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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA—DISTRICT OF SACRAMENTO

IRMA BARBOSA and CECILIA MATA, on  
behalf of themselves and those similarly  
situated,

Plaintiffs,

vs.

DELTA PACKING COMPANY OF LODI,  
INC. AKA “DELTA FRESH”; SALINAS  
FARM LABOR CONTRACTOR, INC.;  
ERNIE COSTAMAGNA, an individual,  
ANNAMARIE COSTAMAGNA, and  
individual, and DOES 1-20

Case No. 2:20-CV-01096-TLN-KJN

STIPULATED PROTECTIVE ORDER  
FOR STANDARD LITIGATION

1     1.     PURPOSES AND LIMITATIONS

2             Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public disclosure  
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,  
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective  
6 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures  
7 or 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, that  
10 this Stipulated Protective Order does not entitle them to file confidential information under seal;  
11 Civil 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 of  
18 Civil Procedure 26(c).

19             2.3     Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well  
20 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 medium  
24 or manner in which it is generated, stored, or maintained (including, among other things, testimony,  
25 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
26 discovery in this matter.

27             2.6     Expert: a person with specialized knowledge or experience in a matter pertinent to  
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1 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
2 consultant in this action.

3 2.7 House Counsel: attorneys who are employees of a party to this action. House  
4 Counsel does not include Outside Counsel of Record or any other outside counsel.

5 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal  
6 entity not named as a Party to this action.

7 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action  
8 but are retained to represent or advise a party to this action and have appeared in this action on  
9 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

10 2.10 Party: any party to this action, including all of its officers, directors, employees,  
11 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

12 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
13 Material in this action.

14 2.12 Professional Vendors: persons or entities that provide litigation support services  
15 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
16 storing, or retrieving data in any form or medium) and their employees and subcontractors.

17 2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
18 “CONFIDENTIAL.”

19 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
20 Producing Party.

21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only Protected Material (as  
23 defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
24 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
25 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
26 However, the protections conferred by this Stipulation and Order do not cover the following  
27 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
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1 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
2 publication not involving a violation of this Order, including becoming part of the public record  
3 through trial or otherwise; and (b) any information known to the Receiving Party prior to the  
4 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
5 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of  
6 Protected Material at trial shall be governed by a separate agreement or order.

7 4. DURATION

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

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
16 Non-Party that designates information or items for protection under this Order must take care to  
17 limit any such designation to specific material that qualifies under the appropriate standards. The  
18 Designating Party must designate for protection only those parts of material, documents, items, or  
19 oral or written communications that qualify – so that other portions of the material, documents,  
20 items, or communications for which protection is not warranted are not swept unjustifiably within  
21 the ambit of this Order.

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

26 If it comes to a Designating Party's attention that information or items that it designated for  
27 protection do not qualify for protection, that Designating Party must promptly notify all other Parties



1 portion or portions of the information or item warrant protection, the Producing Party, to the extent  
2 practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
4 designate qualified information or items does not, standing alone, waive the Designating Party's  
5 right to secure protection under this Order for such material. Upon timely correction of a  
6 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in  
7 accordance with the provisions of this Order.

8 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
10 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
12 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
13 confidentiality designation by electing not to mount a challenge promptly after the original  
14 designation is disclosed.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
16 by providing written notice of each designation it is challenging and describing the basis for each  
17 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
18 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
19 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
20 begin the process by conferring directly (in voice to voice dialogue; other forms of communication  
21 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging  
22 Party must explain the basis for its belief that the confidentiality designation was not proper and  
23 must give the Designating Party an opportunity to review the designated material, to reconsider the  
24 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
25 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
26 has engaged in this meet and confer process first or establishes that the Designating Party is  
27 unwilling to participate in the meet and confer process in a timely manner.



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

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by  
4 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
5 information or item designated “CONFIDENTIAL” only to:

6 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees  
7 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for  
8 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is  
9 attached hereto as Exhibit A;

10 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
11 Party to whom disclosure is reasonably necessary for this litigation and who have signed the  
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
14 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement  
15 to Be Bound” (Exhibit A);

16 (d) the court and its personnel;

17 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and  
18 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
21 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),  
22 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
23 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
24 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
25 Stipulated Protective Order.

26 (g) the author or recipient of a document containing the information or a custodian or  
27 other person who otherwise possessed or knew the information.



