

1 Howard A. Sagaser, State Bar No. 72492  
2 William M. Woolman, State Bar No. 145124  
3 Ian B. Wieland, State Bar No. 285721  
4 **SAGASER, WATKINS & WIELAND, PC**  
5 7550 North Palm Avenue, Suite 100  
6 Fresno, California 93711  
7 Telephone: (559) 421-7000  
8 Facsimile: (559) 473-1483

9 Attorneys for Defendants, Dias & Fragoso, Inc., D&F Agricultural  
10 Enterprises, Inc., Gabriel M. Dias and John L. Fragoso

11 John E. Hill, State Bar No. 45338  
12 johnhill@hill-law-offices.com  
13 Enrique Martínez, State Bar No. 206884  
14 enriquemartinez@hill-law-offices.com  
15 **LAW OFFICES OF JOHN E. HILL**  
16 333 Hegenberger Road, Ste. 500  
17 Oakland, CA 94621  
18 Telephone: (510) 588-1000  
19 Facsimile: (510) 632-1445

20 *Attorneys for Plaintiffs & Putative Classes*

21 UNITED STATES DISTRICT COURT FOR THE  
22 EASTERN DISTRICT OF CALIFORNIA

23 ROSALIE CUEVAS, ADOLFO GOMEZ-  
24 MORENO, REYNALDO TOLANO, and  
25 AGUSTIN AMBRIZ, on behalf of themselves  
26 and all others similarly situated,

27 Plaintiff(s),

28 v.

29 DIAS & FRAGOSO, INC., a California  
30 Corporation; D & F AGRICULTURAL  
31 ENTERPRISES, INC., a California  
32 Corporation; GABRIEL M. DIAS; and JOHN  
33 L. FRAGOSO

34 Defendant(s).

Case No.: 1:17-cv-00357-LJO-BAM

**CLASS ACTION**

**STIPULATED PROTECTIVE ORDER  
RE: CONFIDENTIAL INFORMATION**

1        1.        PURPOSES AND LIMITATIONS

2        Disclosure and discovery activity in this action are likely to involve production of confidential,  
3        proprietary, or private information for which special protection from public disclosure and from  
4        use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the  
5        parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order.  
6        The parties acknowledge that this Order does not confer blanket protections on all disclosures or  
7        responses to discovery and that the protection it affords from public disclosure and use extends  
8        only to the limited information or items that are entitled to confidential treatment under the  
9        applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below,  
10       that this Stipulated Protective Order does not entitle them to file confidential information under  
11       seal; Local Rule 141 sets forth the procedures that must be followed and the standards that will be  
12       applied when a party seeks permission from the court to file material under seal.

13       2.        DEFINITIONS

14           2.1        Challenging Party: a Party or Non-Party that challenges the designation of  
15       information or items under this Order.

16           2.2        “CONFIDENTIAL” Information or Items: information (regardless of how it is  
17       generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
18       of Civil Procedure 26(c).

19           2.3        Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
20       well as their support staff).

21           2.4        Designating Party: a Party or Non-Party that designates information or items that it  
22       produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

23           2.5        Disclosure or Discovery Material: all items or information, regardless of the  
24       medium or manner in which it is generated, stored, or maintained (including, among other things,  
25       testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
26       responses to discovery in this matter.

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1           2.6    Expert: a person with specialized knowledge or experience in a matter pertinent to  
2 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
3 consultant in this action.

4           2.7    House Counsel: attorneys who are employees of a party to this action. House  
5 Counsel does not include Outside Counsel of Record or any other outside counsel.

6           2.8    Non-Party: any natural person, partnership, corporation, association, or other legal  
7 entity not named as a Party to this action.

8           2.9    Outside Counsel of Record: attorneys who are not employees of a party to this  
9 action but are retained to represent or advise a party to this action and have appeared in this action  
10 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

11          2.10 Party: any party to this action, including all of its officers, directors, employees,  
12 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

13          2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
14 Material in this action.

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

19          2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
20 “CONFIDENTIAL.”

21          2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
22 Producing Party.

23    3.    SCOPE

24    The protections conferred by this Stipulation and Order cover not only Protected Material (as  
25 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
26 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
27 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
28    However, the protections conferred by this Stipulation and Order do not cover the following

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

8 4. DURATION

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

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
18 or Non-Party that designates information or items for protection under this Order must take care to  
19 limit any such designation to specific material that qualifies under the appropriate standards. The  
20 Designating Party must designate for protection only those parts of material, documents, items, or  
21 oral or written communications that qualify – so that other portions of the material, documents,  
22 items, or communications for which protection is not warranted are not swept unjustifiably within  
23 the ambit of this Order.

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

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

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
5 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
6 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
7 designated before the material is disclosed or produced.

