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21 Attorneys for Defendants ENESCO LLC,  
 22 THE WALT DISNEY COMPANY,  
 23 WALT DISNEY PARKS AND  
 24 RESORTS U.S., INC., DISNEY STORE  
 25 USA, LLC, and DAVI DPACHECO.

26 UNITED STATES DISTRICT COURT  
 27 CENTRAL DISTRICT OF CALIFORNIA

28 CYNDY BOHONOVSKY, an  
 individual,  
  
 Plaintiff,  
  
 v.  
  
 ENESCO LLC, a Delaware limited  
 liability company; THE WALT  
 DISNEY COMPANY, a Delaware  
 corporation; WALT DISNEY PARKS  
 AND RESORTS U.S., INC., a Florida  
 corporation; DISNEY STORE USA,  
 LLC, a Delaware limited liability  
 company; and DAVID PACHECO, an  
 individual,  
  
 Defendants.

CASE No. CV14-05076-CBM (E)  
~~PROPOSED~~ STIPULATED  
 PROTECTIVE ORDER AND  
 CONFIDENTIALITY  
 AGREEMENT

Assigned for all proceedings:  
 Honorable Consuelo B. Marshall  
  
 Referred to:  
 Magistrate Judge Charles F. Eick  
  
 Complaint Filed: June 30, 2014  
 Trial Date: None

**STATEMENT OF GOOD CAUSE**

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This is a copyright infringement action (“Action”). Discovery and trial of this Action will involve the exchange of highly sensitive information. Such information may include confidential business strategies, financial data, product design and manufacturing details, customer lists, confidential research, development, or commercial information, and other valuable information that is not available to the public. The parties to this action (each individually a “Party” and collectively the “Parties”) agree that the disclosure of such highly sensitive information to the public may be detrimental to their respective commercial interests and that discovery in this proceeding should be conducted under a Stipulated Protective Order and Confidentiality Agreement (“Protective Order”) made pursuant to Rule 26(c) of the Federal Rules of Civil Procedure (“Rule 26”). Through their respective attorneys of record, the Parties have agreed to be bound by the terms of the Protective Order and to present the same for entry as an Order of the Court. Nonparties may produce information and documents that will be governed by the terms of this Protective Order by agreeing in writing to be bound by the terms of this Protective Order through Exhibit A and following the procedure for designating Confidential Information as set forth in this Protective Order.

**INFORMATION COVERED**

1. This Protective Order shall apply to any information, documents, testimony, and things deemed by a Party or nonparty to contain “Confidential Information.” For purposes of this Protective Order, “Confidential Information” means any information, documents, testimony, and things as to which a Party or nonparty deems that a reasonable basis exists for limiting dissemination of the

1 material under the standards of Rule 26 and contains confidential and/or proprietary  
2 commercial information that is not generally available to the public.

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4 2. Confidential Information may include, but is not limited to, all  
5 business information of any type, such as contractual and financial arrangements;  
6 business agreements, statements of income, revenue, expenses, and/or profits;  
7 business plans, strategies, and valuations; and personnel and salary information.

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**DESIGNATION AND TREATMENT  
OF CONFIDENTIAL INFORMATION**

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3. Confidential Information shall be designated by the producing Party  
or nonparty as either "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
ATTORNEYS' EYES ONLY" pursuant to the following standards:

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(a) A Party or nonparty may designate material CONFIDENTIAL  
only if it deems that a reasonable basis exists for limiting dissemination of the  
material under the standards of Rule 26 and that the material contains confidential  
and/or proprietary commercial information that is not generally available to the  
public; and

(b) A Party or nonparty may designate material HIGHLY  
CONFIDENTIAL – ATTORNEYS' EYES ONLY if it deems that disclosure of  
such material to another person or party would be injurious to the commercial  
interests of the designating entity under the standards of Rule 26 and that the  
material consists of or contains highly proprietary technical specifications, trade  
secrets, and/or business information, such that the risk of improper use or disclosure

1 of the designated materials to another party outweighs the right of that party to  
2 review such information.

