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15 UNITED STATES DISTRICT COURT
 16 EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

18 GALLO CATTLE COMPANY d/b/a JOSEPH
 19 GALLO FARMS, a California limited
 partnership,
 20 Plaintiff,
 21 v.
 22 SAPUTO DAIRY FOODS USA, LLC, a
 23 Delaware limited liability company, and
 DOES 1 through 50, inclusive,
 24 Defendants.

Case No. 1:16-cv-01673-EPG
STIPULATED PROTECTIVE ORDER
 Judge: Hon. Erica P. Grosjean
 Action Filed: October 3, 2016
 Trial Date: June 5, 2018

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 26 AND RELATED COUNTER-CLAIM.

1 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiff and Counter-Defendant
2 GALLO CATTLE COMPANY d/b/a JOSEPH GALLO FARMS (“Plaintiff” or “Gallo”), and Defendant
3 and Counter-Plaintiff SAPUTO DAIRY FOODS USA, LLC (“Defendant” or “Saputo”), through counsel
4 undersigned, jointly submit this Stipulated Protective Order to govern the handling of information and
5 materials produced in the course of discovery or filed with the Court in advance of trial in this action.

6 **GOOD CAUSE STATEMENT PURSUANT TO L.R. 141.1(c)**

7 Disclosure and discovery activity in this action are likely to involve production of confidential,
8 proprietary, or private information for which special protection from public disclosure and from use for
9 any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby
10 stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties
11 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
12 discovery, and that the protection it affords from public disclosure and use extends only to the limited
13 information or items that are entitled to confidential treatment under applicable legal principles. It is the
14 intent of the parties and the Court that information will not be designated as confidential for tactical
15 reasons in this case, and that nothing will be so designated without a good faith belief that there is good
16 cause as to why information should not be part of the public record.

17 **Statement Under L.R. 141.1(c)(1):** Examples of confidential information that the parties may
18 seek to protect from unrestricted or unprotected disclosure include:

- 19 a) Information that is the subject of a non-disclosure or confidentiality agreement or
20 obligation;
- 21 b) The names of a party’s vendors, distributors, or customers (or other information tending to
22 reveal their identities);
- 23 c) Agreements with third-parties;
- 24 d) Research and development information;
- 25 e) Proprietary engineering or technical information, including product design, manufacturing
26 techniques, processing information, drawings, memoranda, and reports;
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- 1 f) Information related to budgets, sales, profits, costs, margins, product pricing, or other
2 internal financial/accounting information, including non-public information related to
3 financial condition or performance and income or other non-public tax information;
4 g) Information showing the price or other information related to the terms of sale or purchase
5 of cream and other materials relevant to this case;
6 h) Information related to internal operations, including personnel information;
7 i) Information related to past, current, and future product development;
8 j) Information related to past, current, and future market analyses and business and marketing
9 development, including plans, strategies, forecasts and competition; and,
10 k) Trade secrets (as defined by the jurisdiction in which the information is located).

11 **Statement Under L.R. 141.1(c)(2):** Generally speaking, information and documents shall only be
12 designated under this protective order because the Designating Party believes the information or
13 documents are proprietary, confidential, and/or trade secret information that the Designating Party would
14 not release publicly. Unrestricted or unprotected disclosure of such confidential, technical, commercial, or
15 personal information would result in prejudice or harm to the Producing Party by revealing the Producing
16 Party's competitive confidential information. Such information will have been developed at the expense
17 of the Producing Party and represent valuable tangible and intangible assets of that party. Additionally,
18 privacy interests must be safeguarded. Accordingly, the parties respectfully submit that there is good
19 cause for the entry of this Protective Order.

20 **Statement Under L.R. 141.1(c)(3):** The parties submit that protecting the confidential nature of
21 information in this way will be most efficient for the parties and the Court. That is because the liability
22 issues in this case largely turn on the Court's interpretation of the parties' contracts relating to their
23 purchase or sale of cream. The parties have met and conferred on this issue and agree that — although
24 discovery has only just commenced — they are likely to at least move and/or cross-move for summary
25 judgment on contract interpretation issues with reference to information discovered from the opposing side
26 in this case. Thus, any private agreement between the parties to safeguard this information will only need
27 to be replicated through orders of this Court at the time of filing those anticipated summary judgment
28 motions.

