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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
8 SAN JOSE DIVISION

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10 RILEY WINE CORPORATION d/b/a
BLACKBURN WINE COMPANY,,

11 Plaintiff,

12 vs.

13 VINTAGE WINE ESTATES, INC. and
14 TRADER JOE'S COMPANY,

15 Defendants.

Case No. C11-04388 PSG

STIPULATED PROTECTIVE ORDER

16 **1. PURPOSES AND LIMITATIONS**

17 Disclosure and discovery activity in this action are likely to involve production of
18 confidential, proprietary, or private information for which special protection from public
19 disclosure and from use for any purpose other than prosecuting this litigation would be
20 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the
21 following Stipulated Protective Order. The parties acknowledge that this Order does not confer
22 blanket protections on all disclosures or responses to discovery and that the protection it affords
23 extends only to the limited information or items that are entitled under the applicable legal
24 principles to treatment as confidential. The parties further acknowledge, as set forth in Section
25 10, below, that this Stipulated Protective Order creates no entitlement to file confidential
26 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
27 reflects the standards that will be applied when a party seeks permission from the court to file

1 material under seal.

2 **2. DEFINITIONS**

3 2.1 Party: any party to this action, including all of its officers, directors, employees,
4 consultants, retained experts, and outside counsel (and their support staff).

5 2.2 Disclosure or Discovery Material: all items or information, regardless of the
6 medium or manner generated, stored, or maintained (including, among other things, testimony,
7 transcripts, or tangible things) that are produced or generated in disclosures or responses to
8 discovery in this matter.

9 2.3 "Confidential" Information or Items: information (regardless of how generated,
10 stored or maintained) or tangible things that qualify for protection under standards developed
11 under F.R.Civ.P. 26(c).

12 2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items extremely
13 sensitive "Confidential Information or Items" whose disclosure to another Party or nonparty
14 would create a substantial risk of serious injury that could not be avoided by less restrictive
15 means.

16 2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a
17 Producing Party.

18 2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery
19 Material in this action.

20 2.7 Designating Party: a Party or non-party that designates information or items that it
21 produces in disclosures or in responses to discovery as "Confidential."

22 2.8 Protected Material: any Disclosure or Discovery Material that is designated as
23 "Confidential," or "Highly Confidential -- Attorneys' Eyes Only."

24 2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained
25 to represent or advise a Party in this action.

26 2.10 House Counsel: attorneys who are employees of a Party.

27 2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as
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1 their support staffs).

2 2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to
3 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
4 consultant in this action. This definition includes a professional jury or trial consultant retained
5 in connection with this litigation.

6 2.13 Professional Vendors: persons or entities that provide litigation support services
7 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,
8 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

9 **3. SCOPE**

10 The protections conferred by this Stipulation and Order cover not only Protected Material
11 (as defined above), but also any information copied or extracted therefrom, as well as all copies,
12 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by
13 parties or counsel to or in court or in other settings that might reveal Protected Material.

14 The provisions of this Stipulated Protective Order shall not apply to evidence presented at
15 court proceedings nor otherwise restrict any Party from introducing Protected Material as
16 evidence at trial. A Party may seek a protective order prior to trial with respect to testimony
17 containing Protected Material that may be offered at trial or specific documents containing
18 Protected Material that may be marked as exhibits at trial in order to maintain the continued
19 confidentiality of such information.

20 **4. DURATION**

21 Even after the termination of this litigation, the confidentiality obligations imposed by
22 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
23 order otherwise directs.

24 **5. DESIGNATING PROTECTED MATERIAL**

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
26 or non-party that designates information or items for protection under this Order must take care
27 to limit any such designation to specific material that qualifies under the appropriate standards.

1 A Designating Party must take care to designate for protection only those parts of material,
2 documents, items, or oral or written communications that qualify - so that other portions of the
3 material, documents, items, or communications for which protection is not warranted are not
4 swept unjustifiably within the ambit of this Order.

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

9 If it comes to a Party's or a non-party's attention that information or items that it
10 designated for protection do not qualify for protection, that Party or non-party must promptly
11 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 Order
13 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,
14 material that qualifies for protection under this Order must be clearly so designated before the
15 material is disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (apart from transcripts of depositions
18 or other pretrial or trial proceedings), that the Producing Party affix the legend
19 "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY" on each
20 page that contains protected material in a manner which will not interfere with its legibility. If
21 only a portion or portions of the material on a page qualifies for protection, the Producing Party
22 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
23 margins).

