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10
 11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**
 13 **SAN FRANCISCO DIVISION**

14
 15 CENTER FOR FOOD SAFETY, *et al.*,

16 Plaintiffs,

17 vs.

18 TOM VILSACK, *et al.*,

19 Defendants;

20 AMERICAN SUGARBEET GROWERS)
 ASSOCIATION; ERVIN SCHLEMMER;)
 21 MARK WETTSTEIN; DUANE GRANT; JOHN)
 SNYDER; UNITED STATES BEET SUGAR)
 22 ASSOCIATION; AMERICAN CRYSTAL)
 SUGAR COMPANY; THE AMALGAMATED)
 23 SUGAR COMPANY LLC; WESTERN SUGAR)
 COOPERATIVE; and WYOMING SUGAR)
 24 COMPANY, LLC,)

25 Defendant-Intervenors)

) Case No. 3:08-cv-00484-JSW

) **STIPULATED PROTECTIVE ORDER**

) Dept: Courtroom 11, 19th Floor
) Judge: Hon. Jeffrey S. White

1 **STIPULATION AND PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF**
2 **DOCUMENTS AND OTHER INFORMATION PRODUCED IN DISCOVERY**

3 In accordance with Federal Rule of Civil Procedure 26(c), the parties to this action, by their
4 undersigned counsel, stipulate and agree as follows:

5 **1. Use of Litigation Materials.** All materials designated pursuant to the provisions
6 below, shall be utilized by the receiving party only for the prosecution or defense of this case.

7 **2. Designation of Confidential Material.** Any party to this action and any non-party
8 producing confidential information in response to a discovery demand (collectively, a “Producing
9 Party”) shall be entitled to designate a document confidential by stamping “CONFIDENTIAL” on the
10 face of each page thereof or by stamping “CONFIDENTIAL” on the media upon which the data
11 resides and by explicitly notifying the opposing party, in writing, that the data has been designated as
12 “Confidential.” Such a designation shall constitute a representation by the party or person and its
13 counsel that they, in good faith, believe that the material so designated (“Confidential Material”)
14 contains or constitutes at the time of the designation information that is subject to protection under
15 Rule 26(c) of the Federal Rules of Civil Procedure, including but not limited to (a) trade secrets or
16 other information of a non-public nature considered by the producing party or person to be
17 commercially or personally sensitive, confidential and/or proprietary, including but not limited to
18 information concerning the breeding, planting, developing, producing, marketing, and selling of
19 sugarbeets and sugarbeet seeds; or (b) other competitively sensitive or proprietary research, analysis,
20 development, marketing, financial or commercial information, including information likely to be
21 deemed sensitive by a non-party.

22 In the event either party opposes a confidential designation, and if the parties are unable to
23 resolve such dispute informally, the party opposing the designation may seek intervention of the Court
24 to determine whether such documents are entitled to protection. The information shall be treated as
25 confidential pending a ruling by the Court. A party that fails to challenge the propriety of the
26 designation of documents, or deposition testimony or exhibits, as Confidential Material prior to the
27 entry of judgment in this matter shall preclude any subsequent challenge to such designation.
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1 The inadvertent failure to designate material as “Confidential” shall not be deemed a waiver of
2 the right to assert confidentiality and does not preclude a Producing Party from subsequently making
3 such a designation, and, if such subsequent designation is made, the material so designated will be
4 treated as confidential after being properly designated through the provision of a revised, marked copy.
5 Upon receipt of a marked copy, the receiving party shall return or destroy any and all un-marked
6 copies of the data. If a document is designated as “Confidential Material” and the original or one or
7 more copies are also produced but not so marked, the non-marked original or copies shall also be
8 treated as Confidential Material if the recipient is actually aware of the designation.

9 **3. Non-Disclosure of Confidential Documents.** Except with the prior written consent of
10 the party that produced the Confidential Material, or as hereinafter provided under paragraph 4 below
11 or otherwise, no Confidential Material may be disclosed to any person. “Confidential Material”
12 includes any document (including data compilations in electronically readable form) which is
13 identified as set forth herein by the Producing Party as subject to this confidentiality order. Included in
14 this definition is (i) any data which is furnished on a computer disk or in other electronic form which
15 the Producing Party designates at the time of production as confidential and (ii) any paper document
16 which is marked with the legend (or which shall otherwise have had the legend recorded upon it in a
17 way that brings its attention to a reasonable examiner) “CONFIDENTIAL” on each page to signify
18 that it contains information believed to be subject to protection under this Order. For purposes of this
19 order the term “document” means all written, recorded, electronically readable or graphic material,
20 whether produced or created by a party or another person, whether produced pursuant to a document
21 request, subpoena, by agreement, or otherwise. Deposition transcripts and exhibits, pleadings,
22 motions, affidavits, and briefs that quote, summarize, or contain materials entitled to protection shall
23 be accorded status as a confidential document, but, to the extent feasible, shall be prepared in such a
24 manner that the confidential information is submitted separately from that not entitled to protection.

