

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	DATE FILED: April 6, 2022 3:29 PM FILING ID: D6D182616FD79 CASE NUMBER: 2019CV33770
TUNG CHAN, 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;">▲ COURT USE ONLY ▲</p> Case No: 19CV33770 Division: 209
[PROPOSED] STIPULATED PROTECTIVE ORDER	

This matter comes before the Court on the written stipulation of Non-Party Bellco Credit Union (“Bellco”), Tung Chan (“Plaintiff”), and Gary Schwartz in his position as the Court-Appointed Receiver over the assets of the Defendants (“Receiver”), by and through their respective counsel. Bellco, 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.

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 person or entity, including third-parties to this action, if such person or entity, 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 businesses, 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. Any document, interrogatory answer, deposition testimony, or other information obtained, either in hard copy, electronically, or otherwise, through discovery or other actions taken in the Receivership, including all the conduct and processes authorized by the Orders, or any portion thereof, may be designated as “Highly Sensitive Confidential” by any person or entity, including third-parties to this action, if such person or entity, after review by an attorney, asserts that the Protected Material is such that the providing person or entity could suffer injury, severe disruption, or significant embarrassment if the information is provided beyond the minimum necessary for the conduct of the Receivership (the foregoing may be designated as “Highly Sensitive Protected Material”). Belco currently anticipates that it will use this designation only for its policies and procedures that the Receiver has requested, but reserves its right to make additional designations as it deems appropriate in this matter. This designation shall be used sparingly.

3. 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. Any party may designate a portion of a deposition as “Confidential” with an appropriate statement on the record.

4. Highly Sensitive Protected Material is all documents and material that meet the definition in Paragraph 2 above and is also stamped with or otherwise designated as “Highly Sensitive Confidential” by affixing on each page the designation “Highly Sensitive Confidential.” With respect to documents, the designating party shall place the word “Highly Sensitive Confidential,” or similar language, clearly on each such page or portion of the Highly Sensitive Protected Material designated for protection. Any party may designate a portion of a deposition as “Highly Sensitive Confidential” with an appropriate statement on the record, and the procedures detailed below shall be followed by all participants of the deposition and all future recipients of any transcripts of such depositions.

5. Inadvertent failure to designate Protected Material or Highly Sensitive Protected Material as “Confidential” or “Highly Sensitive Confidential” at the time of production, designation, or provision may be remedied if, within forty-five (45) days or other reasonable time after such Protected Material was produced without a stamp, the producing and/or designating party notifies the receiving party that such Protected Material or Highly Sensitive Protected Material had previously been produced without a stamp. If Protected Material or Highly Sensitive Protected Material which was inadvertently produced without a stamp is introduced as an exhibit during a deposition, the producing and/or designating party must object either orally at the deposition or in writing no later than thirty days after the date on which the transcript is received by the designating party. The producing and/or designating party shall stamp such newly designated material as “Confidential” or “Highly Sensitive Confidential.” All Parties shall return

to the party, or destroy, any unstamped copies of such Protected Material or Highly Sensitive Protected Material upon receipt of such documents bearing the appropriate 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.

6. Protected Material may be disclosed only to the following persons (“Qualified Person(s)”), and only under the conditions set forth below (in ¶ 8 and otherwise in this order), except upon the prior written consent of the designating party:

- a. The Court (except that such disclosure shall comply with the provisions of ¶ 12 below).
- 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 (except that such disclosure shall comply with the provisions of ¶¶ 17-18 below)
- f. The Parties or their officers, directors and employees.

7. Notwithstanding any of the provisions of Paragraph 6, 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. In the event any Protected Material is subject to a FOIA and/or CORA request, the designating party shall be provided with reasonable notice and opportunity to respond prior to any provision of the Protected Material in response to such a request.

8. 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 6(c), 6(d), or 6(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.

9. A designating party shall not be obligated to produce or provide copies of Highly Sensitive Protected Material, but will make it available for review by a requesting party in accordance with the provisions of this paragraph and subparagraphs:

- a. Only the Court, the Receiver, Bellco, and attorneys representing the Receiver and Bellco (and regular employees of such persons or entities assigned to and necessary to assist in the conduct of this Receivership) may review Highly Sensitive Protected Material (“Qualified Reviewers”).
- b. The review will occur at the date and time mutually agreed by the relevant

Qualified Reviewers upon reasonable notice. Documents may be made available for review either with paper or electronic copies and the review may occur either in person or virtually.

