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8 and UPL NA INC.

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14 Attorneys for Plaintiff
15 ANTHONY VINEYARDS

16 UNITED STATES DISTRICT COURT

17 EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION

18 ANTHONY VINEYARDS,) CASE NO. 1:20-CV-00506-NONE-JLT
19 Plaintiff,) ~~[PROPOSED]~~ STIPULATED
20 vs.) PROTECTIVE ORDER
21 NATURAL PLANT) [Local Rules 141.1, 143]
PROTECTION; UPL NA INC.;) (Doc. 21)
22 ARYSTA LIFESCIENCE NORTH)
23 AMERICA, LLC and DOES 1-25,)
Inclusive,)
24 Defendants.)

25 WHEREAS, Rule 26(c) of the Federal Rules of Civil Procedure provides
26 for the issuance of protective orders limiting the disclosure of discovered
27 information in appropriate circumstances;

28 WHEREAS, Plaintiff ANTHONY VINEYARDS (“Plaintiff”) and

1 Defendants ARYSTA LIFESCIENCE NORTH AMERICA, LLC and UPL NA
2 INC. have agreed to the entry of a protective order limiting the disclosure of
3 discovered information between them in appropriate circumstances;

4 WHEREAS, this action is likely to involve confidential and/or private
5 information of third parties; trade secrets; and other valuable research,
6 development, commercial, financial, technical and/or proprietary information for
7 which special protection from public disclosure and from use for any purpose
8 other than prosecution of this action is warranted. Such confidential and
9 proprietary materials and information consist of, among other things,
10 confidential business or financial information, information regarding confidential
11 business practices, or other confidential research, development, or commercial
12 information, information otherwise generally unavailable to the public, or which
13 may be privileged or otherwise protected from disclosure under state or federal
14 statutes, court rules, case decisions, or common law. This Order allows the
15 parties to this action to designate such documents produced in discovery as
16 confidential and subject to an enhanced level of protection from disclosure. This
17 Order strikes an appropriate balance between the parties' interests in prosecuting
18 and defending this case, the judicial interest in the efficiency and integrity of the
19 discovery process, and the public interest in access to information. The parties
20 also acknowledge, as set forth in paragraph 15, below, that this Agreed
21 Protective Order creates no entitlement to file confidential information under
22 seal; and further that Local Rule 141 sets forth the procedures that must be
23 followed when a party seeks permission from the court to file material under
24 seal.

25 Therefore, the Court finds good cause for the entry of this Stipulated
26 Protective Order under Federal Rule of Civil Procedure 26(c) and hereby
27 ORDERS that all documents and other information produced in this case by the
28 parties shall be produced subject to the following:

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1. When used in this Order, the following words shall have the following meanings:

“Documents” means (1) all written, recorded or graphic matter whatsoever and information produced on computer disks or tapes, including all written materials, and (2) any copies, reproductions or summaries of the foregoing, including microfilmed, imaged or electronic copies.

“Discovery Materials” means (1) documents or other information produced by any party or third person, whether pursuant to the applicable civil rules, by subpoena or by agreement, other than documents that are publicly available; (2) interrogatory or other discovery responses; and (3) deposition testimony of any party or third person taken in this action, exhibits thereto and/or any videos or transcripts thereof, whether in written or computer format, and all contents of the foregoing.

“Producing Party” means any party or third person producing discovery materials, whether pursuant to the applicable civil rules, by subpoena, or by agreement.

“Receiving Party” means any party receiving discovery materials from a producing party, whether pursuant to the applicable civil rules, by subpoena, or by agreement.

“Disclose” (and any variant thereof) means to show, give, make available, reproduce, or communicate any discovery materials, or any part or content thereof.

“Confidential Discovery Materials” means any discovery materials that are designated in good faith as “Confidential” by any party or third person. Confidential Discovery Materials are those materials that constitute or contain trade secrets or other confidential research, development, or commercial information which may include proprietary information such as agricultural studies, confidential materials submitted to a public agency, costs, pricing, budgets, customer lists and data, distributor lists and agreements, personnel files, and other private and personal information relating to employees; product formulations, manufacturing procedures and standards, financial data, identity of suppliers, identity of manufacturers, trade secrets, consumer data, confidential research, business plans, strategies and data, marketing plans and strategies, and any other confidential or proprietary information.

