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14 UNITED STATES DISTRICT COURT  
 15 NORTHERN DISTRICT OF CALIFORNIA  
 16 SAN FRANCISCO DIVISION

17	RAQUEL HERNANDEZ and CARLOS	)	No. C 10-4198 TEH
18	HERNANDEZ,	)	
19	Plaintiffs,	)	STIPULATION TO PROTECTIVE
20	v.	)	ORDER; PROPOSED ORDER
21	THOMAS VILSACK, Secretary of the U.S.	)	
22	Department of Agriculture,	)	
23	Defendant.	)	

24 1. PURPOSES AND LIMITATIONS

25 Disclosure and discovery activity in this action are likely to involve production of  
 26 confidential, proprietary, or private information for which special protection from public disclosure  
 27 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,  
 28 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective

1 Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures  
2 or responses to discovery and that the protection it affords from public disclosure and use extends  
3 only to the limited information or items that are entitled to confidential treatment under the  
4 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that  
5 this Stipulated Protective Order does not entitle them to file confidential information under seal;  
6 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be  
7 applied when a party seeks permission from the court to file material under seal.

8 2. DEFINITIONS

9 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
10 information or items under this Order.

11 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it  
12 is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
13 of Civil Procedure 26(c).

14 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel  
15 (as well as their support staff).

16 2.4 Designating Party: a Party or Non-Party that designates information or items  
17 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

18 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
19 medium or manner in which it is generated, stored, or maintained (including, among other things,  
20 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
21 responses to discovery in this matter.

22 2.6 Expert: a person with specialized knowledge or experience in a matter  
23 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness  
24 or as a consultant in this action.

25 2.7 House Counsel: attorneys who are employees of a party to this action. House  
26 Counsel does not include Outside Counsel of Record or any other outside counsel.

27 2.8 Non-Party: any natural person, partnership, corporation, association, or other  
28 legal entity not named as a Party to this action.

1           2.9    Outside Counsel of Record: attorneys who are not employees of a party to this  
2 action but are retained to represent or advise a party to this action and have appeared in this action  
3 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

4           2.10   Party: any party to this action, including all of its officers, directors  
5 employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

6           2.11   Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
7 Material in this action.

8           2.12   Professional Vendors: persons or entities that provide litigation support  
9 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
10 organizing, storing, or retrieving data in any form or medium) and their employees and  
11 subcontractors.

12          2.13   Protected Material: any Disclosure or Discovery Material that is designated  
13 as “CONFIDENTIAL.”

14          2.14   Receiving Party: a Party that receives Disclosure or Discovery Material from  
15 a Producing Party.

16          3.    SCOPE

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

1           4.     DURATION

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

9           5.     DESIGNATING PROTECTED MATERIAL

10           5.1    Exercise of Restraint and Care in Designating Material for Protection. Each  
11 Party or Non-Party that designates information or items for protection under this Order must take  
12 care to limit any such designation to specific material that qualifies under the appropriate standards.  
13 The Designating Party must designate for protection only those parts of material, documents, items,  
14 or oral or written communications that qualify – so that other portions of the material, documents,  
15 items, or communications for which protection is not warranted are not swept unjustifiably within  
16 the ambit of this Order.

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

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

24           5.2    Manner and Timing of Designations. Except as otherwise provided in this  
25 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
26 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
27 designated before the material is disclosed or produced.

28           Designation in conformity with this Order requires:

1 (a) for information in documentary form (e.g., paper or electronic documents, but  
2 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party  
3 affix the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion  
4 or portions of the material on a page qualifies for protection, the Producing Party also must clearly  
5 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

6 A Party or Non-Party that makes original documents or materials available for  
7 inspection need not designate them for protection until after the inspecting Party has indicated which  
8 material it would like copied and produced. During the inspection and before the designation, all  
9 of the material made available for inspection shall be deemed “CONFIDENTIAL.” After the  
10 inspecting Party has identified the documents it wants copied and produced, the Producing Party  
11 must determine which documents, or portions thereof, qualify for protection under this Order. Then,  
12 before producing the specified documents, the Producing Party must affix the “CONFIDENTIAL”  
13 legend to each page that contains Protected Material. If only a portion or portions of the material on  
14 a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s)  
15 (e.g., by making appropriate markings in the margins).

16 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
17 Designating Party identify on the record, before the close of the deposition, hearing, or other  
18 proceeding, all protected testimony.

19 (c) for information produced in some form other than documentary and for any other  
20 tangible items, that the Producing Party affix in a prominent place on the exterior of the container  
21 or containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a  
22 portion or portions of the information or item warrant protection, the Producing Party, to the extent  
23 practicable, shall identify the protected portion(s).

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

1           6.       CHALLENGING CONFIDENTIALITY DESIGNATIONS

2           6.1       Timing of Challenges. Any Party or Non-Party may challenge a designation  
3 of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality  
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
5 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
6 confidentiality designation by electing not to mount a challenge promptly after the original  
7 designation is disclosed.

