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15 **UNITED STATES DISTRICT COURT**  
 16 **CENTRAL DISTRICT OF CALIFORNIA**  
 17

18 LORETTA APODACA, individually and  
 on behalf of all others similarly situated,  
 19 Plaintiffs,  
 20  
 v.  
 21 COSTCO WHOLESALE  
 22 CORPORATION and DOE 1 through and  
 including DOE 100,  
 23 Defendants.  
 24

) Case No. CV12-5664 DSF (Ex)  
 ) ~~PROPOSED~~ PROTECTIVE  
 ) ORDER  
 )  
 ) Complaint Filed: May 17, 2012

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1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production  
3 of confidential, proprietary, or private information for which special protection from  
4 public disclosure and from use for any purpose other than prosecuting this litigation  
5 would be warranted. Accordingly, the parties hereby stipulate for entry of a Stipulated  
6 Protective Order. The parties acknowledge that this Order does not confer blanket  
7 protections on all disclosures or responses to discovery and that the protection it affords  
8 extends only to the limited information or items that are entitled under the applicable  
9 legal principles to treatment as confidential. The parties further acknowledge, as set  
10 forth in Section 10, below, that this Stipulated Protective Order creates no entitlement  
11 to file confidential information under seal.

12 **2. DEFINITIONS**

13 2.1 Party: any party to this action, including any party's officers, directors,  
14 employees, consultants, retained experts, and outside counsel (and their support staff).

15 2.2 Disclosure of Discovery Material: all items or information, regardless of  
16 the medium or manner generated, stored, or maintained (including, among other things,  
17 testimony, transcripts, photographs, videos, or tangible things) that are produced or  
18 generated in disclosures or responses to discovery in this matter.

19 2.3 "Confidential" Information or Items: information (regardless of how  
20 generated, stored or maintained) or tangible things that qualify for protection under  
21 standards developed under Federal Rule of Civil Procedure 26(c).

22 2.4 Receiving Party: a Party that receives Disclosure or Discovery Material  
23 from a Producing Party.

24 2.5 Producing Party: a Party or non-party that produces Disclosure or  
25 Discovery Material in this action.

26 2.6 Designating Party: a Party or non-party that designates information or  
27 items that it produces in disclosures or in responses to discovery as "Confidential."  
28

1           2.7 Protected Material: any Disclosure or Discovery Material that is  
2 designated as “Confidential.”

3           2.8 Outside Counsel: attorneys who are not employees of a Party but who are  
4 retained to represent or advise a Party in this action.

5           2.9 House Counsel: attorneys who are employees of a Party.

6           2.10 Counsel (without qualifier): Outside Counsel and House Counsel (as well  
7 as their support staffs).

8           2.11 Expert: a person or business entity, including its employees and  
9 subcontractors, with specialized knowledge or experience in a matter pertinent to the  
10 litigation who has been retained by a Party or its counsel to serve as an expert witness  
11 or as a consultant in this action and who is not a current employee of a Party’s  
12 competitor and who, at the time of retention, has no pending application or offer to  
13 become an employee of a Party’s competitor. This definition includes a professional  
14 jury or trial consultant retained in connection with this litigation.

15           2.12 Professional Vendors: persons or entities that provide litigation support  
16 services (e.g., photocopying; videotaping; translating; preparing exhibits or  
17 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and  
18 their employees and subcontractors.

19 **3. SCOPE**

20           The protections conferred by this Stipulation and Order cover not only Protected  
21 Material (as defined above), but also any information copied or extracted therefrom, as  
22 well as all copies, excerpts, summaries, or compilations thereof, plus testimony,  
23 conversations, or presentations by parties or counsel to or in court or in other settings  
24 that might reveal Protected Material.

25 **4. DURATION**

26           The Court’s jurisdiction to enforce the terms of the Order shall continue for six  
27 (6) months after the final conclusion of all aspects of the litigation. Nonetheless, the  
28 parties agree to abide by the confidentiality obligations imposed by this Order, which

1 shall remain in effect until a Designating Party agrees otherwise in writing or a court  
2 order otherwise directs.

3 **5. DESIGNATING PROTECTED MATERIAL**

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. To  
5 the extent reasonably possible, each Party or non-party that designates information or  
6 items for protection under this Order must take care to limit any such designation to  
7 specific material that qualifies under the appropriate standards.

8 The parties agree that, where it would be not cost effective to review every  
9 document for confidentiality issues, the parties may designate an entire group of  
10 documents as confidential, including but not limited to in the case of mass e-mail or  
11 internal document production. If the opposing party, upon review, feels that a particular  
12 document is not properly confidential, he or she may confer with the Designating Party,  
13 which shall withdraw the designation if warranted. Absent agreement, the parties may  
14 seek Court relief as provided herein.