1 **PROTECTIVE ORDER**

2 1. DEFINITIONS.

3 (a) The term “Challenging Party” shall mean a Party or Non-Party that challenges the
4 designation of information or items under this Order.

5 (b) The term “Confidential” shall mean information (regardless of how it is generated,
6 stored, or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
7 26(c).

8 (c) The term “Attorneys’ Eyes Only” shall mean and include those CONFIDENTIAL
9 documents, answers to interrogatories, responses to requests for admission, depositions, affidavits, expert
10 reports, legal briefs or memoranda, and portions of such materials, and information derived therefrom
11 which the Designating Party in good faith believes is highly confidential such that, if disclosed to the
12 Receiving Party, might cause competitive harm to the Designating Party. Information and material that
13 may be subject to this protection includes, but is not limited to, financial statements, proprietary technical
14 and/or research and development data, documents related to intellectual property in development or which
15 is the subject of a non-public application, financial, marketing and other sales data (such as actual or
16 prospective customer lists, actual or prospective vendor lists, purchase prices, and sales pricing), trade
17 secrets, proprietary items or information, and/or information having strategic commercial value pertaining
18 to the Designating Party’s trade or business. Additionally, relevant documents related to an individual’s
19 employment or employment related disclosures shall be made pursuant to a “Attorneys’ Eyes Only”
20 designation to protect the privacy of these individuals.

21 (d) The term “Counsel” shall mean the attorneys of record for any party in this action,
22 their associates and their staff. If any party seeks to add counsel of record or substitute counsel of record,
23 then no “Confidential” or “Attorneys’ Eyes Only” Documents and information shall be discussed to such
24 additional or substitute counsel until they have agreed to this stipulation by executing the attached Exhibit
25 A.

26 (e) The term “Designated In-House Counsel” shall have the meaning ascribed to it in
27 Paragraph 7.

no

1 (f) The term “Designating Party” shall mean a Party or Non-Party that designates
2 information or items that it produces in disclosures or in responses to discovery as “Confidential” or
3 “Attorneys’ Eyes Only.”

4 (g) The term “Documents” shall have the same meaning as the terms “documents and
5 electronically stored information” as used in Rule 34 of the Federal Rules of Civil Procedure.

6 (h) The term “Expert” shall mean a person with specialized knowledge or experience in
7 a matter pertinent to this litigation who has been retained by a Party to serve as an expert witness or as a
8 consultant in this litigation and who, at the time of retention, is not anticipated to become an officer,
9 director, or employee of a Party. Nothing in this Protective Order purports to alter in any way the
10 requirements for offering testimony under Fed. R. Evid. 703, or to define the term “expert” for purposes
11 other than those addressed in this Protective Order.

12 (i) The term “Non-Party” shall mean any natural person, partnership, corporation,
13 association, or other legal entity not named as a Party to this action.

14 (j) The term “Party” shall mean any party to this action, including all of its officers,
15 directors, employees, and consultants retained in the ordinary course of business.

16 (k) The term “Producing Party” shall mean a Party or Non-Party that produces
17 information or other discovery material in this action.

18 (l) The term “Professional Vendors” shall mean persons or entities that provide
19 litigation support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or
20 demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees
21 and subcontractors.

22 (m) The term “Protected Material” shall mean any information or other discovery
23 material that is designated as “Confidential” or “Attorneys’ Eyes Only.”

24 (n) The term “Receiving Party” shall mean a Party that receives information or other
25 discovery material from a Producing Party.

26 2. DESIGNATING PROTECTED MATERIAL.