25 **4. Permissible Disclosures of Documents.** Notwithstanding paragraph 2, Confidential
26 Material may be disclosed to the parties in this action (or their officers, directors, in-house counsel and
27 employees), but only to the extent that such disclosure is reasonably deemed necessary by such party’s
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1 counsel for the conduct of this litigation, and provided that such persons may retain Confidential
2 Material only as long as necessary for the conduct of this litigation; to outside counsel of record for
3 the parties in this action who are actively engaged in the conduct or monitoring of this litigation and
4 their partners, counsel, associates, secretaries, paralegal assistants, legal assistants, law clerks and
5 employees to the extent reasonably deemed necessary by such counsel for the conduct of this litigation
6 and to Daniel C. Mott, Fredrikson & Bryon and Robert Sims, Law Offices of Robert Sims, outside
7 counsel for intervenor defendants American Crystal and SES Vanderhave, respectively as determined
8 necessary by counsel of record for American Crystal and SES Vanderhave; to in-house litigating
9 counsel for the Center for Food Safety; and to the Court in this action and Court personnel involved in
10 this litigation (including court reporters, persons operating video recording equipment at depositions,
11 and any special master appointed by the court, but provided that such persons may retain Confidential
12 material only as long as it is necessary for such engagement) and shall be returned or destroyed
13 pursuant to Paragraph 12. Such documents may also be disclosed to the following individuals,
14 provided, however, that such documents are only disclosed to the extent reasonably deemed necessary
15 by counsel for the purpose of such persons' assistance in this litigation and provided that such persons
16 may retain Confidential Material only as long as is necessary for them to render such assistance, and
17 subject to the terms of Paragraph 5 of this protective order:

18 (a) to any person designated by the Court in the interest of justice, upon such terms as the
19 Court may deem proper; and

20 (b) to a party or non-party witness and counsel for such witness in the course of his or her
21 examination at deposition in this action, to the extent counsel has a good faith belief that the document
22 reasonably relates to the potential testimony of such witness;

23 (c) to outside consultants or experts retained for the purpose of assisting counsel in the
24 litigation;

25 (d) to mediators, arbitrators, or similar outside parties and their staffs enlisted by the parties
26 to assist in the resolution of this matter;

1 (e) to employees or contractors of parties involved solely in one or more aspects of
2 organizing, filing, coding, converting, storing, or retrieving data or designing programs for handling
3 data connected with these actions, including the performance of such duties in relation to a
4 computerized litigation support system; and

5 (f) to employees of third-party contractors performing one or more of these functions.

6 **5. Confidentiality Agreement.** Before disclosing Confidential Material to any persons
7 identified in Paragraph 4 above (other than the producing party and the producing party's officers,
8 directors, in-house counsel, employees, experts, and the Court and Court personnel), receiving counsel
9 contemplating disclosure of a producing party's Confidential Material shall require such persons to
10 read a copy of this Order and sign a copy of the Confidentiality Agreement, in the form attached hereto
11 as Exhibit A, affirming that the recipient: (a) has read this Order and understands all of its terms; (b)
12 agrees to abide by and to be bound by the terms of this Order; and (c) agrees to submit to the Court's
13 jurisdiction, or the jurisdiction of any other court of competent jurisdiction, for purposes of
14 enforcement of this Order by proceedings for contempt and/or proceedings for legal and/or equitable
15 relief, including damages, for a breach thereof. Counsel shall retain each such Confidentiality
16 Agreement until such time as the litigation, including all appeals, is concluded and counsel has
17 retrieved all Confidential Material, or received certification of its destruction, from the recipient
18 pursuant to Paragraph 12 below.

