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21 **UNITED STATES DISTRICT COURT**
 22 **CENTRAL DISTRICT OF CALIFORNIA**

23 MERCADO LATINO, INC. dba
 24 CONTINENTAL CANDLE COMPANY,

25 Plaintiff,

26 vs.

27 INDIO PRODUCTS, INC., a California
 28 Corporation, and DOES 1 through 10,
 Inclusive,

Defendants.

Case No. 2:13-cv-01027-DDP-RNB

**ORDER APPROVING AND
 ENTERING JOINT STIPULATED
 PROTECTIVE ORDER**

[106]

**[PROPOSED] ORDER
 APPROVING AND ENTERING JOINT STIPULATED PROTECTIVE ORDER**

1 Plaintiff Mercado Latino, Inc. dba Continental Candle Co. and Defendant Indio
2 Products, Inc., hereafter referred to as “the Parties,” believe that certain information
3 that is or will be encompassed by discovery demands by the Parties involves the
4 production or disclosure of trade secrets, confidential business information, or other
5 proprietary information. The Parties accordingly sought a protective order limiting
6 disclosure thereof in accordance with Federal Rule of Civil Procedure 26(c), and
7 entered into a stipulation regarding the same, previously submitted to the Court.
8 [Docket Item No. 106]. The Court finds that good cause exists for entry of this
9 stipulated Protective Order, and hereby orders that it be entered in the following form.

10 Therefore upon stipulation of all parties for a Protective Order pursuant to Rule
11 26(c) of the Federal Rules of Civil Procedure, it is hereby ORDERED as follows:

12 1. This Protective Order shall apply to all information, documents and
13 things subject to discovery in this Action produced either by a party or a non-party in
14 discovery in this Action and shall include without limitation this litigation and any
15 adjunct subpoena proceedings incident hereto before any tribunal including, without
16 limitation, testimony adduced at deposition upon oral examination or upon written
17 questions, answers to interrogatories, documents and things produced, information
18 obtained from inspection of premises or things, and answers to requests for admission,
19 or information disclosed pursuant to subpoena under Fed. R. Civ. P. 45.

20 2. Each Party may designate as confidential for protection under this Order,
21 in whole or in part, any document, information or material that constitutes or includes,
22 in whole or in part, confidential or proprietary information or trade secrets of the Party
23 or a Third Party to whom the Party reasonably believes it owes an obligation of
24 confidentiality with respect to such document, information or material (“Protected
25 Material”). Protected Material shall be designated by the Party producing it by
26 affixing a legend or stamp on such document, information or material as follows:
27 “CONFIDENTIAL.” The word “CONFIDENTIAL” shall be placed clearly on each
28 page of the Protected Material (except deposition and hearing transcripts) for which

1 such protection is sought. For deposition and hearing transcripts, the word
2 “CONFIDENTIAL” shall be placed on the cover page of the transcript (if not already
3 present on the cover page of the transcript when received from the court reporter) by
4 each attorney receiving a copy of the transcript after that attorney receives notice of
5 the designation of some or all of that transcript as “CONFIDENTIAL.”

6 3. With respect to documents, information or material designated
7 “CONFIDENTIAL” or “RESTRICTED - ATTORNEYS’ EYES ONLY,”
8 (“DESIGNATED MATERIAL”), subject to the provisions herein and unless
9 otherwise stated, this Order governs, without limitation: (a) all documents,
10 electronically stored information, and/or things as defined by the Federal Rules of
11 Civil Procedure; (b) all pretrial, hearing or deposition testimony, or documents
12 marked as exhibits or for identification in depositions and hearings; (c) pretrial
13 pleadings, exhibits to pleadings and other court filings; (d) affidavits; and (e)
14 stipulations. All copies, reproductions, extracts, digests and complete or partial
15 summaries prepared from any DESIGNATED MATERIALS shall also be considered
16 DESIGNATED MATERIAL and treated as such under this Order.

17 4. A designation of Protected Material (i.e., “CONFIDENTIAL” or
18 “RESTRICTED - ATTORNEYS’ EYES ONLY”) may be made at any time.
19 Inadvertent or unintentional production of documents, information or material that has
20 not been designated as DESIGNATED MATERIAL shall not be deemed a waiver in
21 whole or in part of a claim for confidential treatment. Any party that inadvertently or
22 unintentionally produces Protected Material without designating it as DESIGNATED
23 MATERIAL may request destruction of that Protected Material by notifying the
24 recipient(s), as soon as reasonably possible after the producing Party becomes aware
25 of the inadvertent or unintentional disclosure, and providing replacement Protected
26 Material that is properly designated. The recipient(s) shall then destroy all copies of
27 the inadvertently or unintentionally produced Protected Materials and any documents,
28 information or material derived from or based thereon.

