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9 USA WASTE OF CALIFORNIA, INC. and
10 STEVE CAMERON

11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA

13 CALIFORNIA SPORTFISHING PROTECTION
14 ALLIANCE, a non-profit corporation,

15 Plaintiff,

16 vs.

17 USA WASTE OF CALIFORNIA, INC., et al.,

18 Defendants.

Case No.: 2:11-CV-02663-WBS-KJN

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER**

19 **I. PURPOSES AND LIMITATIONS**

20
21 Disclosure and discovery activity in this action are likely to involve production of
22 confidential, proprietary, financial or private information for which special protection from public
23 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
24 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
25 Protective Order. The parties acknowledge that this Order does not confer blanket protections on all
26 disclosures or responses to discovery and that the protection it affords from public disclosure and use
27 extends only to the limited information or items that are entitled to confidential treatment under the
28 applicable legal principles. The parties further acknowledge, as set forth in Section 13.3, below, that

1 this Stipulated Protective Order does not entitle them to file confidential information under seal;
2 Civil Local Rule 141 sets forth the procedures that must be followed and the standards that will be
3 applied when a party seeks permission from the court to file material under seal. Pursuant to Civil
4 Local Rule 141.1(c), the information requested therein is set forth in Section 2.2 and 2.3 below.

5 **II. DEFINITIONS**

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

9 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
10 generated, stored or maintained) or tangible things that constitute commercially sensitive,
11 proprietary, financial or trade secret information and qualify for protection under Federal Rule of
12 Civil Procedure 26(c) including but not limited to proprietary manuals, proprietary training
13 materials, documents reflecting proprietary databases and documents reflecting financial
14 information. Any information or items designated as CONFIDENTIAL pursuant to this section need
15 protection so that information that a party has created on its own for its own purposes or a party’s
16 sensitive financial information are not put forth in the public domain. The need for protection of this
17 type of information or items should be addressed by a court order so that the court may enforce
18 provisions of this protective order and find a violator in contempt if necessary.

19 2.3 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” Information or Items:
20 information (regardless of how it is generated, stored or maintained) or tangible things that constitute
21 commercially sensitive, proprietary, financial or trade secret information and qualify for protection
22 under Federal Rule of Civil Procedure 26(c) including but not limited to proprietary manuals,
23 proprietary training materials, documents reflecting proprietary databases and documents reflecting
24 financial information. Any information or items designated as CONFIDENTIAL – ATTORNEYS’
25 EYES ONLY pursuant to this section need protection so that information that a party has created on
26 its own for its own purposes or a party’s sensitive financial information are not put forth in the
27 public domain. The need for protection of this type of information or items should be addressed by a
28

1 court order so that the court may enforce provisions of this protective order and find a violator in
2 contempt if necessary.

3 2.4 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
4 as their support staff).

5 2.5 Designating Party: a Party or Non-Party that designates information or items that it
6 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “CONFIDENTIAL—
7 ATTORNEYS’ EYES ONLY.”

8 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium
9 or manner in which it is generated, stored, or maintained (including, among other things, testimony,
10 transcripts, and tangible things), that are produced or generated in disclosures or responses to
11 discovery in this matter.

12 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
13 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
14 consultant in this action.

15 2.8 House Counsel: attorneys who are employees of a party to this action. House
16 Counsel does not include Outside Counsel of Record or any other outside counsel.

17 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
18 entity not named as a Party to this action.

19 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this action
20 but are retained to represent or advise a party to this action and have appeared in this action on
21 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

22 2.11 Party: any party to this action, including all of its officers, directors, employees,
23 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

24 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
25 Material in this action.

26 2.13 Professional Vendors: persons or entities that provide litigation support services
27 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,
28 storing, or retrieving data in any form or medium) and their employees and subcontractors.

1 **V. DESIGNATING PROTECTED MATERIAL**

2
3 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or
4 Non-Party that designates information or items for protection under this Order must take care to
5 limit any such designation to specific material that qualifies under the appropriate standards. The
6 Designating Party must designate for protection only those parts of material, documents, items, or
7 oral or written communications that qualify – so that other portions of the material, documents,
8 items, or communications for which protection is not warranted are not swept unjustifiably within
9 the ambit of this Order.

