

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Calamco v. J.R. Simplot Co.

No. 2:21-cv-01201-KJM-CSK (E.D. Cal. June 24, 2025) · No. 2:21-cv-01201-KJM-CSK · Decided June 24,
2025

OPINION

Calamco v. J.R. Simplot Co.

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 11 CALAMCO, Case No. 2:21-cv-01201-KJM-CSK 12 Plaintiff and Counterclaim Defendant,

13 ORDER GRANTING IN PART AND

v. DENYING IN PART DEFENDANT-

14 COUNTERCLAIMANT’S MOTION FOR

J.R. SIMPLOT COMPANY, RECONSIDERATION

15 Defendant and (ECF No. 145) 16 Counterclaimant. 17 18 Pending before the Court is
Defendant and Counterclaimant J.R. Simplot 19 Company’s motion to retain confidentiality,
which Plaintiff and Counterclaim Defendant 20 Calamco opposes.¹ (ECF No. 145.) For the
reasons that follow, the Court GRANTS IN 21 PART AND DENIES IN PART Simplot’s motion
to retain confidentiality.

22 I. BACKGROUND

23 The background as to the pending motion is provided here, and general case 24 background is
not repeated as it has been previously provided in prior orders. On

25 February 27, 2023, the Court rejected the parties’ first proposed Stipulated Protective

26 Order for failure to identify the specific information sought for protection. (ECF No. 76.) 27 1

This matter proceeds before the undersigned pursuant to 28 U.S.C. § 636, Fed. R. 28 Civ. P. 72,

and Local Rule 302(c). 1 The Court approved the parties’ second proposed Stipulated Protective

Order on July 2 18, 2023. (ECF No. 95.) This Stipulated Protective Order set a single

“Confidential” tier 3 of protection, and differentiated between “Outside Counsel of Record” and

“House 4 Counsel.” Stip. Prot. Order ¶¶ 2.2, 2.7, 2.9. Information designated Confidential 5

generally may not be disclosed, but may be disclosed to specific enumerated categories 6 of

individuals, including the Receiving Party’s Outside Counsel of Record, “the officers, 7 directors,

and employees (including House Counsel) of the Receiving Party” to whom 8 disclosure is

reasonably necessary for this litigation, experts of the Receiving Party to 9 whom disclosure is

reasonably necessary, deponents to whom disclosure is reasonably 10 necessary, the court, court

reporters, and other third party vendors. Id. ¶¶ 2.2, 7.2. 11 Various individuals are required to sign the “Acknowledgment and Agreement to Be 12 Bound” attached to the Stipulated Protective Order. Id. ¶ 7.2. 13 The parties then submitted an Amended Stipulated Protective Order, which the 14 Court approved on December 3, 2024, with the clarification that it would not retain 15 jurisdiction over this protective order once the case is closed.² (ECF No. 129.) The 16 Amended Stipulated Protective Order added a second, heightened tier of protection 17 called “Outside Counsels’ Eyes Only” in addition to the existing Confidential tier. 18 Compare Am. Stip. Prot. Order ¶¶ 2.10, 7.3 (ECF 129), with Stip. Prot. Order (ECF No. 19 95). Unlike material designated Confidential, material designated Outside Counsels’ 20 Eyes Only may not be disclosed to “the officers, directors, and employees (including 21 House Counsel) of the Receiving Party” or disclosed to experts who have within the last 22 ten years been employees or independent contractors of any party, any party’s 23 subsidiary, or any party’s affiliated company. See Am. Stip. Prot. Order ¶¶ 7.2, 7.3. The 24 Amended Stipulated Protective Order continued to differentiate between “Outside 25 Counsel of Record” and “House Counsel.” Id. ¶¶ 2.7, 2.9. No other material changes 26 2 The Amended Stipulated Protective Order appears to be based on the United States 27 District Court for the Northern District of California’s model protective orders, which are publicly available. See U.S. District Court N.D. Cal. Model Protective Orders, available at 28 <https://cand.uscourts.gov/forms/model-protective-orders/>. 1 were made. 2 Pursuant to the Amended Stipulated Protective Order, Simplot designated as 3 Outside Counsels’ Eyes Only various documents, the deposition transcripts of Simplot’s