15 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
16 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated  
17 or ordered, material that qualifies for protection under this Order must be clearly so  
18 designated before the material is disclosed or produced.

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (apart from transcripts of depositions  
21 or other pretrial or trial proceedings), that the Producing Party affix the legend  
22 "CONFIDENTIAL" to each page that contains protected material.

23 A Party or non-party that makes original documents or materials available for  
24 inspection need not designate them for protection until after the inspecting Party has  
25 indicated which material it would like copied and produced. During the inspection and  
26 before the designation, all of the material made available for inspection shall be  
27 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents it  
28 wants copied and produced, the Producing Party must determine which documents, or

1 portions thereof, qualify for protection under this Order, then, before producing the  
2 specified documents, the Producing Party must affix the appropriate legend  
3 (“CONFIDENTIAL”) on each page that contains Protected Material.

4 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
5 that the Party or non-party offering or sponsoring the testimony identify on the record,  
6 before the close of the deposition, hearing, or other proceeding that the deposition  
7 contains confidential information.

8 (c) for information produced in some form other than documentary, and for  
9 any other tangible items, that the Producing Party affix in a prominent place on the  
10 exterior of the container or containers in which the information or item is stored the  
11 legend “CONFIDENTIAL.”

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
13 failure to designate qualified information or items as “Confidential” does not, standing  
14 alone, waive the Designating Party’s right to secure protection under this Order for  
15 such material. If material is appropriately designated as “Confidential” after the  
16 material was initially produced, the Receiving Party, on timely notification of the  
17 designation, must make reasonable efforts to assure that the material is treated in  
18 accordance with the provisions of this Order.

## 19 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

20 6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
21 confidentiality designation is necessary to avoid foreseeable substantial unfairness,  
22 unnecessary economic burdens, or a later significant disruption or delay of the  
23 litigation, a Party does not waive its right to challenge a confidentiality designation by  
24 electing not to mount a challenge promptly after the original designation is disclosed.

25 6.2 Meet and Confer. A Party that elects to initiate a challenge to a  
26 Designating Party’s confidentiality designation must do so in good faith and must  
27 begin the process by conferring directly with counsel for the Designating Party. In  
28 conferring, the challenging Party must explain the basis for its belief that the

1 confidentiality designation was not proper and must give the Designating Party an  
2 opportunity to review the designated material, to reconsider the circumstances, and, if  
3 no change in designation is offered, to explain the basis for the chosen designation. A  
4 challenging Party may proceed to the next stage of the challenge process only if it has  
5 engaged in this meet and confer process first.

6 6.3 Judicial Intervention. If a Party elects to press a challenge to a  
7 confidentiality designation, after considering the justification offered by the  
8 Designating Party (or the Designating Party has failed to meet and confer after repeated  
9 requests), the parties will jointly contact the Court to resolve the challenge, or if the  
10 Designating Party declines to participate in jointly contacting the Court, the  
11 challenging Party may move ex parte to bring the issue before the Court. Until the  
12 Court rules on the challenge, all parties shall continue to afford the material in question  
13 the level of protection to which it is entitled under the Producing Party's designation.

14 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
16 disclosed or produced by another Party or by a non-party in connection with this case  
17 ~~only for prosecuting, defending, or attempting to settle this litigation. Such Protected~~  
18 Material may be disclosed only to the categories of persons and under the conditions  
19 described in this Order. When the litigation has been terminated, a Receiving Party  
20 must comply with the provisions of section 11, below (FINAL DISPOSITION).

21 Protected Material must be stored and maintained by a Receiving Party at a  
22 location and in a secure manner that ensures that access is limited to the persons  
23 authorized under this Order.

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
25 ordered by the court or permitted in writing by the Designating Party, a Receiving  
26 Party may disclose any information or item designated CONFIDENTIAL only to:  
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1 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
2 employees of said Counsel to whom it is reasonably necessary to disclose the  
3 information for this litigation;

4 (b) the officers, directors, and employees (including House Counsel) of the  
5 Receiving Party to whom disclosure is reasonably necessary for this litigation;

6 (c) experts (as defined in this Order) to whom disclosure is reasonably  
7 necessary for this litigation and who have signed the "Agreement to Be Bound by  
8 Protective Order" (Exhibit A);

9 (d) the Court and its personnel;

10 (e) court reporters, their staffs, and Professional Vendors to whom disclosure  
11 is reasonably necessary for this litigation;

12 (f) during their depositions and in preparation for their depositions, witnesses  
13 in the action to whom disclosure is reasonably necessary. Pages of transcribed  
14 deposition testimony or exhibits to depositions that reveal Protected Material must be  
15 separately bound by the court reporter and may not be disclosed to anyone except as  
16 permitted under this Stipulated Protective Order;

17 (g) the author or any recipient of the document or the original source of the  
18 information; and

19 (h) any Party, who then shall have all the rights and duties of a Receiving  
20 Party.