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4 4. "CONFIDENTIAL DESIGNATION": Confidential Information  
5 designated as CONFIDENTIAL under paragraph 3(a) maybe disclosed only to the  
6 following persons, except upon the prior written consent of the designating Party or  
7 nonparty or upon order of the Court:

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9 (a) Outside litigation Counsel of Record including attorneys, law  
10 clerks, and staff employees (including stenographic, clerical, and paralegal  
11 employees);

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13 (b) Party individuals, defined as follows: Parties to this action,  
14 including persons regularly employed by the Parties, who reasonably require  
15 knowledge of the particular Confidential Information in order to assist in the Parties'  
16 litigation or settlement activities.

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18 (c) Subject to the provisions of paragraph 10 below, Court personnel  
19 involved in this action, which includes arbitrators and mediators who agree to be  
20 bound to this Protective Order;

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22 (d) Court reporters, videographers, translators, and similar personnel  
23 involved in recording testimony or proceedings in this action who agree in writing  
24 or on the record to be bound to the terms of this Protective Order;

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26 (e) Consultants or experts retained by Parties to this action,  
27 including persons regularly employed by such consultants or experts who

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1 reasonably require knowledge of the Confidential Information disclosed in order to  
2 assist in the Parties' litigation or settlement activities, who agree to the terms of this  
3 Protective Order and sign the attached Exhibit A;

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5 (f) Persons appearing for deposition who agree to the terms of this  
6 Protective Order and sign the attached Exhibit A, provided that such persons (1)  
7 authored or received such Confidential Information, (2) are established as being  
8 knowledgeable of the contents of such Confidential Information prior to the time of  
9 his or her testimony, or (3) is a current employee of the Party (or non-party) that  
10 produced the Confidential Information (subject to the right of the producing Party to  
11 object and move for a protective order prior to the deponent being given access to  
12 such Confidential Information);

13  
14 (g) Persons otherwise lawfully entitled to such Confidential  
15 Information, including persons who have been authors or recipients of such  
16 Confidential Information (and who have not wrongfully obtained the Confidential  
17 Information) outside of discovery in this Action.

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19 5. HIGHLY CONFIDENTIAL – ATTORNEYS EYES ONLY  
20 DESIGNATION: Confidential Information designated as HIGHLY  
21 CONFIDENTIAL – ATTORNEYS' EYES ONLY under paragraph 3(b) may be  
22 disclosed only to the following persons, except upon the prior written consent of the  
23 designating Party or nonparty or upon order of the Court:

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25 (a) All persons identified in paragraphs 4(a) and (c)-(g) above to  
26 whom information designated as HIGHLY CONFIDENTIAL – ATTORNEYS'  
27 EYES ONLY may be disclosed.

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1           6.           A Party or nonparty may designate information produced by that  
2 Party or nonparty which it deems to contain Confidential Information by, to the  
3 extent possible, marking each page of each writing produced as "CONFIDENTIAL"  
4 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" as follows:

5  
6           (a)       In the case of information voluntarily disclosed in these  
7 proceedings or disclosed in response to a discovery request, the producing Party or  
8 nonparty may identify and mark Confidential Information at the time when an  
9 affidavit, pleading, or memoranda is served, when the answer to the interrogatory or  
10 request for admission is served, when a copy of a document is provided, or at the  
11 time of the inspection of the premises or thing.

