

1 ARNOLD & PORTER LLP  
 2 John D. Lombardo (SBN 187142)  
 3 john.lombardo@aporter.com  
 4 777 South Figueroa Street, Forty-Fourth Floor  
 5 Los Angeles, California 90017-5844  
 6 Telephone: 213.243.4000  
 7 Facsimile: 213.243.4199

8 GREENSFELDER, HEMKER & GALE, P.C.  
 9 David M. Harris (Mo. Bar NO. 32330) (*pro hac vice*)  
 10 10 South Broadway, Ste. 2000  
 11 St. Louis, MO 63102  
 12 Telephone: (314) 241-9090  
 13 Facsimile: (314) 345-5465  
 14 dmh@greensfelder.com

15 Attorneys for Defendant  
 16 BP West Coast Products LLC

17 UNITED STATES DISTRICT COURT  
 18 CENTRAL DISTRICT OF CALIFORNIA  
 19 [WESTERN DIVISION]

20 RAJ K. KAPUR, et al.,  
 21  
 22 Plaintiffs,  
 23  
 24 v.  
 25  
 26 BP WEST COAST PRODUCTS LLC,  
 27 et al.,  
 28  
 29 Defendants.

CASE NO.: 2:15-CV-05238

~~PROPOSED~~ PROTECTIVE ORDER

Courtroom: G  
 Judge: Hon. Paul L. Abrams

1 **PROTECTIVE ORDER**

2 1. **PURPOSES AND LIMITATIONS**

3 1.1 Discovery in this Proceeding is likely to involve production of  
4 confidential, proprietary, or private information for which special protection from  
5 public disclosure and from use for any purpose other than prosecuting this litigation  
6 may be warranted. Accordingly, the Court enters the following Protective Order.

7 1.2 This Protective Order does not confer blanket protections on all  
8 disclosures or responses to discovery, and the protection it affords from public  
9 disclosure and use extends only to the limited information or items that are entitled to  
10 confidential treatment under the applicable legal principles.

11 1.3 As set forth in Section 10.3, below, this Protective Order does not entitle  
12 the parties to file confidential information under seal; Civil Local Rule 79-5 sets forth  
13 the procedures that must be followed and the standards that will be applied when a  
14 party seeks permission from the court to file material under seal.

15 2. **GOOD CAUSE STATEMENT**

16 2.1 There is a good cause for the entry of a protective order in this case. The  
17 Parties anticipate producing to one another during discovery highly confidential and  
18 proprietary business documents, including potentially trade secret information and  
19 including documents discussing or detailing sensitive and confidential research,  
20 development, and commercial information about their operations and/or finances.  
21 Such documents could specifically include (1) identification of competitors; (2)  
22 pricing surveys and calculations used in the formulation of competitive motor fuel  
23 prices; (3) marketing strategies and plans for the sale of motor fuel; (4)  
24 experimental/pilot data testing various marketing strategies; (5) confidential formulas  
25 for costs and prices of fuel; (6) rewards and electronic payment strategies, systems,  
26 and data; (7) profitability statistics and analysis of business operations; (8) non-public  
27 financial performance data; (9) personally identifying information such as social  
28

1 security numbers; (10) contractual agreements for the purchase of motor fuel and/or  
2 for information technology services, including related to the Retalix POS/BOS  
3 system; and (11) intellectual property associated with the Retalix BOS/POS system.

4 2.2 All this information is otherwise generally unavailable to the public, may  
5 be privileged or otherwise protected from disclosure under state or federal statutes,  
6 court rules, case decisions, or common law, and the Parties would be damaged if this  
7 information was disseminated publically. Accordingly, to expedite the flow of  
8 information, to facilitate the prompt resolution of disputes over confidentiality of  
9 discovery materials, to adequately protect information the Parties are entitled to keep  
10 confidential, to ensure that the Parties are permitted reasonable necessary uses of such  
11 material in preparation for and in the conduct of trial, to address their handling at the  
12 end of the litigation, and serve the ends of justice, a protective order for such  
13 information is justified in this matter.