1 5. “CONFIDENTIAL” documents, information and material may be
2 disclosed only to the following persons, except upon receipt of the prior written
3 consent of the designating party, upon order of the Court, or as set forth in paragraph
4 12 herein:

5 (a) the Parties and employees of the Parties if reasonably necessary to assist
6 outside counsel in the litigation of this Action and provided that each such person has
7 completed the Undertaking attached as Exhibit A hereto and the same is served upon
8 the producing Party at least ten (10) days before access to the Protected Material is to
9 be given to permit any written objection concerning the disclosure of Protected
10 Material;

11 (b) outside counsel of record in this Action for the Parties;

12 (c) employees of such outside counsel assigned to and reasonably necessary
13 to assist such counsel in the litigation of this Action;

14 (d) in-house counsel for the Parties who exercise no competitive decision-
15 making authority on behalf of the client and who have responsibility for making
16 decisions dealing directly with the litigation of this Action;

17 (e) outside consultants or experts (i.e., not existing employees or affiliates of
18 a Party or an affiliate of a Party) retained for the purpose of this litigation, provided
19 that: (1) such consultants or experts are not presently employed by the Parties hereto,
20 nor employed by member companies of the association plaintiff, for purposes other
21 than this Action; (2) before access is given, the consultant or expert has completed the
22 Undertaking attached as Exhibit A hereto, provided a current curriculum vitae
23 identifying (by name and number of the case, filing date, and location of court) any
24 litigation in connection with which the consultant or expert has offered expert
25 testimony by declaration, report, or testimony at a deposition or trial, during the
26 preceding five years, and the same is served upon the producing Party at least ten (10)
27 days before access to the Protected Material is to be given to permit any written
28 objection concerning the disclosure of Protected Material to the consultant or expert.

1 The Parties agree to promptly confer and use good faith to resolve any such objection.
2 If the Parties are unable to resolve any objection, the objecting Party may file a motion
3 with the Court within fifteen (15) days of the notice, or within such other time as the
4 Parties may agree, seeking a protective order with respect to the proposed disclosure.
5 The objecting Party shall have the burden of proving the need for a protective order.
6 No disclosure shall occur until all such objections are resolved by agreement or Court
7 order;

8 (f) independent litigation support services, including persons working for or
9 as court reporters, graphics or design services, jury or trial consulting services,
10 translators and photocopy, document imaging, information technology, and database
11 services retained by counsel and reasonably necessary to assist counsel with the
12 litigation of this Action; and

13 (g) the Court and its personnel.

14 6. A Party shall designate documents, information or material as
15 “CONFIDENTIAL” or “RESTRICTED - ATTORNEYS’ EYES ONLY” only upon a
16 good faith belief that the documents, information or material contains confidential or
17 proprietary information or trade secrets of the Party or a Third Party to whom the
18 Party reasonably believes it owes an obligation of confidentiality with respect to such
19 documents, information or material. The parties shall avoid mass, indiscriminate, or
20 routinized designations.

21 7. Documents, information or material produced in this Action, including
22 but not limited to Protected Material designated as DESIGNATED MATERIAL, shall
23 be used for no purpose other than the present litigation. Any person or entity who
24 obtains access to DESIGNATED MATERIAL or the contents thereof pursuant to this
25 Order shall not make any copies, duplicates, extracts, summaries or descriptions of
26 such DESIGNATED MATERIAL or any portion thereof except as may be reasonably
27 necessary. Any person or entity who obtains access to DESIGNATED MATERIAL or
28 the contents thereof pursuant to this Order shall not make any copies, duplicates,

1 extracts, summaries or descriptions of such DESIGNATED MATERIAL or any
2 portion thereof except as may be reasonably necessary. Any such copies, duplicates,
3 extracts, summaries or descriptions shall be classified DESIGNATED MATERIALS
4 and subject to all of the terms and conditions of this Order.

5 8. To the extent a producing Party believes that certain Protected Material
6 qualifying to be designated CONFIDENTIAL is so sensitive that its dissemination
7 deserves even further limitation, the producing Party may designate such Protected
8 Material "RESTRICTED -- ATTORNEYS' EYES ONLY."

