

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

LEWIS WAGNER, LLP  
Dina M. Cox (admitted *pro hac vice*)  
dcox@lewiswagner.com  
Janelle P. Kilies (admitted *pro hac vice*)  
jkilies@lewiswagner.com  
501 Indiana Avenue, Suite 200  
Indianapolis, IN 46202  
Telephone: 317-237-0500  
Fax: 317-630-2799

LATHAM & WATKINS LLP  
Jonathan M. Jackson, Bar # 257554  
jonathan.jackson@lw.com  
355 South Grand Avenue  
Los Angeles, CA 90071  
Telephone: 213-891-8556  
Fax: 213-891-8763

*Attorneys for Defendant  
Guthy-Renker, LLC*

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

SARAH ABBOTT, ANJAIL  
ABDUL BADEE, et al.,

Plaintiffs,

v.

GUTHY-RENKER, LLC and WEN  
BY CHAZ DEAN, INC.,

Defendants.

Case No. 2:15-cv-01974-ODW-AGR

**STIPULATED PROTECTIVE  
ORDER**

1 IT IS HEREBY STIPULATED by and between Plaintiffs and Defendant  
2 Guthy-Renker, LLC, by and through their respective counsel of record, as follows:

3 1. GENERAL PROVISIONS  
4

5 1.1 Purposes and Limitations. Discovery in this action is likely to involve  
6 production of confidential, proprietary, or private information for which special  
7 protection from public disclosure and from use for any purpose other than  
8 prosecuting this litigation may be warranted. Accordingly, the parties hereby  
9 stipulate to and petition the Court to enter the following Stipulated Protective  
10 Order. The parties acknowledge that this Order does not confer blanket protections  
11 on all disclosures or responses to discovery and that the protection it affords from  
12 public disclosure and use extends only to the limited information or items that are  
13 entitled to confidential treatment under the applicable legal principles. The parties  
14 further acknowledge, as set forth in Section 12.3, below, that this Stipulated  
15 Protective Order does not entitle them to file confidential information under seal;  
16 Local Rule 79-5 sets forth the procedures that must be followed and the standards  
17 that will be applied when a Party seeks permission from the Court to file material  
18 under seal. The parties also agree that nothing herein shall be construed as an  
19 admission that any types of documents or information described herein must be  
20 produced in this case.  
21  
22  
23  
24  
25  
26  
27  
28

1           1.2    Good Cause Statement. This action is likely to involve trade secrets  
2 (as that term is defined by California Civil Code § 3426.1),<sup>1</sup> customer and pricing  
3 lists, and other valuable research, testing, formula, development, commercial,  
4 financial, technical and/or proprietary information for which special protection  
5 from public disclosure and from use for any purpose other than prosecution of this  
6 action is warranted. Such confidential and proprietary materials and information  
7 consist of, among other things, business processes; non-public business or other  
8 sensitive financial information, including, but not limited to, customer lists, pricing,  
9 sales data, profit and/or loss information, sales, profit and/or loss projections, profit  
10 and loss statements, or corporate financial statements; and also include confidential  
11 research; business development, business marketing or other sensitive commercial  
12 information; formulae and formulae development; testing and test results; or other  
13 confidential research, development, or commercial information (including  
14 information implicating privacy rights of third parties), information otherwise  
15 generally unavailable to the public, or which may be privileged or otherwise  
16 protected from disclosure under state or federal statutes, Court rules, case decisions,  
17 or common law.

23           Defendant is one of the world’s largest direct marketing companies, with  
24 distribution in more than 68 countries. The above information is not generally  
25

---

26  
27 <sup>1</sup> Cal. Civil Code § 3426.1 provides that trade secret “means information, including a formula, pattern, compilation,  
28 program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential,  
from not being generally known to the public or to other persons who can obtain economic value from its disclosure  
or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

1 known to the public or to other persons who could obtain economic value from its  
2 disclosure or use, and Defendant uses reasonable efforts to maintain the secrecy of  
3 this information. The disclosure of Defendant's trade secrets, and confidential and  
4 proprietary materials and information (as described in this paragraph and below) to  
5 the public or Defendant's competitors would cause harm to Defendant's  
6 competitive positions in the marketplace. In addition, discovery in this action is  
7 also likely to call for materials containing medical records and other sensitive  
8 personal information, the disclosure of which would be harmful to individual third  
9 parties.