14 2.3 The Parties may not designate information or materials as confidential for  
15 tactical reasons, and nothing may be so designated without a good faith belief that it  
16 has been maintained in a confidential, non-public manner, and there is good cause  
17 why it should not be part of the public record of this case.

18 3. **DEFINITIONS**

19 3.1 In this Protective Order, the words set forth below shall have the  
20 following meanings:

- 21 a. "Proceeding" means the above-entitled proceeding case number CV 15-  
22 00140 DDP (PLAx), and any proceedings designated as related.
- 23 b. "Professional Vendor(s)" means a person(s) or entity(ies) that provides  
24 litigation support services (e.g., photocopying, videotaping, translating,  
25 preparing exhibits or demonstrations, and organizing, storing, or retrieving  
26 data in any form or medium) and its employees and subcontractors.
- 27  
28

- 1 c. “Court” means the United States District Judge Dean D. Pregerson, or  
2 United States Magistrate Judge Paul L. Abrams, or any other judge to which  
3 this Proceeding may be assigned, including Court staff participating in such  
4 proceedings.
- 5 d. “Confidential” means any means any non-public information which belongs  
6 to a Designating Party who believes in good faith that it is entitled to  
7 confidential treatment under applicable law.
- 8 e. “Highly Confidential” means any non-public, Confidential information  
9 which belongs to a Designating Party who believes in good faith that the  
10 Disclosure of such information would create a substantial risk of serious  
11 financial or other injury that cannot be avoided by less restrictive means.
- 12 f. “Confidential Materials” means any Documents, Testimony or Information  
13 designated as “Confidential” pursuant to the provisions of this Protective  
14 Order.
- 15 g. “Highly Confidential Materials” means any Documents, Testimony or  
16 Information designated as “Highly Confidential” pursuant to the provisions  
17 of this Protective Order.
- 18 h. “Protected Material” means any Documents, Testimony or Information  
19 designated as “Confidential” or “Highly Confidential” pursuant to the  
20 provisions of this Protective Order
- 21 i. “Designating Party” means the Party that designates Materials as “Highly  
22 Confidential” or “Confidential.”
- 23 j. “Receiving Party” means a Party that receives Disclosure of Protected  
24 Material from a Designating Party.
- 25 k. “Challenging Party” means a Party or non-Party that challenges the  
26 designation of information or items under this Protective Order.  
27  
28

1 1. “Disclose” or “Disclosed” or “Disclosure” means to reveal, divulge, give, or  
2 make available materials, or any part thereof, or any information contained  
3 therein.

4 m. “Documents” means (i) any “Writing,” “Recording,” “Photograph,”  
5 “Original,” and “Duplicate” as those terms are defined by Federal Rules of  
6 Evidence Section 1001, which have been produced in discovery in this  
7 Proceeding by any person, and (ii) any copies, reproductions, or summaries  
8 of all or any part of the foregoing.

9 n. “Information” means the content of Documents or Testimony.

10 o. “Testimony” means all depositions, declarations or other testimony taken or  
11 used in this Proceeding.

12 4. **SCOPE AND DURATION**

13 4.1 The protections conferred by this Protective Order cover not only  
14 Confidential Materials or Highly Confidential Materials (as defined above), but also  
15 (1) any information copied or extracted from Confidential Materials or Highly  
16 Confidential Materials; (2) all copies, excerpts, summaries, or compilations of  
17 Confidential Materials or Highly Confidential Materials; and (3) any testimony,  
18 conversations, or presentations by Parties or their Counsel that might reveal  
19 Confidential Materials or Highly Confidential Materials.

20 4.2 Any use of Confidential Materials or Highly Confidential Materials at  
21 trial shall be governed by the orders of the trial judge. This Protective Order does not  
22 govern the use of Confidential Materials or Highly Confidential Materials at trial.

