

<b>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</b> 1437 Bannock Street Denver, CO 80202	DATE FILED: March 16, 2020 11:12 PM CASE NUMBER: 2019CV33770
DAVID S. CHEVAL, Acting Securities Commissioner for the State of Colorado,  Plaintiff,  v.  MARK RAY; REVA STACHNIW; CUSTOM CONSULTING & PRODUCT SERVICES, LLC; RM FARM & LIVESTOCK, LLC; MR CATTLE PRODUCTION SERVICES, LLC; SUNSHINE ENTERPRISES; UNIVERSAL HERBS, LLC; DBC LIMITED, LLC,  Defendants.	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> Case No: 19CV33770  Division: 209
<b>STIPULATED PROTECTIVE ORDER</b>	

This matter comes before the Court on the written stipulation of Non-Party JPMorgan Chase Bank, N.A. (“Chase”), David S. Cheval (“Plaintiff”), Defendants, and Gary Schwartz in his position as the Court-Appointed Receiver over the assets of the Defendants (“Receiver”), by and through their respective counsel. Chase, Plaintiff, Defendants, and the Receiver are collectively referred to herein as the “Parties.” The Parties have consented and agreed to the making and entry of this Order. In conformity with the Parties’ objectives, the Court directs them read all provisions of the Stipulated Protective Order, including but not limited to paragraphs 10, 21 and 22.

IT IS HEREBY ORDERED as follows:

1. Any document, interrogatory answer, deposition testimony, or other information obtained, either in hard copy, electronically, or otherwise, through discovery or other actions taken in this above-captioned receivership action (the “Receivership”), including all the conduct and

processes authorized by the Orders Appointing Receiver entered on September 30, 2019 and November 4, 2019 (the “Orders”), or any portion thereof, may be designated as “Confidential” by any party, including third parties, if such party, after review by an attorney, asserts that the information and/or documents constitutes, includes, or discloses: (1) sensitive, non-public personal information concerning individuals, or (2) confidential and/or proprietary information, trade-secret information, or non-public financial information (any of the foregoing may be designated as “Protected Material”).

2. Protected Material is all documents and material that meet the definition in Paragraph 1 above and is also stamped with or otherwise designated as “Confidential” by affixing on each page the designation “Confidential.” With respect to documents, the designating party shall place the word “Confidential,” or similar language, clearly on each such page or portion of the Protected Material designated for protection.

3. Inadvertent failure to designate Protected Material as “Confidential” at the time of production may be remedied if, within forty-five (45) days after such Protected Material was produced without a “Confidential” stamp, the producing party notifies all Parties that such Protected Material had previously been produced without a “Confidential” stamp. If Protected Material which was inadvertently produced without a “Confidential” stamp is introduced as an exhibit during a deposition, the producing party must object either orally at the deposition or in writing no later than thirty days after the date on which the transcript is available from the court reporter for distribution to counsel, or otherwise that objection shall be waived. The producing party shall stamp such newly designated material as “Confidential.” All Parties shall return to the party, or destroy, any unstamped copies of such Protected Material upon receipt of such Protected

Material bearing the “Confidential” stamp, provided, however, that the foregoing provision shall not apply to any documents that had already been filed with the Court or had otherwise become publicly available.

4. Protected Material may be disclosed only to the following persons (“Qualified Person(s)”), and only under the conditions set forth below (in ¶ 6), except upon the prior written consent of the designating party:

- a. The Court.
- b. Attorneys representing the Parties and regular employees of such attorneys assigned to and necessary to assist in the conduct of this Receivership.
- c. Bona fide consultants and experts retained by the parties and/or by the attorneys for the parties, to the extent necessary for the conduct of this Receivership.
- d. Outside vendors, such as court reporters, duplicating services and translation services, to the extent necessary in the Receivership.
- e. Deponents noticed by the parties, to the extent necessary in the Receivership, the court reporters at such depositions, as well as any other witnesses who testify in this action, whether deposed or not.
- f. The Parties or their officers, directors and employees.