19 **6. Confidential Information in Depositions.**

20 (a) A deponent may during the deposition be shown, and examined about, Confidential
21 Material if the deponent already knows the confidential information contained therein or if the
22 provisions of Paragraph 5 are complied with. Deponents shall not retain or copy portions of the
23 transcript of their depositions that contain confidential information not provided by them or the entities
24 they represent unless they sign the form prescribed in Exhibit A hereto. A deponent who is not a party
25 or representative or employee of a party shall be furnished a copy of this order and sign the attached
26 confidentiality agreement before being examined about, or asked to produce, potentially confidential
27 documents.
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1 (b) Parties (and deponents) may, within 14 days after receiving a
2 deposition transcript, designate pages of the transcript (and exhibits thereto) as confidential.
3 Confidential information within the deposition transcript may be designated by written notification to
4 the opposing party of the pages that are designated confidential. Until expiration of the 14-day period,
5 the entire deposition will be treated as subject to protection against disclosure under this order. If no
6 party or deponent timely designates confidential information in a deposition, then none of the
7 transcript will be treated as confidential; if a timely designation is made, or if any exhibits have been
8 designated confidential, the confidential portions and any confidential exhibits shall be filed under seal
9 separate from the portions and exhibits not so marked.
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11 **7. Confidential Information at Hearings/Trial.** Subject to the Federal Rules Evidence,
12 confidential documents and other confidential information may be offered in evidence at trial or any
13 court hearing, provided that the proponent of the evidence gives reasonable notice to counsel for the
14 party that designated the information as confidential and the Court. Any party may move the Court for
15 an order that the evidence be received *in camera* or under other conditions to prevent unnecessary
16 disclosure. The Court will then determine whether the proffered evidence should continue to be
17 treated as confidential information and, if so, what protection, if any, may be afforded to such
18 information at the trial.

19 **8. Subpoena by Other Courts or Agencies.** If another Court or an administrative agency
20 subpoenas or orders production of Confidential Material that a party has obtained under the terms of
21 this order, such party shall promptly notify the person who designated the data as Confidential of the
22 pendency of such subpoena or order.

23 **9. Filing.** Without written permission from the designating party or a Court order secured
24 after appropriate notice to all interested persons, a party may not file in the public record in this action
25 any Confidential Material. A party that seeks to file under seal any Confidential Material must comply
26 with Civil Local Rule 79-5. Any party may introduce relevant and admissible Confidential Material in
27 court filings, at trial or at a hearing before the Court in this action provided that the party that produced
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1 the Confidential Material is given reasonable notice and an opportunity to seek relief from the Court.
2 Where possible, only confidential portions of filings with the Court shall be filed under seal.

3 **10. Designation of “Confidential Restricted Attorneys’ Eyes Only” Documents.** In
4 addition to designating documents as “Confidential,” any party producing documents or providing
5 discovery in this case may designate information as “Confidential Restricted Attorneys’ Eyes Only”
6 (in the same manner as designating CONFIDENTIAL information) if the party in good faith believes
7 such information could cause damage to the parties’ business interests if disclosed to a party in this
8 case. “Confidential Restricted Attorneys’ Eyes Only” information shall be treated as Confidential
9 Material under this Order in all respects *except that such information shall not be revealed, disclosed*
10 *or communicated in any way to the parties* (including the parties’ officers, directors, in-house counsel
11 and managers) except as provided below.

12 The only persons to whom documents designated as “Confidential Restricted Attorneys’ Eyes
13 Only” may be disclosed are the following:

14 (a) counsel who have either (i) made an appearance of record for the parties in this action,
15 or (ii) Daniel C. Mott, Fredrikson & Bryon and Robert Sims, Law Offices of Robert Sims, outside
16 counsel for intervenor defendants American Crystal and SES Vanderhave, respectively as determined
17 necessary by counsel of record for American Crystal and SES Vanderhave, or other counsel for a
18 intervenor defendant who are actively engaged in the conduct or monitoring of this litigation and agree
19 to sign the attached confidentiality agreement, and each case their respective partners, counsel,
20 associates, secretaries, paralegals, and employees and contractors to the extent reasonably necessary to
21 render professional services in connection with the litigation;

22 (b) persons with prior knowledge of the documents or the confidential information
23 contained therein;

24 (c) experts, consultants, and other persons, who are especially retained by attorneys for one
25 of the parties to assist in the preparation of the case for trial or to provide testimony who are not
26 regular employees of the parties to this litigation, and only if such persons have a need to use some or
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1 all of the documents, testimony, information, or other materials designated as “Confidential Restricted
2 Attorneys’ Eyes Only;”

3 (d) an officer, director, employee, or proposed expert witness of the party that produced the
4 “Confidential Restricted Attorneys’ Eyes Only” material in the course of his or her examination at
5 deposition in this action, and counsel for such witness, to the extent deemed necessary by counsel for a
6 named party in order to examine such witness;

7 (e) persons who have prepared or assisted in the preparation of the “Confidential Restricted
8 Attorneys’ Eyes Only” material or to whom the” Confidential Restricted Attorneys’ Eyes Only”
9 materials or copies thereof were addressed, delivered, or relate but only the extent that such disclosure
10 is necessary for the conduct of this litigation; and

11 (f) Court officials involved in this litigation (including court reporters, and persons
12 operating video recording equipment at depositions).