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

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
14 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
15 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
16 designated before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
19 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
20 legend “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” to each page
21 that contains protected material. If only a portion or portions of the material on a page qualifies for
22 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
23 appropriate markings in the margins).

24 A Party or Non-Party that makes original documents or materials available for inspection
25 need not designate them for protection until after the inspecting Party has indicated which material it
26 would like copied and produced. During the inspection and before the designation, all of the
27 material made available for inspection shall be deemed “CONFIDENTIAL—ATTORNEYS’ EYES
28 ONLY.” After the inspecting Party has identified the documents it wants copied and produced, the

1 Producing Party must determine which documents, or portions thereof, qualify for protection under
2 this Order. Then, before producing the specified documents, the Producing Party must affix the
3 “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” legend to each page
4 that contains Protected Material. If only a portion or portions of the material on a page qualifies for
5 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
6 appropriate markings in the margins).

7 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
8 Designating Party identify on the record, before the close of the deposition, hearing, or other
9 proceeding, all protected testimony and may request the preparation of a separate transcript of such
10 material. In addition, a Designating Party may designate in writing, within twenty (20) days after
11 receipt of discovery responses or a transcript, that specific pages of the transcript or specific
12 discovery responses be treated as “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’
13 EYES ONLY.”

14 (c) for information produced in some form other than documentary and for any other
15 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
16 containers in which the information or item is stored the legend “CONFIDENTIAL” or
17 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” If only a portion or portions of the
18 information or item warrant protection, the Producing Party, to the extent practicable, shall identify
19 the protected portion(s).

20 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified
21 information or items does not, standing alone, waive the Designating Party’s right to secure
22 protection under this Order for such material. Upon correction of a designation, the Receiving Party
23 must make reasonable efforts to assure that the material is treated in accordance with the provisions
24 of this Order.

25 VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26
27 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
28 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality

1 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
2 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a
3 confidentiality designation by electing not to mount a challenge promptly after the original
4 designation is disclosed.

5 6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s
6 confidentiality designation must do so in good faith and must begin the process by conferring
7 directly with counsel for the Designating Party. In conferring, the challenging Party must explain
8 the basis for its belief that the confidentiality designation was not proper and must give the
9 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
10 and, if no change in designation is offered, to explain the basis for the chosen designation. A
11 challenging Party may proceed to the next stage of the challenge process only if it has engaged in
12 this meet and confer process first.

13 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
14 designation after considering the justification offered by the Designating Party may file and serve a
15 motion under Civil Local Rule 230 **or 251 as appropriate** (and in compliance with Civil Local Rule
16 141, if applicable) that identifies the challenged material and sets forth in detail the basis for the
17 challenge. Each such motion must be accompanied by a competent declaration that affirms that the
18 movant has complied with the meet and confer requirements imposed in the preceding paragraph and
19 that sets forth with specificity the justification for the confidentiality designation that was given by
20 the Designating Party in the meet and confer dialogue.

21 The burden of persuasion in any such challenge proceeding shall be on the Designating
22 Party. Accordingly, in making or opposing any motion relating to the designation of confidential
23 information, the party seeking to maintain a document as confidential shall bear the burden of
24 showing specific prejudice or harm will result if no protective order is granted. Until the Court rules
25 on the challenge, all parties shall continue to afford the material in question the level of protection to
26 which it is entitled under the Producing Party’s designation.

1 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
2 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
3 deposition testimony or exhibits to depositions that reveal Protected Material must be separately
4 bound by the court reporter and may not be disclosed to anyone except as permitted under this
5 Stipulated Protective Order; and,

6 (h) the author or recipient of a document containing the information or a custodian or other
7 person who otherwise possessed or knew the information.

8 **VIII Disclosure of “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” Information or**
9 **Items.**

10
11 In the absence of prior written permission from the Designating Party or an order by the
12 Court, documents designated as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” shall not be
13 disclosed to any person other than Outside Counsel of Record, House Counsel or the Court, Court
14 personnel or court reporters.