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

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

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

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

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
12 Designating Party whose Protected Material may be affected.

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

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

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

27 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-

1 Party's confidential information in its possession, and the Party is subject to an agreement with the  
2 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

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

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

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

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

16 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

24 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
25 MATERIAL

26 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced  
27 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties

1 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to  
2 modify whatever procedure may be established in an e-discovery order that provides for production  
3 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
4 parties reach an agreement on the effect of disclosure of a communication or information covered by  
5 the attorney-client privilege or work product protection, the parties may incorporate their agreement  
6 in the stipulated protective order submitted to the court.

7 12. PROVISIONS REQUIRED BY LOCAL RULE 141.1(C)

8 12.1 The information eligible for protection under this order includes: employee  
9 timekeeping records (timeclock data, punch cards, time sheets, employee schedules), employee  
10 payroll records (wage statements, paycheck stubs, payroll reports), employee contact information  
11 (names, addresses of residence, telephone numbers, email addresses).

12 12.2 The information described in section 12.1 is eligible for protection because 1)  
13 timekeeping records contain private, confidential information gathered from non-party individuals  
14 while they were employed by the Designating Party and will include information about an  
15 individual's daily work activities, 2) payroll records will include Social Security numbers, personal  
16 addresses, rates of pay, any legally required deductions that are not known by the public (such as  
17 deductions for child custody payments or other wage garnishment, 3) personal contact information is  
18 that is not otherwise available to the public in any other setting, and includes information about a  
19 non-party's personal residence.

20 12.3 The Parties request a court order be entered so that the interests of non-party  
21 individuals are protected.

22 13. MISCELLANEOUS

23 13.1 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 13.2 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 13.3 Filing Protected Material. Without written permission from the Designating Party or a  
4 court order secured after appropriate notice to all interested persons, a Party may not file in the  
5 public record in this action any Protected Material. A Party that seeks to file under seal any Protected  
6 Material must comply with Civil Local Rule 141. Protected Material may only be filed under seal  
7 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant  
8 to Civil Local Rule 141, a sealing order will issue only upon a request establishing that the Protected  
9 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under  
10 the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local  
11 Rule 141 is denied by the court, then the Receiving Party may file the information in the public  
12 record pursuant to Civil Local Rule 141 unless otherwise instructed by the court.

13 14. FINAL DISPOSITION

14 Within 60 days after the final disposition of this action, as defined in paragraph 4, each  
15 Receiving Party must return all Protected Material to the Producing Party or destroy such material.  
16 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
17 summaries, and any other format reproducing or capturing any of the Protected Material. Whether  
18 the Protected Material is returned or destroyed, the Receiving Party must submit a written  
19 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)  
20 by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material  
21 that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,  
22 abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected  
23 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
24 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,  
25 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant  
26 and expert work product, even if such materials contain Protected Material. Any such archival copies  
27 that contain or constitute Protected Material remain subject to this Protective Order as set forth in

1 Section 4 (DURATION).

2 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

3

4 DATED: June 29, 2021

\_\_\_\_\_  
/s/ Liliana Garcia  
Hector Martinez  
Liliana Garcia  
Attorneys for Plaintiffs

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8 DATED: June 29, 2021

\_\_\_\_\_  
/s/ Melissa Cerro  
Christina Tillman  
Melissa Cerro  
Attorneys for Defendant Delta Packing  
Company of Lodi, Inc.

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12 DATED: June 25, 2021

\_\_\_\_\_  
/s/ Faith Driscoll  
Patrick S. Moody  
Faith Driscoll  
Attorneys for Defendant Salinas Farm Labor Contractor, Inc.

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16 PURSUANT TO STIPULATION, IT IS SO ORDERED.


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19 Dated: July 1, 2021

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\_\_\_\_\_  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_ [print or  
4 type full address], declare under penalty of perjury that I have read in its entirety and understand the  
5 Stipulated Protective Order that was issued by the United States District Court for the Eastern  
6 District of California on [date] in the case of \_\_\_\_\_ **[insert formal name of the case and the  
7 number and initials assigned to it by the court]**. I agree to comply with and to be bound by all the  
8 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply  
9 could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I  
10 will not disclose in any manner any information or item that is subject to this Stipulated Protective  
11 Order to any person or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Eastern District  
13 of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such  
14 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  
23 Printed name: \_\_\_\_\_

24  
25 Signature: \_\_\_\_\_