8 Designation in conformity with this Order requires:

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

16 A Party or Non-Party that makes original documents or materials available  
17 for inspection need not designate them for protection until after the  
18 inspecting Party has indicated which material it would like copied and  
19 produced. During the inspection and before the designation, all of the  
20 material made available for inspection shall be deemed  
21 “CONFIDENTIAL.” After the inspecting Party has identified the  
22 documents it wants copied and produced, the Producing Party must  
23 determine which documents, or portions thereof, qualify for protection  
24 under this Order. Then, before producing the specified documents, the  
25 Producing Party must affix the “CONFIDENTIAL” legend to each page  
26 that contains Protected Material. If only a portion or portions of the material  
27 on a page qualifies for protection, the Producing Party also must clearly  
28 identify the protected portion(s) (e.g., by making appropriate markings in

- 1 the margins).
- 2 (b) for testimony given in deposition or in other pretrial or trial proceedings,
- 3 that the Designating Party identify on the record, before the close of the
- 4 deposition, hearing, or other proceeding, all protected testimony.
- 5 (c) for information produced in some form other than documentary and for any
- 6 other tangible items, that the Producing Party affix in a prominent place on
- 7 the exterior of the container or containers in which the information or item
- 8 is stored the legend “CONFIDENTIAL.” If only a portion or portions of the
- 9 information or item warrant protection, the Producing Party, to the extent
- 10 practicable, shall identify the protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to

12 designate qualified information or items does not, standing alone, waive the Designating Party’s

13 right to secure protection under this Order for such material. Upon timely correction of a

14 designation, the Receiving Party must make reasonable efforts to assure that the material is treated

15 in accordance with the provisions of this Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of

18 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality

19 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic

20 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to

21 challenge a confidentiality designation by electing not to mount a challenge promptly after the

22 original designation is disclosed.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution

24 process by providing written notice of each designation it is challenging and describing the basis

25 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written

26 notice must recite that the challenge to confidentiality is being made in accordance with this

27 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in

28 good faith and must begin the process by conferring directly (in voice to voice dialogue; other

1 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
2 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
3 designation was not proper and must give the Designating Party an opportunity to review the  
4 designated material, to reconsider the circumstances, and, if no change in designation is offered, to  
5 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of  
6 the challenge process only if it has engaged in this meet and confer process first or establishes that  
7 the Designating Party is unwilling to participate in the meet and confer process in a timely  
8 manner.

9       6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
10 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
11 Local Rule 251 within 21 days of the initial notice of challenge or within 14 days of the parties  
12 agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. Each  
13 such motion must be accompanied by a competent declaration affirming that the movant has  
14 complied with the meet and confer requirements imposed in the preceding paragraph. Failure by  
15 the Designating Party to make such a motion including the required declaration within 21 days  
16 shall automatically waive the confidentiality designation for each challenged designation. In  
17 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
18 time if there is good cause for doing so, including a challenge to the designation of a deposition  
19 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
20 accompanied by a competent declaration affirming that the movant has complied with the meet  
21 and confer requirements imposed by the preceding paragraph.

22       The burden of persuasion in any such challenge proceeding shall be on the Designating  
23 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose  
24 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
25 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
26 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
27 material in question the level of protection to which it is entitled under the Producing Party's  
28 designation until the court rules on the challenge.

1     7.     ACCESS TO AND USE OF PROTECTED MATERIAL

2             7.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
3 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
4 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
5 the categories of persons and under the conditions described in this Order. When the litigation has  
6 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
7 DISPOSITION).

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

10            7.2     Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
11 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
12 information or item designated “CONFIDENTIAL” only to:

- 13             (a)     the Receiving Party’s Outside Counsel of Record in this action, as well as  
14 employees of said Outside Counsel of Record to whom it is reasonably  
15 necessary to disclose the information for this litigation and who have signed  
16 the “Acknowledgment and Agreement to Be Bound” that is attached hereto  
17 as Exhibit A;
- 18             (b)     the officers, directors, and employees (including House Counsel) of the  
19 Receiving Party to whom disclosure is reasonably necessary for this  
20 litigation and who have signed the “Acknowledgment and Agreement to Be  
21 Bound” (Exhibit A);
- 22             (c)     Experts (as defined in this Order) of the Receiving Party to whom  
23 disclosure is reasonably necessary for this litigation and who have signed  
24 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 25             (d)     the court and its personnel;
- 26             (e)     those present during the trial of this matter, including all pre-trial and  
27 motion hearings, and during presentation/argument of this evidence unless  
28 the Court orders otherwise;



- 1 (f) court reporters and their staff, professional jury or trial consultants, mock
- 2 jurors, and Professional Vendors to whom disclosure is reasonably
- 3 necessary for this litigation and who have signed the “Acknowledgment and
- 4 Agreement to Be Bound” (Exhibit A);
- 5 (g) during their depositions, witnesses in the action to whom disclosure is
- 6 reasonably necessary and who have signed the “Acknowledgment and
- 7 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
- 8 Designating Party or ordered by the court. Pages of transcribed deposition
- 9 testimony or exhibits to depositions that reveal Protected Material must be
- 10 separately bound by the court reporter and may not be disclosed to anyone
- 11 except as permitted under this Stipulated Protective Order.
- 12 (h) the author or recipient of a document containing the information or a
- 13 custodian or other person who otherwise possessed or knew the
- 14 information.