9 9. For Protected Material designated RESTRICTED -- ATTORNEYS'
10 EYES ONLY, access to, and disclosure of, such Protected Material shall be limited to
11 individuals listed in paragraphs 5 (b, c, e, f, and g); access by the parties, party
12 employees and in-house counsel is not permitted.

13 10. Nothing in this Order shall require production of documents, information
14 or other material that a Party contends is protected from disclosure by the attorney-
15 client privilege, the work product doctrine, or other privilege, doctrine, or immunity.
16 If documents, information or other material subject to a claim of attorney-client
17 privilege, work product doctrine, or other privilege, doctrine, or immunity is
18 inadvertently or unintentionally produced, such production shall in no way prejudice
19 or otherwise constitute a waiver of, or estoppel as to, any such privilege, doctrine, or
20 immunity. Any Party that inadvertently or unintentionally produces documents,
21 information or other material it reasonably believes are protected under the attorney-
22 client privilege, work product doctrine, or other privilege, doctrine, or immunity may
23 obtain the return of such documents, information or other material by promptly
24 notifying the recipient(s) and providing a privilege log for the inadvertently or
25 unintentionally produced documents, information or other material. The recipient(s)
26 shall gather and return all copies of such documents, information or other material to
27 the producing Party, except for any pages containing privileged or otherwise protected
28 markings by the recipient(s), which pages shall instead be destroyed and certified as

1 such to the producing Party.

2 11. There shall be no disclosure of any DESIGNATED MATERIAL by any
3 person authorized to have access thereto to any person who is not authorized for such
4 access under this Order. The Parties are hereby ORDERED to safeguard all such
5 documents, information and material to protect against disclosure to any unauthorized
6 persons or entities. Information DESIGNATED MATERIAL shall not be made
7 available, directly or indirectly or through paraphrasing, by the persons receiving it to
8 any unauthorized persons. Information DESIGNATED MATERIAL shall be used by
9 authorized persons solely for purposes of this litigation. The party or parties receiving
10 DESIGNATED MATERIAL shall not under any circumstances sell, offer for sale,
11 advertise, or publicize DESIGNATED MATERIAL or any information contained
12 therein.

13 12. Nothing contained herein shall be construed to prejudice any Party's right
14 to use any DESIGNATED MATERIAL in taking testimony at any deposition or
15 hearing provided that the DESIGNATED MATERIAL is only disclosed to a person(s)
16 who is: (i) eligible to have access to the DESIGNATED MATERIAL by virtue of his
17 or her employment with the designating party, (ii) identified in the DESIGNATED
18 MATERIAL as an author, addressee, or copy recipient of such information, (iii)
19 although not identified as an author, addressee, or copy recipient of such
20 DESIGNATED MATERIAL, has, in the ordinary course of business, seen such
21 DESIGNATED MATERIAL, (iv) a current or former officer, director or employee of
22 the producing Party or a current or former officer, director or employee of a company
23 affiliated with the producing Party; (v) counsel for a Party, including outside counsel
24 and in-house counsel (subject to paragraph 9 of this Order); (vi) an independent
25 contractor, consultant, and/or expert retained for the purpose of this litigation; (vii)
26 court reporters and videographers; (viii) the Court; or (ix) other persons entitled
27 hereunder to access to DESIGNATED MATERIAL. DESIGNATED MATERIAL
28 shall not be disclosed to any other persons unless prior authorization is obtained from

1 counsel representing the producing Party or from the Court.

2 13. Parties may, at the deposition or hearing or within thirty (30) days after
3 receipt of a deposition or hearing transcript, designate the deposition or hearing
4 transcript or any portion thereof as “CONFIDENTIAL” or “RESTRICTED -
5 ATTORNEY’ EYES ONLY” pursuant to this Order. Access to the deposition or
6 hearing transcript so designated shall be limited in accordance with the terms of this
7 Order. Until expiration of the 30-day period, the entire deposition or hearing transcript
8 shall be treated as RESTRICTED - ATTORNEY’ EYES ONLY.

9 14. This Order authorizes the filing of any material under seal in the Central
10 District of California.