“Attorneys of Record” means attorneys of record for any of the parties to this action, members of the firm of the attorneys of record for the parties, and any in-house attorneys who are employed by the parties.

2. Any Confidential Discovery Materials produced by the producing party and designated as such shall be used solely for the purposes of this

1 litigation and shall not be used for any other legal action, except by agreement of the
2 parties or subject to a Court Order.

3 3. Disclosure of Confidential Discovery Materials other than in
4 accordance with the terms of this Order may subject the disclosing party to such
5 sanctions and remedies as the Court may deem appropriate.

6 4. Subject to the terms, conditions, and restrictions of this Order,
7 Confidential Discovery Materials marked “Confidential” may be disclosed only
8 to the following persons and only to the extent such persons have a legitimate
9 need to know the particular Confidential Discovery Materials disclosed to them:

- 10 (a) Persons employed by the Court and the jury empaneled in connection
11 with the handling of this action;
- 12 (b) Attorneys of Record;
- 13 (c) Employees of the Attorneys of Record working under the direct
14 supervision of such Attorneys of Record;
- 15 (d) The parties, including current employees, officers, partners or
16 directors;
- 17 (e) Former employees, officers, partners or directors of the parties who
18 are potential witnesses or deponents;
- 19 (f) Outside experts or consultants provided that prior to any disclosure
20 the Attorney of Record who retains the outside expert or consultant
21 obtains such expert’s or consultant’s agreement to the non-disclosure
22 agreement described in paragraph 6 below;
- 23 (g) Certified shorthand reporters and videotape operators for the
24 purposes of recording the testimony of deposition witnesses and
25 preparing a written or videotaped record of testimony;
- 26 (h) Independent copying services, independent computer consulting and
27 support services, independent translators, independent exhibit
28 makers, and other independent litigation support services retained for
purposes of this litigation; and
- (i) Any other person who is designated by written stipulation of the
parties to have access to Confidential Discovery Materials, or by

1 order of the Court after notice to all parties upon a showing of good
2 cause why such person shall be so designated and opposing parties
3 have had an opportunity to be heard in opposition thereto.

4 5. Before disclosing any Confidential Discovery Materials to any
5 person specified in paragraph 4(e) or 4(f), above, disclosing counsel shall advise
6 said persons of this Order and said person must agree in writing to the non-
7 disclosure agreement attached hereto as Exhibit A, which states that such persons
8 agree (1) to be bound by the terms hereof, (2) to maintain Confidential Discovery
9 Materials in confidence, and (3) not to disclose Confidential Discovery Materials
10 to anyone other than in accordance with the terms of this Order. All deposition
11 witnesses to whom Confidential Discovery Materials are disclosed at deposition
12 must agree in writing to the non-disclosure agreement attached hereto as Exhibit
13 A, and are hereby ordered (1) to maintain Confidential Discovery Materials in
14 confidence and (2) not to disclose Confidential Discovery Materials to anyone
15 other than in accordance with the terms of this Order. Each party shall maintain
16 a file containing such certifications and, upon request, forward those
17 certifications to the producing party within ten (10) days of such request. In no
18 event shall any disclosure of Confidential Discovery Materials be made to
19 competitors of Defendants, including any person who, upon reasonable and good
20 faith inquiry could be determined to be, an employee of a competitor of
21 Defendants, irrespective of whether such person is retained as an expert or
22 consultant by counsel for Plaintiff.

23 6. Any party desiring to designate particular Discovery Materials as
24 Confidential Discovery Materials must place upon such materials in a
25 conspicuous manner so as to not obliterate, cover, or interfere with the reading of
26 such material a marking which reads: "CONFIDENTIAL - SUBJECT TO
27 PROTECTIVE ORDER."