27 (a) Exercise of Restraint and Care in Designating Material for Protection. Each Party
28 or Non-Party that designates information or items for protection under this Order must take care to limit

1 any such designations. The Designating Party must designate for protection only those parts of material,
2 documents, items, or oral or written communications that qualify under the appropriate standards so that
3 other portions of the material, documents, items, or communications for which protection is not warranted
4 are not swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized designations
5 are prohibited. Designations that are shown to be clearly unjustified or that have been made for an
6 improper purpose (*e.g.*, to unnecessarily encumber or retard the case development process or to impose
7 unnecessary expenses and burdens on other parties) expose the Designating Party to sanctions. If it comes
8 to a Designating Party’s attention that information or items that it designated for protection do not qualify
9 for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the
10 mistaken designation.

11 (b) Manner and Timing of Designations. Except as otherwise provided in this Order or
12 as otherwise stipulated or ordered, discovery material and information that qualify for protection under this
13 Order must be clearly so designated before the material is disclosed or produced. The Designating Party
14 must use reasonable efforts to ensure that the applicable legend appears on each page of each file
15 produced, as permitted by the particular format of a given Document.

16 (c) Materials Subject to Designation. Each party to this litigation may designate any
17 Document, thing, interrogatory answer, admission, deposition testimony, and portions of such materials, or
18 other information which it has provided or which a third-party has provided as “Confidential” and/or
19 “Attorneys’ Eyes Only” in accordance with this Protective Order. The party designating such information
20 as “Confidential” or “Attorneys’ Eyes Only” shall be known as the “Designating Party” and the
21 designation shall be set out thereon. In designating Documents or information as “Confidential,” the
22 Designating Party’s counsel shall make a good faith determination, before applying the designation, that
23 the information warrants protection under Rule 26(c) of the Federal Rules of Civil Procedure. Before
24 designating Documents or information as “Attorneys’ Eyes Only” the Designating Party’s counsel shall
25 make a good faith determination that the information warrants protection under Rule 26(c) of the Federal
26 Rules of Civil Procedure, and also warrants protection from disclosure to the party receiving the
27 Documents or information due to a risk of competitive harm.

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1 (d) Designating Originals or Tangible Items. In the event the Producing Party elects to
2 produce original Documents and things for inspection rather than produce copies of Documents, no
3 marking need be made by the Producing Party in advance of the initial inspection. Thereafter, upon
4 selection of specified Documents for copying by the inspecting party, the Producing Party shall mark the
5 copies of such Documents as may contain protected subject matter with the appropriate confidentiality
6 marking at the time the copies are produced to the inspecting party. Said marking shall not delay the
7 production of the copies. Information obtained by counsel from initial review of Documents, whether in
8 written form or not, shall be maintained as “Confidential” unless such information is produced without a
9 designation of confidentiality, or as otherwise designated by the Producing Party.

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

15 3. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 (a) Timing of Challenges. Any Party or Non-Party may challenge a designation of
17 confidentiality at any time. A Party does not waive its right to challenge a confidentiality designation by
18 electing not to mount a challenge promptly after the original designation is disclosed.

19 (b) Meet and Confer. The Challenging Party shall initiate the dispute resolution process
20 by providing written notice of each designation it is challenging and describing the basis for each
21 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that
22 the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective
23 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by
24 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 5
25 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its
26 belief that the confidentiality designation was not proper and must give the Designating Party an
27 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
28 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed

1 to the next stage of the challenge process only if it has engaged in this meet and confer process first or
2 establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely
3 manner.

4 (c) Judicial Intervention. If the Parties cannot resolve a challenge without court
5 intervention, the Designating Party shall file and serve a motion to retain confidentiality within 14 days of
6 the initial notice of challenge or within 7 days of the parties agreeing that the meet and confer process will
7 not resolve their dispute, whichever is earlier. Any motion seeking relief from the Court must comply
8 with Local Rule 251, including the Joint Statement requirement. Each such motion must be accompanied
9 by a competent declaration affirming that the movant has complied with the meet and confer requirements
10 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion, including
11 the required declaration within 14 days (or 7 days, if applicable), shall automatically waive the
12 confidentiality designation for each challenged designation. In addition, the Challenging Party may file a
13 motion challenging a confidentiality designation at any time if there is good cause for doing so, including a
14 challenge to the designation of a deposition transcript or any portions thereof. Any motion brought
15 pursuant to this provision must be accompanied by a competent declaration affirming that the movant has
16 complied with the meet and confer requirements imposed by the preceding paragraph.