5. Notwithstanding any of the provisions of Paragraph 4, nothing in this Order shall prevent Plaintiff, as an agency of the State of Colorado, or Receiver, as a Court-appointed agent of the State of Colorado, from using or distributing to other state or federal government agencies, any Protected Material, for all proper purposes including but not limited to enforcement of any relevant laws and regulations, so long as the confidentiality of any Protected Material so used or

distributed is maintained pursuant to the terms of this Order, including, without limitation, in connection with any FOIA requests and/or CORA requests.

6. Before any Qualified Person in possession of Protected Material (a “disclosing person,” for purposes of this paragraph) shows or discloses such Protected Material to a person described in paragraph 4(c), 4(d), or 4(e) (a “receiving person” for purposes of this paragraph), the disclosing person shall provide to the receiving person a copy of this Order and shall require the receiving person to read the Order and execute (sign and date) a copy of Exhibit “A” – Consent to Terms of Protective Order.

7. Inadvertent production or disclosure of any Protected Material, privileged information, or information to which a party claims is governed by the work-product doctrine (“Privileged Material”) will not be deemed to be a waiver of those protections. If a producing party believes that Privileged Material was inadvertently produced, the producing party shall so notify the Parties in writing and state the basis for the claim of privilege or work-product protection. After receiving notice of the inadvertent production, a receiving party must promptly return, sequester, or destroy the inadvertently produced Privileged Material and any copies it has and may not use or disclose the Privileged Material or information contained therein until the claim is resolved. A receiving party may promptly present the information to the Court under seal for a determination of the claim. If the receiving party disclosed the Privileged Material before being notified of the inadvertent production, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved. Nothing in this paragraph will modify any obligation a party otherwise has with respect to inadvertent production under the law or the ethical rules.

8. To designate Protected Material produced by another person as “Confidential,” prompt written notice shall be provided to that other person of the Protected Material that should have been designated as “Confidential,” and that person, as well as all persons or entities that received the unstamped Protected Material, shall then follow the steps set forth above in paragraph 3 with respect to the treatment of Protected Material that was inadvertently not designated as “Confidential.”

9. Except as set forth in Paragraph 5, Protected Material produced or exchanged in the course of the Receivership shall not be used for any purpose other than performing the necessary duties and tasks in the Receivership, as outlined by the Orders, so long as the confidentiality of any Protected Material so used is maintained pursuant to the terms of this Order.

10. Protected Material filed with the Court pursuant to this Order is hereby ordered to have the Clerk of the Court to file and maintain in “suppressed” status any motion, exhibit or other material: (1) identified by the Parties on the face of the document as “suppressed” and “filed as suppressed” and (2) designated by the Parties by notice to the Clerk for each item to be filed and maintained as “suppressed”.

11. Counsel and all other Qualified Persons receiving or reviewing Confidential Material shall treat any document they created that incorporated Confidential Material – including any summary, compilation, notes, copy, electronic images, handwritten notes, correspondence or database containing Protected Material as a derivative copy of the Protected Material. All such derivative copies shall be treated just as the Protected Material.

12. A party shall not be obligated to challenge the propriety of a designation under paragraph 2 at the time made, and the failure to do so shall not preclude a subsequent challenge

thereto. Any party may request in writing to the party who produced Confidential Material that the designation be modified or withdrawn. If the designating party does not agree to re-designation within 10 days of receipt of the written request, the requesting party may apply to the Court for relief. Upon any such application to the Court for relief, the burden shall be on the designating party to show why its classification is proper. All interested parties will make best efforts to resolve such disagreements as to confidentiality before submitting them to the Court. Agreement of the Parties to this Order shall not be construed as an agreement or admission by one party that any designation under paragraph 2 by the other party is in any way proper or correct.

13. After termination of this Receivership, including any appeals, documents and other tangible items containing Protected Material, including all copies, notes, and other materials containing or referring to information derived therefrom, shall be returned to the party which produced it or destroyed within thirty days following a written request, and all persons who possessed such material shall confirm the return or destruction. Legal counsel may retain in its files one copy of Protected Material for archival purposes only. It is provided, however, that a party (specifically excluding legal counsel) shall be obligated to return or destroy Protected Material contained in an archived computer system backup in accordance with the party's computer back-up, security, or disaster recovery procedures. The provisions of this paragraph shall not apply to any Protected Material filed with the Court or disclosed by Plaintiff or Receiver pursuant to Paragraph 5. Rather, any Protected Material filed with the Court shall be disposed of pursuant to the Parties' stipulation and/or order of the Court.

