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13
 14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT CALIFORNIA
 16 OAKLAND DIVISION

18 MARIO PERUGINI, an individual,

19 Plaintiff,

20 v.

21 UNIVAR USA INC., a corporation; & Does 1
 22 through 25, inclusive,

23 Defendants.

Case No. 15-cv-03723-YGR

STIPULATED PROTECTIVE ORDER

AS MODIFIED BY THE COURT

24
 25 **1. PURPOSES AND LIMITATIONS**

26 Disclosure and discovery activity in this action are likely to involve production of confidential,
 27 proprietary, or private information for which special protection from public disclosure and from use for
 28 any purpose other than prosecuting this litigation may be warranted. Accordingly, Plaintiff Mario

1 Perugini (“Plaintiff”) and Defendant Univar USA Inc. (“Defendant”) (collectively, the “Parties”) hereby
2 stipulate to and petition the Court to enter the following Stipulated Protective Order. The Parties
3 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
4 discovery and that the protection it affords from public disclosure and use extends only to the limited
5 information or items that are entitled to confidential treatment under the applicable legal principles. The
6 Parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order
7 does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the
8 procedures that must be followed and the standards that will be applied when a party seeks permission
9 from the Court to file material under seal.

10 **Statement of Good Cause.** This action is likely to involve trade secrets, commercial, financial,
11 technical, proprietary, and/or personal information for which special protection from public disclosure
12 and from use for any purpose other than prosecution of this action is warranted. Such confidential and
13 proprietary materials and information consist of, among other things, confidential business or financial
14 information, information regarding confidential business practices, or other confidential research,
15 development, or commercial information (including information implicating privacy rights of third
16 parties), information otherwise generally unavailable to the public, or which may be privileged or
17 otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or
18 common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of
19 disputes over confidentiality of discovery materials, to adequately protect information the Parties are
20 entitled to keep confidential, to ensure that the Parties are permitted reasonable necessary uses of such
21 material in preparation for and in the conduct of trial, to address their handling at the end of the
22 litigation, and serve the ends of justice, a protective order for such information is justified in this matter.
23 It is the intent of the Parties that information will not be designated as confidential for tactical reasons
24 and that nothing be so designated without a good faith belief that it has been maintained in a
25 confidential, non-public manner, and there is good cause why it should not be part of the public record
26 of this case.

27 **2. DEFINITIONS**

28 2.1. Action: this pending federal lawsuit, Perugini v. Univar USA Inc., Case No. 15-cv-03723

1 YGR.

2 2.2. Challenging Party: a Party or Non-Party that challenges the designation of information
3 or items under this Order.

4 2.3. “CONFIDENTIAL” Information or Items: information (regardless of how it is
5 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil
6 Procedure 26(c).

7 2.4. Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
8 their support staff).

9 2.5. Designating Party: a Party or Non-Party that designates information or items that it
10 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

11 2.6. Disclosure or Discovery Material: all items or information, regardless of the medium or
12 manner in which it is generated, stored, or maintained (including, among other things, testimony,
13 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery
14 in this matter.

15 2.7. Expert: a person with specialized knowledge or experience in a matter pertinent to the
16 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant
17 in this action.

18 2.8. House Counsel: attorneys who are employees of a party to this action. House Counsel
19 does not include Outside Counsel of Record or any other outside counsel.

20 2.9. Non-Party: any natural person, partnership, corporation, association, or other legal entity
21 not named as a Party to this action.

22 2.10. Outside Counsel of Record: attorneys who are not employees of a party to this action but
23 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
24 party or are affiliated with a law firm which has appeared on behalf of that party.

25 2.11. Party: any party to this action, including all of its officers, directors, employees,
26 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

27 2.12. Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
28 this action.

1 2.13. Professional Vendors: persons or entities that provide litigation support services (e.g.,
2 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
3 retrieving data in any form or medium) and their employees and subcontractors.

4 2.14. Protected Material: any Disclosure or Discovery Material that is designated as
5 “CONFIDENTIAL.”

6 2.15. Receiving Party: a Party that receives Disclosure or Discovery Material from a
7 Producing Party.

8 **3. SCOPE**

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

21 **4. DURATION**

22 Even after final disposition of this litigation, the confidentiality obligations imposed by this
23 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
24 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
25 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and
26 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits
27 for filing any motions or applications for extension of time pursuant to applicable law.
28

1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1. Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
3 Party that designates information or items for protection under this Order must take care to limit any
4 such designation to specific material that qualifies under the appropriate standards. The Designating
5 Party must designate for protection only those parts of material, documents, items, or oral or written
6 communications that qualify – so that other portions of the material, documents, items, or
7 communications for which protection is not warranted are not swept unjustifiably within the ambit of
8 this Order.

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

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

16 5.2. Manner and Timing of Designations. Except as otherwise provided in this Order (see,
17 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
18 Discovery Material that qualifies for protection under this Order must be clearly so designated before
19 the material is disclosed or produced.

20 Designation in conformity with this Order requires:

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

26 A Party or Non-Party that makes original documents or materials available for inspection need
27 not designate them for protection until after the inspecting Party has indicated which material it would
28 like copied and produced. During the inspection and before the designation, all of the material made

1 available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified
2 the documents it wants copied and produced, the Producing Party must determine which documents, or
3 portions thereof, qualify for protection under this Order. Then, before producing the specified
4 documents, the Producing Party must affix the “CONFIDENTIAL” legend to each page that contains
5 Protected Material. If only a portion or portions of the material on a page qualifies for protection, the
6 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
7 markings in the margins).

