

1 James Juo (State Bar No. 193852)
 2 *jjuo@fulpat.com*
 3 Kenya L. Williams (State Bar No. 276875)
 4 *kwilliams@fulpat.com*
 5 FULWIDER PATTON LLP
 6 Howard Hughes Center
 7 6060 Center Drive, Tenth Floor
 8 Los Angeles, California 90045
 9 Telephone: (310) 824-5555
 10 Facsimile: (310) 824-9696
 11
 12 Attorneys for Defendant,
 13 RGM DISTRIBUTION, INC.

9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**

12 HMS STORES, LLC,
 13 Plaintiff,

14 v.

15 RGM DISTRIBUTION, INC., *et al.*,
 16 Defendants.

CASE NO. 14-CV-9730 SVW (Ex)

STIPULATED PROTECTIVE ORDER

17
 18 AND COUNTERCLAIMS

Honorable Stephen V. Wilson

19
 20 **1. INTRODUCTION**

21 **1.1 PURPOSES AND LIMITATIONS**

22 Discovery in this action is likely to involve production of confidential,
 23 proprietary, or private information for which special protection from public
 24 disclosure and from use for any purpose other than prosecuting this litigation may be
 25 warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter
 26 the following Stipulated Protective Order. The parties acknowledge that this Order
 27 does not confer blanket protections on all disclosures or responses to discovery and
 28 that the protection it affords from public disclosure and use extends only to the

1 limited information or items that are entitled to confidential treatment under the
2 applicable legal principles. The parties further acknowledge, as set forth in Section
3 12.3, below, that this Stipulated Protective Order does not entitle them to file
4 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
5 that must be followed and the standards that will be applied when a party seeks
6 permission from the court to file material under seal.

7 1.2 GOOD CAUSE STATEMENT

8 It is the intent of the parties and the Court that confidential materials will not
9 be designated as protected information for tactical reasons in this case and that
10 nothing be so designated without a good faith belief that there is good cause why it
11 should not be part of the public record of this case. Confidential information that the
12 parties may seek to protect from unrestricted or unprotected disclosure will be
13 limited to trade secrets, customer and pricing lists and other valuable research,
14 development, commercial, financial, technical and/or proprietary information that a
15 designating party determines in good faith should be kept confidential and where the
16 unrestricted or unprotected disclosure of such information may result in prejudice or
17 harm to the disclosing party. Accordingly, to expedite the flow of information, to
18 facilitate the prompt resolution of disputes over confidentiality of discovery
19 materials, to adequately protect information the parties are entitled to keep
20 confidential, to ensure that the parties are permitted reasonable necessary uses of
21 such material in preparation for and in the conduct of trial, to address their handling
22 at the end of the litigation, and serve the ends of justice, a protective order for such
23 information is justified in this matter.

24

25 2. DEFINITIONS

26 2.1 Action: this pending federal law suit.

27 2.2 Challenging Party: a Party or Non-Party that challenges the
28 designation of information or items under this Order.

1 2.3 “CONFIDENTIAL” Information or Items: information (regardless
2 of how it is generated, stored or maintained) or tangible things that qualify for
3 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
4 Good Cause Statement.

5 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
6 their support staff).

7 2.5 Designating Party: a Party or Non-Party that designates information
8 or items that it produces in disclosures or in responses to discovery as
9 “CONFIDENTIAL.”

10 2.6 Disclosure or Discovery Material: all items or information,
11 regardless of the medium or manner in which it is generated, stored, or maintained
12 (including, among other things, testimony, transcripts, and tangible things), that are
13 produced or generated in disclosures or responses to discovery in this matter.

14 2.7 Expert: a person with specialized knowledge or experience in a
15 matter pertinent to the litigation who has been retained by a Party or its counsel to
16 serve as an expert witness or as a consultant in this Action.

17 2.8 House Counsel: attorneys who are employees of a party to this
18 Action. House Counsel does not include Outside Counsel of Record or any other
19 outside counsel.

20 2.9 Non-Party: any natural person, partnership, corporation, association,
21 or other legal entity not named as a Party to this action.