17 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. All
18 parties shall continue to afford the material in question the level of protection to which it is entitled under
19 the Producing Party's designation until the Court rules on the challenge.

20 4. ACCESS TO "CONFIDENTIAL" MATERIALS. All information designated as
21 "Confidential" shall not be disclosed to anyone other than the parties, Counsel, Designated In-House
22 Counsel, the Court and its personnel, court reporters and/or videographers in the course of covering
23 depositions, as well as any experts, consultants, and Professional Vendors retained by any Party or its
24 Counsel. All persons other than Counsel, the Parties, Designated In-House Counsel, the Court, and the
25 Court's personnel in the instant action to whom "Confidential" information is disclosed shall read this
26 Protective Order in advance of such disclosure and agree in writing to be bound by its terms.

1 “Confidential” information subject to this Protective Order shall be used by the party(ies) to whom
2 it is produced solely and exclusively for purposes of the above-captioned litigation unless and until such
3 designation is removed either by agreement of the Parties or by order of the Court.

4 5. ACCESS TO “ATTORNEYS’ EYES ONLY” MATERIALS. All information designated
5 as “Attorneys’ Eyes Only” shall not be disclosed to anyone other than the Court and its personnel,
6 Counsel, and court reporters and/or videographers in the course of covering depositions. Any Party’s
7 experts, consultants, and/or translators retained by Party’s Counsel may receive “Attorneys’ Eyes Only”
8 information *provided* they have agreed to this stipulation by executing Exhibit A pursuant to Paragraph 6
9 below. *However*, the experts, consultants, and translators who may view “Attorneys’ Eyes Only” cannot
10 be employees or independent contractors of either Gallo or Saputo or any of Gallo’s or Saputo’s
11 subsidiaries or affiliated companies.

12 “Attorneys’ Eyes Only” information subject to this Protective Order shall be used by the party(ies)
13 to whom it is produced solely and exclusively for purposes of the above-captioned litigation unless and
14 until such designation is removed either by agreement of the Parties or by order of the Court.

15 6. EXPERTS & CONSULTANTS.

16 (a) Persons Covered By This Provision. The procedure specified under Paragraph 6(b)
17 shall apply to Experts expressly retained by Counsel to assist in the preparation of this litigation for trial,
18 whether or not the Expert is expected to testify at trial or not, as well as any personnel who support such
19 Expert’s work under the Expert’s direction and supervision, and who are necessary for the completion of
20 that work. Disclosures to any such support personnel are to be limited to only those disclosures necessary
21 to assist the Expert.

22 (b) Procedure for Designating Experts & Consultants Under the Protective Order. As a
23 condition precedent to disclosure of any Confidential and/or Attorneys’ Eyes Only materials to an
24 individual described above in Paragraph 6(a) above, at least ten (10) days (as calculated by Fed. R. Civ. P.
25 6) before the contemplated disclosure of the Confidential and/or Attorneys’ Eyes Only information is to be
26 made, Counsel for the Receiving Party shall serve a Notice on the Producing Party identifying such
27 individual by name and including a *curriculum vitae* (“CV”) or equivalent resume disclosing the
28 individual’s employment history, past or present relationship with any of the Parties, all consulting

1 engagements in the past four (4) years, all cases in which the individual has testified in a deposition or a
2 trial in the past four (4) years, and an executed acknowledgment from the individual to whom the
3 disclosure is to be made in the form of Exhibit A attached hereto. If a Producing Party objects to the
4 proposed disclosure to such individual, the Parties shall promptly confer in good faith to resolve the
5 concerns giving rise to the objection. If the Parties are unable to reach agreement regarding such
6 disclosure, the objecting Party must apply to the Court for a protective order no later than ten (10) days (as
7 calculated by Fed. R. Civ. P. 6) after receipt of the executed acknowledgement in the form attached as
8 Exhibit A and CV or resume. The burden shall be on the objecting Party to demonstrate to the Court why
9 such individual should not be permitted to receive Confidential and/or Attorneys' Eyes Only information
10 under the Protective Order. Confidential and/or Attorneys' Eyes Only information shall not be disclosed
11 to such individual pending the Court's resolution of the dispute. The foregoing ten (10) and ten (10) day
12 periods may be extended or shortened by agreement of the Parties or by Order of the Court.

