

1 extends only to the limited information or items that are entitled to confidential
2 treatment under the applicable legal principles. The parties further acknowledge, as set
3 forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them
4 to file confidential information under seal; 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. The parties also agree that
7 nothing herein shall be construed as an admission that any types of documents or
8 information described herein must be produced in this case.

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

25 The above information is not generally known to the public or to other persons
26 who could obtain economic value from its disclosure or use, and Defendant uses

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

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

18 This action is also likely to involve the Personal Health Information (as that
19 term is defined by 42 U.S.C. §§ 1320d-1320d-8 (Section 1171 of the Health Insurance
20 Portability and Accountability Act of 1996: Administrative Simplification)² and 45
21 C.F.R. 160.103) and Personally Identifiable Information (as that term is used in the
22 Gramm-Leach-Bliley Act, 15 U.S.C. § 6809(4))³ of Plaintiffs. This information is
23 protected from general disclosure by multiple federal and state statutes and
24 regulations.

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

28 ³ Personally Identifiable Information includes any non-public personal information, including, but not limited to, full
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.

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2. DEFINITIONS

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

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

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

2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support staff and vendors provided that the vendors have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A)).

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

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

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

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

2.9 “HIGHLY CONFIDENTIAL” Information or Items: extremely sensitive “CONFIDENTIAL Information or Items,” disclosure of which to another Party or

1 Non-Party would create a substantial risk of serious harm that could not be avoided by
2 less restrictive means. Such Information and Items include, but are not limited to, the
3 following non-public Information and Items: formulae for Wen® Cleansing
4 Conditioner; documents relating to the development and testing of formulae for
5 Wen® Cleansing Conditioner; financial data or information, including, but not limited
6 to, information concerning sales, revenue, profit margins, costs, and/or capital
7 expenditures; budgets, forecasts, and projections; Defendant's proprietary computer
8 software; agreements with retailers, wholesalers, manufacturers, distributors, and/or
9 other third-parties relating to Wen® Cleansing Conditioner; and/or marketing or other
10 business strategy documents.

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

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

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

20 2.13 Party: any Party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 2.14 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this Action.

25 2.15 Professional Vendors: persons or entities that provide litigation support
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or
27 demonstrations, and organizing, storing, or retrieving data in any form or medium)
28 and their employees and subcontractors.

1 2.16 Protected Material: any Disclosure or Discovery Material that is
2 designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL."

3 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5 **3. SCOPE**

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

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

13 **4. DURATION**

14 Even after final disposition of this litigation, the confidentiality obligations
15 imposed by this Order shall remain in effect until a Designating Party agrees
16 otherwise in writing or a Court order otherwise directs. Final disposition shall be
17 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
18 or without prejudice; and (2) final judgment herein after the completion and
19 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
20 including the time limits for filing any motions or applications for extension of time
21 pursuant to applicable law.

22 **5. DESIGNATING PROTECTED MATERIAL**

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

24 Each Party or Non-Party that designates information or items for protection under this
25 Order must take care to limit any such designation to specific material that qualifies
26 under the appropriate standards. The Designating Party must designate for protection
27 only those parts of material, documents, items, or oral or written communications that
28 qualify so that other portions of the material, documents, items, or communications

1 for which protection is not warranted are not swept unjustifiably within the ambit of
2 this Order.

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

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

11 5.2 Manner and Timing of Designations. Except as otherwise provided in
12 this Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material
13 that qualifies for protection under this Order must be clearly so designated before the
14 material is disclosed or produced.

15 Designation in conformity with this Order requires:

16 (a) **Information in documentary form.** The Producing Party shall affix to
17 any Disclosure or Discovery Material in documentary form (e.g., paper or electronic
18 documents, but excluding transcripts of depositions or other pretrial or trial
19 proceedings) the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” to
20 each page that contains protected material.

21 A Party or Non-Party that makes original documents or materials available for
22 inspection need not designate them for protection until after the inspecting Party has
23 indicated which material it would like copied and produced. During the inspection and
24 before the designation, all of the material made available for inspection shall be
25 deemed “HIGHLY CONFIDENTIAL.” After the inspecting Party has identified the
26 documents it wants copied and produced, the Producing Party must determine which
27 documents, or portions thereof, qualify for protection under this Order. Then, before
28 producing the specified documents, the Producing Party must affix the appropriate

1 legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”) to each page that
2 contains Protected Material. If only a portion or portions of the material on a page
3 qualifies for protection, the Producing Party also must clearly identify the protected
4 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for
5 each portion, the level of protection being asserted.

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

22 Transcripts containing Protected Material shall have an obvious legend on the
23 title page that the transcript contains Protected Material, and the title page shall be
24 followed by a list of all pages (including line numbers as appropriate) that have been
25 designated as Protected Material and the level of protection being asserted by the
26 Designating Party. The Designating Party shall inform the court reporter of these
27 requirements.