22 2.10 Outside Counsel of Record: attorneys who are not employees of a
23 party to this Action but are retained to represent or advise a party to this Action and
24 have appeared in this Action on behalf of that party or are affiliated with a law firm
25 which has appeared on behalf of that party, and includes support staff.

26 2.11 Party: any party to this Action, including all of its officers, directors,
27 employees, consultants, retained experts, and Outside Counsel of Record (and their
28 support staffs).

1 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
2 Discovery Material in this Action.

3 2.13 Professional Vendors: persons or entities that provide litigation
4 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
5 demonstrations, and organizing, storing, or retrieving data in any form or medium)
6 and their employees and subcontractors.

7 2.14 Protected Material: any Disclosure or Discovery Material that is
8 designated as “CONFIDENTIAL.”

9 2.15 Receiving Party: a Party that receives Disclosure or Discovery
10 Material from a Producing Party.

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12 3. SCOPE

13 3.1 The protections conferred by this Stipulation and Order cover not only
14 Protected Material (as defined above), but also (1) any information copied or
15 extracted from Protected Material; (2) all copies, excerpts, summaries, or
16 compilations of Protected Material; and (3) any testimony, conversations, or
17 presentations by Parties or their Counsel that might reveal Protected Material.

18 3.2 Any use of Protected Material at trial shall be governed by the orders of
19 the trial judge. This Order does not govern the use of Protected Material at trial.

20
21 4. DURATION

22 4.1 Even after final disposition of this litigation, the confidentiality
23 obligations imposed by this Order shall remain in effect until a Designating Party
24 agrees otherwise in writing or a court order otherwise directs. Final disposition shall
25 be deemed to be the later of (1) dismissal of all claims and defenses in this Action,
26 with or without prejudice; and (2) final judgment herein after the completion and
27 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
28

1 including the time limits for filing any motions or applications for extension of time
2 pursuant to applicable law.

3
4 **5. DESIGNATING PROTECTED MATERIAL**

5 **5.1 Exercise of Restraint and Care in Designating Material for**
6 **Protection.** Each Party or Non-Party that designates information or items for
7 protection under this Order must take care to limit any such designation to specific
8 material that qualifies under the appropriate standards. The Designating Party must
9 designate for protection only those parts of material, documents, items, or oral or
10 written communications that qualify so that other portions of the material,
11 documents, items, or communications for which protection is not warranted are not
12 swept unjustifiably within the ambit of this Order.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations
14 that are shown to be clearly unjustified or that have been made for an improper
15 purpose (e.g., to unnecessarily encumber the case development process or to impose
16 unnecessary expenses and burdens on other parties) may expose the Designating
17 Party to sanctions.

18 If it comes to a Designating Party's attention that information or items that it
19 designated for protection do not qualify for protection, that Designating Party must
20 promptly notify all other Parties that it is withdrawing the inapplicable designation.

21 **5.2 Manner and Timing of Designations.** Except as otherwise provided
22 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
23 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
24 under this Order must be clearly so designated before the material is disclosed or
25 produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic
28 documents, but excluding transcripts of depositions or other pretrial or trial

1 proceedings), that the Producing Party affix at a minimum, the legend
2 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
3 contains protected material. If only a portion or portions of the material on a page
4 qualifies for protection, the Producing Party also must clearly identify the protected
5 portion(s) (e.g., by making appropriate markings in the margins). A Party or Non-
6 Party that makes original documents available for inspection need not designate them
7 for protection until after the inspecting Party has indicated which documents it would
8 like copied and produced. During the inspection and before the designation, all of the
9 material made available for inspection shall be deemed “CONFIDENTIAL.” After
10 the inspecting Party has identified the documents it wants copied and produced, the
11 Producing Party must determine which documents, or portions thereof, qualify for
12 protection under this Order. Then, before producing the specified documents, the
13 Producing Party must affix the “CONFIDENTIAL legend” to each page that
14 contains Protected Material. If only a portion or portions of the material on a page
15 qualifies for protection, the Producing Party also should identify the protected
16 portion(s) (e.g., by making appropriate markings in the margins).