13 Information designated as “Confidential Restricted Attorneys’ Eyes Only” shall not be
14 disclosed to clients or any other person not specifically mentioned in this paragraph above without
15 specific court order or upon agreement of the producing party in writing. Before disclosing
16 “Confidential Restricted Attorneys’ Eyes Only” material to any persons permitted by this paragraph
17 (other than the producing party and its officers, directors, in-house counsel, employees, experts, and
18 the Court and Court personnel), counsel contemplating disclosure shall require such persons to read a
19 copy of this Order and sign a copy of the Confidentiality Agreement, in the form attached hereto as
20 Exhibit A, pursuant to Paragraph 5 above.

21 **11. Designation of “Highly Confidential” Documents.** In addition to designating
22 documents as “Confidential,” and “Confidential Restricted Attorneys’ Eyes Only” any party producing
23 documents or providing discovery in this case may designate information as “Highly Confidential” if
24 the party in good faith believes such information could cause damage to the parties’ business interests
25 if disclosed to business competitors in this case. Access to “Highly Confidential” information shall be
26 limited to the same individuals who may receive “Confidential Restricted Attorneys’ Eyes Only”
27 information subject to the following limitation. Only the party submitting a discovery request
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1 (“Requesting Party”) and other parties that are not business competitors of the designating party with
2 respect to the issues in this case may be provided with “Highly Confidential” information. Upon
3 disclosure of “Highly Confidential” information, the designating party will provide written notice to all
4 other parties. The notice shall state the date of the production and the basis for disclosure (i.e., “Highly
5 Confidential documents were provided in response to Request for Production 5”). If counsel for non-
6 requesting business competitor believes that it has a legitimate, litigation-based need to receive a copy
7 of “Highly Confidential” information, it may request a copy in writing. If, after meeting and
8 conferring in accordance with the Court’s Discovery Plan, the parties are unable to come to agreement
9 regarding the disclosure of “Highly Confidential” information, the party seeking a copy of the
10 information may move the Court for an order compelling production. If a request by a business
11 competitor would require production of “Highly Confidential” information, the designating party and
12 requesting business competitor shall meet and confer in accordance with the Court’s Discovery Plan in
13 an effort to reach agreement on disclosure. If those parties are unable to reach agreement, the
14 designating party may move the Court for a protective order regarding the “Highly Confidential”
15 information.

16 “Highly Confidential” information shall only be produced to the requesting party in hard copy.
17 A producing party shall provide the Requesting Party with two (2) hard copies of each document
18 designated as “Highly Confidential.” The information shall be produced in a re-sealable envelope or
19 file, with the case number, date and “HIGHLY CONFIDENTIAL INFORMATION OF [INSERT
20 PARTY NAME]” on the outside. A Receiving Party shall maintain the “Highly Confidential”
21 information within the provided envelope. The Receiving Party shall keep a log identifying each time
22 the “Highly Confidential” information is accessed, which shall include the date and name of the
23 individual accessing the “Highly Confidential” information. The Receiving Party shall maintain
24 possession of this log but shall provide the log to the designating party at the conclusion of the case
25 upon request, or by order of the Court upon showing of good cause.

26 If the Receiving Party wishes to use any “Highly Confidential” information at a deposition, its
27 counsel shall give the designating party 48 hours written notice, including notice of any copies that
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1 will be made for the deposition. If a designating party objects to use of the “Highly Confidential”
2 information within the presence of non-requesting defendant-intervenors who are business
3 competitors, the designating party shall notify all parties and the defendant-intervenors who are
4 business competitors shall confer and resolve, or if unable to resolve, move the Court for a protective
5 order governing the use of the “Highly Confidential” information during the deposition. No party will
6 seek to recover any sanctions, fees or costs associated with deposition delays that may result from
7 good-faith disputes regarding the use of “Highly Confidential” information during depositions.

8 A Receiving Party shall not make any additional copies of “Highly Confidential” information
9 unless requesting and receiving written permission from the designating party. Access shall at all
10 times be limited to the Receiving Party’s outside litigation counsel and/or in-house litigating counsel
11 for the Center for Food Safety in this action and its approved experts or non-party consultants.