10  
11  
12  
13 Accordingly, to expedite the flow of information, to facilitate the prompt  
14 resolution of disputes over confidentiality of discovery materials, to adequately  
15 protect information the parties are entitled to keep confidential, to ensure that the  
16 parties are permitted reasonably necessary uses of such material in preparation for  
17 and in the conduct of trial, to address their handling at the end of the litigation, and  
18 to serve the ends of justice, a protective order for such information is justified in  
19 this matter. It is the intent of the parties that information will not be designated as  
20 confidential for tactical reasons and that nothing be so designated without a good  
21 faith belief that it has been maintained in a confidential, non-public manner, and  
22 there is good cause why it should not be part of the public record of this case.

23  
24  
25  
26 This action is also likely to involve the Personal Health Information (as that  
27 term is defined by 42 U.S.C. §§ 1320d-1320d-8 (Section 1171 of the Health  
28

1 Insurance Portability and Accountability Act of 1996: Administrative  
2 Simplification)<sup>2</sup> and 45 C.F.R. 160.103) and Personally Identifiable Information (as  
3 that term is used in the Gramm-Leach-Bliley Act, 15 U.S.C. § 6809(4))<sup>3</sup> of  
4 Plaintiffs. This information is protected from general disclosure by multiple federal  
5 and state statutes and regulations.

7 2. DEFINITIONS

8  
9 2.1 Action: the above-entitled proceeding, Case No. 2:15-cv-01974-ODW-  
10 AGR.

11 2.2 Challenging Party: a Party or Non-Party that challenges the  
12 designation of information or items under this Order.

13 2.3 “CONFIDENTIAL” Information or Items: information (regardless of  
14 how it is generated, stored or maintained) or tangible things that qualify for  
15 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
16 the Good Cause Statement.

17 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
18 their support staff and vendors provided that the vendors have signed the  
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A)).  
20  
21  
22  
23  
24

---

25 <sup>2</sup> Personal Health Information includes, but is not limited to, demographic information; medical history; test and  
26 laboratory results; insurance information and other data that a health care professional collects to identify an  
individual and determine appropriate care.

27 <sup>3</sup> Personally Identifiable Information includes any non-public personal information, including, but not limited to, full  
28 name and iterations of name; personal identification numbers, such as social security, passport or driver’s license  
numbers; address information; asset information; telephone numbers; personal characteristics, such as photos and  
other images; and information about an individual that is linked or linkable to the foregoing items.

1           2.5 Designated House Counsel: House Counsel who seek access to  
2 “HIGHLY CONFIDENTIAL” information in this Action.

3           2.6 Designating Party: a Party or Non-Party that designates information or  
4 items that it produces in disclosures or in responses to discovery as  
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”  
6

7           2.7 Disclosure or Discovery Material: all items or information, regardless  
8 of the medium or manner in which it is generated, stored, or maintained (including,  
9 among other things, testimony, transcripts, and tangible things), that are produced  
10 or generated in disclosures or responses to discovery in this matter.  
11

12           2.8 Expert: a person with specialized knowledge or experience in a matter  
13 pertinent to the litigation who (1) has been retained by a Party or its counsel to  
14 serve as an expert witness or as a consultant in this action, (2) is not a past or  
15 current employee of a Party or of a Party’s competitor, and (3) at the time of  
16 retention, is not anticipated to become an employee of a Party or of a Party’s  
17 competitor.  
18

19           2.9 “HIGHLY CONFIDENTIAL” Information or Items: extremely  
20 sensitive “CONFIDENTIAL Information or Items,” disclosure of which to another  
21 Party or Non-Party would create a substantial risk of serious harm that could not be  
22 avoided by less restrictive means. Such Information and Items include, but are not  
23 limited to, the following non-public Information and Items: formulae for Wen®  
24 Cleansing Conditioner; documents relating to the development and testing of  
25  
26  
27  
28

1 formulae for Wen® Cleansing Conditioner; financial data or information,  
2 including, but not limited to, information concerning sales, revenue, profit margins,  
3 costs, and/or capital expenditures; budgets, forecasts, and projections; Defendant's  
4 proprietary computer software; agreements with retailers, wholesalers,  
5 manufacturers, distributors, and/or other third-parties relating to Wen® Cleansing  
6 Conditioner; and/or marketing or other business strategy documents.  
7

8  
9 2.10 House Counsel: attorneys who are employees of a Party to this Action.  
10 House Counsel does not include Outside Counsel of Record or any other outside  
11 counsel.  
12

13 2.11 Non-Party: any natural person, partnership, corporation, association, or  
14 other legal entity not named as a Party to this action.  
15

16 2.12 Outside Counsel of Record: attorneys who are not employees of a  
17 Party to this Action but are retained to represent or advise a Party to this Action and  
18 have appeared in this Action on behalf of that Party or are affiliated with a law firm  
19 which has appeared on behalf of that Party, and includes support staff.  
20