28 7. Discovery Materials disclosed at a deposition may be designated by a

1 party as Confidential Discovery Materials by indicating on the record at the
2 deposition that the specific part of the testimony and/or any exhibits marked for
3 identification is confidential, and is subject to the provisions of the Order. In
4 such situations, the questions and answers designated as confidential may be
5 transcribed separately from the remainder of the deposition. Counsel for any
6 party may exclude from the room during any portion of a deposition any person
7 not entitled under this Order to receive Confidential Discovery Materials while
8 such materials are being disclosed and/or discussed. A party may also designate
9 discovery materials disclosed at such depositions as confidential by notifying all
10 parties in writing, within fifteen (15) days of receipt of the transcript by the
11 attorneys of record for the designating party, of the specific pages and lines of
12 the transcript which contain Confidential Discovery Materials. Each party shall
13 attach a copy of such written statement to the face of the transcript and each copy
14 thereof in his or her possession, custody or control. During such fifteen (15) day
15 period, all Discovery Materials shall be treated as Confidential Discovery
16 Materials.

17 8. By making any such Confidential Discovery Materials available
18 during the course of this litigation, the producing party does not waive any trade
19 secret or other confidential protection that might otherwise be afforded over
20 those materials. Furthermore, by designating any Discovery Materials
21 “confidential,” the parties do not acknowledge that any such Discovery Materials
22 are relevant or discoverable in this action. This Order shall not constitute a
23 waiver of any right to seek discovery of, or alternatively to resist discovery of,
24 any material in this action.

25 9. Inadvertent failure to designate Discovery Materials as confidential
26 at the time of production may be remedied by supplemental written notice. If
27 such notice is given, the identified materials shall thereafter be fully subject to
28 this Order as if they had initially been designated as Confidential Discovery

1 Materials, provided that there shall be no sanction for any use or disclosure of
2 such material prior to designation. The inadvertent disclosure by the producing
3 party of Confidential Discovery Materials, regardless of whether such materials
4 were so designated at the time of disclosure, shall not be deemed a waiver, in
5 whole or in part, of a party's claim of confidentiality, either as to the specific
6 discovery materials disclosed or as to any other Discovery Materials relating
7 thereto or on the same or related subject matter.

8 10. If a receiving party desires to disclose any part of any Confidential
9 Discovery Materials in any manner not in accordance with the terms of this
10 Order, the party seeking to make such disclosure shall obtain the written
11 agreement of the producing party to so proceed or, in the absence of such
12 agreement, shall seek the approval of the Court by way of a motion filed with the
13 Court.

14 11. This Order is without prejudice to any party's right to assert the
15 attorney-client, work-product, or other privileges or doctrines, or to any party's
16 right to contest the designation of Confidential Discovery Materials. A party
17 shall not be obligated to challenge the designation of any particular Discovery
18 Materials as being confidential at the time such designation is made and failure
19 to do so shall not preclude a subsequent challenge thereto. In the event that any
20 party to this litigation disagrees at any point in these proceedings with the
21 designation by the producing party of Discovery Materials as being confidential,
22 the parties shall first try to dispose of such dispute in good faith on an informal
23 basis by conferring directly with counsel for the producing party. The
24 challenging party must explain the basis for its belief that the designation was
25 not proper and must give the producing party an opportunity to review the
26 designated material, to reconsider the circumstances, and, if no change in
27 designation is offered, to explain the basis for the designation. If the dispute
28 cannot be resolved, the objecting party may seek appropriate relief from the

1 court. Any objections to such a designation, when made, shall be in writing and
2 shall specify the nature of any objection. Any designated Confidential Discovery
3 Materials shall remain as such under the terms of this Order until the Court
4 makes a determination otherwise.

5 12. Nothing in this Order restricts or affects the rights of the producing
6 party to use or disclose any Confidential Discovery Materials produced by such
7 party. Any such use or disclosure of Confidential Discovery Materials by the
8 producing party shall not be deemed a waiver of the terms of this Order.
9 Nothing in this Order, or any proceeding undertaken pursuant hereto, shall be
10 deemed to have the effect of a waiver by any Party of, or otherwise deemed to
11 alter the confidentiality or non-confidentiality of, any information. Nor shall
12 compliance with this Order operate as an admission as to the admissibility of any
13 information.

14 13. All Discovery Materials provided by non-parties may be made, by
15 separate written agreement, specifically subject to the terms of this Order. Such
16 nonparties and/or the parties may designate Discovery Materials as confidential
17 in accordance with this Order. Any designation by such non-parties and/or the
18 parties shall have the same force and effect as if made pursuant to the terms of
19 this Order. The provisions of paragraph 12 relating to a challenge on the
20 assertion of confidential status shall apply to Discovery Materials designated
21 confidential by nonparties.

22 14. Without written permission from the designating party or a court
23 order secured after appropriate notice to all interested persons, a party may not
24 file in the public record in this action any Confidential Discovery Materials. In
25 the event disclosure of sealed materials is sought, no portion of the materials thus
26 sealed shall be released except upon notice to the producing party made by the
27 party or non-party seeking disclosure, proof of which shall be made to the Court,
28 and after a full opportunity for hearing upon the matter.

1 15. Confidential Discovery Material shall not be filed with the Court
2 except when required in connection with matters pending before the Court. If
3 filed they shall be filed in a sealed envelope, clearly marked:

4 **THIS DOCUMENT CONTAINS CONFIDENTIAL**
5 **INFORMATION COVERED BY A PROTECTIVE ORDER.**

6 Applicable law, including Civil Local Rule 141, governs the filing of documents
7 under seal with the District Court. Confidential Discovery Material and other
8 papers filed provisionally under seal shall be available to the Court, to counsel of
9 record, and to all other persons entitled to receive the confidential information
10 contained therein under the terms of this Order.

11 16. Confidential Discovery Material may be introduced by any party at
12 the time of trial or at any court hearing, provided it is submitted under seal
13 initially by the party seeking to use Confidential Discovery Material. At the time
14 that such material is introduced, the Court shall issue such Order as it deems
15 appropriate for maintaining the confidentiality of such material.

16 17. If a receiving party learns that, by inadvertence or otherwise, it has
17 disclosed any Confidential Discovery Materials to any person or in any
18 circumstance not authorized under this Protective Order, the receiving party must
19 immediately (a) notify the producing party in writing of the unauthorized
20 disclosures, (b) use its best efforts to retrieve all copies of the Confidential
21 Discovery Materials, (c) inform the person or persons to whom the unauthorized
22 disclosures were made of all the terms of this Protective Order, and (d) request
23 such person or persons to execute the non-disclosure agreement attached hereto
24 as Exhibit A.

25 18. If a receiving party is served with a subpoena or an order issued in
26 other litigation that would compel disclosure of any Confidential Discovery
27 Materials, the receiving party must so notify the producing party immediately, in
28 writing, and no more than three court days after receiving the subpoena or order.

1 Such notification must include a copy of the subpoena or court order. The
2 receiving party must also immediately, in writing, inform the party who caused
3 the subpoena or order to issue in the other litigation that some or all the material
4 covered by the subpoena or order is the subject of this Protective Order. In
5 addition, the receiving party must deliver a copy of this Protective Order
6 promptly to the party in the other action who caused the subpoena or order to
7 issue. The purpose of imposing these duties is to alert the interested parties to
8 the existence of this Protective Order and to afford the producing party an
9 opportunity to try to protect its confidentiality interests in the court from which
10 the subpoena or order issued. The producing party shall bear the burdens and the
11 expenses of seeking protection of its confidential material in the other court –
12 and nothing in these provisions should be construed as authorizing or
13 encouraging the receiving party to disobey a lawful directive from another court.
14 If the producing party timely seeks a protective order in the other court, the
15 receiving party served with the subpoena or court order shall not produce any
16 Confidential Discovery Materials before a determination by the court from which
17 the subpoena or order issued, unless the receiving party has obtained permission
18 from the producing party.

19 19. The Parties shall confer in good faith prior to trial in an attempt to
20 devise protective procedures to be applicable at trial that are satisfactory to the
21 Court.

