

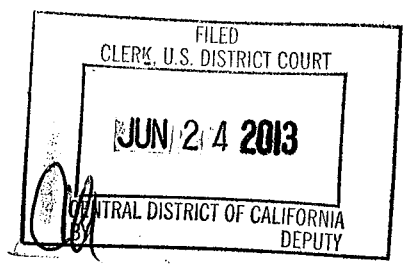
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14 UNITED STATES DISTRICT COURT
 15 CENTRAL DISTRICT OF CALIFORNIA

16 TYRONE SMITH, GREG
 17 VILLANUEVA, and JOHN
 CAUDILL, individuals, on behalf of
 18 themselves, all others similarly
 situated, and the general public,

19 Plaintiff,

20 v.

21 BIMBO BAKERIES USA, INC., a
 22 Delaware corporation; and DOES 1
 through 10, inclusive,

23 Defendants.

Case No. CV 12-1689 CAS (PJWx)
**STIPULATED PROTECTIVE
 CONFIDENTIALITY
 AGREEMENT**

ORDER. PJW

NOTE CHANGES
 THROUGHOUT.

25 **ANY PARTY INTENDING TO SUBMIT TO
 THE COURT ANY DOCUMENTS COVERED
 26 BY THIS PROTECTIVE ORDER SHALL FILE A
 MOTION UNDER LOCAL RULE 79-5
 27 REQUESTING PERMISSION TO FILE
 THEM UNDER SEAL.**

PJW

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18 *Attorneys for Defendant
19 BIMBO BAKERIES USA, INC*

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1 WHEREAS, pursuant to Federal Rule of Civil Procedure 26(Plaintiffs
2 Tyrone Smith, Greg Villanueva, and John Caudill (“Plaintiffs”) and Defendant
3 Bimbo Bakeries USA, Inc. (“Defendant”) (collectively, the “Parties”) have
4 stipulated that certain discovery material be treated as confidential (hereinafter
5 “Confidentiality Agreement”);

6 WHEREAS, the Parties agree that it is critical to maintain the confidentiality
7 of certain documents and information produced in this litigation and to ensure that
8 such documents and information are used for purposes of this litigation only;

9 Accordingly, IT IS HEREBY STIPULATED, by and between the Parties:

10 1. The Parties shall have the right to limit access to any document or data
11 produced in discovery or other item relevant to this litigation, including without
12 limitation, data or documents produced by a party or third third-party, answers to
13 interrogatories, and any portion of deposition testimony or other testimony by a
14 witness, to the counsel for the Parties. Such documents and data include, without
15 limitation, those that contain confidential compensation, benefits, work hours, and
16 other personal information pertaining to putative class members other than the
17 named Plaintiffs.

18 2. Such documents or other tangible items must be designated by
19 conspicuously stamping the words “COUNSEL ONLY” on each page of the
20 designated material or by notifying the other Party in writing of the material to be
21 considered so designated. With regard to testimony, a Party must notify the other
22 parties of the portion of testimony to be designated “COUNSEL ONLY” either on
23 the record at the deposition or in writing not later than ten (10) days after the
24 transcript is received.

25 3. All information designated as “COUNSEL ONLY” shall be used only
26 for the purposes of this action and shall not be used for any other purpose except
27 upon written consent of the designating party or order of the Court. All data and
28 documents produced by Defendant for purposes of mediation shall be designated as

1 "COUNSEL ONLY" without objection by Plaintiff or his counsel. All information
2 designated as "COUNSEL ONLY" shall be held in confidence and shall not be
3 revealed, discussed, or disclosed in any manner, in any form, to any person or entity
4 other than: *THE COURT AND ITS PERSONNEL;*

5 a. the undersigned counsel and attorneys from their respective law
6 firms, in-house counsel for Defendant, and the employees of any of the above
7 counsel to whom it is necessary that the information be disclosed for purposes of
8 this litigation only;

9 b. any outside expert or consultant engaged by a Party for the
10 purpose of assisting in this litigation, provided, however, that such outside expert or
11 consultant agrees in writing to comply with the terms of this Stipulation in the
12 format attached as Exhibit A hereto;

13 c. any trial or deposition witnesses, but only to the extent
14 reasonably deemed necessary by counsel for the prosecution, defense or settlement
15 of this action, provided that all individual identifier information and all individual
16 compensation and benefits information pertaining to putative class members other
17 than the named Plaintiffs is redacted before the document(s) or information
18 designated for "COUNSEL ONLY" is shared with the witness(es) and only if, prior
19 to any such dissemination, the witness(es) provide a written statement in the format
20 attached as Exhibit "A" hereto, that they agree to be bound by this Confidentiality
21 Agreement;

22 d. any person who was involved in the preparation of the document
23 or information;

24 e. any other person, entity, or firm with the prior written consent of
25 all Parties; or

26 f. any mediator selected by the parties.