23 4.3 If this case proceeds to trial, all of the **court-filed** information to be  
24 introduced that was previously designated as Confidential or Highly Confidential or  
25 maintained pursuant to this Protective Order becomes public and will be  
26 presumptively available to all members of the public, including the press, unless  
27 compelling reasons supported by specific factual findings to proceed otherwise are  
28

1 made to the trial judge in advance of the trial. Accordingly, the terms of this protective  
2 order do not extend beyond the commencement of the trial.

3 5. **DESIGNATING CONFIDENTIAL MATERIAL**

4 5.1 Exercise of Restraint and Care in Designating Material for Protection.

5 Each Party or Non-Party that designates information or items for protection  
6 must take care to limit any such designation to specific material that qualifies under  
7 the appropriate standards. The Designating Party must designate for protection only  
8 those parts of material, documents, items, or oral or written communications that  
9 qualify so that other portions of the material, documents, items, or communications  
10 for which protection is not warranted are not swept unjustifiably within the ambit of  
11 this Protective Order. Mass, indiscriminate, or routinized designations are prohibited.  
12 Designations that are shown to be clearly unjustified or that have been made for an  
13 improper purpose (e.g., to unnecessarily encumber the case development process or to  
14 impose unnecessary expenses and burdens on other parties) may expose the  
15 Designating Party to sanctions. If it comes to a Designating Party's attention that  
16 information or items that it designated for protection do not qualify for protection, that  
17 Designating Party must promptly notify all other Parties that it is withdrawing the  
18 inapplicable designation.

19 5.2 Categories of Protected Materials.

20 The Designating Party shall have the right to designate as "Highly  
21 Confidential" only the non-public Documents, Testimony or Information that the  
22 Designating Party in good faith believes would create a substantial risk of serious  
23 financial or other injury, if Disclosed to another Party or non-Party, and that such risk  
24 cannot be avoided by less restrictive means. The Designating Party shall have the right  
25 to designate as "Confidential" any Documents, Testimony or Information that the  
26 Designating Party in good faith believes to contain non-public information that is  
27 entitled to confidential treatment under applicable law.  
28

1 The types of Documents, Testimony, or Information that may qualify as  
2 Confidential Materials or Highly Confidential Materials pursuant to this Protective  
3 Order may include customer lists, market surveys, pricing surveys, competitor  
4 surveys, price zone maps and/or data, historical pricing data, prospective pricing data,  
5 pricing research, or analysis, confidential emails regarding gasoline pricing or the  
6 Retalix POS/BOS system, confidential data or analysis regarding the selection,  
7 testing, implementation, and/or operation of the Retalix POS/BOS system, electronic  
8 payment system information, marketing strategy information, business strategy  
9 information, and financial performance data (including but not limited to tax returns,  
10 balance sheets, and profit and loss statements).

11 The entry of this Protective Order does not alter, waive, modify, or abridge any  
12 right, privilege or protection otherwise available to any Party with respect to the  
13 discovery of matters, including but not limited to any Party's right to assert the  
14 attorney-client privilege, the attorney work product doctrine, or other privileges, or  
15 any Party's right to contest any such assertion.

16 5.3 Manner and Timing of Designations.

17 Any Documents, Testimony or Information to be designated as "Highly  
18 Confidential" or "Confidential" must be clearly so designated before the Document,  
19 Testimony or Information is Disclosed or produced. The Parties may agree that the  
20 case name and number are to be part of the "Highly Confidential" or "Confidential"  
21 designation. The "Highly Confidential" and "Confidential" designations should not  
22 obscure or interfere with the legibility of the designated Information.

23 a. For Documents (apart from transcripts of depositions or other pretrial or  
24 trial proceedings), the Designating Party must affix the legend "Highly  
25 Confidential" on each page of any Document containing such designated  
26 Highly Confidential Material.

27 b. For Documents (apart from transcripts of depositions or other pretrial or  
28

1 trial proceedings), the Designating Party must affix the legend  
2 “Confidential” on each page of any Document containing such  
3 designated Confidential Material.