11 15. At any time after the delivery of DESIGNATED MATERIAL, counsel
12 for the party or parties receiving the DESIGNATED MATERIAL may challenge the
13 Confidential designation of all or any portion thereof by providing written notice
14 thereof to counsel for the party disclosing or producing the DESIGNATED
15 MATERIAL. If the parties are unable to agree as to whether the confidential
16 designation of DESIGNATED MATERIAL is appropriate, the party or parties
17 receiving the DESIGNATED MATERIAL shall certify to the Court that the parties
18 cannot reach an agreement as to the confidential nature of all or a portion of the
19 DESIGNATED MATERIAL Thereafter, the party or parties disclosing or producing
20 the DESIGNATED MATERIAL shall have ten (10) days from the date of certification
21 to file a motion for protective order with regard to any DESIGNATED MATERIAL
22 in dispute. The party or parties producing the DESIGNATED MATERIAL shall have
23 the burden of establishing that the disputed DESIGNATED MATERIAL are entitled
24 to confidential treatment. If the party or parties producing the DESIGNATED
25 MATERIAL do not timely file a motion for protective order, then the DESIGNATED
26 MATERIAL in dispute shall no longer be subject to confidential treatment as
27 provided in this Order. All DESIGNATED MATERIAL is entitled to confidential
28 treatment pursuant to the terms of this Order until and unless the parties formally

1 agree in writing to the contrary, a party fails to timely move for a protective order, or a
2 contrary determination is made by the Court as to whether all or a portion of
3 DESIGNATED MATERIAL is entitled to confidential treatment.

4 16. To the extent that any discovery is taken of persons who are not Parties to
5 this Action (“Third Parties”) and in the event that such Third Parties contended the
6 discovery sought involves trade secrets, confidential business information, or other
7 proprietary information, then such Third Parties may agree to be bound by this Order.

8 17. To the extent that discovery or testimony is taken of Third Parties, the
9 Third Parties may designate as “CONFIDENTIAL” or “RESTRICTED --
10 ATTORNEYS’ EYES ONLY” any documents, information or other material, in
11 whole or in part, produced or give by such Third Parties. The Third Parties shall have
12 ten (10) days after production of such documents, information or other materials to
13 make such a designation. Until that time period lapses or until such a designation has
14 been made, whichever occurs sooner, all documents, information or other material so
15 produced or given shall be treated as “RESTRICTED -- ATTORNEYS’ EYES
16 ONLY” in accordance with this Order.

17 18. Within thirty (30) days of final termination of this Action, including any
18 appeals, all DESIGNATED MATERIAL, including all copies, duplicates, abstracts,
19 indexes, summaries, descriptions, and excerpts or extracts thereof (excluding excerpts
20 or extracts incorporated into any privileged memoranda of the Parties, materials which
21 have been admitted into evidence in this Action, and briefing and other materials
22 submitted to the Court), shall at the producing Party’s election either be returned to
23 the producing Party or be destroyed. The receiving Party shall verify the return or
24 destruction by affidavit furnished to the producing Party, upon the producing Party’s
25 request.

26 19. The failure to designate documents, information or material in
27 accordance with this Order and the failure to object to a designation at a given time
28 shall not preclude the filing of a motion at a later date seeking to impose such

1 designation or challenging the propriety thereof. The entry of this Order and/or the
2 production of documents, information and material hereunder shall in no way
3 constitute a waiver of any objection to the furnishing thereof, all such objections being
4 hereby preserved.

5 20. Any Party knowing or believing that any other party is in violation of or
6 intends to violate this Order and has raised the question of violation or potential
7 violation with the opposing party and has been unable to resolve the matter by
8 agreement may move the Court for such relief as may be appropriate in the
9 circumstances. Pending disposition of the motion by the Court, the Party alleged to be
10 in violation of or intending to violate this Order shall discontinue the performance of
11 and/or shall not undertake the further performance of any action alleged to constitute a
12 violation of this Order.

13 21. Production of DESIGNATED MATERIAL by each of the Parties shall
14 not be deemed a publication of the documents, information and material (or the
15 contents thereof) produced so as to void or make voidable whatever claim the Parties
16 may have as to the proprietary and confidential nature of the documents, information
17 or other material or its contents.

18 22. Nothing in this Order shall be construed to effect an abrogation, waiver
19 or limitation of any kind on the rights of each of the Parties to assert any applicable
20 discovery or trial privilege. Production of DESIGNATED MATERIAL by each of
21 the Parties shall not be deemed an admission or agreement as to the relevance and/or
22 admissibility of any material.