27 4. The Parties shall also have the right to designate as
28 "CONFIDENTIAL" any document, data, or other item relevant to this litigation,

1 including, without limitation, data or documents produced by a party or third third-
2 party, answers to interrogatories, and any portion of deposition testimony or other
3 testimony by a witness. Such documents and data include, without limitation,
4 employment records, payroll records, financial/accounting records of any Party, and
5 time-keeping data.

6 5. Such documents or other tangible items must be designated by
7 conspicuously stamping the words "CONFIDENTIAL" on each page of the
8 designated material or by notifying the other Party in writing of the material to be
9 considered so designated. With regard to testimony, a Party must notify the other
10 parties of the portion(s) of the record to be designated "CONFIDENTIAL" either
11 on the record at the deposition or in writing not later than ten (10) days after the
12 transcript is received.

13 6. All information designated as "CONFIDENTIAL" shall be used only
14 for the purposes of this action and shall not be used for any other purpose except
15 upon written consent of the designating party or order of the Court. All information
16 designated as "CONFIDENTIAL" shall be held in confidence and shall not be
17 revealed, discussed, or disclosed in any manner, in any form, to any person or entity
18 other than:

19 a. the named Plaintiff in this action, the undersigned counsel and
20 attorneys from their respective law firms, in-house counsel for Defendant, and the
21 employees of any of the above counsel to whom it is necessary that the information
22 be disclosed for purposes of this litigation only;

23 b. any expert or consultant engaged by a Party for the purpose of
24 assisting in this litigation, provided, however, that such outside expert or consultant
25 agrees in writing to comply with the terms of this Stipulation in the format attached
26 as Exhibit A hereto;

27 c. any trial or deposition witnesses, but only to the extent
28 reasonably deemed necessary by counsel for the prosecution, defense or settlement

ANY DOCUMENTS COVERED BY THIS PROTECTIVE ORDER MUST BE SUBMITTED TO THE COURT WITH AN INTERIM SEALING APPLICATION UNDER RULE 79-5 TO BE FILED UNDER SEAL.

1 of this action and only if, prior to any such dissemination, the witness(es) provide a
2 written statement in the format attached as Exhibit "A" hereto, that they agree to be
3 bound by this Confidentiality Agreement;

- 4 d. any person who was involved in the preparation of the document
- 5 or information; or
- 6 e. any other person, entity, or firm with the prior written consent of
- 7 all Parties; or
- 8 f. any mediator selected by the parties.

9 7. Any Party that provides information designated as
10 "CONFIDENTIAL" documents or other discovery obtained from any other Party in
11 the course of this litigation to any person permitted under this Stipulation, including
12 the named Plaintiff and witness(es), or any expert (other than the Court, court
13 personnel, and court reporters or any mediator selected by the parties) will ensure
14 that the receiving person is advised of this Confidentiality Agreement and agrees to
15 be bound by it. Any violation of the Confidentiality Agreement by any person shall
16 also be deemed a violation by the Party that provided to that person the documents
17 and/or information. Each party shall maintain a written list of persons to whom the
18 party provides information designated as "CONFIDENTIAL" by another party.

19 8. When any document or information designated "COUNSEL ONLY"
20 or "CONFIDENTIAL" or other pleadings or papers disclosing or referring to such
21 information are used in connection with any motion, hearing, filing or other
22 submission to the Court, those materials and papers, or any portion thereof that
23 discloses information designated as "COUNSEL ONLY" or "CONFIDENTIAL,"
24 shall be filed under seal (by the filing party) with the Clerk of the Court in an
25 envelope marked "SEALED PURSUANT TO ORDER OF COURT DATED
26 _____," together with a simultaneous application pursuant to L.R. 79-5
27 (hereinafter the "Interim Sealing Application"). The Interim Sealing Application
28 shall be governed by L.R. 79-5. Even if the filing party believes that the materials

1 ~~subject to this Confidentiality Agreement are not properly classified as confidential,~~
2 ~~the filing party shall file the Interim Sealing Application; provided, however, that~~
3 ~~the filing of the Interim Sealing Application shall be without prejudice to the filing~~
4 ~~party's rights under ¶ 9 of the Confidentiality Agreement.~~

5 9. Nothing in this Agreement shall preclude any Party from challenging a
6 designation of "COUNSEL ONLY" or "CONFIDENTIAL" by another Party.