21 2.13 Party: any Party to this Action, including all of its officers, directors,  
22 employees, consultants, retained experts, and Outside Counsel of Record (and their  
23 support staffs).  
24

25 2.14 Producing Party: a Party or Non-Party that produces Disclosure or  
26 Discovery Material in this Action.  
27  
28

1           2.15 Professional Vendors: persons or entities that provide litigation  
2 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
3 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
4 and their employees and subcontractors.  
5

6           2.16 Protected Material: any Disclosure or Discovery Material that is  
7 designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL."  
8

9           2.17 Receiving Party: a Party that receives Disclosure or Discovery  
10 Material from a Producing Party.  
11

### 12           3.     SCOPE

13           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

19           Any use of Protected Material at trial shall be governed by the orders of the  
20 trial judge. This Order does not govern the use of Protected Material at trial.  
21

### 22           4.     DURATION

23           Even after final disposition of this litigation, the confidentiality obligations  
24 imposed by this Order shall remain in effect until a Designating Party agrees  
25 otherwise in writing or a Court order otherwise directs. Final disposition shall be  
26 deemed to be the later of (1) dismissal of all claims and defenses in this Action,  
27  
28



1 with or without prejudice; and (2) final judgment herein after the completion and  
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
3 including the time limits for filing any motions or applications for extension of  
4 time pursuant to applicable law.  
5

6 **5. DESIGNATING PROTECTED MATERIAL**

7 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

8  
9 Each Party or Non-Party that designates information or items for protection under  
10 this Order must take care to limit any such designation to specific material that  
11 qualifies under the appropriate standards. The Designating Party must designate for  
12 protection only those parts of material, documents, items, or oral or written  
13 communications that qualify so that other portions of the material, documents,  
14 items, or communications for which protection is not warranted are not swept  
15 unjustifiably within the ambit of this Order.  
16  
17

18 Mass, indiscriminate, or routinized designations are prohibited. Designations  
19 that are shown to be clearly unjustified or that have been made for an improper  
20 purpose (e.g., to unnecessarily encumber the case development process or to  
21 impose unnecessary expenses and burdens on other parties) may expose the  
22 Designating Party to sanctions.  
23  
24

25 If it comes to a Designating Party's attention that information or items that it  
26 designated for protection do not qualify for protection, that Designating Party must  
27 promptly notify all other Parties that it is withdrawing the inapplicable designation.  
28

1           5.2 Manner and Timing of Designations. Except as otherwise provided in  
2 this Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material  
3 that qualifies for protection under this Order must be clearly so designated before  
4 the material is disclosed or produced.  
5

6           Designation in conformity with this Order requires:

7           (a) **Information in documentary form.** The Producing Party shall affix  
8 to any Disclosure or Discovery Material in documentary form (e.g., paper or  
9 electronic documents, but excluding transcripts of depositions or other pretrial or  
10 trial proceedings) the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”  
11 to each page that contains protected material.  
12  
13

14           A Party or Non-Party that makes original documents or materials available  
15 for inspection need not designate them for protection until after the inspecting Party  
16 has indicated which material it would like copied and produced. During the  
17 inspection and before the designation, all of the material made available for  
18 inspection shall be deemed “HIGHLY CONFIDENTIAL.” After the inspecting  
19 Party has identified the documents it wants copied and produced, the Producing  
20 Party must determine which documents, or portions thereof, qualify for protection  
21 under this Order. Then, before producing the specified documents, the Producing  
22 Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
23 CONFIDENTIAL”) to each page that contains Protected Material. If only a portion  
24 or portions of the material on a page qualifies for protection, the Producing Party  
25  
26  
27  
28

1 also must clearly identify the protected portion(s) (e.g., by making appropriate  
2 markings in the margins) and must specify, for each portion, the level of protection  
3 being asserted.  
4

5 (b) **Depositions.** Unless all parties agree on the record at the time the  
6 deposition testimony is taken, all deposition testimony taken in this case shall be  
7 treated as if it were designated “HIGHLY CONFIDENTIAL” from the date of the  
8 deposition through and including thirty (30) days after receipt of the final  
9 deposition transcript. No later than the thirtieth day after receipt of the final  
10 deposition transcript, a party may serve a Notice of Designation to all parties of  
11 record as to specific portions of the transcript, including exhibits, that are  
12 designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” and thereafter  
13 those portions identified in the Notice of Designation shall be protected under the  
14 terms of this Order. The failure to serve a timely Notice of Designation shall waive  
15 any designation of testimony taken in that deposition as confidential information,  
16 unless (a) the parties agree to a different time for serving a Notice of Designation or  
17 (b) the party seeking a late designation seeks and obtains relief from the deadline  
18 from the Court for good cause shown. Alternatively, a Designating Party may  
19 specify, at the deposition or up to 30 days afterwards if that period is properly  
20 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or  
21 “HIGHLY CONFIDENTIAL.”  
22  
23  
24  
25  
26  
27  
28