13 7. DESIGNATED IN-HOUSE COUNSEL. As a condition precedent to disclosure of any
14 Confidential materials to a Designated In-House Counsel, at least ten (10) days (as calculated by Fed. R.
15 Civ. P. 6) before the contemplated disclosure of the Confidential information is to be made, Counsel for
16 the Receiving Party shall serve a Notice on the Producing Party identifying such individual by name and
17 title, in addition to providing a description of his/her primary job duties, and including an executed
18 acknowledgment from the individual to whom the disclosure is to be made in the form of Exhibit B
19 attached hereto. If a Producing Party objects to the proposed disclosure to such individual, the Parties
20 shall promptly confer in good faith to resolve the concerns giving rise to the objection. If the Parties are
21 unable to reach agreement regarding such disclosure, the objecting Party must apply to the Court for a
22 protective order no later than ten (10) days (as calculated by Fed. R. Civ. P. 6) after receipt of the executed
23 acknowledgement in the form attached as Exhibit B. The burden shall be on the objecting Party to
24 demonstrate to the Court why such individual should not be permitted to receive Confidential information
25 under the Protective Order. Confidential information shall not be disclosed to such individual pending the
26 Court's resolution of the dispute. The foregoing ten (10) and ten (10) day periods may be extended or
27 shortened by agreement of the Parties or by Order of the Court.

1 8. STORAGE OF PROTECTED INFORMATION BY RECEIVING PARTY. The recipient
2 of any Confidential and/or Attorneys' Eyes Only materials provided under this Protective Order (including
3 copies or excerpts made thereof) shall maintain such information in a secure and safe area, and shall
4 exercise reasonable and proper care with respect to the storage, custody, use, and/or dissemination of such
5 information.

6 9. TREATMENT OF PROTECTED MATERIAL AT DEPOSITIONS IN THIS
7 LITIGATION.

8 (a) Deposition of the Authors and Recipients of Protected Material. With respect to
9 Documents designated as including "Confidential" or "Attorneys' Eyes Only," any person indicated on the
10 face of the Document to be its originator, author, or recipient may be shown the Documents. Additionally,
11 any Document designated as including "Confidential" or "Attorneys' Eyes Only" may be shown to any
12 employee of the Designating Party and/or the party that produced in this litigation the Document so
13 designated during the deposition of that employee if it is reasonably probable that the employee would
14 have access to or knowledge of the information contained in that Document.

15 (b) Exclusion of Certain Persons From Protected Deposition Testimony. Any Party
16 shall have the right to exclude from attendance at a deposition, during such time as the "Confidential" or
17 "Attorneys' Eyes Only" Documents or information is to be disclosed, every individual not entitled under
18 the Protective Order to receipt of the information, excluding the deponent and the court reporter and/or
19 videographer.

20 (c) Procedure for Designating Transcript Sections as Protected Material. Whenever a
21 deposition taken on behalf of any party involves a disclosure of "Confidential" or "Attorneys' Eyes Only"
22 Documents or information of any party, said deposition or portions thereof shall be designated as
23 containing "Confidential" or "Attorneys' Eyes Only" subject to the provisions of this Protective Order at
24 the time the deposition is taken whenever possible; *however*, any Party shall have until ten (10) days after
25 receipt of the deposition transcript within which to designate, in writing, those portions of the transcript it
26 wishes to remain designated as "Confidential" or "Attorneys' Eyes Only," and the right to make such
27 designation shall be waived unless made within the ten (10) day period. During such ten (10) period, the
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1 entirety of the transcript shall be deemed designated “Attorneys’ Eyes Only” to preserve the right of any
2 Party to make a designation of “Confidential” or “Attorneys’ Eyes Only” during that ten (10) day period.