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1 (c) **Other Material.** For information produced in some form other than
2 documentary and for any other tangible items, the Producing Party shall affix in a
3 prominent place on the exterior of the container or containers in which the information
4 or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” If
5 only a portion or portions of the information or item warrant protection, the Producing
6 Party, to the extent practicable, shall identify the protected portion(s) and specify the
7 level of protection being asserted.

8 5.3 Inadvertent Failures to Designate. If corrected within a reasonable time
9 of identifying an inadvertent failure to designate, an inadvertent failure to designate
10 qualified information or items does not, standing alone, waive the Designating Party's
11 right to secure protection under this Order for such material. Upon reasonably timely
12 correction of a designation, the Receiving Party must make reasonable efforts to
13 assure that the material is treated in accordance with the provisions of this Order.

14 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
16 designation of confidentiality at any time that is consistent with the Court's
17 Scheduling Order. Unless a prompt challenge to a Designating Party's confidentiality
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
19 economic burdens, or a significant disruption or delay of the litigation, a Party does
20 not waive its right to challenge a confidentiality designation by electing not to mount
21 a challenge promptly after the original designation is disclosed.

22 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process consistent with Local Rule 37-1, *et seq.* The Challenging Party
24 shall initiate the dispute resolution process by providing written notice of each
25 designation it is challenging and describing the basis for each challenge. To avoid
26 ambiguity as to whether a challenge has been made, the written notice must recite that
27 the challenge to confidentiality is being made in accordance with this specific
28 paragraph of the Protective Order. The parties shall attempt to resolve each challenge

1 in good faith and must begin the process by conferring directly (in voice to voice
2 dialogue consistent with Local Rule 37-1, *et seq.*; other forms of communication are
3 not sufficient) within 10 days of the date of service of notice. In conferring, the
4 Challenging Party must explain the basis for its belief that the confidentiality
5 designation was not proper and must give the Designating Party an opportunity to
6 review the designated material, to reconsider the circumstances, and, if no change in
7 designation is offered, to explain the basis for the chosen designation. A Challenging
8 Party may seek judicial assistance only if it has engaged in this meet and confer
9 process in good faith or establishes that the Designating Party is unwilling to
10 participate in the meet and confer process in a timely manner.

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

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

19 7.1 Basic Principles. A Receiving Party may use Disclosure or Discovery
20 Material that is disclosed or produced by another Party or by a Non-Party in
21 connection with this Action only for prosecuting, defending, or attempting to settle
22 this Action. Protected Material may be disclosed only to the categories of persons and
23 under the conditions described in this Order. When the Action has been terminated, a
24 Receiving Party must comply with the provisions of section 13 below (FINAL
25 DISPOSITION).

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

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the Court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
4 only to:

- 5 (a) the Receiving Party's Outside Counsel of Record in this Action, as well
6 as employees of said Outside Counsel of Record to whom it is reasonably
7 necessary to disclose the information for this Action;
- 8 (b) the officers, directors, and employees (including House Counsel) of the
9 Receiving Party to whom disclosure is reasonably necessary for this
10 Action;
- 11 (c) Experts (as defined in this Order) of the Receiving Party to whom
12 disclosure is reasonably necessary for this Action and who have signed
13 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 14 (d) the Court and its personnel;
- 15 (e) court reporters and their staff;
- 16 (f) professional jury or trial consultants, mock jurors, and Professional
17 Vendors to whom disclosure is reasonably necessary for this Action and
18 who have signed the “Acknowledgment and Agreement to Be Bound”
19 (Exhibit A);
- 20 (g) the custodian, author, or recipient of a document containing the
21 information;
- 22 (h) during their depositions, witnesses, and attorneys for witnesses, in the
23 Action to whom disclosure is reasonably necessary provided: (1) the
24 deposing Party requests that the witness sign the form attached as
25 Exhibit A hereto; and (2) they will not be permitted to keep any
26 confidential information unless they sign the “Acknowledgment and
27 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
28 Designating Party or ordered by the Court.; and

- 1 (i) any mediator or settlement officer, and their supporting personnel,
2 mutually agreed upon by any of the parties engaged in settlement
3 discussions.

4 7.3 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items.

5 Unless otherwise ordered by the Court or permitted in writing by the Designating
6 Party, a Receiving Party may disclose any information or item designated “HIGHLY
7 CONFIDENTIAL” only to:

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

1 to whom the procedures set forth in paragraph 7.4(a)(1), below, have
2 been followed.

3 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
4 CONFIDENTIAL” Information or Items to Designated House Counsel or Experts.