1 Transcripts containing Protected Material shall have an obvious legend on  
2 the title page that the transcript contains Protected Material, and the title page shall  
3 be followed by a list of all pages (including line numbers as appropriate) that have  
4 been designated as Protected Material and the level of protection being asserted by  
5 the Designating Party. The Designating Party shall inform the court reporter of  
6 these requirements.  
7

8  
9 (c) **Other Material.** For information produced in some form other than  
10 documentary and for any other tangible items, the Producing Party shall affix in a  
11 prominent place on the exterior of the container or containers in which the  
12 information or item is stored the legend “CONFIDENTIAL” or “HIGHLY  
13 CONFIDENTIAL.” If only a portion or portions of the information or item warrant  
14 protection, the Producing Party, to the extent practicable, shall identify the  
15 protected portion(s) and specify the level of protection being asserted.  
16  
17

18 5.3 Inadvertent Failures to Designate. If corrected within a reasonable  
19 time of identifying an inadvertent failure to designate, an inadvertent failure to  
20 designate qualified information or items does not, standing alone, waive the  
21 Designating Party's right to secure protection under this Order for such material.  
22 Upon reasonably timely correction of a designation, the Receiving Party must make  
23 reasonable efforts to assure that the material is treated in accordance with the  
24 provisions of this Order.  
25  
26  
27  
28

1           6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

2           6.1   Timing of Challenges. Any Party or Non-Party may challenge a  
3 designation of confidentiality at any time that is consistent with the Court's  
4 Scheduling Order. Unless a prompt challenge to a Designating Party's  
5 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
6 unnecessary economic burdens, or a significant disruption or delay of the litigation,  
7 a Party does not waive its right to challenge a confidentiality designation by  
8 electing not to mount a challenge promptly after the original designation is  
9 disclosed.

10           6.2   Meet and Confer. The Challenging Party shall initiate the dispute  
11 resolution process consistent with Local Rule 37-1, *et seq.* The Challenging Party  
12 shall initiate the dispute resolution process by providing written notice of each  
13 designation it is challenging and describing the basis for each challenge. To avoid  
14 ambiguity as to whether a challenge has been made, the written notice must recite  
15 that the challenge to confidentiality is being made in accordance with this specific  
16 paragraph of the Protective Order. The parties shall attempt to resolve each  
17 challenge in good faith and must begin the process by conferring directly (in voice  
18 to voice dialogue consistent with Local Rule 37-1, *et seq.*; other forms of  
19 communication are not sufficient) within 10 days of the date of service of notice.  
20 In conferring, the Challenging Party must explain the basis for its belief that the  
21 confidentiality designation was not proper and must give the Designating Party an  
22  
23  
24  
25  
26  
27  
28

1 opportunity to review the designated material, to reconsider the circumstances, and,  
2 if no change in designation is offered, to explain the basis for the chosen  
3 designation. A Challenging Party may seek judicial assistance only if it has  
4 engaged in this meet and confer process in good faith or establishes that the  
5 Designating Party is unwilling to participate in the meet and confer process in a  
6 timely manner.  
7

8  
9 6.3 Burden of Persuasion. The burden of persuasion in any challenge  
10 proceeding shall be on the Designating Party. Frivolous challenges and those made  
11 for an improper purpose (e.g., to harass or impose unnecessary expenses and  
12 burdens on other parties) may expose the Challenging Party to sanctions. Unless  
13 the Designating Party has waived or withdrawn the confidentiality designation, all  
14 parties shall continue to afford the material in question the level of protection to  
15 which it is entitled under the Producing Party's designation until the Court rules on  
16 the challenge.  
17  
18

19  
20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

21 7.1 Basic Principles. A Receiving Party may use Disclosure or Discovery  
22 Material that is disclosed or produced by another Party or by a Non-Party in  
23 connection with this Action only for prosecuting, defending, or attempting to settle  
24 this Action. Protected Material may be disclosed only to the categories of persons  
25 and under the conditions described in this Order. When the Action has been  
26  
27  
28