8           6.2       Meet and Confer. The Challenging Party shall initiate the dispute resolution  
9 process by providing written notice of each designation it is challenging and describing the basis for  
10 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice  
11 must recite that the challenge to confidentiality is being made in accordance with this specific  
12 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith  
13 and must begin the process by conferring directly (in voice to voice dialogue; other forms of  
14 communication are not sufficient) within 14 days of the date of service of notice. In conferring, the  
15 Challenging Party must explain the basis for its belief that the confidentiality designation was not  
16 proper and must give the Designating Party an opportunity to review the designated material, to  
17 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the  
18 chosen designation. A Challenging Party may proceed to the next stage of the challenge process only  
19 if it has engaged in this meet and confer process first or establishes that the Designating Party is  
20 unwilling to participate in the meet and confer process in a timely manner.

21           6.3       Judicial Intervention. If the Parties cannot resolve a challenge without court  
22 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
23 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the  
24 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process  
25 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a  
26 competent declaration affirming that the movant has complied with the meet and confer requirements  
27 imposed in the preceding paragraph. Failure by the Designating Party to make such a motion  
28 including the required declaration within 21 days (or 14 days, if applicable) shall automatically

1 waive the confidentiality designation for each challenged designation. In addition, the Challenging  
2 Party may file a motion challenging a confidentiality designation at any time if there is good cause  
3 for doing so, including a challenge to the designation of a deposition transcript or any portions  
4 thereof. Any motion brought pursuant to this provision must be accompanied by a competent  
5 declaration affirming that the movant has complied with the meet and confer requirements imposed  
6 by the preceding paragraph.

7           The burden of persuasion in any such challenge proceeding shall be on the  
8 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass  
9 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
10 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file  
11 a motion to retain confidentiality as described above, all parties shall continue to afford the material  
12 in question the level of protection to which it is entitled under the Producing Party’s designation until  
13 the court rules on the challenge.

14           7.     ACCESS TO AND USE OF PROTECTED MATERIAL

15           7.1    Basic Principles. A Receiving Party may use Protected Material that is  
16 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
17 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
18 disclosed only to the categories of persons and under the conditions described in this Order. When  
19 the litigation has been terminated, a Receiving Party must comply with the provisions of section 13  
20 below (FINAL DISPOSITION).

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

23           7.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
24 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose  
25 any information or item designated “CONFIDENTIAL” only to:

26           (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
27 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
28 information for this litigation and who have signed the “Acknowledgment and Agreement to Be

1 Bound” that is attached hereto as Exhibit A;

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

5 (c) the Plaintiffs, Raquel Hernandez and Carolos Hernandez, after they have signed  
6 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

10 (e) the court and its personnel;

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

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

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

22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
23 OTHER LITIGATION

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

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

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

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

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

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

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

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

23 1. promptly notify in writing the Requesting Party and the Non-Party that  
24 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

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

28 3. make the information requested available for inspection by the

1 Non-Party.

2 (c) If the Non-Party fails to object or seek a protective order from this court  
3 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
4 produce the Non-Party's confidential information responsive to the discovery request. If the  
5 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in  
6 its possession or control that is subject to the confidentiality agreement with the Non-Party before  
7 a determination by the court.<sup>1</sup> Absent a court order to the contrary, the Non-Party shall bear the  
8 burden and expense of seeking protection in this court of its Protected Material.

9 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

17 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
18 PROTECTED MATERIAL

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

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

1 incorporate their agreement in the stipulated protective order submitted to the court.  
2

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person  
5 to seek its modification by the court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
7 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
8 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
9 Party waives any right to object on any ground to use in evidence of any of the material covered by  
10 this Protective Order.

11 12.3 Filing Protected Material. Without written permission from the Designating  
12 Party or a court order secured after appropriate notice to all interested persons, a Party may not file  
13 in the public record in this action any Protected Material. A Party that seeks to file under seal any  
14 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
15 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.  
16 Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that  
17 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
18 protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant  
19 to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the information  
20 in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

21 13. FINAL DISPOSITION. Within 60 days after the final disposition of this action, as  
22 defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing  
23 Party or destroy such material. As used in this subdivision, "all Protected Material" includes all  
24 copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the  
25 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party  
26 must submit a written certification to the Producing Party (and, if not the same person or entity, to  
27 the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all  
28 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not



1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
4 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
5 understand the Stipulated Protective Order that was issued by the United States District Court for  
6 the Northern District of California on \_\_\_\_\_ [date] in the case of Hernandez, et al.  
7 v. Vilsack, C 10-4198 TEH. I agree to comply with and to be bound by all the terms of this  
8 Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose  
9 me to sanctions and punishment in the nature of contempt. I hereby consent to the jurisdiction of  
10 the Northern District of California if any such action is brought against me. I solemnly promise that  
11 I will not disclose in any manner any information or item that is subject to this Stipulated Protective  
12 Order to any person or entity except in strict compliance with the provisions of this Order.

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

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

20  
21 Date: \_\_\_\_\_

22 City and State where sworn and signed: \_\_\_\_\_

23  
24 Printed name: \_\_\_\_\_  
25 [printed name]

26 Signature: \_\_\_\_\_  
27 [signature]