12 **12. Non-Termination.** The provisions of this order shall not terminate at the conclusion of
13 these actions. Within 60 days after final conclusion of all aspects of this litigation, documents
14 designated as “Confidential” and all copies of same (other than a copy of court filings, exhibits of
15 record and documents that may be on backup tapes or any disaster recovery databases), documents
16 designated “Confidential Restricted Attorneys’ Eyes Only” and documents designated as “Highly
17 Confidential” shall be returned to the producing party or destroyed. All counsel of record shall make
18 certification of compliance herewith and shall deliver the same to the producing party not more than 90
19 days after final termination of this litigation.

20 **13. Modification Permitted.** Nothing in this order shall prevent any party or other person
21 from seeking modification of this order or from objecting to discovery that it believes to be otherwise
22 improper. Nothing in this order shall be construed as a concession by any party that any category of
23 documents is discoverable, admissible in evidence, or entitled to confidential treatment.

24 **14. Inadvertent Production.** In the event that a party inadvertently produces material that
25 is protected by the attorney-client privilege, work product doctrine, or any other privilege, within ten
26 (10) business days after the producing party actually discovers that such production was made, the
27 producing party may make a written request that the other parties return the inadvertently produced
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1 privilege document along with any copies made thereof. The parties who received the inadvertently
2 produced document will either return the document to the producing party or destroy the document
3 immediately upon receipt of the written request, as directed by the producing party. By returning or
4 destroying the document, the receiving party is not conceding that the document is privileged and is
5 not waiving its right to later challenge the substantive privilege claim, provided that it may not
6 challenge the privilege claim by arguing that the inadvertent production waived the privilege. Pursuant
7 to Federal Rule of Evidence 502, disclosure of material in connection with this litigation shall not
8 effect a waiver of the attorney-client privilege or work product protection in this litigation, nor in other
9 federal or state proceedings.

10 If a party inadvertently discloses any document or thing containing information that it deems
11 Protected Material without designating it as CONFIDENTIAL, CONFIDENTIAL RESTRICTED
12 ATTORNEYS' EYES ONLY, or HIGHLY CONFIDENTIAL, or if party inadvertently applies an
13 incorrect designation to any document or thing, the disclosing party shall promptly, upon discovery of
14 such inadvertent disclosure or erroneous designation, inform the receiving party in writing of the
15 correct designation of the material, and the receiving party shall thereafter treat the information as
16 "Confidential," "Confidential Restricted Attorneys' Eyes Only," or "Highly Confidential" as the case
17 may be. To the extent such information may have been disclosed to persons other than persons
18 authorized to receive such Protected Material in this Order, the receiving party shall promptly inform
19 the designating party in writing of the disclosure and circumstances surrounding the disclosure,
20 immediately retrieve the information, and avoid any further disclosure to non-authorized persons.

21 **15. Responsibility of Attorneys.** The attorneys of record are responsible for employing
22 reasonable measures to control, consistent with this order, duplication of, access to, and distribution of
23 copies of confidential documents. Parties shall not duplicate any confidential document except
24 working copies and for filing in court under seal.

1 Dated: February 8, 2010

Respectfully submitted,

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ORDER

IT IS SO ORDERED.

Dated: February 9, 2010


United States District Judge

EXHIBIT A
CONFIDENTIALITY AGREEMENT

1
2
3 I, _____, hereby acknowledge, agree and certify under
4 penalty of perjury that:

5 1. I have read the Stipulation and Protective Order Regarding Confidentiality of
6 Documents and Other Information Produced in Discovery (“Order”), entered in the civil action
7 captioned *Center for Food Safety et al. v. Thomas J. Vilsack et al.*, Civil Action No. 3:08-cv-00484-
8 JSW, in the United States District Court for the Northern District of California.

9
10 2. I understand the terms of the Order.

11 3. I hereby agree to be bound by the terms of the Order and understand that a violation
12 thereof may subject me to contempt proceedings and to legal and equitable remedies, including
13 damages.

14 4. I understand and agree that money damages would not be a sufficient remedy for breach
15 of this Undertaking and that a party that asserts the confidential interest shall be entitled to specific
16 performance and injunctive or other equitable relief as a remedy for any such breach. I agree to waive
17 any requirement for the securing or posting of any bond in connection with such remedy. Such remedy
18 shall not be deemed to be the exclusive remedy for breach of this Undertaking but shall be in addition
19 to all remedies available at law or equity.

20 5. I hereby irrevocably submit to the jurisdiction of the United States District Court for the
21 Northern District of California, or any other court of competent jurisdiction, for purposes of ensuring
22

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1 compliance with the terms and conditions of the Order and for civil remedies in the form of legal and
2 equitable relief, including damages, for any breach thereof.

3 Executed on _____.

4
5
6 _____
7 Print Name

8
9 _____
10 Signature

11
12 _____
13 Title

14
15 _____
16 Company