1 terminated, a Receiving Party must comply with the provisions of section 13 below  
2 (FINAL DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a  
4 location and in a secure manner that ensures that access is limited to the persons  
5 authorized under this Order.  
6

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
8 otherwise ordered by the Court or permitted in writing by the Designating Party, a  
9 Receiving Party may disclose any information or item designated  
10 “CONFIDENTIAL” only to:  
11

- 12 (a) the Receiving Party's Outside Counsel of Record in this Action, as  
13 well as employees of said Outside Counsel of Record to whom it is  
14 reasonably necessary to disclose the information for this Action;  
15
- 16 (b) the officers, directors, and employees (including House Counsel) of  
17 the Receiving Party to whom disclosure is reasonably necessary for  
18 this Action;  
19
- 20 (c) Experts (as defined in this Order) of the Receiving Party to whom  
21 disclosure is reasonably necessary for this Action and who have  
22 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
23 A);  
24
- 25 (d) the Court and its personnel;  
26
- 27 (e) court reporters and their staff;  
28

1 (f) professional jury or trial consultants, mock jurors, and Professional  
2 Vendors to whom disclosure is reasonably necessary for this Action  
3 and who have signed the “Acknowledgment and Agreement to Be  
4 Bound” (Exhibit A);  
5

6 (g) the custodian, author, or recipient of a document containing the  
7 information;  
8

9 (h) during their depositions, witnesses, and attorneys for witnesses, in the  
10 Action to whom disclosure is reasonably necessary provided: (1) the  
11 deposing Party requests that the witness sign the form attached as  
12 Exhibit A hereto; and (2) they will not be permitted to keep any  
13 confidential information unless they sign the “Acknowledgment and  
14 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the  
15 Designating Party or ordered by the Court.; and  
16  
17

18 (i) any mediator or settlement officer, and their supporting personnel,  
19 mutually agreed upon by any of the parties engaged in settlement  
20 discussions.  
21

22 7.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items.  
23

24 Unless otherwise ordered by the Court or permitted in writing by the Designating  
25 Party, a Receiving Party may disclose any information or item designated  
26 “HIGHLY CONFIDENTIAL” only to:  
27  
28



- 1 (a) the Receiving Party's Outside Counsel of Record in this action, as well  
2 as employees of said Outside Counsel of Record to whom it is  
3 reasonably necessary to disclose the information for this litigation and  
4 who have signed the "Acknowledgment and Agreement to Be Bound"  
5 that is attached hereto as Exhibit A;  
6  
7 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
8 necessary for this litigation, (2) who have signed the  
9 "Acknowledgment and Agreement to Be Bound" (Exhibit A), and (3)  
10 as to whom the procedures set forth in paragraph 7.4(a)(2), below,  
11 have been followed;  
12  
13 (c) the court and its personnel;  
14  
15 (d) court reporters and their staff, professional jury or trial consultants, and  
16 Professional Vendors to whom disclosure is reasonably necessary for  
17 this litigation and who have signed the "Acknowledgment and  
18 Agreement to Be Bound" (Exhibit A);  
19  
20 (e) the author or recipient of a document containing the information or a  
21 custodian or other person who otherwise possessed or knew the  
22 information; and  
23  
24 (f) Designated House Counsel of the Receiving Party (1) who has no  
25 involvement in competitive decision-making, (2) to whom disclosure  
26 is reasonably necessary for this litigation, (3) who has signed the  
27  
28

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (4)  
2 as to whom the procedures set forth in paragraph 7.4(a)(1), below,  
3 have been followed.  
4

5 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
6 CONFIDENTIAL” Information or Items to Designated House Counsel or Experts.  
7

8 (a)(1) Unless otherwise ordered by the Court or agreed to in writing by the  
9 Designating Party, a Party that seeks to disclose to Designated House  
10 Counsel any information or item that has been designated “HIGHLY  
11 CONFIDENTIAL” pursuant to paragraph 7.3(f) first must make a  
12 written request to the Designating Party that (1) sets forth the full  
13 name of the Designated House Counsel and the city and state of his or  
14 her residence, and (2) describes the Designated House Counsel’s  
15 current and reasonably foreseeable future primary job duties and  
16 responsibilities in sufficient detail to determine if House Counsel is  
17 involved, or may become involved, in any competitive decision-  
18 making.  
19

20  
21  
22 (a)(2) Notwithstanding paragraph 7.4(a)(2)(i) below, unless otherwise  
23 ordered by the Court or agreed to in writing by the Designating Party,  
24 a Party that seeks to disclose to an Expert (as defined in this Order)  
25 any information or item that has been designated “HIGHLY  
26 CONFIDENTIAL” pursuant to paragraph 7.3(b) first must make a  
27  
28