24 A Party or non-party that makes original documents or materials available for inspection
25 need not designate them for protection until after the inspecting Party has indicated which
26 material it would like copied and produced. During the inspection and before the designation, all
27 of the material made available for inspection shall be deemed CONFIDENTIAL. After the

1 inspecting Party has identified the documents it wants copied and produced, the Producing Party
2 must determine which documents, or portions thereof, qualify for protection under this Order,
3 then, before producing the specified documents, the Producing Party must affix the appropriate
4 legend "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY" on
5 each page that contains Protected Material. If only a portion or portions of the material on a page
6 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
7 (e.g., by making appropriate markings in the margins).

8 (b) for testimony given in deposition, that the Party or non-party offering or
9 sponsoring the testimony identify on the record, before the close of the deposition, all protected
10 testimony, and further specify any portions of the testimony that qualify as "CONFIDENTIAL,"
11 or "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY." When it is impractical to
12 identify separately each portion of testimony that is entitled to protection, and when it appears
13 that substantial portions of the testimony may qualify for protection, the Party or non-party that
14 sponsors, offers, or gives the testimony may invoke on the record (before the deposition or
15 proceeding is concluded) a right to have up to 20 days to identify the specific portions of the
16 testimony as to which protection is sought. Only those portions of the testimony that are
17 appropriately designated for protection within the 20 days shall be covered by the provisions of
18 this Stipulated Protective Order.

19 Transcript pages containing Protected Material must be separately bound by the
20 court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL," or
21 "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY," as instructed by the Party or
22 nonparty offering or sponsoring the witness or presenting the testimony.

23 (c) for information produced in some form other than documentary, and for
24 any other tangible items, that the Producing Party affix in a prominent place on the exterior of the
25 container or containers in which the information or item is stored the legend "CONFIDENTIAL,"
26 or "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY." If only portions of the
27 information or item warrant protection, the Producing Party, to the extent practicable, shall

1 6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality
2 designation after considering the justification offered by the Designating Party may file and serve
3 a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)
4 that identifies the challenged material and sets forth in detail the basis for the challenge. Each
5 such motion must be accompanied by a competent declaration that affirms that the movant has
6 complied with the meet and confer requirements imposed in the preceding paragraph and that
7 sets forth with specificity the justification for the confidentiality designation that was given by
8 the Designating Party in the meet and confer dialogue.

9 The burden of persuasion in any such challenge proceeding shall be on the Designating
10 Party. Until the court rules on the challenge, all parties shall continue to afford the material in
11 question the level of protection to which it is entitled under the Producing Party's designation.

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

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

19 Protected Material must be stored and maintained by a Receiving Party at a location and
20 in a secure manner that ensures that access is limited to the persons 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 may
23 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 Counsel to whom it is reasonably necessary to disclose the information for this
26 litigation;

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

3 (c) experts (as defined in this Order) of the Receiving Party to whom
4 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
5 Bound by Protective Order" (Exhibit A);

6 (d) the Court and its personnel;

7 (e) court reporters, their staffs, and professional vendors to whom disclosure
8 is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by
9 Protective Order" (Exhibit A");

10 (f) during their depositions, witnesses in the action to whom disclosure is
11 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
12 (Exhibit A"). Pages of transcribed deposition testimony or exhibits to depositions that reveal
13 Protected Material must be separately bound by the court reporter and may not be disclosed to
14 anyone except as permitted under this Stipulated Protective Order;

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

17 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

18 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
19 Designating Party, a Receiving Party may disclose any information or item designated HIGHLY
20 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

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

25 (b) House Counsel of a Receiving Party (1) who has no involvement in
26 competitive decision-making, (2) to whom disclosure is reasonably necessary for this litigation,
27 and (3) who has signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

1 (c) Experts (as defined in this Order) (1) to whom disclosure is reasonably
2 necessary for this litigation, (2) who have signed the “Agreement to Be Bound by Protective
3 Order” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 4, below, have been
4 followed;

5 (d) the Court and its personnel;

6 (e) court reporters, their staffs, and professional vendors to whom disclosure
7 is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by
8 Protective Order” (Exhibit A); and

9 (f) the author of the document or the original source of the information.

10 7.4 Procedures for Approving Disclosure of “HIGHLY CONFIDENTIAL –
11 ATTORNEYS’ EYES ONLY” Information or Items to “Experts”

12 (a) Unless otherwise ordered by the court or agreed in writing by the
13 Designating Party, a Party that seeks to disclose to an “Expert” (as defined in this Order) any
14 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
15 EYES ONLY” first must make a written request to the Designating Party that (1) identifies the
16 specific HIGHLY CONFIDENTIAL information that the Receiving Party seeks permission to
17 disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her
18 primary residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s
19 current employer(s), (5) identifies each person or entity from whom the Expert has received
20 compensation for work in his or her areas of expertise or to whom the expert has provided
21 professional services at any time during the preceding five years, and (6) identifies (by name and
22 number of the case, filing date, and location of court) any litigation in connection with which the
23 Expert has provided any professional services during the preceding five years.