23 23. Each of the Parties shall also retain the right to file a motion with the
24 Court (a) to modify this Order to allow disclosure of DESIGNATED MATERIAL to
25 additional persons or entities and (b) to apply for additional protection of
26 DESIGNATED MATERIAL.

27 24. The parties agree that where a document production request seeks
28 production of an attorney-client privileged communication between the responding

1 party and its litigation counsel, or materials subject to protection as work product
2 under Fed.R.Civ.P. 26(b)(3), dated on or after the date the original complaint was filed
3 in this action, the party responding to the request need not list such documents on its
4 privilege log.

5 25. This Protective Order shall not bar any attorney of record in the course of
6 rendering advice to his client with respect to this litigation from conveying to any
7 party client his evaluation in a general way of Designated Material produced or
8 exchanged in this action where such information is material to the scope of the
9 attorney's representation of his or her client. However, in rendering such advice and
10 otherwise communicating with his client, the attorney shall not disclose the substance
11 of the contents of any "RESTRICTED -- ATTORNEYS' EYES ONLY" information
12 produced by another party.

13 26. In the event any person or party that has possession, custody, or control
14 of any information designated as "CONFIDENTIAL" or "RESTRICTED --
15 ATTORNEYS' EYES ONLY" that is covered by this Protective Order receives a
16 subpoena or other process or order to produce such information, such person or party
17 shall notify promptly, in writing, counsel for the party designating as confidential the
18 documents sought by such subpoena or other process or order, shall furnish a copy of
19 said subpoena or other process or order, and shall cooperate in any procedure sought
20 to be pursued by the party whose interests may be affected. The party asserting the
21 confidential treatment shall have the burden of defending against such subpoena,
22 process or order. The person or party receiving the subpoena or process or order shall
23 be entitled to comply with it except: (a) to the extent the party asserting the
24 confidential treatment is successful in obtaining an order modifying or quashing it;
25 and (b) in complying with the process or order shall, at a minimum, seek to obtain
26 confidential treatment of the "CONFIDENTIAL" or "RESTRICTED --
27 ATTORNEYS' EYES ONLY" information before producing it pursuant to the
28 subpoena, process or order.

1 27. The provisions of this Protective Order that restrict the disclosure and use
2 of Designated Material shall survive the final disposition of this action and continue to
3 be binding on all persons subject to its terms, except that (a) there shall be no
4 restriction on documents that are used as exhibits in Court unless such exhibits were
5 filed under seal, and (b) a party may seek the written permission of the producing
6 party or order of the Court with respect to dissolution or modification of such
7 protective orders. This Court retains and shall have continuing jurisdiction over the
8 parties and recipients of the Protected Documents for enforcement of the provisions of
9 this Order following termination of this litigation.

10 28. This Order shall be binding upon the parties and their attorneys,
11 successors, executors, personal representatives, administrators, heirs, legal
12 representatives, assigns, subsidiaries, divisions, employees, agents, independent
13 contractors, or other persons or organizations over which they have control.

14 **IT IS SO ORDERED.**

15
16 Dated: August 17, 2017



HON. DEAN D. PREGERSON

1 **EXHIBIT A**
2 **UNDERTAKING OF EXPERTS OR CONSULTANTS REGARDING**
3 **PROTECTIVE ORDER**

4 I, _____, declare that:

5 1. My address is _____

6 _____.

7 2. My current employer is

8 _____.

9 3. My current occupation and job title is

10 _____.

11 4. I have received a copy of the Protective Order in this action. I have
12 carefully read and understand the provisions of the Protective Order.

13 5. I will comply with all of the provisions of the Protective Order. I will
14 hold in confidence, will not disclose to anyone not qualified under the Protective
15 Order, and will use only for purposes of this action any information designated as
16 "CONFIDENTIAL" or "RESTRICTED -- ATTORNEYS' EYES ONLY" that is
17 disclosed to me.

18 6. Promptly upon termination of these actions, I will return all documents
19 and things designated as "CONFIDENTIAL" or "RESTRICTED -- ATTORNEYS'
20 EYES ONLY" that came into my possession, and all documents and things that I have
21 prepared relating thereto, to the outside counsel for the party by whom I am employed.

22 7. I hereby submit to the jurisdiction of this Court for the purpose of
23 enforcement of the Protective Order in this action.

24 I declare under penalty of perjury that the foregoing is true and correct.

25 Signature _____

26 Date _____

27

28