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

15 (a)(2) Notwithstanding paragraph 7.4(a)(2)(i) below, unless otherwise ordered
16 by the Court or agreed to in writing by the Designating Party, a Party that
17 seeks to disclose to an Expert (as defined in this Order) any information
18 or item that has been designated “HIGHLY CONFIDENTIAL” pursuant
19 to paragraph 7.3(b) first must make a written request to the Designating
20 Party that (1) identifies the general categories of “HIGHLY
21 CONFIDENTIAL” information that the Receiving Party seeks
22 permission to disclose to the Expert, (2) sets forth the full name of the
23 Expert and the city and state of his or her primary residence, (3) attaches
24 a copy of the Expert’s current resume, (4) identifies the Expert’s current
25 employer(s), (5) identifies each person or entity from whom the Expert
26 has received compensation or funding for work in his or her areas of
27 expertise or to whom the expert has provided professional services,
28 including in connection with a litigation, at any time during the preceding

1 five years,⁴ and (6) identifies (by name and number of the case, filing
2 date, and location of Court) any litigation in connection with which the
3 Expert has offered expert testimony, including through a declaration,
4 report, or testimony at a deposition or trial, during the preceding five
5 years.

6 (i) If the time for designating any Expert has not expired and the
7 Expert has not been disclosed pursuant to Fed.R.Civ.P. 26 or
8 pursuant to order of the Court; or if an Expert is a consulting
9 expert, a Party does not have to specifically comply with
10 provisions (2) – (6) of paragraph 7.4(2)(a) above. In such a
11 situation, a party shall make a good faith attempt to disclose
12 sufficient information to comply with the spirit of paragraph
13 7.4(2)(a) above while protecting the identity of the consulting
14 expert or non-disclosed Expert. Once an Expert is disclosed
15 pursuant to Fed.R.Civ.P. 26 and/or pursuant to order of the Court,
16 the Expert must fully comply with paragraph 7.4(2)(a) above.

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

23 (c) A Party that receives a timely written objection must meet and confer
24 with the Designating Party (through direct voice to voice dialogue
25 consistent with Local Rule 37-1, *et seq.*; other forms of communication
26 are not sufficient) to try to resolve the matter by agreement within seven
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28 ⁴ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the 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 days of the written objection. If no agreement is reached, the Party
2 seeking to make the disclosure to Designated House Counsel or the
3 Expert may file a motion as provided in Local Rule 7 (and in compliance
4 with Local Rule 79-5, if applicable) seeking permission from the Court to
5 do so. Any such motion must describe the circumstances with specificity,
6 set forth in detail the reasons why the disclosure to Designated House
7 Counsel or the Expert is reasonably necessary, assess the risk of harm
8 that the disclosure would entail, and suggest any additional means that
9 could be used to reduce that risk. In addition, any such motion must be
10 accompanied by a competent declaration describing the parties' efforts to
11 resolve the matter by agreement (i.e., the extent and the content of the
12 meet and confer discussions) and setting forth the reasons advanced by
13 the Designating Party for its refusal to approve the disclosure.

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

21 If a Party is served with a subpoena or a court order issued in other litigation or a
22 demand for the production of documents in an administrative proceeding or other
23 similar action that compels disclosure of any information or items designated in this
24 action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" that Party must:

25 (a) Promptly notify in writing the Designating Party. Such notification shall
26 include a copy of the subpoena, court order, or other demand;

27 (b) Promptly notify in writing the Party who caused the subpoena or order to
28 issue in the other litigation that some or all of the material covered by the subpoena or

1 order is subject to this Protective Order. Such notification shall include a copy of this
2 Stipulated Protective Order; and

3 (c) Cooperate with respect to all reasonable procedures sought to be pursued
4 by the Designating Party whose Protected Material may be affected.⁵

5 If the Designating Party timely seeks a protective order, the Party served with
6 the subpoena, court order, or other demand, shall not produce any information
7 designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”
8 before a determination by the court or tribunal from which the subpoena or order
9 issued, unless the Party has obtained the Designating Party’s permission. The
10 Designating Party shall bear the burden and expense of seeking protection in that
11 court of its confidential material – and nothing in these provisions should be construed
12 as authorizing or encouraging a Receiving Party in this action to disobey a lawful
13 directive from another court.

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

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

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

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28 ⁵ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to 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 1. Promptly notify in writing the Requesting Party and the Non-Party
2 that some or all of the information requested is subject to a
3 confidentiality agreement with a Non-Party;
- 4 2. Promptly provide the Non-Party with a copy of the Stipulated
5 Protective Order in this litigation, the relevant discovery request(s),
6 and a reasonably specific description of the information requested;
7 and
- 8 3. Make the information requested available for inspection by the
9 Non-Party.