15 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
16 LITIGATION

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

- 20 (a) promptly notify in writing the Designating Party. Such notification shall include a
- 21 copy of the subpoena or court order;
- 22 (b) promptly notify in writing the party who caused the subpoena or order to issue in
- 23 the other litigation that some or all of the material covered by the subpoena or order is subject to
- 24 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
- 25 and
- 26 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
- 27 Designating Party whose Protected Material may be affected.

28 If the Designating Party timely seeks a protective order, the Party served with the subpoena

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

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

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

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

- 17 (1) promptly notify in writing the Requesting Party and the Non-Party that
- 18 some or all of the information requested is subject to a confidentiality
- 19 agreement with a Non-Party;
- 20 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
- 21 Order in this litigation, the relevant discovery request(s), and a reasonably
- 22 specific description of the information requested; and
- 23 (3) make the information requested available for inspection by the Non-Party.

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

1 by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and  
2 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 Material  
5 to any person or in any circumstance not authorized under this Stipulated Protective Order, the  
6 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized  
7 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)  
8 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
9 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to  
10 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 produced  
14 material is subject to a claim of privilege or other protection, the obligations of the Receiving  
15 Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not  
16 intended to modify whatever procedure may be established in an e-discovery order that provides  
17 for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and  
18 (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or  
19 information covered by the attorney-client privilege or work product protection, the parties may  
20 incorporate their agreement in the stipulated protective order submitted to the court.

21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
23 seek its modification by the court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
25 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
26 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
27 Party waives any right to object on any ground to use in evidence of any of the material covered  
28 by this Protective Order.

1           12.3 Filing Protected Material. Without written permission from the Designating Party  
2 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
3 the public record in this action any Protected Material. A Party that seeks to file under seal any  
4 Protected Material must comply with Local Rule 141. Protected Material may only be filed under  
5 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.  
6 Pursuant to Local Rule 141, a sealing order will issue only upon a request establishing that the  
7 Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
8 protection under the law. If a Receiving Party's request to file Protected Material under seal  
9 pursuant to Local Rule 141(b) is denied by the court, then the Receiving Party may file the  
10 information in the public record pursuant to Local Rule 141(a) unless otherwise instructed by the  
11 court.

12           13.     FINAL DISPOSITION

13           Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving  
14 Party must return all Protected Material to the Producing Party or destroy such material. As used  
15 in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
16 summaries, and any other format reproducing or capturing any of the Protected Material. Whether  
17 the Protected Material is returned or destroyed, the Receiving Party must submit a written  
18 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)  
19 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected  
20 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained  
21 any copies, abstracts, compilations, summaries or any other format reproducing or capturing any  
22 of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
23 copy of all 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 Order  
27 as set forth in Section 4 (DURATION).

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1 14. FILING PROTECTED MATERIAL

2 The parties understand that only a Court Order can seal documents filed with the Court pursuant to  
3 a Noticed Motion to Seal. The parties agree to utilize telephonic conferencing procedures to  
4 attempt to agree to a Joint or Unopposed Motion to Seal Documents which a party desires to file  
5 under seal. The parties agree to cooperate with each other in a good faith attempt to file the Joint  
6 or Unopposed Motion to seal Confidential Information. To the extent that filing under seal is not  
7 permitted by the Court, no party will file any Confidential Information with the Court without  
8 providing at least 5 days advance notice to the other parties.

9  
10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11  
12  
13 Date: June 8, 2017

LAW OFFICES OF JOHN E. HILL

14 By: /s/ Enrique Martinez  
15 Enrique Martínez  
16 *Attorneys for Plaintiffs*

17 Date: June 8, 2017

SAGASER, WATKINS & WIELAND, P.C.

18 By: /s/ William M. Woolman  
19 William M. Woolman  
20 *Attorneys for Defendants*

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**ORDER**

The parties' stipulated protective order filed on June 16, 2017 (Doc. 11) complies with the requirements of Local Rules 141 and 141.1. Accordingly, IT IS HEREBY ORDERED that the parties' Stipulated Protective Order is APPROVED in its entirety.

IT IS SO ORDERED.

Dated: June 21, 2017

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE