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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

THE MORNING STAR PACKING
COMPANY, et al.,

Plaintiff,

v.

SK FOODS, L.P., et al.,

Defendants.

CASE NO. 2:09-cv-00208-KJM-EFB

STIPULATED PROTECTIVE ORDER

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1. **PURPOSES AND LIMITATIONS.**

Disclosure and discovery activity in this action may involve production of trade secrets or other confidential research, development, or commercial information, within the meaning of Fed. R. Civ. P. 26(c), or other private or competitively sensitive information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation would be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to confidential treatment. The parties further acknowledge, as set forth in Section 10, below, that this Stipulated Protective Order creates no entitlement to file confidential information under seal. General Local Rule 141 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the Court to file material under seal, and is hereby incorporated by reference.

2. **DEFINITIONS.**

2.1 Party: any party to this action including all of its officers, directors, and employees.

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1 2.2 Tomatoes Actions: refers collectively to (1) *Morning Star Packing Company, et al. v.*
2 *SK Foods, L.P., et al*, No. 09-cv-00208-KJM-EFB (E.D. Cal.), (2) *L’Ottavo Ristorante, et al. v.*
3 *Ingomar Packing Company, et al.*, No. 09-cv-01945-KJM-EFB (E.D. Cal.), and (3) *United States v.*
4 *Salyer*, No. 10-cr-00061-LKK-DAD (E.D. Cal.).

5 2.3 Disclosure or Discovery Material: all items or information, regardless of the medium
6 or manner generated, stored, or maintained (including, among other things, documents, testimony,
7 transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery
8 in this matter.

9 2.4 Confidential Information or Items: information (regardless of how generated, stored or
10 maintained) or tangible things that qualify for protection under standards developed under
11 Fed.R.Civ.P. 26(c).

12 2.5 Highly Confidential Information or Items: extremely sensitive Confidential
13 Information or Items whose disclosure to another Party or non-party would create a substantial risk of
14 injury that could not be avoided by less restrictive means.

15 2.6 Receiving Party: a Party that receives Disclosure or Discovery Material from a
16 Producing Party.

17 2.7 Producing Party: a Party or non-party that produces Disclosure or Discovery Material
18 in this action.

19 2.8 Designating Party: a Party or non-party that designates information or items that it
20 produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential.”

21 2.9 Protected Material: any Disclosure or Discovery Material that is designated as
22 “Confidential” or as “Highly Confidential.”

23 2.10 Outside Counsel: attorneys, along with their paralegals, and other support personnel,
24 who are not employees of a Party but who are retained to represent or advise a Party in this action.

25 2.11 In House Legal Personnel: attorneys and other personnel employed by a Party to
26 perform legal functions who are responsible for overseeing this litigation for the Party.

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1 2.12 Counsel (without qualifier): Outside Counsel and In House Legal Personnel (as well
2 as their support staffs, including but not limited to attorneys, paralegals, secretaries, law clerks, and
3 investigators).

4 2.13 Expert and/or Consultant: a person with specialized knowledge or experience in a
5 matter pertinent to the litigation, along with his or her employees and support personnel, who has
6 been retained by a Party or its Counsel to serve solely as an expert witness or as a consultant in the
7 Tomatoes Actions and not for any other purpose, and who is not currently an employee of or
8 consultant to a Party, its Counsel or a competitor of a Party, nor has been an employee of or
9 consultant to a Party, its Counsel or a competitor of a Party within four years of the date of entry of
10 this Order, and who, at the time of retention, is not anticipated to become an employee of or
11 consultant to a Party, its Counsel or a competitor of a Party except to serve as an expert witness or
12 consultant in the Tomatoes Actions. This definition includes a professional jury or trial consultant
13 retained in connection with this litigation.

14 2.14 Professional Vendors: persons or entities that provide litigation support services (*e.g.*,
15 photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing,
16 retrieving data in any form or medium; etc.) and their employees and subcontractors.

17 3. **SCOPE.**

18 The protections conferred by this Stipulated Protective Order cover not only Protected
19 Material (as defined above), but also any information copied or extracted therefrom, as well as all
20 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations
21 by Parties or Counsel in settings that might reveal Protected Material.

22 4. **DURATION.**

23 The confidentiality obligations imposed by this Order shall remain in effect until the
24 Designating Party agrees otherwise in writing or this Court orders otherwise.

25 5. **DESIGNATING PROTECTED MATERIAL.**

26 5.1 Manner and Timing of Designations. Except as otherwise provided in this Order (*see*,
27 *e.g.*, section 5.1(b), below), or as otherwise stipulated or ordered, material that qualifies for protection
28 under this Order must be clearly so designated before the material is disclosed or produced.

1 Notwithstanding the preceding sentence, should a Producing Party discover that it produced material
2 that was not designated as Protected Material or that it produced material that was designated as
3 Protected Material but had designated that Protected Material in the incorrect category of Protected
4 Material, the Producing Party may notify all Parties, in writing, of the error and identifying (by bates
5 number or other individually identifiable information) the affected documents and their new
6 designation or re-designation. Thereafter, the material so designated or re-designated will be treated
7 as Protected Material. Promptly after providing such notice, the Producing Party shall provide re-
8 labeled copies of the material to each Receiving Party reflecting the change in designation. The
9 Receiving Party will replace the incorrectly designated material with the newly designated materials
10 and will destroy the incorrectly designated materials.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (apart from transcripts of depositions or
13 other pretrial or trial proceedings), that the Producing Party affix the legend
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” on each page that contains protected
15 material.

16 (b) for testimony given in deposition, that a Party, or a non-party that sponsors,
17 offers, gives, or elicits the testimony, designate any portion of the testimony as
18 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” either on the record before the
19 deposition is concluded, or in writing on or before the later of (i) fourteen days after the final
20 transcript is received or (ii) the date by which any review by the witness and corrections to the
21 transcript are to be completed under Fed. R. Civ. P. 30(e). Only those portions of the
22 testimony that are designated for protection in accordance with the preceding sentence shall
23 be covered by the provisions of this Stipulated Protective Order. The entire testimony shall
24 be deemed to have been designated Highly Confidential until the time within which the
25 transcript may be designated has elapsed. If testimony is not designated within the prescribed
26 time period, then such testimony shall not be deemed Confidential or Highly Confidential
27 except as ordered by the Court.

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1 Transcript pages containing Protected Material must be separately bound by the court
2 reporter, who must affix to each such page the legend “CONFIDENTIAL” or “HIGHLY
3 CONFIDENTIAL,” as instructed by the Party or nonparty sponsoring, offering, giving or
4 eliciting the witness’ testimony.

5 (c) for information produced in electronic or video format, and for any other
6 tangible items, that the Producing Party affix in a prominent place on the exterior of the
7 container or containers in which the information or item is stored the legend
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

9 5.2 Inadvertent Failures to Designate. If corrected, an inadvertent failure to designate
10 qualified information or items as “Confidential” or “Highly Confidential” does not, standing alone,
11 waive the Designating Party’s right to secure protection under this Order for such material. If
12 material is re-designated as “Confidential” or “Highly Confidential” after the material was initially
13 produced, the Receiving Party, upon notification of the designation must make reasonable efforts to
14 assure that the material is treated in accordance with the provisions of this Order.

15 5.3 Increasing the Designation of Information or Items Produced by Other Parties or Non-
16 Parties. A Party may increase the designation (*i.e.*, change any Disclosure or Discovery Material
17 produced without a designation to a designation of “CONFIDENTIAL” or “HIGHLY
18 CONFIDENTIAL” or designate any Disclosure or Discovery Material produced as
19 “CONFIDENTIAL” to a designation of “HIGHLY CONFIDENTIAL”) of any Discovery Material
20 produced by any other Party or non-Party provided that said Discovery Material contains the upward
21 Designating Party’s own Confidential or Highly Confidential Information. Any such increase in the
22 designation of a document shall be made within 90 days of the date of its production, unless good
23 cause is shown for a later increase in the designation.

24 Increasing a designation shall be accomplished by providing written notice to all Parties
25 identifying (by bates number or other individually identifiable information) the Disclosure or
26 Discovery Material whose designation is to be increased. Promptly after providing such notice, the
27 upward Designating Party shall provide re-labeled copies of the material to each Receiving Party
28 reflecting the change in designation. The Receiving Party will replace the incorrectly designated

1 material with the newly designated materials and will destroy the incorrectly designated materials.
2 Any Party may object to the increased designation of Disclosure or Discovery Materials pursuant to
3 the procedures set forth in paragraph 6 regarding challenging designations. The upward Designating
4 Party shall bear the burden of establishing the basis for the increased designation.

5 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS.**

6 6.1 Timing of Challenges. A Party does not waive its right to challenge a confidentiality
7 designation by electing not to mount a challenge promptly after the original designation is disclosed.

8 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's
9 confidentiality designation must do so in good faith and must begin the process by notifying the
10 Designating Party in writing, by telephone or in person of its challenge and identify the challenged
11 material, then conferring directly in voice to voice dialogue (other forms of communication are not
12 sufficient) with counsel for the Designating Party. The Parties must then meet and confer in good
13 faith. Each Party must explain the basis for its respective position about the propriety of the
14 challenged confidentiality designations. The parties shall have fourteen (14) days from the initial
15 notification of a challenge to complete this meet and confer process.

16 6.3 Judicial Intervention. In any judicial proceeding challenging a confidentiality
17 designation, the burden of persuasion with respect to the propriety of the confidentiality designation
18 shall remain upon the Designating Party. If the parties are not able to resolve a dispute about a
19 confidentiality designation within the time provided in paragraph 6.2, above, the parties shall, within
20 fourteen (14) days thereafter, prepare and present to the Court (or Special Master if one has been
21 appointed) a joint filing that identifies the challenged material and sets forth the respective positions
22 of the parties about the propriety of the challenged confidentiality designations. Until the ruling on
23 the dispute becomes final, all Receiving Parties shall continue to afford the material in question the
24 level of protection to which it is entitled under the Designating Party's designation. In the event that
25 the final ruling is that the challenged material is not confidential or that its designation should be
26 changed the Designating Party shall reproduce copies of all materials with their designations removed
27 or changed in accordance with the ruling within thirty (30) days at the expense of the Designating
28 Party.

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 a Producing Party only in connection with this action for prosecuting, defending, or
4 attempting to settle this action. Such Protected Material may be disclosed only to the categories of
5 persons and under the conditions described in this Order. When the litigation has been terminated, a
6 Receiving Party must comply with the provisions of section 11, below (FINAL DISPOSITION).

7 Protected Material must be stored and maintained by a Receiving Party at a location and in a
8 secure manner that ensures that access is limited to the persons authorized under this Order. For
9 purposes of this Order, a secure website, or other internet-based document depository with adequate
10 security, shall be deemed a secure location.

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

- 14 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
15 employees of said counsel to whom it is reasonably necessary to disclose the information for
16 this litigation;
- 17 (b) the Parties, including any current or former officers, directors, and employees
18 of Parties to whom disclosure is reasonably necessary for this litigation and who have signed
19 the “Agreement To Be Bound by Protective Order” (Exhibit A);
- 20 (c) Experts and/or Consultants with respect to each of whom (1) disclosure is
21 reasonably necessary for this litigation, and (2) an “Agreement To Be Bound by Protective
22 Order” (Exhibit A) has been signed;
- 23 (d) the Court and its personnel;
- 24 (e) stenographers, their staffs, and professional vendors to whom disclosure is
25 reasonably necessary for this litigation and who have signed the “Agreement To Be Bound by
26 Protective Order” (Exhibit A);
- 27 (f) the author, addressees, or recipients of the document, or any other natural
28 person who would have likely reviewed such document during his or her employment as a

1 result of the substantive nature of his or her employment position, or who is specifically
2 identified in the document, or whose conduct is purported to be specifically identified in the
3 document;

4 (g) witnesses in the action to whom disclosure is reasonably necessary for this
5 litigation and who have signed the “Agreement To Be Bound by Protective Order”
6 (Exhibit A); provided that, Confidential Information may be disclosed to a witness during
7 their deposition, but only if they have executed the “Agreement to Be Bound by Protective
8 Order” (Exhibit A), which shall be made an exhibit to the deposition transcript, or have
9 agreed on the record to keep the information confidential and not to use it for any purpose, or
10 have been ordered to do so; and provided further that, pages of transcribed deposition
11 testimony or exhibits to depositions that reveal Confidential Information must be marked
12 “Confidential” and separately bound by the court reporter and not included in the main
13 deposition transcript and exhibit binder, and may not be disclosed to anyone except as
14 permitted under this Stipulated Protective Order;

15 (h) participants in a focus group or mock jury who have agreed in writing to keep
16 the information confidential and not to use it for any purpose other than the focus group,
17 mock jury, or similar exercise, provided that such participants shall not be permitted to retain
18 any copies of any Protected Material or to retain any notes of any Protected Material; and

19 (i) any other person to whom the Designating Party agrees in writing or on the
20 record, and any other person to whom the Court compels access to the Confidential
21 Information.

22 7.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items. Unless otherwise
23 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may
24 disclose any information or item designated “HIGHLY CONFIDENTIAL” only to:

25 (a) the Receiving Party’s Outside Counsel of record in this action, as well as
26 employees of said counsel to whom it is reasonably necessary to disclose the information for
27 this litigation;

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1 (b) Experts and/or Consultants with respect to each of whom (1) disclosure is
2 reasonably necessary for this litigation, and (2) an “Agreement To Be Bound by Protective
3 Order” (Exhibit A) has been signed;

4 (c) the Court and its personnel;

5 (d) stenographers, their staffs, and professional vendors to whom disclosure is
6 reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
7 Protective Order” (Exhibit A);

8 (e) the author, addressees or recipients of the document, or any other natural
9 person who would have likely reviewed such document during his or her employment as a
10 result of the substantive nature of his or her employment position, or who is specifically
11 identified in the document, or whose conduct is purported to be specifically identified in the
12 document;

13 (f) participants in a focus group or mock jury who have agreed in writing to keep
14 the information confidential and not to use it for any purpose other than the focus group,
15 mock jury, or similar exercise, provided that such participants shall not be permitted to retain
16 any copies of any Protected Material or to retain any notes of any Protected Material; and

17 (g) any other person to whom the Designating Party agrees in writing or on the
18 record and any other person to whom the Court compels access to the Highly Confidential
19 Information.

20 7.4 Retention of Exhibit A. Outside Counsel for the Party that obtains the signed
21 “Agreements To Be Bound by Protective Order” (Exhibit A), as required above, shall retain them for
22 one year following the final termination of this action including any appeals, and shall make them
23 available to other Parties upon good cause shown.

24 7.5 Retention of Protected Material. Persons who have been shown Protected Material
25 pursuant to Section 7.2(b), (f), or (g), or Section 7.3(e) or (f) shall not retain copies of such Protected
26 Material.

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1 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION.**

3 If a Receiving Party is served with a discovery request, subpoena or an order issued in other
4 litigation that would compel disclosure of any information or items designated in this action as
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL,” the Receiving Party must so notify the
6 Designating Party, in writing (by fax or electronic mail, if possible), along with a copy of the
7 discovery request, subpoena or order, as soon as reasonably practicable.

8 The Receiving Party also must immediately inform the party who caused the discovery
9 request, subpoena or order to issue in the other litigation that some or all the material covered by the
10 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
11 deliver a copy of this Stipulated Protective Order promptly to the party in the other action that caused
12 the discovery request, subpoena or order to issue.

13 The purpose of imposing these duties is to alert the interested parties to the existence of this
14 Stipulated Protective Order and to afford the Designating Party in this case an opportunity to try to
15 protect its confidentiality interest in the court from which the discovery request, subpoena or order is
16 issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that
17 court of its confidential or highly confidential material. Nothing in these provisions should be
18 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
19 from another court.

20 9. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

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

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1 **10. FILING PROTECTED MATERIAL.**

2 Without written permission from the Designating Party or a court order secured after
3 appropriate notice to all interested persons, a Party may not file in the public record in this action any
4 Protected Material. A Party that seeks to file under seal any Protected Material must comply with
5 General Local Rule 141.

6 **11. FINAL DISPOSITION.**

7 11.1 Unless otherwise ordered or agreed in writing by the Producing Party, within thirty
8 days after the final termination of this action, including any appeals, each Receiving Party must either
9 destroy all Protected Material (except the material described in section 11.2. below) or return it to the
10 Producing Party. As used in this subdivision, "Protected Material" includes all copies, abstracts,
11 compilations, summaries or any other form of reproducing or capturing any of the Protected Material.
12 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written
13 certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by
14 the thirty-day (30) deadline that: (i) identifies (by category, where appropriate) all the Protected
15 Material that was returned and all the Protected Material that was destroyed; and (ii) affirms that,
16 except for the material described in section 11.2. below, the Receiving Party has not retained any
17 copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the
18 Protected Material.

19 11.2 Nothing in this Order requires, and this Order shall not be construed to require, any
20 Counsel to produce, return or destroy their own attorney work product, or the work product of their
21 co-counsel. Following the final termination of this action Counsel shall be entitled to retain an
22 archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or
23 attorney work product, even if such materials contain Protected Material. Any such archival copies
24 that contain or constitute Protected Material remain subject to this Protective Order as set forth in
25 Section 4 (DURATION), above.