17 (b) for testimony given in depositions that the Designating Party identify
18 the Disclosure or Discovery Material on the record, before the close of the
19 deposition all protected testimony.

20 (c) for information produced in some form other than documentary and for
21 any other tangible items, that the Producing Party affix in a prominent place on the
22 exterior of the container or containers in which the information is stored the legend
23 “CONFIDENTIAL.” If only a portion or portions of the information warrants
24 protection, the Producing Party, to the extent practicable, shall identify the protected
25 portion(s).

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
27 failure to designate qualified information or items does not, standing alone, waive
28 the Designating Party’s right to secure protection under this Order for such material.

1 Upon timely correction of a designation, the Receiving Party must make reasonable
2 efforts to assure that the material is treated in accordance with the provisions of this
3 Order.

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5 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6 6.1 **Timing of Challenges.** Any Party or Non-Party may challenge a
7 designation of confidentiality at any time that is consistent with the Court's
8 Scheduling Order.

9 6.2 **Meet and Confer.** The Challenging Party shall initiate the dispute
10 resolution process (and, if necessary, file a discovery motion) under Local Rule 37.1
11 *et seq.*

12 6.3 The burden of persuasion in any such challenge proceeding shall be
13 on the Designating Party. Frivolous challenges, and those made for an improper
14 purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other
15 parties) may expose the Challenging Party to sanctions. Unless the Designating Party
16 has waived or withdrawn the confidentiality designation, all parties shall continue to
17 afford the material in question the level of protection to which it is entitled under the
18 Producing Party's designation until the Court rules on the challenge.

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

21 7.1 **Basic Principles.** A Receiving Party may use Protected Material that
22 is disclosed or produced by another Party or by a Non-Party in connection with this
23 Action only for prosecuting, defending, or attempting to settle this Action. Such
24 Protected Material may be disclosed only to the categories of persons and under the
25 conditions described in this Order. When the Action has been terminated, a
26 Receiving Party must comply with the provisions of section 13 below (FINAL
27 DISPOSITION).

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

4 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
5 otherwise ordered by the court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated
7 "CONFIDENTIAL" only to:

8 (a) the Receiving Party's Outside Counsel of Record in this Action, as
9 well as employees of said Outside Counsel of Record to whom it is reasonably
10 necessary to disclose the information for this Action;

11 (b) Experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this Action and who have signed the
13 "Acknowledgment and Agreement to Be Bound" (Exhibit A), as well as employees
14 of said Expert to whom it is reasonably necessary to disclose the information for
15 this Action;

16 (c) the Court and its personnel;

17 (d) court reporters and their staff;

18 (e) professional jury or trial consultants, mock jurors, and Professional
19 Vendors to whom disclosure is reasonably necessary for this Action;

20 (f) the author or recipient of a document containing the information or a
21 custodian or other person who otherwise possessed or knew the information;

22 (g) during their depositions, witnesses, and attorneys for witnesses, in
23 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
24 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
25 they will not be permitted to keep any confidential information unless they sign the
26 "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise
27 agreed by the Designating Party or ordered by the court. Pages of transcribed
28 deposition testimony or exhibits to depositions that reveal Protected Material may be

1 separately bound by the court reporter and may not be disclosed to anyone except as
2 permitted under this Stipulated Protective Order;

3 (h) any mediator or settlement officer, and their supporting personnel,
4 mutually agreed upon by any of the parties engaged in settlement discussions; and

5 (i) other persons by written consent of the Producing Party or upon
6 order of the Court and on such conditions as may be agreed or ordered.

7

8 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED

9 PRODUCED IN OTHER LITIGATION

10 If a Party is served with a subpoena or a court order issued in other litigation
11 that compels disclosure of any information or items designated in this Action as
12 “CONFIDENTIAL,” that Party must:

13 (a) promptly notify in writing the Designating Party. Such notification
14 shall include a copy of the subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or
16 order to issue in the other litigation that some or all of the material covered by the
17 subpoena or order is subject to this Protective Order. Such notification shall include
18 a copy of this Stipulated Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought to be
20 pursued by the Designating Party whose Protected Material may be affected.