4 Rule 30(b)(6) witnesses John Schiers and Greg Swanson, and the report of its retained 5 damages expert, Dr. Keith Ugone. Calamco challenged certain of these designations, 6 and Simplot modified its designation of Outside Counsels’ Eyes Only to Confidential for 7 one document (SIMPLOT004813) and portions of Dr. Ugone’s expert report. As a result 8 of Simplot’s Outside Counsels’ Eyes Only designation, portions of the report of 9 Calamco’s rebuttal damages expert, Dr. Kenneth Serwin, have also been designated 10 Outside Counsels’ Eyes Only. The parties were not able to resolve their dispute 11 regarding designations after meeting and conferring. 12 On March 18, 2025, the parties filed a notice of Simplot’s motion to retain 13 confidentiality and a notice of Calamco’s cross-motion to compel, which the Court denied 14 because the parties did not file the required Joint Statement re Discovery Disagreement. 15 (ECF Nos. 137, 140.) On April 1, 2025, the district judge denied the parties’ stipulated 16 request to extend all case deadlines. (ECF No. 139.) 17 On May 20, 2025, Simplot filed a motion to retain confidentiality and Calamco filed 18 a cross-motion to compel, with a combined Joint Statement re Discovery Disagreement.³ 19 (ECF No. 145.) On May 22, 2025, the Court denied the motions as untimely where the 20 last discovery deadline of April 23, 2025 had passed and the district judge denied the 21 parties’ stipulated request to extend all case deadlines. (ECF No. 146.) Simplot 22 subsequently moved for reconsideration of the Court’s denial of Simplot’s motion to 23 retain confidentiality as untimely, which the Court granted on June 12, 2025 and vacated 24 3

Simplot did not follow this Court's Civil Standing Orders, which sets a twenty (20) 25 page limit for the Joint Statement re Discovery Disagreement. The parties' Joint 26 Statement as to Simplot's motion to retain confidentiality exceeded thirty (30) pages, and the Simplot-only portion was twenty (20) pages long. The Court will exercise its 27 discretion to consider the entire portion of the Joint Statement addressing the motion to retain confidentiality, but Simplot is warned that the Court will not excuse such failures in 28 the future. 1 the portion of its May 22, 2025 order denying Simplot's motion to retain confidentiality as 2 untimely.⁴ (ECF Nos. 149, 150.) On June 23, 2025, Simplot submitted the documents at 3 issue for an in-camera review as ordered by the Court. (ECF No. 155.)

4 II. DISCUSSION

5 The issue presented to the Court is narrow. Calamco concedes that the 6 information at issue is properly designated Confidential under the Amended Stipulated 7 Protective Order: "the [Amended Stipulated Protective Order] specifically contemplates 8 that this type of information can be treated as CONFIDENTIAL." It Disco Stmt at 30-31 9 (citing Am. Stip. Prot. Order ¶ 2.2) (ECF No. 145-1). The issue then is whether the 10 information is properly designated as Outside Counsels' Eyes Only, rather than as 11 Confidential. Information designated Confidential is information "that qualif[ies] for 12 protection under Federal Rule of Civil Procedure 26(c)." Am. Stip. Prot. Order ¶ 2.2. 13 Disclosure of Confidential information is generally restricted, but may be disclosed to in- 14 house and outside counsel; the party's officers, directors, and employees; and other 15 categories enumerated in the Amended Stipulated Protective Order ¶ 7.2. Information 16 designated Outside Counsels' Eyes Only is information "that the Designating Party in 17 good faith believes is highly confidential such that, if disclosed to the Receiving Party, 18 might cause competitive harm to the Designating Party." Id. ¶ 2.10. Unlike information 19 designated Confidential, information designated Outside Counsels' Eyes Only may not 20 be disclosed to in-house counsel, or to the party's officers, directors, and employees. Id. 21 ¶ 7.3. 22 Though the parties do not actually dispute that the information at issue is 23 Confidential and warrants protection under the Amended Stipulated Protective Order, in 24 an abundance of caution, the Court proceeds with the two-step analysis described in the 25 legal standards section below. 26 // / 27 4 Reconsideration of the Court's denial of Calamco's motion to compel as untimely was 28 not sought, and this portion of the May 22, 2025 order remains. 1 A. Legal Standards 2 Pursuant to Federal Rule of Civil Procedure 26, "[t]he court may, for good cause, 3 issue an order to protect a party or person from annoyance, embarrassment, oppression, 4 or undue burden or expense." Fed. R. Civ. P. 26(c)(1). "The party opposing disclosure 5 has the burden of proving 'good cause,' which requires a showing 'that specific prejudice 6 or harm will result' if the protective order is not granted." In re Roman Cath. Archbishop 7 of Portland in Oregon, 661 F.3d 417, 424 (9th Cir. 2011) (quoting Foltz v. State Farm 8 Mut. Auto. Ins. Co., 331 F.3d 1122, 1130 (9th Cir. 2003)). The court need not making a 9 finding of good cause before issuing a protective order when the parties stipulate to a 10 protective order, as the parties do here. See id. When there is a stipulated