26 **12. INADVERTENTLY PRODUCED DOCUMENTS.**

27 If a Party at any time notifies any other Party that it inadvertently produced documents,
28 testimony, information, and/or things that are protected from disclosure under the attorney-client

1 privilege, work product doctrine, and/or any other applicable privilege or immunity from disclosure,
2 or the Receiving Party discovers such inadvertent production, the inadvertent production shall not be
3 deemed a waiver of the applicable privilege or protection. The Receiving Party shall immediately
4 return all copies of such documents, testimony, information and/or things to the inadvertently
5 producing Party and shall not use such items for any purpose until further order of the Court. In all
6 events, such return must occur within three (3) business days of receipt of notice or discovery of the
7 inadvertent production. The return of any discovery item to the inadvertently producing Party shall
8 not in any way preclude the Receiving Party from moving the Court for a ruling that the document or
9 thing was never privileged.

10 **13. ATTORNEY RENDERING ADVICE**

11 Nothing in this Protective Order will bar or otherwise restrict an attorney from rendering
12 advice to his or her client with respect to this matter or from relying upon or generally referring to
13 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” Disclosure or Discovery Material in rendering
14 such advice; provided however, that in rendering such advice or in otherwise communicating with his
15 or her client, the attorney shall not reveal or disclose the specific content thereof if such disclosure is
16 not otherwise permitted under this Protective Order.

17 **14. HEARINGS AND TRIAL**

18 The terms of this Protective Order shall govern in all circumstances except for presentations
19 of evidence and argument in court (e.g., during hearings, status conferences, and trial). The parties
20 shall meet and confer in advance of such proceedings and seek the guidance of the Court as to
21 appropriate procedures to govern such proceedings.

22 **15. MISCELLANEOUS.**

23 15.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek
24 its modification by the Court in the future.

25 15.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order
26 no Party waives any right it otherwise would have to object to disclosing or producing any
27 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
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1 Party waives any right to object on any ground to use in evidence of any of the material covered by
2 this Protective Order.

3 **IT IS SO STIPULATED.**

4 DATED: October 9, 2013

By: /s/ James Kachmar
Dale C. Campbell
James Kachmar
WEINTRAUB TOBIN CHEDIAK COLEMAN
GRODIN LAW CORPORATION
400 Capitol Mall, 11th Floor
Sacramento, CA 95814
Telephone: (916) 558-6000
Facsimile: (916) 446-1611
dcampbell@weintraub.com
jkachmar@weintraub.com

*Attorneys for Plaintiffs The Morning Star Packing
Company, Liberty Packing Company, LLC, California
Fruit & Tomato Kitchens, LLC, and The Morning Star
Company*

13 DATED: October 9, 2013

By: /s/ Stephen Zovickian
Stephen Zovickian
BINGHAM MCCUTCHEN, LLP
Three Embarcadero Center
San Francisco, CA 94111-4067
Telephone: (415) 393-2000
Facsimile: (415) 393-2286
Stephen.zovickian@bingham.com

Attorneys for Defendant Ingomar Packing Company

20 DATED: October 18, 2013

By: /s/George A. Nicoud III
George A. Nicoud III
GIBSON DUNN & CRUTCHER, LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105-2933
Telephone: (415) 393-8200
Facsimile: (415) 393-8306
tnicoud@gibsondunn.com

Attorneys for Defendant Los Gatos Tomato Products

1 DATED: October 18, 2013

By: _____/s/Miles Ehrlich
Miles Ehrlich
RAMSEY & EHRLICH LLP
803 Hearst Avenue
Berkeley, CA 94710
Telephone: (510) 548-3600
Facsimile: (510) 291-3060
miles@ramsey-ehrllich.com

Attorneys for Defendant Greg Pruett

7 DATED: October 18, 2013

By: _____/s/William Farmer
William Farmer
COLLETTE ERICKSON FARMER &
O'NEILL LLP
235 Pine Street, Suite 1300
San Francisco, CA 94104
Telephone: (415) 788-4646
Facsimile: (415) 788-6929
wfarmer@collette.com

Attorneys for Defendant Stuart Woolf

14 DATED: October 18, 2013

By: _____/s/James P. Mayo
James P. Mayo
SEGAL & KIRBY LLP
770 L. Street, Suite 1440
Sacramento, CA 95814-3396
Telephone: (916) 446-0828
Facsimile: (916) 446-6003
jmayo@segalandkirby.com

Attorneys for Defendant Scott Salyer

21 **IT IS SO ORDERED.**

22 DATED: October 23, 2013.


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print full name], of

_____ [print or type full address], declare

under penalty of perjury under the laws of the United States of America that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Eastern District of California, Sacramento Division, in the case of *The Morning Star Packing Company, et al. v. SK Foods, et al.*, Case No. 2:09-cv-00208-KJM-EFB.

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

Date: _____

City and State (or Country) where sworn and signed: _____

Printed name: _____

Signature: _____