21 If the Designating Party timely seeks a protective order, the Party served with
22 the subpoena or court order shall not produce any information designated in this
23 action as “CONFIDENTIAL” before a determination by the court from which the
24 subpoena or order issued, unless the Party has obtained the Designating Party’s
25 permission. The Designating Party shall bear the burden and expense of seeking
26 protection in that court of its confidential material and nothing in these provisions
27 should be construed as authorizing or encouraging a Receiving Party in this Action
28 to disobey a lawful directive from another court.

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9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT
TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

- (1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
- (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and
- (3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

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10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

12. MISCELLANEOUS

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

1 12.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective Order.

6 12.3 Filing Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
8 only be filed under seal pursuant to a court order authorizing the sealing of the
9 specific Protected Material at issue. If a Party's request to file Protected Material
10 under seal is denied by the court, then the Receiving Party may file the information
11 in the public record unless otherwise instructed by the court.

12
13 13. FINAL DISPOSITION

14 After the final disposition of this Action, as defined in paragraph 4, within 60
15 days of a written request by the Designating Party, each Receiving Party must return
16 all Protected Material to the Producing Party or destroy such material. As used in this
17 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
18 summaries, and any other format reproducing or capturing any of the Protected
19 Material. Whether the Protected Material is returned or destroyed, the Receiving
20 Party must submit a written certification to the Producing Party (and, if not the same
21 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
22 (by category, where appropriate) all the Protected Material that was returned or
23 destroyed and (2) affirms that the Receiving Party has not retained any copies,
24 abstracts, compilations, summaries or any other format reproducing or capturing any
25 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
26 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
27 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
28 reports, attorney work product, and consultant and expert work product, even if such

1 materials contain Protected Material. Any such archival copies that contain or
2 constitute Protected Material remain subject to this Protective Order as set forth
3 in Section 4 (DURATION).

4 14. Any violation of this Order may be punished by any and all appropriate
5 measures including, without limitation, contempt proceedings and/or monetary
6 sanctions.

8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10 DATED: August 17, 2015

/s/ Kamran Fattahi
Kamran Fattahi
Attorneys for Plaintiff

13 DATED: August 17, 2015


/s/ Kenya L. Williams
James Juo
Kenya L. Williams
Attorneys for Defendant

16 *All other signatories listed, and on
17 whose behalf the filing is submitted,
18 concur in the filing's content and
19 have authorized the filing.*

18 /s/ Kenya L. Williams

21 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23 DATED: 8/18/15


Hon. Stephen V. Wilson
United States District Judge
Charles F. Eick
United States Magistrate Judge

28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name], of
_____ [address],

7 declare under penalty of perjury that I have read in its entirety and understand the
8 Stipulated Protective Order that was issued by the United States District Court for
9 the Central District of California on _____ [date] in the case
10 of *HMS Stores, LLC v. RGM Distribution, Inc., et al.*, No. 14-CV-9730 SVW (Ex).
11 I agree to comply with and to be bound by all the terms of this Stipulated Protective
12 Order and I understand and acknowledge that failure to so comply could expose me
13 to sanctions and punishment in the nature of contempt. I solemnly promise that I will
14 not disclose in any manner any information or item that is subject to this Stipulated
15 Protective Order to any person or entity except in strict compliance with the
16 provisions of this Order.

17 I further agree to submit to the jurisdiction of the United States District Court
18 for the Central District of California for the purpose of enforcing the terms of this
19 Stipulated Protective Order, even if such enforcement proceedings occur after
20 termination of this action. I hereby appoint _____ [name]
21 of _____ [address
22 and telephone number] as my California agent for service of process in connection
23 with this action or any proceedings related to enforcement of this Stipulated
24 Protective Order.

25 Date: _____

26 City and State where sworn and signed: _____

27 Printed name: _____

28 Signature: _____