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## CLIENT ALERT

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### A Patent For A Formula Does Not Destroy Trade Secret Status So Long As The Patent Does Not Disclose The “Process” For Applying The Trade Secret

On November 20, 2019, the California Court of Appeal confirmed that a patent for a formula does not destroy a formula’s trade secret status so long as the patent does not disclose the process for applying the trade secret.

In *Global Protein Products, Inc. v. Le* (2019) 2019 Cal.App. LEXIS 1156, appellants Kevin K. Le and West Coast AG, LLC (“Appellants”) appealed from the trial court’s denial of their renewed motion to dissolve a stipulated permanent injunction, which prohibited Appellants from acquiring, disclosing or using a trade secret formula developed by Global Protein Products, Inc. (“Respondent”).

Appellants claimed that when Respondent made certain public disclosures of the ingredients of the formula in connection with obtaining a patent, that this resulted in the information contained in the trade secret becoming part of the public domain and extinguishing the previously existing trade secret status.

The California Court of Appeal, while agreeing with the general statement of the law that, “publication of a trade secret destroys it,” the Court of Appeal did not agree that trade secret status was forfeited in this instance. \* 25. This was because Respondents, “trade secret was not limited to the identity of the components used; the trade secret encompassed the proprietary formula and the process for treating lettuce.” \* 26.

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The benefits of a patent and a trade secret are both of immeasurable value. However, with the benefit of qualified legal counsel, you may not have to sacrifice the benefit of one to get the benefit of the other.

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