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13           (b)       In the case of depositions and deposition transcripts, the  
14 designating Party or nonparty shall advise opposing counsel and the court reporter  
15 of the specific pages and exhibits to be maintained as Confidential Information at  
16 the deposition or within thirty (30) days after receipt of the transcript. For  
17 convenience, if a deposition transcript contains repeated references to Confidential  
18 Information that cannot conveniently be segregated from non-confidential  
19 information, any Party or nonparty may request that the entire transcript be marked  
20 by the reporter as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
21 ATTORNEYS' EYES ONLY". The Court Reporter shall conform all materials in  
22 his or her possession to reflect such confidentiality designation and bind (or re-bind  
23 if necessary) separately those portions of the testimony and/or exhibits designated as  
24 Confidential Information and shall mark the face of the separately bound transcript  
25 containing such confidential testimony and/or exhibits CONFIDENTIAL  
26 PURSUANT TO COURT ORDER or HIGHLY CONFIDENTIAL PURSUANT  
27 TO COURT ORDER – ATTORNEYS' EYES ONLY, as appropriate. Until the  
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1 expiration of the 30 day period following the designating Party's (or non-party's)  
2 receipt of the transcript, the entire transcript shall be deemed Confidential  
3 Information absent an agreement by the Parties (or non-party) on the record.  
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5 7. Inadvertent failure to designate Confidential Information as such  
6 prior to disclosure, production, or response, will not prevent a subsequent  
7 confidentiality designation by letter sent promptly after discovery of such  
8 inadvertent failure. Any disclosure made by the receiving Party prior to receipt of  
9 the letter shall not be a violation of this Protective Order, nor shall the receiving  
10 Party incur liability for use or disclosure of the information prior to the receipt of  
11 such letter.  
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13 8. A Party's determination not to designate certain material as  
14 Confidential Information despite designating other similar materials as Confidential  
15 Information shall not be considered a waiver of any confidentiality designation as to  
16 any materials so designated, and shall not prevent a subsequent confidentiality  
17 designation by letter of such undesignated materials as provided for herein.  
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19 **DISPUTES AND DISCLOSURE OF CONFIDENTIAL INFORMATION**  
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21 9. All Confidential Information shall be used solely for the purpose of  
22 this litigation between the Parties and may not be used for any other purpose, except  
23 (a) by Order of the court in this Action after a noticed motion is made in which  
24 notice is given to all interested Parties and persons; and (b) for a Party's use of its  
25 own Confidential Information that it has designated.  
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1           10.       Subject to the limitations of this Protective Order, Confidential  
2 Information designated in accordance with paragraph 4 may be used during  
3 discovery, in connection with any motion, at the trial and/or appeal of this action, or  
4 for any other purpose as the Court may allow after notice to all interested Parties  
5 and persons. To the extent Confidential Information is included in any pleading,  
6 paper, or other document filed with the Court, the Party or person filing such  
7 Confidential Information shall lodge such information under seal in compliance with  
8 this Court's Orders and Local Rule 79-5. Papers being submitted for filing under  
9 seal shall bear on the face of the initial page of the papers the notation "Confidential  
10 or Highly Confidential – Attorneys Eyes Only. Filed Under Seal."

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12           11.       A Party may dispute the designation of any Confidential Information  
13 by giving written notice of such objection to the designating Party or nonparty  
14 within 30 days of the designation. The Parties will first try, in good faith, to resolve  
15 such a dispute before presenting the dispute to the Court pursuant to Local Rule 37.  
16 If the designating Party or nonparty does not withdraw or change the designation,  
17 the objecting Party may file a motion requesting that the Court determine whether  
18 the information should be treated as Confidential Information, and if so, the  
19 appropriate designation. In any such motion, the designating Party or nonparty has  
20 the burden of establishing that the information is Confidential Information as  
21 defined in paragraph 4 above, but the information shall be treated as appropriate  
22 Confidential Information unless and until determined otherwise by the Court. The  
23 disputed material shall be presented to the Court under seal, pursuant to Local Rule  
24 79-5 and the provisions of this Order to permit the Court to make a determination as  
25 to whether the material qualifies as Confidential Information, and if so, the  
26 appropriate designation for the Confidential Information. The Court may award  
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1 reasonable attorney's fees and costs to the prevailing Party or nonparty if it finds  
2 such motion or opposition to such motion was not substantially justified.

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4 12. Any Party or nonparty receiving a request to produce Confidential  
5 Information to a third-party shall not do so without compulsion of law, but shall  
6 provide notice and details of the request to the designating Party or nonparty as soon  
7 as is practical under the circumstances but, in any event, no less than fourteen days  
8 prior to the date by which production is required. If the designating Party or  
9 nonparty objects to the production, no production of the Confidential Information  
10 shall occur until a court of competent jurisdiction rules on the subject.