1 written request to the Designating Party that (1) identifies the general  
2 categories of “HIGHLY CONFIDENTIAL” information that the  
3 Receiving Party seeks permission to disclose to the Expert, (2) sets  
4 forth the full name of the Expert and the city and state of his or her  
5 primary residence, (3) attaches a copy of the Expert’s current resume,  
6 (4) identifies the Expert’s current employer(s), (5) identifies each  
7 person or entity from whom the Expert has received compensation or  
8 funding for work in his or her areas of expertise or to whom the expert  
9 has provided professional services, including in connection with a  
10 litigation, at any time during the preceding five years,<sup>4</sup> and (6)  
11 identifies (by name and number of the case, filing date, and location of  
12 Court) any litigation in connection with which the Expert has offered  
13 expert testimony, including through a declaration, report, or testimony  
14 at a deposition or trial, during the preceding five years.

15  
16  
17  
18  
19 (i) If the time for designating any Expert has not expired and the  
20 Expert has not been disclosed pursuant to Fed.R.Civ.P. 26 or  
21 pursuant to order of the Court; or if an Expert is a consulting  
22 expert, a Party does not have to specifically comply with  
23 provisions (2) – (6) of paragraph 7.4(2)(a) above. In such a  
24  
25  
26

---

27 <sup>4</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the  
28 Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 situation, a party shall make a good faith attempt to disclose  
2 sufficient information to comply with the spirit of paragraph  
3 7.4(2)(a) above while protecting the identity of the consulting  
4 expert or non-disclosed Expert. Once an Expert is disclosed  
5 pursuant to Fed.R.Civ.P. 26 and/or pursuant to order of the  
6 Court, the Expert must fully comply with paragraph 7.4(2)(a)  
7  
8 above.  
9

10 (b) A Party that makes a request and provides the information specified in  
11 the preceding respective paragraphs may disclose the subject Protected  
12 Material to the identified Designated House Counsel or Expert unless,  
13 within 5 business days of delivering the request, the Party receives a  
14 written objection from the Designating Party. Any such objection must  
15 set forth in detail the grounds on which it is based.  
16  
17

18 (c) A Party that receives a timely written objection must meet and confer  
19 with the Designating Party (through direct voice to voice dialogue  
20 consistent with Local Rule 37-1, *et seq.*; other forms of  
21 communication are not sufficient) to try to resolve the matter by  
22 agreement within seven days of the written objection. If no agreement  
23 is reached, the Party seeking to make the disclosure to Designated  
24 House Counsel or the Expert may file a motion as provided in Local  
25 Rule 7 (and in compliance with Local Rule 79-5, if applicable) seeking  
26  
27  
28

1 permission from the Court to do so. Any such motion must describe  
2 the circumstances with specificity, set forth in detail the reasons why  
3 the disclosure to Designated House Counsel or the Expert is  
4 reasonably necessary, assess the risk of harm that the disclosure would  
5 entail, and suggest any additional means that could be used to reduce  
6 that risk. In addition, any such motion must be accompanied by a  
7 competent declaration describing the parties' efforts to resolve the  
8 matter by agreement (i.e., the extent and the content of the meet and  
9 confer discussions) and setting forth the reasons advanced by the  
10 Designating Party for its refusal to approve the disclosure.  
11  
12  
13

14 In any such proceeding, the Party opposing disclosure to Designated House  
15 Counsel or the Expert shall bear the burden of proving that the risk of harm that the  
16 disclosure would entail (under the safeguards proposed) outweighs the Receiving  
17 Party's need to disclose the Protected Material to its Designated House Counsel or  
18 Expert.  
19  
20

21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
22 PRODUCED IN OTHER LITIGATION.  
23

24 If a Party is served with a subpoena or a court order issued in other litigation  
25 or a demand for the production of documents in an administrative proceeding or  
26 other similar action that compels disclosure of any information or items designated  
27  
28

1 in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” that Party  
2 must:

3 (a) promptly notify in writing the Designating Party. Such notification  
4 shall include a copy of the subpoena, court order, or other demand;  
5

6 (b) promptly notify in writing the Party who caused the subpoena or order  
7 to issue in the other litigation that some or all of the material covered by the  
8 subpoena or order is subject to this Protective Order. Such notification shall include  
9 a copy of this Stipulated Protective Order; and  
10

11 (c) cooperate with respect to all reasonable procedures sought to be  
12 pursued by the Designating Party whose Protected Material may be affected.<sup>5</sup>  
13

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

26  
27 

---

<sup>5</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to  
28 afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the Court from  
which the subpoena or order issued.

