
7 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
8 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
9 including the time limits for filing any motions or applications for extension of time pursuant to
10 applicable law.

11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Manner and Timing of Designations. Except as otherwise provided in this Order,
13 or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
14 under this Order must be clearly so designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) for information in documentary form (e.g., paper or electronic documents, but
17 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
18 affix the legend “CONFIDENTIAL” to each page that contains protected material.

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

27

28

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

4 (c) for information produced in some form other than documentary and for any other
5 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
6 or containers in which the information or item is stored the legend “CONFIDENTIAL.”

7 5.2 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
8 designate qualified information or items does not, standing alone, waive the Designating Party’s
9 right to secure protection under this Order for such material. Upon timely correction of a
10 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
11 in accordance with the provisions of this Order.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
14 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
15 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
16 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
17 challenge a confidentiality designation by electing not to mount a challenge promptly after the
18 original designation is disclosed.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
20 process by providing written notice of each designation it is challenging and describing the basis
21 for each challenge. A Challenging Party may proceed to the next stage of the challenge process
22 only if it has engaged in this meet and confer process first or establishes that the Designating Party
23 is unwilling to participate in the meet and confer process in a timely manner.

24 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
25 intervention, the Challenging Party may file a motion challenging a confidentiality designation if
26 there is good cause for doing so, including a challenge to the designation of a deposition transcript
27 or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a
28

1 competent declaration affirming that the movant has complied with the meet and confer
2 requirements imposed by the preceding paragraph.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
13 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
14 information or item designated “CONFIDENTIAL” only to:

15 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
16 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
17 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
18 Bound” that is attached hereto as Exhibit A;

19 (b) the officers, directors, and employees (including House Counsel) of the Receiving
20 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

25 (d) the court and its personnel;

26

27

28

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

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

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

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

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

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

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

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

25 The Party served with the subpoena or court order shall not produce any information
26 designated in this action as “CONFIDENTIAL” before a determination by the court from which
27 the subpoena or order issued, unless the Party has obtained the Designating Party’s permission.

28

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

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

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

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

13 (2) Promptly provide the Non-Party with a copy of the Stipulated Protective Order in
14 this litigation, the relevant discovery request(s), and a reasonably specific description of the
15 information requested; and

16 (3) Make the information requested available for inspection by the Non-Party.

17 (c) If the Non-Party fails to object or seek a protective order from this court within 14
18 days of receiving the notice and accompanying information, the Receiving Party may produce the
19 Non-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 or
21 control that is subject to the confidentiality agreement with the Non-Party before a determination
22 by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and
23 expense of seeking protection in this court of its Protected Material.

24 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
26 Material to any person or in any circumstance not authorized under this Stipulated Protective
27 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
28

1 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
2 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
3 terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and
4 Agreement to Be Bound” that is attached hereto as Exhibit A.

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
6 PROTECTED MATERIAL

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

16 12. MISCELLANEOUS

17 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
18 seek its modification by the court in the future.

19 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
20 Order no Party waives any right it otherwise would have to object to disclosing or producing any
21 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
22 Party waives any right to object on any ground to use in evidence of any of the material covered
23 by this Protective Order.

24 12.3 Filing Protected Material. Without written permission from the Designating Party
25 or a court order secured after appropriate notice to all interested persons, a Party may not file in
26 the public record in this action any Protected Material. A Party that seeks to file under seal any
27 Protected Material must comply with Civil Local Rule 141.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

13. FINAL DISPOSITION

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

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: April 14, 2017

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Pamela M. Ferguson
Shawn A. Toliver
Pamela M. Ferguson
Jon C. James
Attorneys for Defendant TRISTAR PRODUCTS, INC.

DATED: April 14, 2017

LAW OFFICES OF TODD M. FRIEDMAN, P.C
LLP

By: /s/ Meghan George (as authorized on April 12, 2017)
Todd M. Friedman
Meghan George
Attorneys for Plaintiff EDWINA PINON

1 I hereby attest that I have on file all holographic signatures corresponding to any
2 signatures indicated by a conformed signature (/s/) within this e-filed document.

LEWIS BRISBOIS BISGAARD & SMITH LLP

3 DATED: April 14, 2017

4 By: /s/ Pamela M. Ferguson
5 Shawn A. Toliver
6 Pamela M. Ferguson
7 Jon C. James
8 Attorneys for Defendant TRISTAR PRODUCTS,
9 INC.

10 **ORDER**

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

- 11 1. The protective order is entered;
- 12 2. The parties are advised that pursuant to the Local Rules of the United States
13 District Court, Eastern District of California, any documents which are to be
14 filed under seal will require a written request which complies with Local Rule
15 141; and
- 16 3. The party making a request to file documents under seal shall be required to
17 show good cause for documents attached to a nondispositive motion or
18 compelling reasons for documents attached to a dispositive motion. Pintos v.
19 Pacific Creditors Ass'n, 605 F.3d 665, 677-78 (9th Cir. 2009).

20 IT IS SO ORDERED.

21 Dated: April 14, 2017

22 
23 UNITED STATES MAGISTRATE JUDGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California on _____ 2017, in the case of *Edwina Pinon v. Tristar Products, Inc., et. al.* Case No.: 1:16-CV-00331-DAD-SAB. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

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

Date: _____, 2017

City and State where sworn and signed:

Printed Name: _____

Signature: _____