protective 11 order, the burden of proof remains with the party seeking protection (here, Simplot). See 12 id. (citing *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1211 n.1 (9th Cir. 2002)). 13 The court analyzes a motion to retain confidentiality designations pursuant to a 14 stipulated protective order in two steps. First, the court “must determine whether 15 particularized harm will result from disclosure of information to the public.” In re Roman 16 Cath. Archbishop of Portland, 661 F.3d at 424. Second, “if the court concludes that such 17 harm will result from disclosure of the discovery documents, then it must proceed to 18 balance the public and private interests to decide whether maintaining a protective order 19 is necessary.” Id. Where both factors weigh in favor of protection, the court must also 20 consider whether redaction will allow disclosure. Id. at 425 (citing *Foltz v. State Farm 21 Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1136-37 (9th Cir. 2003)). In balancing the interests, 22 courts examine the following factors: “(1) whether disclosure will violate any privacy 23 interests; (2) whether the information is being sought for a legitimate purpose or for an 24 improper purpose; (3) whether disclosure of the information will cause a party 25 embarrassment; (4) whether confidentiality is being sought over information important to 26 public health and safety; (5) whether the sharing of information among litigants will 27 promote fairness and efficiency; (6) whether a party benefitting from the order of 28 confidentiality is a public entity or official; and (7) whether the case involves issues 1 important to the public.” See id. at 424, 424 n.5 (citing *Glenmede Trust Co. v. 2 Thompson*, 56 F.3d 476, 483 (3d Cir. 1995)). 3 B. Analysis 4 Simplot designated as Outside Counsels’ Eyes Only the following: (i) Simplot’s 5 supply agreement with third party Helm Fertilizer Corporation; (ii) a spreadsheet 6 compiling UAN325 pricing and margin data for fiscal years 2022-2024 7 (SIMPLOT004814); and (iii) a spreadsheet exported from the “Salesforce platform 8 showing UAN32 sales versus quantities individual customers were contracted to 9 purchase” (SIMPLOT004826). 6 Based on Simplot’s Outside Counsels’ Eyes Only 10 designation of this information, portions of other documents that contain this designated 11 information have also been designated as Outside Counsels’ Eyes Only: (iv) portions of 12 the deposition transcripts of Simplot Rule 30(b)(6) witnesses Schiers and Swanson 13 pertaining to this information; (v) portions of the report of Simplot’s damages expert Dr. 14 Ugone referencing this information; and (vi) portions of the report of Calamco’s rebuttal 15 damages expert Dr. Serwin referencing this information. Calamco contends that these 16 documents and information should be re-designated as Confidential, not as Outside 17 Counsels’ Eyes Only. 18 The Court first addresses Calamco’s due process argument regarding the Outside 19 Counsels’ Eyes Only designations at trial and other trial-related arguments, including 20 how confidentiality designations will be handled at trial. Trial-related issues are not 21 properly before this Court on Simplot’s motion to retain confidentiality, which was 22 brought pursuant to the Amended Stipulated Protective Order. Am. Stip. Prot. Order 23 5 “UAN32” or “UAN 32” is a fertilizer product using urea ammonium nitrate solution at 24 32% nitrogen. It Disco Stmt at 9-10. 6 The parties dispute whether the Outside Counsels’ Eyes Only designation of the 25 Salesforce spreadsheet (SIMPLOT004826) is at issue based on the parties’

meet and 26 confer efforts. Without determining whether the parties adequately met and conferred as to the Salesforce spreadsheet, which is unclear from the record, the Court will include 27 this spreadsheet in its analysis as the underlying issues and analysis are the same, and doing so promotes the efficient use of judicial resources and also conserves the 28 resources of the parties.

