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24 **UNITED STATES DISTRICT COURT**  
 25 **NORTHERN DISTRICT OF CALIFORNIA**

26 PRESTON JONES, on behalf of himself,  
 27 all others similarly situated, and the general  
 28 public,

Case No. 3:16-cv-00711 HSG

**STIPULATED PROTECTIVE ORDER**

Plaintiff,

vs.

NUTIVA, INC.,

Defendant.

Complaint Filed: January 8, 2016  
 Trial Date: None Set



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

15 2. DEFINITIONS

16 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
17 information or items under this Order.

18 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how  
19 it is generated, stored or maintained) or tangible things that qualify for protection under  
20 Federal Rule of Civil Procedure 26(c).

21 2.3 Counsel (without qualifier): Outside Counsel of Record and House  
22 Counsel (as well as their support staff).

23 2.4 Designating Party: a Party or Non-Party that designates information or  
24 items that it produces in disclosures or in responses to discovery as  
25 “CONFIDENTIAL.”

26 2.5 Disclosure or Discovery Material: all items or information, regardless of  
27 the medium or manner in which it is generated, stored, or maintained (including, among  
28

1 other things, testimony, transcripts, and tangible things), that are produced or generated  
2 in disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter  
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
5 expert witness or as a consultant in this action.

6 2.7 House Counsel: attorneys who are employees of a party to this action.  
7 House Counsel does not include Outside Counsel of Record or any other outside  
8 counsel.

9 2.8 Non-Party: any natural person, partnership, corporation, association, or  
10 other legal entity not named as a Party to this action.

11 2.9 Outside Counsel of Record: attorneys who are not employees of a party to  
12 this action but are retained to represent or advise a party to this action and have  
13 appeared in this action on behalf of that party or are affiliated with a law firm which has  
14 appeared on behalf of that party.

15 2.10 Party: any named party to this action, including all of its officers,  
16 directors, employees, consultants, retained experts, and Outside Counsel of Record (and  
17 their support staffs).

18 2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
19 Discovery Material in this action.

20 2.12 Professional Vendors: persons or entities that provide litigation support  
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
22 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
23 their employees and subcontractors.

24 2.13 Protected Material: any Disclosure or Discovery Material that is  
25 designated as “CONFIDENTIAL.”

26 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material  
27 from a Producing Party.

28 ///

1 3. SCOPE

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

16 4. DURATION

17 Even after final disposition of this litigation, the confidentiality obligations  
18 imposed by this Order shall remain in effect until a Designating Party agrees otherwise  
19 in writing or a court order otherwise directs. Final disposition shall be deemed to be the  
20 later of (1) dismissal of all claims and defenses in this action, with or without prejudice;  
21 and (2) final judgment herein after the completion and exhaustion of all appeals,  
22 rehearings, remands, trials, or reviews of this action, including the time limits for filing  
23 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.  
26 Each Party or Non-Party that designates information or items for protection under this  
27 Order must take care to limit any such designation to specific material that qualifies  
28 under the appropriate standards. The Designating Party must designate for protection

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

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that  
6 are shown to be clearly unjustified or that have been made for an improper purpose  
7 (e.g., to unnecessarily encumber or retard the case development process or to impose  
8 unnecessary expenses and burdens on other parties) expose the Designating Party to  
9 sanctions. If it comes to a Designating Party’s attention that information or items that it  
10 designated for protection do not qualify for protection, that Designating Party must  
11 promptly notify all other Parties that it is withdrawing the mistaken designation.