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12 13. The inadvertent disclosure of any documents or electronically stored  
13 information that may be subject to attorney-privilege, the work-product doctrine, or  
14 any other applicable privilege recognized under California law (collectively referred  
15 to as "Privileged Information") shall not be deemed a waiver in whole or in part of  
16 any such privilege, either as to the specific information disclosed or as to any other  
17 information relating thereto or on the same or related subject matter.

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## TERMINATION

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21 14. Within thirty (30) days after final termination of this Action, each  
22 person subject to this Protective Order shall return all copies and samples of  
23 Confidential Information in its possession, custody, or control to counsel for the  
24 disclosing Party or nonparty; or otherwise shall destroy all Confidential Information  
25 in its possession, custody, or control, and certify the destruction thereof, except,  
26 however, counsel may retain one copy of any pleading, interrogatory response,  
27 deposition transcript, or other document containing such Confidential Information,

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1 subject to paragraph 15 of this Protective Order. No counsel or Party shall be  
2 required to destroy any electronically stored information contained in backup media  
3 that cannot practicably be destroyed without also destroying other non-confidential  
4 data; such electronically stored information shall not be accessed or restored to other  
5 accessible media without the agreement of the designating Party or an order of the  
6 Court after notice to the designating Party.

7  
8 15. This Protective Order shall survive the final determination of this  
9 Action and shall remain in full force and effect after the conclusion of all of the  
10 proceedings in this Action. This Court shall maintain jurisdiction over this  
11 Protective Order to enforce its terms and to ensure the Parties' and any relevant non-  
12 party's compliance herewith.

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14 **AGREEMENT TO BE BOUND**

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16 16. The Parties and all signatories to this Protective Order, including  
17 those in the attached Exhibit A, agree to be bound by all the undisputed terms of this  
18 Protective Order pending its approval and entry by the Court. In the event that the  
19 Court modifies this Protective Order, or in the event that the Court enters a different  
20 Protective Order, the Parties agree to be bound by this Protective Order until such  
21 time as the Court may enter such a different Protective Order. It is the Parties' intent  
22 to be bound by the terms of this Protective Order pending its entry so as to allow for  
23 immediate production of Confidential Information under the terms herein.

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1 **STIPULATED AND AGREED.**

2 Dated: April 17, 2015

3 TESSER RUTTENBEG & GROSSMAN  
4 LLP

5  
6 By: /s/Brian M. Grossman

7 Brian M. Grossman  
8 Sharon G. Yaacobi  
9 Attorneys for Plaintiff Cyndy Bohonovsky

10 Dated: April 17, 2015


11 Mark D. Kremer  
12 Michael Marchand, members of  
13 CONKLE, KREMER & ENGEL  
14 Professional Law Corporation

15 By: /s/Mark D. Kremer

16 Mark D. Kremer  
17 Attorneys for Defendants ENESCO LLC,  
18 THE WALT DISNEY COMPANY,  
19 WALT DISNEY PARKS AND RESORTS  
20 U.S., INC., DISNEY STORE USA, LLC,  
21 and DAVI DPACHECO.

22 **THE COURT, HAVING FOUND GOOD CAUSE FOR THE FOREGOING**  
23 **STIPULATED PROTECTIVE ORDER, IT IS SO ORDERED.**

24 DATED: 4/17, 2015

25   
26 Honorable ~~Consuelo B. Marshall~~ *Charles F. Eick*  
27 United States ~~District Judge~~  
28 *MAGISTRATE JUDGE*

**EXHIBIT A**

**AGREEMENT TO STIPULATED PROTECTIVE ORDER**

I have reviewed the Stipulated Protective Order and Confidentiality Agreement (“Protective Order”) entered in the Central District of California court case entitled *Bohonovsky v. Enesco LLC, et al.*, Case No. 2:14-cv-05076-CMB (E) (the “Action”). I agree to maintain the confidentiality of all Confidential Information, as defined by the Protective Order, and that I will not use or disclose (to anyone other than my counsel) any Confidential Information that I learn of or receive in the course of the Action. I have received a copy of the Protective Order, agree to abide and be bound by its terms, and agree that I am subject to the jurisdiction of the Court having jurisdiction over the Action for purposes of enforcement of these obligations.

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

Printed Name: \_\_\_\_\_

On behalf of: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_