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

3           (a)     The terms of this Order are applicable to information produced by a  
4 Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY  
5 CONFIDENTIAL.” Such information produced by Non-Parties in connection with  
6 this litigation is protected by the remedies and relief provided by this Order.  
7 Nothing in these provisions should be construed as prohibiting a Non-Party from  
8 seeking additional protections.  
9

10           (b)    In the event that a Party is required, by a valid discovery request, to  
11 produce a Non-Party’s confidential information in its possession, and the Party is  
12 subject to an agreement with the Non-Party not to produce the Non-Party’s  
13 confidential information, then the Party shall:  
14

- 15           1.     promptly notify in writing the Requesting Party and the Non-  
16 Party that some or all of the information requested is subject to a  
17 confidentiality agreement with a Non-Party;  
18
- 19           2.     promptly provide the Non-Party with a copy of the Stipulated  
20 Protective Order in this litigation, the relevant discovery  
21 request(s), and a reasonably specific description of the  
22 information requested; and  
23
- 24           3.     make the information requested available for inspection by the  
25 Non-Party.  
26  
27  
28

1 (c) If the Non-Party fails to object or seek a protective order from this  
2 Court within 14 days of receiving the notice and accompanying information, the  
3 Receiving Party may produce the Non-Party's confidential information responsive  
4 to the discovery request. If the Non-Party timely seeks a protective order, the  
5 Receiving Party shall not produce any information in its possession or control that  
6 is subject to the confidentiality agreement with the Non-Party before a  
7 determination by the Court.<sup>6</sup> Absent a Court order to the contrary, the Non-Party  
8 shall bear the burden and expense of seeking protection in this Court of its  
9 Protected Material.  
10  
11

12  
13 10. 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  
17 writing the Designating Party of the unauthorized disclosures, (b) use its best  
18 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the  
19 person or persons to whom unauthorized disclosures were made of all the terms of  
20 this Order, and (d) request such person or persons to execute the "Acknowledgment  
21 and Agreement to Be Bound" that is attached hereto as Exhibit A.  
22  
23  
24

25 11. INADVERTENT PRODUCTION OF PRIVILEGED OR  
26 OTHERWISE PROTECTED MATERIAL  
27

28 <sup>6</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this Court.



1           When a Producing Party gives notice to Receiving Parties that certain  
2 inadvertently produced material is subject to a claim of privilege or other  
3 protection, the obligations of the Receiving Parties are those set forth in Federal  
4 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
5 whatever procedure may be established in an e-discovery order regarding the  
6 inadvertent production of Disclosure or Discovery Material. Pursuant to Federal  
7 Rule of Evidence 502(d) and (e), the inadvertent disclosure in this Action of  
8 Disclosure or Discovery Material protected by the attorney-client privilege and/or  
9 work product doctrine shall not operate as a waiver of the attorney-client privilege  
10 and/or work product doctrine.  
11  
12

13  
14           12.    MISCELLANEOUS

15           12.1   Right to Further Relief. Nothing in this Order abridges the right of any  
16 person to seek its modification by the Court in the future.  
17

18           12.2   Right to Assert Other Objections. By stipulating to the entry of this  
19 Protective Order no Party waives any right it otherwise would have to object to  
20 disclosing or producing any information or item on any ground not addressed in  
21 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
22 any ground to use in evidence of any of the material covered by this Protective  
23 Order.  
24  
25

26           12.3   Filing Protected Material. A Party that seeks to file under seal any  
27 Protected Material must comply with Local Rule 79-5 and Local Rule 7. Protected  
28

1 Material may only be filed under seal pursuant to a Court order authorizing the  
2 sealing of the specific Protected Material at issue. In accordance with Local Rule  
3 79-5.1, a proposed filing containing Protected Material shall be accompanied by an  
4 application to file the papers or the portion thereof containing the Protected  
5 Material (if such portion is segregable) under seal; and that the application shall be  
6 directed to the judge to whom the papers are directed. If a Receiving Party desires  
7 to file Protected Material, the Receiving Party shall confer with the Designating  
8 Party in accordance with Local Rule 7 in order to afford the Designating Party an  
9 opportunity to support its position to the court in support of filing the Protected  
10 Material under seal. If a Party's request to file Protected Material under seal is  
11 denied by the Court, then the Receiving Party may file the information in the public  
12 record unless otherwise instructed by the Court.