3 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
4 LITIGATION.

5 If a Party is served with a subpoena or a court order issued in another litigation that compels
6 disclosure of any information or items designated in this action as “Confidential” or “Attorneys’ Eyes
7 Only,” that Party must:

8 (a) Promptly notify the Designating Party in writing. Such notification shall include a copy of the
9 subpoena or court order;

10 (b) Promptly notify, in writing, the party who caused the subpoena or order to issue in the other
11 litigation that some or all of the material covered by the subpoena or order is subject to this Protective
12 Order. Such notification shall include a copy of this Stipulated Protective Order; and

13 (c) Cooperate with respect to all reasonable procedures sought to be pursued by the Designating
14 Party whose Protected Material may be affected.

15 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
16 court order shall not produce any information designated in this action as “Confidential” or “Attorneys’
17 Eyes Only” before a determination by the court from which the subpoena or order issued, unless the Party
18 has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense
19 of seeking protection in that court of its confidential material — and nothing in these provisions should be
20 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
21 another court.

22 11. PROTECTED MATERIAL OF A NON-PARTY SOUGHT TO BE PRODUCED IN THIS
23 LITIGATION.

24 (a) Applicability. The terms of this Order are applicable to information produced by a
25 Non-Party in this action and designated as “Confidential” or “Attorneys’ Eyes Only.” Such information
26 produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided
27 by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
28 additional protections.

1 (b) Notice Procedure. In the event that a Party is required, by a valid discovery
2 request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an
3 agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party
4 shall:

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

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

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

11 (c) Disclosure and Remedy. If the Non-Party fails to object or seek a protective order
12 from this Court within 14 days of receiving the above notice and accompanying information, the
13 Receiving Party may produce the Non-Party's confidential information responsive to the discovery
14 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any
15 information in its possession or control that is subject to the confidentiality agreement with the Non-Party
16 before a determination by the Court. Absent a court order to the contrary, the Non-Party shall bear the
17 burden and expense of seeking protection in this Court of its Protected Material.

18 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL. If a Receiving Party
19 learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any
20 circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately
21 (1) notify in writing the Designating Party of the unauthorized disclosures, (2) use its best efforts to
22 retrieve all unauthorized copies of the Protected Material, (3) inform the person or persons to whom
23 unauthorized disclosures were made of all the terms of this Order, and (4) request such person or persons
24 to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

25 13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
26 MATERIAL. When a Producing Party gives notice to Receiving Parties that certain inadvertently
27 produced material is subject to a claim of privilege or other protection, the obligations of the Receiving
28 Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to

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

6 14. FINAL DISPOSITION.

7 (a) Upon Termination of this Action. Within sixty (60) days after a final disposition of
8 the action, which shall include entry of final judgment and the exhaustion of all rights of appeal, or a
9 dismissal of the action, a Receiving Party shall either return to the Producing Party or destroy all
10 Documents and things or transcripts of depositions, together with all copies thereof, which have been
11 designated “Confidential” or “Attorneys’ Eyes Only.” Notwithstanding this provision, Counsel are
12 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
13 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and
14 consultant and expert work product, even if such materials contain Protected Material. Any such archival
15 copies that contain or constitute Protected Material remain subject to this Protective Order.

16 (b) Continuing Obligations. The termination of proceedings in this action shall not
17 thereafter relieve a person to whom “Confidential” or “Attorneys’ Eyes Only” was disclosed from the
18 obligation of maintaining the confidentiality of such information in accordance with the provisions of this
19 Protective Order for a period of three (3) years, *except* that the continuing nature of the obligations in this
20 provision shall not apply to the Court or its personnel.

21 15. LIMITATIONS.