1 ¶ 6.3. The Amended Stipulated Protective Order expressly provides that “[a]ny use of 2 Protected Material at trial shall be governed by a separate agreement or order.” Am. 3 Stip. Prot. Order ¶ 3. The use of Protected Material at trial and various other trial-related 4 issues, including whether any material at trial will retain confidentiality designations and 5 public access, will need to be raised at the appropriate time with the judge presiding over 6 the trial. The Court therefore declines to analyze Calamco’s due process and other trial- 7 related arguments. 8 Though the parties do not dispute that the information is Confidential and 9 warrants protection, in an abundance of caution, the Court proceeds with the two-step 10 analysis. As to the first step, the Court finds that Simplot has sufficiently identified a 11 “particularized harm will result from disclosure of information to the public,” based on its 12 description of competitive harm from the disclosure of its supply agreement with third 13 party Helm, and UAN32 sales, pricing, and margin data. See *In re Roman Cath.*, 661 14 F.3d at 424. Simplot states that while the fact that Helm supplies Simplot with UAN32 is 15 publicly known, the details of Simplot’s agreement with Helm, which includes cost and 16 pricing information, and calculation of Simplot’s profit, is not known to Calamco and other 17 competitors in the market. *Jt Disco Stmt* at 10; Richard Sunderland Decl. ¶¶ 7-10 (ECF

18 No. 145-2). Simplot has sufficiently alleged that this information provides Simplot with a 19 competitive advantage, and disclosing it would harm Simplot. See Sunderland Decl. 20 ¶¶ 10, 13, 14. The agreement also includes a confidentiality provision. *Jt Disco Stmt* at 21 11; Sunderland Decl. ¶ 11. 22 The SIMPLOT004814 spreadsheet containing UAN32 sales, pricing, and margin 23 data represent Simplot’s compilation of its UAN32 data from fiscal year 2022 through 24 2024. *Jt Disco Stmt* at 12; John Schiers Decl. ¶¶ 4-6 (ECF No. 145-3). This data was 25 collected and aggregated on a daily basis over many years by Simplot personnel. 26 Schiers Decl. ¶ 5. This spreadsheet also calculates Simplot’s year-over-year gross profit 27 margin from UAN32. Schiers Decl. ¶ 4. The SIMPLOT004826 Salesforce spreadsheet 28 also includes sales data by individual customer. Simplot has sufficiently alleged that this 1 sales, pricing, and margin information provides Simplot with a competitive advantage, 2 and disclosing it would harm Simplot. See Sunderland Decl. ¶¶ 14, 16; Schiers Decl. 3 ¶¶ 5-7. This information is not disclosed outside of Simplot. The Court notes that courts 4 in California have also found compilations of cost and pricing data to be trade secrets. 5 See *Cool Runnings Int’l Inc. v. Gonzalez*, 2021 WL 5331453, at *7 (E.D. Cal. 2021) 6 (collecting cases that the compilation of pricing information is a trade secret and granting 7 plaintiff’s motion for a preliminary injunction); *Cutera, Inc. v. Lutronic Aesthetics, Inc.*, 8 444 F. Supp. 3d 1198, 1206 (E.D. Cal. 2020); *Argo Grp. US, Inc. v. Prof’l Governmental 9 Underwriters, Inc.*, 2013 WL 11327772, at *2 (C.D. Cal. Dec. 6, 2013)