- c. Qualified Reviewers may review and take non-verbatim notes of Highly Sensitive Protected Material, but may not make copies, scans, photographs, verbatim notes, or other sorts of exact or verbatim copies of the Highly Sensitive Protected Material.
- d. Qualified Reviewers may request to receive a copy of Highly Sensitive Protected Materials, but any such requests shall be made in good faith and shall be limited to the narrowest set of documents or information necessary in order to perform specific duties of the Receivership. In the event of a request, which must explain the specific intended use of the information (including anticipated future recipients), the designating party and the party requesting copies shall negotiate in good faith about any conditions or restrictions on the provision of such copies, which may include, among other things, conditions on subsequent use and/or limitations or conditions on providing the documents or information to any other recipients.
- e. Qualified Reviewers may request to refer to Highly Sensitive Protected Materials in a deposition, but any such requests shall be made in good faith and shall be limited to the narrowest set of documents or information necessary in order to perform specific duties of the Receivership. In the event of a request, which must explain the nature of the anticipated use, the

designating party and the party requesting copies shall negotiate in good faith any conditions or restrictions on the use of such information or documents, which may include, among other things, additional confidentiality restrictions on all participants in the deposition, separate transcripts for the portion of the deposition referring to the Highly Sensitive Protected Materials.

10. Inadvertent production or disclosure of any Protected Material, Highly Sensitive 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 and/or designating party believes that Privileged Material was inadvertently produced, the producing and/or designating 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 and/or designating 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.

11. To designate Protected Material or Highly Sensitive Protected Material produced

by another person or entity as “Confidential” or “Highly Sensitive Confidential,” prompt written notice shall be provided to that other person or entity of the Protected Material Highly Sensitive Protected Material that should have been designated as “Confidential” or “Highly Sensitive Confidential,” and that person or entity, as well as any other persons or entities that are actually known by the designating party to have received the unstamped Protected Material or Highly Sensitive Protected Material, shall then follow the steps set forth above in paragraph 5 with respect to the treatment of Protected Material or Highly Sensitive Protected Material that was inadvertently not designated as “Confidential” or “Highly Sensitive Confidential.”

12. Except as set forth in Paragraph 7, Protected Material and/or Highly Sensitive Protected Material produced, provided, 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, and only so long as the confidentiality of any Protected Material and/or Highly Sensitive Protected Material is maintained pursuant to the terms of this Order.

13. Any Protected Material filed with the Court shall be filed as “Restricted” and shall remain “Restricted” until further Order by the Court. Where possible, only portions of the filing with the Court constituting Protected Material shall be filed as “Restricted.” The party filing any Protected Material shall be responsible for informing the Court that the filing should be “Restricted.” Highly Sensitive Protected Material shall not be filed with the Court or used in a Court proceeding if at all possible. If a Party believes that it must file or use in a Court proceeding documents that another person or entity have designated as Highly Sensitive Protected Material, the Party and designating party shall negotiate in good faith about a redesignation of the materials and/or other alternatives with respect to that document and information.

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

15. A party shall not be obligated to challenge the propriety of a designation under this order at the time made, and the failure to do so shall not preclude a subsequent challenge thereto. Any person or entity may request in writing to the person or entity who provided Protected Material or Highly Sensitive Protected 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 this order by the other person or entity is in any way proper or correct.

16. After termination of this Receivership, including any appeals, documents and other tangible items containing Protected Material and/or Highly Sensitive Protected Material, including all copies, notes, and other materials containing or referring to information derived therefrom, shall be returned to the person or entity 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 and/or Highly Sensitive Protected Material (and any notes or and other materials containing or referring to information derived therefrom) for archival purposes only. It is provided, however, that a party (specifically excluding legal counsel) shall be obligated to return or destroy Protected Material and/or Highly Sensitive 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 and/or Highly Sensitive Protected Material filed with the Court or disclosed by Plaintiff pursuant to Paragraph 7. Rather, any Protected Material and/or Highly Sensitive Protected Material filed with the Court shall be disposed of pursuant to the Parties' stipulation and/or order of the Court.