14. If the Protected Material defined by this Order is in any manner referenced or utilized in the course of a deposition, counsel for the Parties shall be given opportunity to indicate

on the record at the deposition, or in writing within 3 days after receipt of the transcript of such deposition, that the testimony contains Protected Material and is subject to the provisions of this Order.

15. Prior to any deposition or segment of a deposition wherein either party intends on discussing or utilizing in any manner the Protected Material defined herein, the court reporter taking such deposition shall be provided with a copy of the Order and shall execute a Consent to Terms of Protective Order in the form of Exhibit "A" attached hereto. All such depositions or portions of depositions shall be conducted in private, with only Qualified Persons in attendance.

16. Except as set forth in paragraph 11, the restrictions embodied in this Order shall be binding upon the party, person, or entity to whom such Protected Material is produced or distributed unless and until the Court rules otherwise based upon a showing by that party that:

- a. The Protected Material, in the form produced, was or becomes public knowledge absent a breach of the restrictions of this Order; or
- b. The Protected Material, in the form produced, was already made known to that party through a third party who himself has not breached any obligation of confidentiality in doing so.

17. Nothing herein shall prevent any person from seeking, by written agreement of the signatories hereto or Court order, further, greater or lesser protection with respect to the use of any Protected Material in connection with the Receivership. Nothing herein shall be construed to limit in any way any producing party's use of its own Protected Material.

18. If a party (the "Disclosing Party") concludes that it has been compelled, by subpoena or other form of judicial or other compulsory process, to disclose information or

Protected Material other than those to whom disclosure is permitted in paragraph 4, the Disclosing Party shall as promptly as possible, and in any event at least fourteen days prior to the disclosure (or within a time frame that is reasonable under the circumstances if the return date of the subpoena or other process requires compliance in fewer than fourteen days), provide written notice, and include a copy of the subpoena or request, to counsel for the producing party of the Disclosing Party's intention to disclose Protected Material. The purpose of this paragraph is to give the producing party an opportunity to object to the disclosure of such Protected Material pursuant to compulsory process. If the producing party seeks an order from a court or other authority precluding disclosure of Protected Material, the Disclosing Party shall not disclose such Protected Material until the court or other authority has ruled on the producing party's request, so long as the Disclosing Party does not violate any rule of the court or other authority with jurisdiction over the subpoena or document request by waiting for the court or other authority to rule on the producing party's motion.

19. In the event that additional persons or entities become parties to this action, neither their outside counsel nor experts or consultants retained to assist said counsel shall have access to Protected Material produced by or obtained from any other producing party until said party has executed and filed with the Court a copy of this Stipulated Protective Order.

20. The terms of this Order shall be binding upon the Parties after the conclusion of this litigation by dismissal, settlement, entry of final judgment, or other means. The Court shall retain jurisdiction to enforce the terms of the Order and all persons or entities subject to its terms expressly submit to the jurisdiction of the Court for purposes of such enforcement.

21. The state judicial system, including the Second Judicial District, is a public



institution, and trials conducted here are open to the public. The Court will not take any special measures to protect the confidentiality of documents or testimony during court proceedings, including but not limited to excluding people from the courtroom, except upon a demonstration of extraordinary need and irreparable harm.

22. This Protective Order may be modified by the Court at any time for good cause shown following notice to the Parties and an opportunity for them to be heard.

IT IS SO STIPULATED.

/s/ Katherine Roush

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*Attorneys for Plaintiff*

**SO ORDERED** this 16<sup>th</sup> day of March, 2020.

BY THE COURT:

A handwritten signature in black ink, reading "Kandace C. Gerdes". The signature is written in a cursive style with a large, looping "G" at the end. It is positioned above a horizontal line.

Kandace C. Gerdes  
District Court Judge

**EXHIBIT A**

**CONSENT TO TERMS OF PROTECTIVE ORDER**

I, \_\_\_\_\_, hereby acknowledge that (i) I have received a copy of the Stipulated Protective Order entered in the above-referenced case; (ii) I have reviewed the Stipulated Protective Order; and (iii) I consent and agree to abide by the terms and provisions contained therein.

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title/Position