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

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

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

21 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

28 6.2. Meet and Confer. The Challenging Party shall initiate the dispute resolution process by

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

13 6.3. Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
14 the parties shall follow the Court's Standing Order in Civil Cases regarding Discovery and Discovery
15 Motions. The parties may file a joint letter brief regarding retaining confidentiality within 21 days of the
16 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process will
17 not resolve their dispute, whichever is earlier. Failure by a Designating Party to file such discovery
18 dispute letter within the applicable 21 or 14 day period (set forth above) with the Court shall
19 automatically waive the confidentiality designation for each challenged designation. If, after submitting
20 a joint letter brief, the Court allows that a motion may be filed, any such motion must be accompanied
21 by a competent declaration affirming that the movant has complied with the meet and confer
22 requirements imposed in the preceding paragraph. The Court, in its discretion, may elect to transfer the
23 discovery matter to a Magistrate Judge.

24 In addition, the parties may file a joint letter brief regarding a challenge to a confidentiality
25 designation at any time if there is good cause for doing so, including a challenge to the designation of a
26 deposition transcript or any portions thereof. If, after submitting a joint letter brief, the Court allows that
27 a motion may be filed, any motion brought pursuant to this provision must be accompanied by a
28 competent declaration affirming that the movant has complied with the meet and confer requirements

1 imposed by the preceding paragraph. The Court, in its discretion, may elect to refer the discovery matter
2 to a Magistrate Judge.

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

10 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

11 7.1. Basic Principles. A Receiving Party may use Protected Material that is disclosed or
12 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
13 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
14 categories of persons and under the conditions described in this Order. When the litigation has been
15 terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
16 DISPOSITION).

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

19 7.2. Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
20 Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information
21 or item designated "CONFIDENTIAL" only to:

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

26 (b) the officers, directors, and employees (including House Counsel) of the Receiving
27 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
28 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

4 (d) the Court and its personnel;

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

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

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

15 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
16 **LITIGATION**

17 8.1. If a Party is served with a subpoena or a court order issued in other litigation that compels
18 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

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

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

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

26 8.2. If the Designating Party timely seeks a protective order, the Party served with the
27 subpoena or court order shall not produce any information designated in this action as
28 “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued,

1 unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the
2 burden and expense of seeking protection in that court of its confidential material – and nothing in these
3 provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey
4 a lawful directive from another court.

5 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
6 **LITIGATION**

7 9.1. The terms of this Order are applicable to information produced by a Non-Party in this
8 action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection
9 with this litigation is protected by the remedies and relief provided by this Order. Nothing in these
10 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

11 9.2. In the event that a Party is required, by a valid discovery request, to produce a Non-
12 Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-
13 Party not to produce the Non-Party’s confidential information, then the Party shall:

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

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

19 (c) make the information requested available for inspection by the Non-Party.

20 9.3. If the Non-Party fails to object or seek a protective order from this court within 14 days
21 of receiving the notice and accompanying information, the Receiving Party may produce the Non-
22 Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a
23 protective order, the Receiving Party shall not produce any information in its possession or control that
24 is subject to the confidentiality agreement with the Non-Party before a determination by the Court.
25 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking
26 protection in this court of its Protected Material.

27 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

28 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material

1 to any person or in any circumstance not authorized under this Stipulated Protective Order, the
2 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
3 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material,
4 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this
5 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be
6 Bound” that is attached hereto as Exhibit A.

7 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
8 **MATERIAL**

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

17 **12. MISCELLANEOUS**

18 12.1. Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
19 modification by the Court in the future.

20 12.2. Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
21 Party waives any right it otherwise would have to object to disclosing or producing any information or
22 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
23 right to object on any ground to use in evidence of any of the material covered by this Protective Order.

24 12.3. Filing Protected Material. Without written permission from the Designating Party or a
25 court order secured after appropriate notice to all interested persons, a Party may not file in the public
26 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
27 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a
28 court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local

1 Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue
2 is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
3 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is
4 denied by the Court, then the Receiving Party may file the information in the public record pursuant to
5 Civil Local Rule 79-5(e) unless otherwise instructed by the Court.

6 **13. FINAL DISPOSITION**

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

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 DATED: October 30, 2015

Respectfully submitted,

4 SEYFARTH SHAW LLP

5
6 By: /s/ Jason M. Allen
Francis J. Ortman III
7 Jason M. Allen

8 Attorneys for Defendant
9 UNIVAR USA INC.

10 DATED: October 30, 2015

Respectfully submitted,

11 AIMAN-SMITH & MARCY


12
13 By: /s/ Donald Joseph Clapp
14 Donald Joseph Clapp

15 Attorneys for Plaintiff
16 Mario Perugini.

17 PURSUANT TO STIPULATION, IT IS SO ORDERED.

18 This Order terminates Docket Number 22.

19
20 DATED: November 5, 2015


21 Hon. Yvonne Gonzalez Rogers
22 United States District Judge
23
24
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28

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 District
6 of California on _____ [date] in the case of Perugini v. Univar USA Inc., Case No. 15-cv-03723
7 YGR. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
8 understand and acknowledge that failure to so comply could expose me to sanctions and punishment in
9 the nature of contempt. I solemnly promise that I will not disclose in any manner any information or
10 item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance
11 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 if
14 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 my
17 California agent for service of process in connection with this action or any proceedings related to
18 enforcement of this Stipulated Protective Order.

19
20 Date: _____

21 City and State where sworn and signed: _____

22
23 Printed name: _____

24
25 Signature: _____
26
27
28