22 (a) Attorneys’ Right to Counsel Clients. Nothing in this Protective Order shall bar or
23 otherwise restrict any attorney herein from rendering legal advice to the attorney’s Party-client with
24 respect to this action, and in the course thereof, relying upon an examination of “Confidential” and/or
25 “Attorneys’ Eyes Only” Documents or information; *provided, however*, that in rendering such legal advice
26 and in otherwise communicating with the Party-client, the attorney shall not disclose any “Confidential” or
27 “Attorneys’ Eyes Only” Documents or information to anyone not authorized to receive such Documents,
28 things, materials, or information pursuant to the terms of this Protective Order.

1 (b) Filing Protected Materials. Any Documents produced in discovery, answers to
2 interrogatories, deposition transcripts, or other Documents that are filed with the Court for any purpose
3 and that incorporate information that is designated “Confidential” or “Attorneys’ Eyes Only” shall be filed
4 in compliance with Local Rule 141.

5 (c) Reservation of Rights. Nothing in this Protective Order, nor the taking of any action
6 in accordance with the provisions of this Protective Order, nor the failure to object thereto, shall be
7 construed as a waiver or admission of any claim or defense of this action. Moreover, the failure to
8 designate information in accordance with this Order and the failure to object to a designation at a given
9 time shall not preclude the filing of a motion at a later date seeking to impose such designation or
10 challenging the propriety thereof. The entry of this Order shall not be construed as a waiver of any right to
11 object to the furnishing of information in response to discovery or to object to a requested inspection of
12 Documents or things, and, except as expressly provided, shall not relieve any party of the obligation of
13 producing information in the course of discovery. This Order shall not in any way limit what the
14 Producing Party may do with its own Documents or information.

15 (d) Meet and Confer In Advance of Trial. Subject to Paragraph 15(b) and the Federal
16 Rules of Evidence, Documents, material, and information designated “Confidential” or “Attorneys’ Eyes
17 Only” may be offered in evidence at any pre-trial hearing in the instant action upon one (1) day’s written
18 notice of the intention to do so or, if that is not possible, such shorter notice as the circumstances permit.
19 In the instant Action, any party may move the Court orally or in writing for an order that the evidence be
20 received *in camera* at a hearing or under other conditions to prevent unnecessary disclosure. The party
21 seeking to use Documents, material, and information designated “Confidential” or “Attorneys’ Eyes Only”
22 must request that the portion of the proceeding where use is made be conducted so as to exclude persons
23 not qualified to receive such Documents, material, and information.

24 The parties shall meet and confer concerning the use and protection of Documents, material, and
25 information designated “Confidential” or “Attorneys’ Eyes Only” in open court at any pre-trial hearing or
26 trial.

1 Prior to the pretrial conference, the parties shall meet and confer concerning appropriate methods
2 for dealing with Documents, material, and information designated “Confidential” or “Attorneys’ Eyes
3 Only” at trial.

4 16. MISCELLANEOUS.

5 (a) Right to Seek Modification. The parties may, by written stipulation, provide for
6 exceptions to this Protective Order, and any Party may seek an order of this Court modifying or
7 interpreting this Protective Order. No stipulation amending this Protective Order will have the force or
8 effect of a Court order absent the Court’s written approval of it.

9 (b) Right to Further Relief. Nothing in the foregoing provisions of this Protective Order
10 shall be deemed to preclude any party from seeking and obtaining, on an appropriate showing, additional
11 protection with respect to the confidentiality or relief from this Protective Order regarding matter
12 designated as containing “Confidential” or “Attorneys’ Eyes Only.”

13 (c) Right to Assert Other Objections. By stipulating to entry of this Protective Order, no
14 Party waives any right it otherwise would have to object to disclosing or producing any information on any
15 ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on
16 any ground to use in evidence of any of the material covered by this Protective Order.

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STIPULATION

IT IS HEREBY STIPULATED by and among the parties, through their respective counsel that the foregoing Stipulated Protective Order may be entered in this action subject to the consent of this Court.