22 20. At the conclusion of this litigation, including any appeals from any
23 judgment or order entered by the Court and any retrial, at the request of the
24 producing party, the receiving party shall forward all executed non-disclosure
25 agreements to the producing party within thirty (30) days, retrieve all
26 Confidential Discovery Materials from testifying experts, consulting experts, and
27 any other person or entity to whom the receiving party has disclosed Confidential
28 Discovery Materials, and, at its option, within thirty (30) days either: (1) destroy

1 all received Confidential Discovery Materials by such party and shall certify in
2 writing that such destruction has occurred; or (2) return all received Confidential
3 Discovery Materials to the producing party and certify in writing that all such
4 discovery materials have been returned. If the producing party is not notified of
5 which option the discovering party has chosen, it will be presumed that option
6 (1) was chosen. Upon written request of the producing party, the discovering
7 party shall confirm that one of the foregoing options has been implemented.
8 However, notwithstanding any other provision of this paragraph, all Confidential
9 Discovery Materials shall remain subject to this Order.

10 21. This Order shall be without prejudice to the right of the parties or any
11 third person to request additional protection under applicable laws for discovery
12 requests hereafter served by any party or to seek modification of this Order upon
13 a showing of good cause.

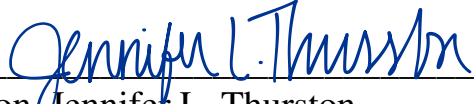
14 22. The terms of this Order shall not be construed as any limitation upon
15 the right of any party to offer into evidence any documents, response, or
16 information designated as confidential.

17 23. This Order shall be binding upon the parties hereto, counsel for the
18 parties, and upon the parties' and their counsels' successors, executors, personal
19 representatives, administrators, heirs, legal representatives, assigns, subsidiaries,
20 divisions, employees, agents, independent contractors, and other persons or
21 organizations over which they have control. The parties, their counsel and
22 employees of such counsel, and their expert witnesses, consultants and
23 representatives retained in connection with this action each expressly stipulates
24 to the personal jurisdiction of this Court for purposes of any proceeding brought
25 by a party to this action to enforce this Order.

26 24. This Court retains jurisdiction over the parties, counsel for the
27 parties, and all persons, firms, corporations or organizations to whom this Order
28 applies for purposes of enforcement of this Order following the conclusion of

1 this action. However, submission of this Order does not constitute a waiver of
2 any claim or defense, including any personal jurisdiction defense.

3 Entered this 13th day of April, 2021.

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5 
6 Hon Jennifer L. Thurston
7 United States Magistrate Judge

8 STIPULATED AND AGREED TO:

9 Dated: April 13, 2021

GORDON REES SCULLY
MANSUKHANI, LLP

10
11 By: /s/ Matthew P. Nugent
12 P. Gerhardt Zacher
13 Thomas J. Tobin
14 Matthew P. Nugent
15 Attorneys for Defendants
16 ARYSTA LIFESCIENCE
17 NORTH AMERICA, LLC and
18 UPL NA INC.

16 Dated: April 13, 2021

THE LAW OFFICE OF RALPH B.
WEGIS

17
18 By: /s/ Edward Gordon
19 (as authorized on April 7, 2021)
20 Ralph B. Wegis
21 Edward Gordon
22 Attorneys for Plaintiff
23 ANTHONY VINEYARDS
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27
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EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY VINEYARDS,	}	CASE NO. 1:20-CV-00506-NONE-JLT
	}	
Plaintiff,	}	
	}	
vs.	}	
	}	
NATURAL PLANT PROTECTION;	}	
UPL NA INC.; ARYSTA	}	
LIFESCIENCE NORTH AMERICA,	}	
LLC and DOES 1-25,	}	
Inclusive, et al.,	}	
	}	
Defendants.)	

I, _____, hereby certify my understanding that Confidential Discovery Materials are being provided to me pursuant to the terms and restrictions of an Order entered by the United States District Court for the Eastern District of California in connection with the action entitled *Anthony Vineyards v. Natural Plant Protection, et al.*, Case No. 1:20-CV-00506-NONE-JLT

I further certify that I have been provided a copy of and have read the Order. I understand that the Order prohibits me from either using or disclosing Confidential Discovery Materials for any purpose other than as set forth in and pursuant to the Order entered by the Court. I hereby agree to subject myself to the jurisdiction of the Court for purposes of enforcement of the terms and restrictions of the Order. I understand that violation of the Order is punishable as contempt of court.

Date: _____

Signature: _____

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