7 a. If any Party elects to challenge a designation of any data,
8 document, interrogatory response, deposition testimony, or other information
9 pursuant to this order, that Party must provide at least ten (10) days advance written
10 notice to afford the designating Party an opportunity to remove voluntarily such
11 designation.

12 b. If, after the ten-day period has expired, the designating Party has
13 not agreed to remove the designation and the Parties are otherwise unable to resolve
14 the challenge to the designation after conferring in good faith in person or by
15 phone, the challenging and designating Parties shall contact the Court for a
16 determination of whether the challenged designation is appropriate. The
17 designating Party shall provide the Court with one copy of the material challenged.
18 If the designating party does not initiate a determination, as defined below, of the
19 designation by the Court within ten (10) days after the ten-day period has expired,
20 the documents, deposition testimony, or other information at issue will lose the
21 designation of "COUNSEL ONLY" or "CONFIDENTIAL." The designating party
22 must initiate determination of the designation by the Court by (1) calling the
23 Magistrate Judge's clerk and requesting a telephonic or in-person hearing, and, if
24 requested by the Magistrate Judge, (2) sending a letter to the challenging party
25 under Central District Local Rule 37-1, followed by a conference of counsel under
26 L.R. 37-1 and the designating party sending that party's portion of a joint
27 stipulation under L.R. 37-2 to the challenging party within ten (10) days after the
28 conference of counsel.

1 c. If a Party challenges a designation of "COUNSEL ONLY" or
2 "CONFIDENTIAL" to the Court, the material is to be treated as "COUNSEL
3 ONLY" or "CONFIDENTIAL" until such time as the Court has ruled on the
4 challenge, at which time the "COUNSEL ONLY" or "CONFIDENTIAL"
5 designation will be removed only if the Court so orders.

6 10. In addition to the obligations of the Parties and their counsel to ensure
7 compliance with this Agreement by third parties who execute Exhibit A hereto,
8 nothing in this Agreement shall preclude any Party from seeking from the Court an
9 Order binding third parties to abide by this Agreement.

10 11. Within sixty (60) days after the close of this litigation for any reason,
11 each Party and its counsel shall retrieve all copies of materials designated
12 "COUNSEL ONLY" or "CONFIDENTIAL" from his and/or its own files, and
13 from experts or other persons to whom he or it has provided such materials, and
14 shall do one of the following: (1) return to the designating Party all such materials,
15 including all copies thereof, produced by such designating Party during this action;
16 or (2) certify in writing to the designating Party that all materials designated
17 "COUNSEL ONLY" or "CONFIDENTIAL" produced by such other Party during
18 this action have been destroyed. In addition to these obligations, within forty-five
19 (45) days after the completion of the mediation, if any, Plaintiff's counsel shall
20 retrieve from their files and from all experts they have retained all copies of data
21 and spreadsheets provided by Defendant to Plaintiff's counsel for purposes of
22 mediation, as well as all other compilations, lists or summaries of those materials,
23 and shall return all such materials to Defendant or certify in writing to Defendant
24 that all such materials have been destroyed, which shall include completely erasing
25 all copies of the materials from computer databanks, hard drives, external drives,
26 and disks. A Party who prevails in an effort to enforce some or all of the terms of
27 this Paragraph 11 shall be entitled to recover its reasonable attorneys' fees and costs
28 incurred in doing so.

1 12. To the extent that any documents designated as “COUNSEL ONLY”
2 or “CONFIDENTIAL” are produced by a Party in connection with any mediation
3 in this action, the receiving counsel shall not forward any electronic copies or hard
4 copies of such documents to anyone else and shall return such documents and all
5 copies thereof immediately upon the conclusion of the mediation and shall not
6 retain any copies, summaries, or electronic images of such documents.

7 Notwithstanding the foregoing, the Parties may mutually agree to extend the time
8 for the return of such documents to facilitate continued settlement discussions, if
9 any.