Dated: March 29, 2017

**McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLC**

By: /s/ Shane G. Smith
Shane G. Smith

*Attorneys for Plaintiff and Counter-Defendant
Gallo Cattle Company d/b/a Joseph Gallo Farms*

Dated: March 29, 2017

LEWIS & LLEWELLYN LLP

By: /s/ Evangeline A.Z. Burbidge
Evangeline A.Z. Burbidge

*Attorneys for Defendant and Counter-Plaintiff
Saputo Dairy Foods USA, LLC*

-oOo-

SIGNATURE ATTESTATION

I hereby attest that concurrence has been obtained from Evangeline A.Z. Burbidge, counsel for Saputo Dairy Foods USA, LLC, as indicated by a “conformed” signature (/s/) within this e-filed document.

/s/ Shane G. Smith
Shane G. Smith

1 Order

2 The Court has reviewed the above stipulated protective order and adopts it. The Court modifies
3 paragraph 3(c) to describe the procedure for seeking leave of court to file a motion challenging a
4 confidentiality designation: Counsel must receive permission from the Court following an informal
5 telephone conference. A party wishing to schedule such a conference should contact chambers to receive
6 available dates. The Court will schedule the conference as soon as possible, taking into consideration the
7 urgency of the issue. Prior to the conference, the Court will require the parties to submit letter briefs of no
8 more than 3 pages in length to chambers for review. Telephonic conferences will not be on the record and
9 the Court will not issue a formal ruling at that time. Nevertheless, the Court will attempt to provide
10 guidance to the parties to narrow or dispose of the dispute. If no resolution is reached, the Court will
11 consider whether the filing of a formal motion is appropriate.

12
13 IT IS SO ORDERED.

14 Dated: March 31, 2017

15 /s/ Eric P. Gray
16 UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 **ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [type or print full name] of
4 _____ [print or type full
5 address], hereby declare under penalty of perjury that I have read and am fully familiar with the terms of
6 the Protective Order entered in *Gallo Cattle Co. v. Saputo Dairy Foods USA, LLC*, Case No. 1:16-cv-
7 01673-EPG, and hereby agree to comply with and be bound by the terms and conditions of said Order
8 unless and until modified by further Order of the Court.

9 I acknowledge that I am about to receive Confidential Information and/or Attorneys' Eyes Only
10 Information in said action, and hereby certify my understanding that such information is being provided to
11 me pursuant to the terms and restrictions of the Protective Order. I understand that such information, and
12 any copies I make of any material containing "Confidential" and/or "Attorneys' Eyes Only" information,
13 or any notes or other records that may be made regarding any such information, shall not be disclosed to
14 others, except other persons that are identified in or have agreed to comply with and be bound by the terms
15 of the Protective Order. I hereby consent to the jurisdiction of said Court for purposes of enforcing this
16 Order, even if such enforcement proceedings occur after termination of this action.

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

23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed Name: _____

27
28 Signature: _____

1 **EXHIBIT B**

2 **ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND [DESIGNATED IN-HOUSE COUNSEL]**

3 I, _____ [type or print full name] of
4 _____ [print or type full
5 address], hereby declare under penalty of perjury that I have read and am fully familiar with the terms of
6 the Protective Order entered in *Gallo Cattle Co. v. Saputo Dairy Foods USA, LLC*, Case No. 1:16-cv-
7 01673-EPG, and hereby agree to comply with and be bound by the terms and conditions of said Order
8 unless and until modified by further Order of the Court.

9 I acknowledge that I am about to receive Confidential Information in said action, and hereby
10 certify my understanding that such information is being provided to me pursuant to the terms and
11 restrictions of the Protective Order. I understand that such information, and any copies I make of any
12 material containing “Confidential” information, or any notes or other records that may be made regarding
13 any such information, shall not be disclosed to others, except other persons that are identified in or have
14 agreed to comply with and be bound by the terms of the Protective Order. I hereby consent to the
15 jurisdiction of said Court for purposes of enforcing this Order, even if such enforcement proceedings occur
16 after termination of this action.

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

23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed Name: _____

27
28 Signature: _____