10 (c) If the Non-Party fails to object or seek a protective order from this Court
11 within 14 days of receiving the notice and accompanying information, the Receiving
12 Party may produce the Non-Party’s confidential information responsive to the
13 discovery request. If the Non-Party timely seeks a protective order, the Receiving
14 Party shall not produce any information in its possession or control that is subject to
15 the confidentiality agreement with the Non-Party before a determination by the
16 Court.⁶ Absent a Court order to the contrary, the Non-Party shall bear the burden and
17 expense of seeking protection in this Court of its Protected Material.

18 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

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⁶ 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 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
2 **OTHERWISE PROTECTED MATERIAL**

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

12 **12. MISCELLANEOUS**

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
14 person to seek its modification by the Court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this
16 Protective Order no Party waives any right it otherwise would have to object to
17 disclosing or producing any information or item on any ground not addressed in this
18 Stipulated Protective Order. Similarly, no Party waives any right to object on any
19 ground to use in evidence of any of the material covered by this Protective Order.

20 12.3 Filing Protected Material. A Party that seeks to file under seal any
21 Protected Material must comply with Local Rule 79-5 and Local Rule 7. Protected
22 Material may only be filed under seal pursuant to a Court order authorizing the sealing
23 of the specific Protected Material at issue. In accordance with Local Rule 79-5.1, a
24 proposed filing containing Protected Material shall be accompanied by an application
25 to file the papers or the portion thereof containing the Protected Material (if such
26 portion is segregable) under seal; and that the application shall be directed to the judge
27 to whom the papers are directed. If a Receiving Party desires to file Protected
28 Material, the Receiving Party shall confer with the Designating Party in accordance

1 with Local Rule 7 in order to afford the Designating Party an opportunity to support
2 its position to the court in support of filing the Protected Material under seal. If a
3 Party's request to file Protected Material under seal is denied by the Court, then the
4 Receiving Party may file the information in the public record unless otherwise
5 instructed by the Court.

6 **13. FINAL DISPOSITION**

7 After the final disposition of this Action, as defined in paragraph 4, within 60
8 days of a written request by the Designating Party, each Receiving Party must use
9 reasonable efforts to return all Protected Material to the Producing Party or destroy
10 such material. As used in this subdivision, "all Protected Material" includes all copies,
11 abstracts, compilations, summaries, and any other format reproducing or capturing
12 any of the Protected Material. The Receiving Party's reasonable efforts shall not
13 require the return or destruction of confidential information from (i) disaster recovery
14 or business continuity backups, (ii) data stored in system-generated temporary folders
15 or near-line storage; (iii) unstructured departed employee data, and/or (iv) material
16 that is subject to legal hold obligations or comingled with other such material.
17 Backup storage media will not be restored for purposes of returning or certifying
18 destruction of confidential information, but such retained information shall continue to
19 be treated in accordance with the Order. Whether the Protected Material is returned or
20 destroyed, the Receiving Party must submit a written certification to the Producing
21 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
22 deadline that (1) identifies (by category, where appropriate) all the Protected Material
23 that was returned or destroyed and (2) affirms that the Receiving Party has not
24 retained any copies, abstracts, compilations, summaries or any other format
25 reproducing or capturing any of the Protected Material except as otherwise permitted
26 in this provision. Notwithstanding this provision, Counsel are entitled to retain an
27 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
28 legal memoranda, correspondence, deposition and trial exhibits, expert reports,

1 attorney work product, and consultant and expert work product, even if such materials
2 contain Protected Material. Any such archival copies that contain or constitute
3 Protected Material remain subject to this Protective Order as set forth in Section 4
4 (DURATION).

5 **14. VIOLATIONS**

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

9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:

10
11 DATED: August 1, 2017

DATED: August 1, 2017

12
13 /s/ Amy E. Davis

/s/ Barry R. Schirm

14 Amy E. Davis
15 Attorneys for Plaintiffs
16 Amy E. Davis (*Pro Hac Vice*)

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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: August 1, 2017

Respectfully submitted,

/s/ Barry R. Schirm

Barry R. Schirm

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

DATED: August 9, 2017



HONORABLE ALICIA G. ROSENBERG
UNITED STATES MAGISTRATE JUDGE

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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its
entirety and understand the Stipulated Protective Order that was issued by the United
States District Court for the Central District of California on _____ in the case
of Sarah Abbott, Anjail Abdul Badee, et al., v. Guthy-Renker, LLC and WEN By
Chaz Dean, Inc., Case No. 2:15-cv-01974-ODW-AGR. I agree to comply with and to
be bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment
in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order. I further
agree to submit to the jurisdiction of the United States District Court for the Central
District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action. I hereby appoint _____ [print or type full
name] of _____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____