10 13. Nothing herein contained shall be construed to preclude or limit any
11 Party from opposing any discovery on any grounds that would otherwise be
12 available. This Agreement shall not, in and of itself, prejudice any contention of
13 any Party upon any motion, nor shall this Agreement constitute a waiver of any
14 right to seek relief from the Court from any and all of the provisions hereof or other
15 modifications of the terms hereof. This Agreement shall not limit any Party’s right
16 to seek judicial review or to seek further and additional protection against or
17 limitation upon production or dissemination of information and documents or their
18 contents.

19 14. Nothing herein shall be construed to preclude or limit the presence of
20 any individual at any hearings in, or the trial of, this action.

21 15. Inadvertent failure to designate material as “COUNSEL ONLY” or
22 “CONFIDENTIAL” shall not be construed as a waiver, in whole or in part, and
23 may be corrected by the producing party by written notification to the recipient
24 promptly upon discovery of the failure to designate.

25 16. Nothing in this Confidentiality Agreement shall be deemed to be a
26 limit or waiver of the attorney-client privilege, the work product doctrine, or any
27 other relevant privilege. Further, inadvertent production of privileged information
28 shall not waive the privilege. If privileged information is inadvertently produced,

1 the recipient agrees that, upon written request from the producing party, it shall
2 promptly return all copies of documents and/or electronic media provided
3 containing the privileged information, and make no use of the privileged
4 information.

5 17. In the event that any Party or their counsel obtains information from a
6 third party that the Party believes in good faith to be confidential, the Party may
7 designate such information "COUNSEL ONLY" or "CONFIDENTIAL" pursuant
8 to this Confidentiality Agreement and it shall be treated as such in accordance with
9 the Confidentiality Agreement.

10 18. Upon the final resolution of this litigation, the provisions of this
11 Confidentiality Agreement shall continue to be binding. The Court will expressly
12 retain jurisdiction over this action for enforcement of the provisions of this
13 Confidentiality Agreement following the final resolution of this litigation.

14 19. This Confidentiality Agreement is binding on all Parties to this action
15 and on all third parties who have been served with a copy of this Confidentiality
16 Agreement, and shall remain in force and effect until modified, superseded, or
17 terminated by consent of the Parties or by Order of the Court.

18
19 Dated: May 24, 2013

THE CULLEN LAW FIRM, APC

20
21 By: /S/ Paul T. Cullen

Attorneys for Plaintiffs
TYRONE SMITH, GREG VILLANUEVA,
JOHN CAUDILL

22
23 Dated: May 24, 2013

MARLIN & SALTZMAN, LLP

24
25 By: /S/ Christina A. Humphrey

Christina A. Humphrey
Attorneys for Plaintiffs TYRONE
SMITH, GREG VILLANUEVA,
JOHN CAUDILL

1 Dated: May 24, 2013

MORGAN, LEWIS & BOCKIUS LLP

2
3 By /S/ Megan Barry Borovicka

4 John S. Battenfeld
5 Michael J. Puma (admitted *pro hac vice*)
6 Megan Barry Borovicka

7 *Attorneys for Defendant*
8 *BIMBO BAKERIES USA, INC.*

9 THIS ORDER DOES NOT AUTHORIZE THE
10 PARTIES TO FILE ANY DOCUMENTS UNDER
11 SEAL. NOR DOES IT ALLOW THEM TO

12 FILE DOCUMENTS
13 UNDER AN "INTERIM
14 SEALING APPLICATION."

15 **IT IS SO ORDERED.**
16 **DATED: 6/27/13**
17 *Kathleen J. Walsh*
18 **UNITED STATES MAGISTRATE JUDGE**

19 ANY
20 PARTY WISHING TO FILE DOCUMENTS
21 UNDER SEAL SHALL FOLLOW

22 L.R. 79-5.
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EXHIBIT A

AGREEMENT CONCERNING INFORMATION COVERED BY A CONFIDENTIALITY STIPULATION AND ORDER

The undersigned hereby acknowledges that he/she has read the Stipulation and Order Regarding Confidentiality Of Discovery Material ("Order") in Tyrone Smith, et al. v. Bimbo Bakeries USA, Inc., Civil Action No. CV 12-1689 CAS (PJWx), and understands their terms, agrees to be bound by each of those terms, and agrees to subject himself/herself personally to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing their terms. Specifically, and without limitation upon such terms, the undersigned agrees not to use or disclose any information designated as Counsel Only or Confidential made available to him/her other than in accordance with the Stipulation and Order.

Dated: _____

By: _____

(Type or print name of individual)

Of: _____
Name of Employer

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