13  
14  
15  
16  
17 13. FINAL DISPOSITION

18 After the final disposition of this Action, as defined in paragraph 4, within 60  
19 days of a written request by the Designating Party, each Receiving Party must use  
20 reasonable efforts to return all Protected Material to the Producing Party or destroy  
21 such material. As used in this subdivision, "all Protected Material" includes all  
22 copies, abstracts, compilations, summaries, and any other format reproducing or  
23 capturing any of the Protected Material. The Receiving Party's reasonable efforts  
24 shall not require the return or destruction of confidential information from (i)  
25 disaster recovery or business continuity backups, (ii) data stored in system-

1 generated temporary folders or near-line storage; (iii) unstructured departed  
2 employee data, and/or (iv) material that is subject to legal hold obligations or  
3 comingled with other such material. Backup storage media will not be restored for  
4 purposes of returning or certifying destruction of confidential information, but such  
5 retained information shall continue to be treated in accordance with the Order.

6 Whether the Protected Material is returned or destroyed, the Receiving Party must  
7 submit a written certification to the Producing Party (and, if not the same person or  
8 entity, to the Designating Party) by the 60 day deadline that (1) identifies (by  
9 category, where appropriate) all the Protected Material that was returned or  
10 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
11 abstracts, compilations, summaries or any other format reproducing or capturing  
12 any of the Protected Material except as otherwise permitted in this provision.

13 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
14 pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
15 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney  
16 work product, and consultant and expert work product, even if such materials  
17 contain Protected Material. Any such archival copies that contain or constitute  
18 Protected Material remain subject to this Protective Order as set forth in Section 4  
19 (DURATION).

1           14.    Violations.

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

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

7 DATED: May 30, 2017

DATED: May 30, 2017

8  
9 /s/ Amy E. Davis

/s/ Dina M. Cox

10 *Attorneys for Plaintiffs*

*Attorneys for Defendant*

11 Amy E. Davis (*Pro Hac Vice*)  
12 CHRISTIANSEN DAVIS, LLC  
13 4100 Spring Valley Road, Suite 450  
14 Dallas, TX 75244  
adavis@cdbfirm.com

Jonathan M. Jackson, Bar # 257554  
LATHAM & WATKINS LLP  
355 South Grand Avenue  
Los Angeles, CA 90071  
jonathan.jackson@lw.com

15 David E. Rosen  
16 MURPHY ROSEN LLP  
17 100 Wilshire Blvd., Suite 1300  
18 Santa Monica, CA 90401-1142  
19 drosen@murphyrosen.com

Dina M. Cox (*Pro Hac Vice*)  
Janelle P. Kilies (*Pro Hac Vice*)  
LEWIS WAGNER, LLP  
501 Indiana Avenue, Suite 200  
Indianapolis, IN 46202  
dcox@lewiswagner.com  
jkilies@lewiswagner.com

**Attorney Attestation**

In accordance with Local Rule 5-4.3.4(a)(2)(i), the filer of this document hereby attests that the concurrence to the filing of this document has been obtained from the other signatories hereto, and that all signatories hereto have authorized its filing.

DATED: May 30, 2017

Respectfully submitted,

/s/ Dina M. Cox

Dina M. Cox

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: June 2, 2017



---

HONORABLE ALICIA G. ROSENBERG  
UNITED STATES MAGISTRATE JUDGE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**  
**ACKNOWLEDGMENT AND AGREEMENT TO BE**  
**BOUND**

1  
2  
3  
4  
5 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
6 [print or type full address], declare under penalty of perjury that I have read in its  
7 entirety and understand the Stipulated Protective Order that was issued by the  
8 United States District Court for the Central District of California on \_\_\_\_\_ in  
9 the case of Sarah Abbott, Anjail Abdul Badee, et al., v. Guthy-Renker, LLC and  
10 WEN By Chaz Dean, Inc., Case No. 2:15-cv-01974-ODW-AGR. I agree to comply  
11 with and to be bound by all the terms of this Stipulated Protective Order and I  
12 understand and acknowledge that failure to so comply could expose me to sanctions  
13 and punishment in the nature of contempt. I solemnly promise that I will not  
14 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. I further agree to submit to the jurisdiction of the United  
17 States District Court for the Central District of California for the purpose of  
18 enforcing the terms of this Stipulated Protective Order, even if such enforcement  
19 proceedings occur after termination of this action. I hereby appoint  
20 \_\_\_\_\_ [print or type full name] of \_\_\_\_\_  
21 \_\_\_\_\_ [print or type full address and telephone number] as my  
22 California agent for service of process in connection with this action or any  
23 proceedings related to enforcement of this Stipulated Protective Order.

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

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

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

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

28