

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

VICTOR GUTTMANN, on behalf of  
himself and all others similarly situated,  
  
Plaintiff,  
  
v.  
  
OLE MEXICAN FOODS, INC.  
  
Defendant.

Case No: C 14-04845-HSG  
Pleading Type: Class Action  
Action Filed: October 31, 2014  
  
~~PROPOSED~~ STIPULATED  
PROTECTIVE ORDER  
  
Judge: The Honorable Haywood S. Gilliam, Jr

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

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

2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is

1 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
2 Civil Procedure 26(c).

3 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well  
4 as their support staff).

5 2.4 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.”

7 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium  
8 or manner in which it is generated, stored, or maintained (including, among other things, testimony,  
9 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
10 discovery in this matter.

11 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to  
12 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
13 consultant in this action.

14 2.7 House Counsel: attorneys who are employees of a party to this action. House  
15 Counsel does not include Outside Counsel of Record or any other outside counsel.

16 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal  
17 entity not named as a Party to this action.

18 2.9 Outside Counsel of Record: attorneys who are not employees of a party to this action  
19 but are retained to represent or advise a party to this action and have appeared in this action on  
20 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

21 2.10 Party: any party to this action, including all of its officers, directors, employees,  
22 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

23 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
24 Material in this action.

25 2.12 Professional Vendors: persons or entities that provide litigation support services  
26 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
27 storing, or retrieving data in any form or medium) and their employees and subcontractors.

28 2.13 Protected Material: any Disclosure or Discovery Material that is designated as

1 “CONFIDENTIAL.”

2 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
3 Producing Party.

4 3. SCOPE

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

17 4. DURATION

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

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
26 Non-Party that designates information or items for protection under this Order must take care to  
27 limit any such designation to specific material that qualifies under the appropriate standards. The  
28 Designating Party must designate for protection only those parts of material, documents, items, or

1 oral or written communications that qualify – so that other portions of the material, documents,  
2 items, or communications for which protection is not warranted are not swept unjustifiably within  
3 the ambit of this Order.

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

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

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
12 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
13 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
14 designated before the material is disclosed or produced.

15 Designation in conformity with this Order requires:

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

21 A Party or Non-Party that makes original documents or materials available for inspection need not  
22 designate them for protection until after the inspecting Party has indicated which material it would  
23 like copied and produced. During the inspection and before the designation, all of the material made  
24 available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has  
25 identified the documents it wants copied and produced, the Producing Party must determine which  
26 documents, or portions thereof, qualify for protection under this Order. Then, before producing the  
27 specified documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page  
28 that contains Protected Material. If only a portion or portions of the material on a page qualifies for

1 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making  
2 appropriate markings in the margins).

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

6 (c) for information produced in some form other than documentary and for any other  
7 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
8 containers in which the information or item is stored the legend "CONFIDENTIAL." If only a  
9 portion or portions of the information or item warrant protection, the Producing Party, to the extent  
10 practicable, shall identify the protected portion(s).

11 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
12 designate qualified information or items does not, standing alone, waive the Designating Party's  
13 right to secure protection under this Order for such material. Upon timely correction of a  
14 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in  
15 accordance with the provisions of this Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of  
18 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
19 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,  
20 or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a  
21 confidentiality designation by electing not to mount a challenge promptly after the original  
22 designation is disclosed.

23 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process  
24 by providing written notice of each designation it is challenging and describing the basis for each  
25 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must  
26 recite that the challenge to confidentiality is being made in accordance with this specific paragraph  
27 of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must  
28 begin the process by conferring directly (in voice to voice dialogue; other forms of communication

1 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging  
2 Party must explain the basis for its belief that the confidentiality designation was not proper and  
3 must give the Designating Party an opportunity to review the designated material, to reconsider the  
4 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
5 designation. A Challenging Party may proceed to the next stage of the challenge process only if it  
6 has engaged in this meet and confer process first or establishes that the Designating Party is  
7 unwilling to participate in the meet and confer process in a timely manner.

8           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
9 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
10 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the  
11 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process  
12 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a  
13 competent declaration affirming that the movant has complied with the meet and confer  
14 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a  
15 motion including the required declaration within 21 days (or 14 days, if applicable) shall  
16 automatically waive the confidentiality designation for each challenged designation. In addition, the  
17 Challenging Party may file a motion challenging a confidentiality designation at any time if there is  
18 good cause for doing so, including a challenge to the designation of a deposition transcript or any  
19 portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
20 competent declaration affirming that the movant has complied with the meet and confer  
21 requirements imposed by the preceding paragraph.

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

1       7.       ACCESS TO AND USE OF PROTECTED MATERIAL

2           7.1       Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
3 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
4 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
5 the categories of persons and under the conditions described in this Order. When the litigation has  
6 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL  
7 DISPOSITION).

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

10          7.2       Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by  
11 the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
12 information or item designated “CONFIDENTIAL” only to:

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

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

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

23           (d) the court and its personnel;

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

27           (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
28 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),

1 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed  
2 deposition testimony or exhibits to depositions that reveal Protected Material must be separately  
3 bound by the court reporter and may not be disclosed to anyone except as permitted under this  
4 Stipulated Protective Order.

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

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
8 LITIGATION

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

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

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

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

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

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

28 (a) The terms of this Order are applicable to information produced by a Non-Party in this



1 action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in  
2 connection with this litigation is protected by the remedies and relief provided by this Order.  
3 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional  
4 protections.

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

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

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

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

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

21 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
2 MATERIAL

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

11 12. MISCELLANEOUS

12 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek  
13 its modification by the court in the future.

14 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
15 no Party waives any right it otherwise would have to object to disclosing or producing any  
16 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
17 Party waives any right to object on any ground to use in evidence of any of the material covered by  
18 this Protective Order.

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

1 13. FINAL DISPOSITION

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

17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18  
19 DATED: June 12, 2015 /s/ Gregory S. Weston  
20 Attorney for Plaintiff

21  
22 DATED: June 12, 2015 /s/ James W. Farris  
23 Attorney for Defendant

24  
25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26  
27 DATED: 6/15/2015   
28 United States District ~~Magistrate~~ Judge

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 Northern  
6 District of California on [date] in the case of *Guttmann v. Ole Mexican Foods, Inc.*, No. 3:14-cv-  
7 4845-HSG. I agree to comply with and to be bound by all the terms of this Stipulated Protective  
8 Order and I understand and acknowledge that failure to so comply could expose me to sanctions and  
9 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any  
10 information or item that is subject to this Stipulated Protective Order to any person or entity except  
11 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 Northern  
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  
23 Printed name: \_\_\_\_\_

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

**ATTESTATION**

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I, Gregory S. Weston , hereby attest, pursuant to N.D. Cal. Local Rule 5.1(i)(3), that the concurrence to the filing of this document has been obtained from each signatory hereto.

/s/ Gregory S. Weston  
Gregory S. Weston