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

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

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

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

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

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

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

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

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

21 (2) promptly provide the Non-Party with a copy of the Stipulated
22 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
23 description of the information requested; and

24 (3) make the information requested available for inspection by the Non-
25 Party.

26 (c) If the Non-Party fails to object or seek a protective order from this court within 14
27 days of receiving the notice and accompanying information, the Receiving Party may produce the
28 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely

1 seeks a protective order, the Receiving Party shall not produce any information in its possession or
2 control that is subject to the confidentiality agreement with the Non-Party before a determination by
3 the court.¹ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
4 seeking protection in this court of its Protected Material.

5
6 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

7
8 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
9 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,
10 the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
11 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c)
12 inform the person or persons to whom unauthorized disclosures were made of all the terms of this
13 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to
14 Be Bound” that is attached hereto as Exhibit A.

15 **XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
16 **MATERIAL**

17
18 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
19 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
20 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
21 modify whatever procedure may be established in an e-discovery order that provides for production
22 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
23 parties reach an agreement on the effect of disclosure of a communication or information covered by
24 the attorney-client privilege or work product protection, the parties may incorporate their agreement
25 in the stipulated protective order submitted to the court.

26
27 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party
28 and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 **XIII. MISCELLANEOUS**

2
3 13.1 **Right to Further Relief.** Nothing in this Order abridges the right of any Party to seek
4 its modification by the court in the future.

5 13.2 **Right to Assert Other Objections.** By stipulating to the entry of this Protective Order,
6 no Party waives any right it otherwise would have to object to disclosing or producing any
7 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
8 Party waives any right to object on any ground to use in evidence of any of the material covered by
9 this Protective Order.

10 13.3 **Filing Protected Material.** Without written permission from the Designating Party or
11 a court order secured after appropriate notice to all interested persons, a Party may not file in the
12 public record in this action any Protected Material. A Party that seeks to file under seal any
13 Protected Material must comply with Civil Local Rule 141. Protected Material may only be filed
14 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
15 issue. Pursuant to Civil Local Rule 141, a sealing order will issue only upon a request establishing
16 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to
17 protection under the law. If a Receiving Party's request to file Protected Material under seal
18 pursuant to Civil Local Rule 141 is denied by the court, then the Receiving Party may file the
19 information in the public record pursuant to Civil Local Rule 141 unless otherwise instructed by the
20 court.

21 **XIV. FINAL DISPOSITION**

22
23 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
24 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
25 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
26 summaries, and any other format reproducing or capturing any of the Protected Material. Whether
27 the Protected Material is returned or destroyed, the Receiving Party must submit a written
28 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)

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ORDER

The parties' proposed Stipulated Protective Order is **HEREBY APPROVED**, with one modification noted in bold in paragraph 6.3. Moreover, the court does not retain jurisdiction to resolve disputes over the Stipulated Protective Order after final disposition of this case. See Local Rule 141.1(f).

IT IS SO ORDERED.

Date: 8/30/2012

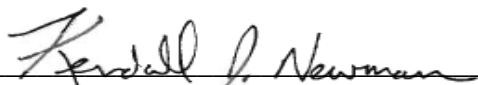

KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1 I, _____ [print or type full name], of _____
2 [print or type full address], declare under penalty of perjury that I have read in its entirety and
3 understand the Stipulated Protective Order that was issued by the United States District Court for the
4 Eastern District of California on _____ [date] in the case of *California Sportfishing*
5 *Protection Alliance. v. USA Waste of California, et al.*, 2:11-CV-02663-WBS-KJN. I agree to
6 comply with and to be bound by all the terms of this Stipulated Protective Order and I understand
7 and acknowledge that failure to so comply could expose me to sanctions and punishment in the
8 nature of contempt. I solemnly promise that I will not disclose in any manner any information or
9 item that is subject to this Stipulated Protective Order to any person or entity except in strict
10 compliance with the provisions of this Order.
11

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

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

19
20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____

23 [printed name]

24 Signature: _____

25 [signature]