21 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
22 **IN OTHER LITIGATION**

23 If a Receiving Party is served with a subpoena or an order issued in other  
24 litigation that would compel disclosure of any information or items designated in this  
25 action as "CONFIDENTIAL," the Receiving Party must so notify the Designating  
26 Party, in writing (by fax, if possible) immediately and in no event more than three court  
27 days after receiving the subpoena or order. Such notification must include a copy of the  
28 subpoena or court order.



1           The Receiving Party also must immediately inform in writing the Party who  
2 caused the subpoena or order to issue in the other litigation that some or all the material  
3 covered by the subpoena or order is the subject of this Protective Order. In addition, the  
4 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to the  
5 Party in the other action that caused the subpoena or order to issue.

6           The purpose of imposing these duties is to alert the interested parties to the  
7 existence of this Protective Order and to afford the Designating Party in this case an  
8 opportunity to try to protect its confidentiality interests in the court from which the  
9 subpoena or order issued. The Designating Party shall bear the burdens and the  
10 expenses of seeking protection in that court of its confidential material. Nothing in  
11 these provisions should be construed as authorizing or encouraging a Receiving Party  
12 in this action to disobey a lawful directive from another court.

13 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

14           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
15 Protected Material to any person or in any circumstance not authorized under this  
16 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing  
17 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
18 all copies of the Protected Material, and (c) inform the person or persons to whom  
19 unauthorized disclosures were made of all the terms of this Order.

20 **10. FILING PROTECTED MATERIAL**

21           Without written permission from the Designating Party or a court order secured  
22 after a joint conference call with the magistrate judge, a Party may not file in the public  
23 record in this action any Protected Material. A Party that seeks to file under seal any  
24 Protected Material must comply with the Local Rules. In addition to placing documents  
25 in a sealed envelope with instructions that the document is filed pursuant to the  
26 Stipulated Protective Order and that the envelope is not to be opened absent further  
27 order of the court, the envelope should be labeled to identify the title of the case, the  
28 case number, and the title of the document.

1 **11. FINAL DISPOSITION**

2 Unless otherwise ordered or agreed in writing by the Producing Party, within  
3 sixty days after the final termination of this action, each Receiving Party must return all  
4 Protected Material to the Producing Party. As used in this subdivision, "all Protected  
5 Material" includes all copies, abstracts, compilations, summaries or any other form of  
6 reproducing or capturing any of the Protected Material. With permission in writing  
7 from the Designating Party, the Receiving Party may destroy some or all of the  
8 Protected Material instead of returning it. Whether the Protected Material is returned or  
9 destroyed, the Receiving Party must submit a written certification to the Producing  
10 Party (and, if not the same person or entity, to the Designating Party) by the sixty day  
11 deadline that identifies (by category, where appropriate) all the Protected Material that  
12 was returned or destroyed and that affirms that the Receiving Party has not retained any  
13 copies, abstracts, compilations, summaries or other forms of reproducing or capturing  
14 any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
15 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,  
16 correspondence or attorney work product, even if such materials contain Protected  
17 ~~Material. Any such archival copies that contain or constitute Protected Material remain~~  
18 subject to this Protective Order as set forth in Section 4 (DURATION), above. The  
19 Court's jurisdiction to enforce the terms of the Order shall continue for six (6) months  
20 after the final conclusion of all aspects of the litigation.

21 **12. MISCELLANEOUS**

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
23 person to seek its modification by the Court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
25 Protective Order no Party waives any right it otherwise would have to object to  
26 disclosing or producing any information or item on any ground not addressed in this

27 ...

28 ...

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
2 ground to use in evidence of any of the material covered by this Protective Order.

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4 **IT IS SO ORDERED.**

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7 Dated: 4/8/13

  
HON. CHARLES F. EICK  
UNITED STATES DISTRICT COURT  
MAGISTRATE JUDGE

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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California in or about March 2013, in the case of *Apodaca v. Costco Wholesale Corporation.*, Case No. CV12-5664 DSF (Ex). I agree to comply with and to be bound by all the terms of this Stipulated Protective Order. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of the Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint Alan Harris of Harris & Ruble, 6424 Santa Monica Blvd., Los Angeles, CA 90038, telephone: (323) 962-3777, as my agent for service of process in connection with this action or any proceeding related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_