24 (b) A Party that makes a request and provides the information specified in the
25 preceding paragraph may disclose the subject Protected Material to the identified Expert unless,
26 within seven court days of delivering the request, the Party receives a written objection from the
27 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

1 (c) A Party that receives a timely written objection must meet and confer with
2 the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
3 agreement. If no agreement is reached, the Party seeking to make the disclosure to the Expert
4 may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule
5 79-5, if applicable) seeking permission from the court to do so. Any such motion must describe
6 the circumstances with specificity, set forth in detail the reasons for which the disclosure to the
7 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail and
8 suggest any additional means that might be used to reduce that risk. In addition, any such motion
9 must be accompanied by a competent declaration in which the movant describes the parties'
10 efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
11 discussions) and sets forth the reasons advanced by the Designating Party for its refusal to
12 approve the disclosure.

13 In any such proceeding the Party opposing disclosure to the Expert shall bear the
14 burden of proving that the risk of harm that the disclosure would entail (under the safeguards
15 proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

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

18 If a Receiving Party is served with a subpoena or an order issued in other litigation that
19 would compel disclosure of any information or items designated in this action as
20 "CONFIDENTIAL," or "HIGHLY CONFIDENTIAL -- ATTORNEYS' EYES ONLY," the
21 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
22 and in no event more than three court days after receiving the subpoena or order. Such
23 notification must include a copy of the subpoena or court order.

24 The Receiving Party also must immediately inform in writing the Party who caused the
25 subpoena or order to issue in the other litigation that some or all the material covered by the
26 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
27 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that

1 caused the subpoena or order to issue.

2 The purpose of imposing these duties is to alert the interested parties to the existence of
3 this Protective Order and to afford the Designating Party in this case an opportunity to try to
4 protect its confidentiality interests in the court from which the subpoena or order issued. The
5 Designating Party shall bear the burdens and the expenses of seeking protection in that court of
6 its confidential material - and nothing in these provisions should be construed as authorizing or
7 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

8 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

16 **10. FILING PROTECTED MATERIAL**

17 Without written permission from the Designating Party or a court order secured after
18 appropriate notice to all interested persons, a Party may not file in the public record in this action
19 any Protected Material. A Party that seeks to file under seal any Protected Material must comply
20 with Civil Local Rule 79-5.

21 **11. FINAL DISPOSITION**

22 Within 60 days after the final disposition of this action, each Receiving Party must return
23 all Protected Material to the Producing Party or destroy such material. As used in this
24 subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and
25 any other format reproducing or capturing any of the Protected Material. Whether the Protected
26 Material is returned or destroyed, the Receiving Party must submit a written certification to the
27 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day

1 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
2 returned or destroyed and (2) affirms that the Receiving Party has not retained any copies,
3 abstracts, compilations, summaries or any other format reproducing or capturing any of the
4 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
5 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
6 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
7 consultant and expert work product, even if such materials contain Protected Material. Any such
8 archival copies that contain or constitute Protected Material remain subject to this Protective
9 Order as set forth in Section 4.

10 **12. MISCELLANEOUS**

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
12 seek its modification by the Court in the future.

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

18 12.3 Right to a Party's Own Materials. Nothing in this Stipulated Protective Order
19 shall prevent any Party from using or disclosing its own materials or information, regardless of
20 whether designed as CONFIDENTIAL.

21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

22
23
24 Dated: 12/14/11

DICKENSON, HEATMAN & FOGARTY

By: 

J. Scott Gerien (SBN 184728)
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Dated: 12/14/11

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Trader Joe's Company

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 12/27/11


Hon. Paul S. Grewal
United States District Court

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 *Riley Wine*
7 *Corporation dba Blackburn Wine Company v. Vintage Wine Estates, Inc. and Trader Joe's*
8 *Company*, Case No. CV11-04388 PSG. I agree to comply with and to be bound by all the terms
9 of this Stipulated Protective Order and I understand and acknowledge that failure to so comply
10 could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that
11 I will not disclose in any manner any information or item that is subject to this Stipulated
12 Protective Order to any person or entity except in strict compliance with the provisions of this
13 Order.

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

21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24
25 Signature: _____

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