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

16 Designation in conformity with this Order requires:

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

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

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

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

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

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

## 20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

27 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
28 resolution process by providing written notice of each designation it is challenging and

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

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

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

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
13 disclosed or produced by another Party or by a Non-Party in connection with this case  
14 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
15 Material may be disclosed only to the categories of persons and under the conditions  
16 described in this Order. When the litigation has been terminated, a Receiving Party  
17 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

21 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
22 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
23 may disclose any information or item designated “CONFIDENTIAL” only to:

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



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

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

7 (d) the court and its personnel;

8 (e) court reporters and their staff, professional jury or trial consultants, mock  
9 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this  
10 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
11 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court;

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

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

20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
21 OTHER LITIGATION

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

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

27 (b) promptly notify in writing the party who caused the subpoena or order to  
28 issue in the other litigation that some or all of the material covered by the subpoena or

1 order is subject to this Protective Order. Such notification shall include a copy of this  
2 Stipulated Protective Order; and

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

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

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

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

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

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

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

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

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

#### 13 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

#### 22 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 23 PROTECTED MATERIAL

24 When a Producing Party gives notice to Receiving Parties that certain  
25 inadvertently produced material is subject to a claim of privilege or other protection, the  
26 obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
27 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
28 may be established in an e-discovery order that provides for production without prior

1 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
2 parties reach an agreement on the effect of disclosure of a communication or  
3 information covered by the attorney-client privilege or work product protection, the  
4 parties may incorporate their agreement in the stipulated protective order submitted to  
5 the court.

## 6 12. MISCELLANEOUS

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
8 person to seek its modification by the court in the future.

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

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

## 26 13. FINAL DISPOSITION

27 Within 60 days after the final disposition of this action, as defined in paragraph 4,  
28 each Receiving Party must return all Protected Material to the Producing Party or

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

16  
17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
18

19  
20 Dated: April 11, 2016

21 By: /s/ Jack Fitzgerald  
Jack Fitzgerald

22 THE LAW OFFICE OF JACK FITZGERALD, PC  
23 Jack Fitzgerald  
Trevor M. Flynn  
24 Melanie Persinger

25 THE LAW OFFICES OF PAUL K. JOSEPH, PC  
26 Paul K. Joseph

27 Attorneys for Plaintiff and Proposed Class  
28

1 Dated: April 11, 2016

2 By: /s/ William P. Cole  
3 William P. Cole

4 CALL & JENSEN  
5 A Professional Corporation  
6 Matthew R. Orr  
7 William P. Cole

8 AMIN TALATI & UPADHYE, LLC  
9 Rakesh M. Amin  
10 Ryan M. Kaiser  
11 Sanjay S. Karnik

12 Attorneys for Defendant Nutiva, Inc.

13 **SIGNATURE ATTESTATION**


14 I hereby attest that I have on file all holographic signatures corresponding to any  
15 signatures indicated by a conformed signature (/S/) within this e-filed document.

16 April 11, 2016

17 /s/ William P. Cole  
18 William P. Cole

19 PURSUANT TO STIPULATION, IT IS SO ORDERED.

20 DATED: 4/13/2016

21   
22 HON. HAYWOOD S. GILLIAM, JR.  
23 UNITED STATES DISTRICT JUDGE

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  
5 and understand the Stipulated Protective Order that was issued by the United States  
6 District Court for the Northern District of California on [date] in the case of *Jones v.*  
7 *Nutiva, Inc.*, 16-CV-00711-HSG. I agree to comply with and to be bound by all the terms  
8 of this Stipulated Protective Order and I understand and acknowledge that failure to so  
9 comply could expose me to sanctions and punishment in the nature of contempt. I  
10 solemnly promise that I will not disclose in any manner any information or item that is  
11 subject to this Stipulated Protective Order to any person or entity except in strict  
12 compliance with the provisions of this Order.

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

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

21  
22 Date: \_\_\_\_\_

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

24  
25 Printed name: \_\_\_\_\_

26  
27 Signature: \_\_\_\_\_



**CERTIFICATE OF SERVICE**

I hereby certify that on April 11, 2016, I electronically filed the foregoing document described as STIPULATED PROTECTIVE ORDER with the Clerk of the Court using the CM/ECF System which will send notification of such filing via electronic mail to all counsel of record.

/s/ William P. Cole  
William P. Cole



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