("[I]nformation 10 regarding profit margins, costs, and market research can be protected trade secrets."). 11 As to the second step, in balancing the public and private interests, the Court 12 finds that the following factors weigh in favor of protection: as described above, 13 disclosure will violate privacy interests of Simplot and as to the Helm agreement, also 14 violate the privacy interests of third party Helm Fertilizer Corporation where the supply 15 agreement is subject to a confidentiality agreement between Helm and Simplot; while 16 disclosure of the information will not cause a party embarrassment, there is a risk of 17 competitive harm to Simplot as discussed above; the information is not important to 18 public health and safety; none of the parties, including Helm, are public entities or 19 officials; and the case does not involve issues important to the public. 20 The following factor weighs in favor of disclosure: the information is being sought 21 by Calamco for a legitimate purpose in this litigation, though the Court notes Simplot's 22 concern that the information may be used outside this litigation. 23 The fairness and efficiency factor is neutral as it is unclear whether the sharing of 24 highly confidential information to Calamco executives directly, rather than to their outside 25 counsel and outside experts, will promote fairness and efficiency. The parties' Amended 26 Stipulated Protective Order expressly provides for this. While Calamco raises concerns 27 regarding not being able to share this information with its officers, directors, and 28 employees, limiting certain information to attorney's eyes only is common in high stakes 1 corporate litigation between competitors and a provision to which Calamco agreed. In 2 addition, Calamco's outside counsel and outside experts were and are able to review 3 this information. 4 In balancing all the factors, the Court concludes that the private interests in 5 protection outweigh the public interests. The Court expressly notes that the use of 6 protected information at trial is not properly before this Court on Simplot's motion to 7 retain confidentiality. 8 Because both factors weigh in favor of protection, the Court must also consider 9 whether redaction will allow disclosure. See *In re Roman Cath. Archbishop*, 661 F.3d at 10 425. Here, Simplot has designated three entire documents as Outside Counsels' Eyes 11 Only: the Simplot-Helm agreement and two spreadsheets (SIMPLOT004814 and 12 SIMPLOT004826). The Court reviewed these documents in camera. 13 As to the Simplot-Helm agreement, the Court concludes that this document may 14 be partially redacted to permit disclosure of non-highly confidential or confidential 15 information. Some portions are clearly highly confidential (e.g., Attachment A and other 16 provisions related to pricing, margins, and calculations). Other portions, however, are not 17 highly confidential or confidential (e.g., contract terms that appear to be standard terms 18 that are likely not unique to this agreement, etc.). Within seven (7) days of this Order, 19 Simplot's outside counsel is ordered to provide to Calamco's outside counsel a proposed 20 redacted version of the Simplot-Helm agreement and meet and confer with Calamco's 21 outside counsel regarding the proposed redacted version. The Court fully expects 22 outside counsel for Simplot and Calamco to be able to reach an agreement on the partial 23 redaction of the Simplot-Helm agreement. 24 As to both spreadsheets, the Court concludes that redaction is not possible where 25 they are comprised of sales, pricing, and margin

data. 26 Simplot has already redacted those portions of the deposition transcripts and 27 expert reports that refer to the underlying information. To the extent the redaction and 28 partial disclosure of the Simplot-Helm agreement ordered impacts the redaction of 1 | deposition transcripts and expert reports, Simplot is ordered to promptly provide 2 || Calamco's outside counsel with revised redacted versions of the deposition transcripts 3 | and expert reports. 4] Ill. CONCLUSION 5 In conclusion, IT |S HEREBY ORDERED that: 6 1. Defendant and Counterclaimant J.R. Simplot Company's motion to retain 7 confidentiality (ECF No. 145) is GRANTED IN PART AND DENIED IN 8 PART; 9 2. Within seven (7) days of this Order, Simplot's outside counsel is ordered to 10 provide a proposed redacted version of the Simplot-Helm agreement and 11 meet and confer with Plaintiff and Counterclaim Defendant Calamco's 12 outside counsel regarding the proposed redacted version; and 13 3. To the extent the redaction and partial disclosure of the Simplot-Helm 14 agreement ordered impacts the redaction of deposition transcripts and 15 expert reports, Simplot is ordered to promptly provide Calamco's outside 16 counsel with revised redacted versions of the deposition transcripts and 17 expert reports. 18 19 |

Dated: June 24, 2025 Cc (i s □□

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UNITED STATES MAGISTRATE JUDGE

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