17. 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 10 days after receipt of the transcript of such deposition, that the testimony contains Protected Material and is subject to the provisions of this Order. Protected Material shall only be used in a deposition after prior notice to the designating party and reasonable opportunity to object.

18. 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.

19. Highly Sensitive Protected Material shall not be used, referenced, or proffered in a deposition unless previously agreed to in writing in accordance with this Order. If Highly Sensitive Protected Material is used, referenced, or proffered in a deposition without obtaining advance written agreement in accordance with this Order, the person or entity who makes such disclosure without advance written agreement shall provide notice of the unagreed disclosure to the person or entity who designated the Highly Sensitive Protected Material within 48 hours of the unagreed disclosure. Thereafter, the disclosing party shall cooperate fully with all efforts to address the unagreed disclosure at the direction of the designating party. The disclosing party shall be responsible for all reasonable costs of the efforts to address the unagreed disclosure, including reasonable attorneys fees and costs of the designating party in connection with such efforts.

20. The restrictions embodied in this Order shall be binding upon the party, person, or entity to whom such Protected Material and/or Highly Sensitive Protected Material is produced or distributed unless and until the Court rules otherwise based upon a showing by that party that the Protected Material and/or Highly Sensitive Protected Material, in the form produced, was or becomes public knowledge absent a breach of the restrictions of this Order.

21. Nothing herein shall prevent any person from seeking, by written agreement of all signatories hereto as well as the person or entity who designated the applicable materials, or by Court order after motion and notice to all signatories hereto as well as to the person or entity who designated the applicable materials, further, greater or lesser protection with respect to the use of any Protected Material and/or Highly Sensitive Protected Material in connection with the Receivership. Nothing herein shall be construed to limit in any way any producing and/or designating person's or entity's use of its own Protected Material and/or Highly Sensitive

Protected Material.

22. If a person or entity (the “Disclosing Party”) concludes that it has been compelled, by subpoena or other form of judicial or other compulsory process, to disclose Protected Material and/or Highly Sensitive Protected Material other than those to whom disclosure is permitted under the Order, 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 and/or designating person or entity of the Disclosing Party’s intention to disclose Protected Material and/or Highly Sensitive Protected Material. In the event a party to this action not listed as a “Qualified Reviewer” or a “Qualified Person” in paragraphs 6 and 9 of this Order requests that the Receiver provide a them a copy of Protected Material or Highly Sensitive Protected Material pursuant to paragraph 9 of the Orders Appointing Receiver dated September 30, 2019 and November 4, 2019, the Receiver shall as promptly as possible, and in any event at least fourteen days prior to the disclosure, provide written notice, and include a copy of the request, to counsel for the producing and/or designating person or entity of the Receiver’s intention to disclose Protected Material and/or Highly Sensitive Protected Material. The purpose of this paragraph is to give the producing and/or designating person or entity an opportunity to object to the disclosure of such Protected Material and/or Highly Sensitive Protected Material pursuant to compulsory process. If the producing and/or designating person or entity seeks an order from a court or other authority precluding disclosure of Protected Material and/or Highly Sensitive Protected Material, the Disclosing Party or Receiver shall not disclose such Protected Material and/or Highly Sensitive

Protected Material until the Disclosing Party or Receiver has obtained an order from a court or other authority, so long as the Disclosing Party does not violate any rule or order 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 and/or designating person's or entity's motion.

23. 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 and/or Highly Sensitive Protected Material produced by or obtained from any other person or entity until (1) the undersigned parties have agreed in writing that disclosure may be made to the additional persons or entities, their counsel, experts, or consultants, and (2) said person or entity has executed their agreement to be bound by the terms of and filed with the Court a copy of this Stipulated Protective Order.

24. The terms of this Order shall be binding upon the Parties and the recipient of any Protected Material or Highly Sensitive Protected Material 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.

IT IS SO STIPULATED.

/s/
John A. Chanin, #20749
Katherine A. Roush, # 39267

Attorneys for Court Appointed Receiver

/s/
Steve Gutierrez
Brian Neil Hoffman
Hannah E. Armentrout
Holland & Hart LLP

Attorneys for third-party Bellco Credit Union

/s/
Janna Fischer
Attorneys for Plaintiff

IT IS SO ORDERED.

Dated this _____ day of _____, 2022.

BY THE COURT:

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