- 4 c. For Testimony given in depositions the Designating Party may either:
- 5 i. identify on the record, before the close of the deposition, all  
6 “Highly Confidential” and/or “Confidential” Testimony, by specifying all  
7 portions of the Testimony that qualify as “Highly Confidential” and/or  
8 “Confidential;” or
  - 9 ii. designate the entirety of the Testimony at the deposition as  
10 “Highly Confidential” and/or “Confidential” (before the deposition is  
11 concluded) with the right to identify more specific portions of the  
12 Testimony as to which protection is sought within 30 days following  
13 receipt of the deposition transcript. In circumstances where portions of  
14 the deposition Testimony are designated for protection, the transcript  
15 pages containing “Highly Confidential” and/or “Confidential”  
16 Information may be separately bound by the court reporter, who must  
17 affix to the top of each page the legend “Highly Confidential” or  
18 “Confidential,” as instructed by the Designating Party.
- 19 d. For Information produced in some form other than Documents, and for  
20 any other tangible items, including, without limitation, compact discs or  
21 DVDs, the Designating Party must affix in a prominent place on the  
22 exterior of the container or containers in which the Information or item is  
23 stored the legend “Highly Confidential” and/or “Confidential.” If only  
24 portions of the Information or item warrant protection, the Designating  
25 Party, to the extent practicable, shall identify the “Highly Confidential”  
26 and “Confidential” portions.
- 27  
28



1           5.4    Inadvertent Production.

2           The inadvertent production by any of the Parties or non-Parties to the  
3 Proceedings of any Document, Testimony or Information during discovery in this  
4 Proceeding without a “Confidential” or “Highly Confidential” designation, shall be  
5 without prejudice to any claim that such item is “Confidential” or “Highly  
6 Confidential” and such Party shall not be held to have waived any rights by such  
7 inadvertent production. In the event that any Document, Testimony or Information  
8 that is subject to a “Highly Confidential” or “Confidential” designation is  
9 inadvertently produced without such designation, the Party that inadvertently  
10 produced the document shall give written notice of such inadvertent production within  
11 twenty (20) days of discovery of the inadvertent production, together with a further  
12 copy of the subject Document, Testimony or Information designated as “Highly  
13 Confidential” or “Confidential” (the “Inadvertent Production Notice”). Upon receipt  
14 of such Inadvertent Production Notice, the Party that received the inadvertently  
15 produced Document, Testimony or Information shall promptly destroy the  
16 inadvertently produced Document, Testimony or Information and all copies thereof,  
17 or, at the expense of the producing Party, return such together with all copies of such  
18 Document, Testimony or Information to counsel for the producing Party and shall  
19 retain only the “Highly Confidential” and/or “Confidential” designated Materials.  
20 Should the Receiving Party choose to destroy such inadvertently produced Document,  
21 Testimony or Information, the Receiving Party shall notify the producing Party in  
22 writing of such destruction within ten (10) days of receipt of written notice of the  
23 inadvertent production. This provision is not intended to apply to any inadvertent  
24 production of any Information protected by attorney-client or work product privileges.  
25 In the event that this provision conflicts with any applicable law regarding waiver of  
26 confidentiality through the inadvertent production of Documents, Testimony or  
27 Information, such law shall govern.

1           5.5    Unauthorized Disclosure of Protected Material.

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

10           6.       **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11           6.1    Timing of Challenges.

12           Any Party or Non-Party may challenge a designation of confidentiality at any  
13 time that is consistent with the Court’s Scheduling Order.

14           6.2    Meet and Confer.

15           The Challenging Party shall initiate the dispute resolution process under Local  
16 Rule 37.1, et seq. Any discovery motion must strictly comply with the procedures set  
17 forth in Local Rules 37-1, 37-2, and 37-3.

18           6.3    Burden.

19           The burden of persuasion in any such challenge proceeding shall be on the  
20 Designating Party. Frivolous challenges, and those made for an improper purpose  
21 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
22 expose the Challenging Party to sanctions. Unless the Designating Party has waived  
23 or withdrawn the confidentiality designation, all Parties shall continue to afford the  
24 material in question the level of protection to which it is entitled under the Producing  
25 Party’s designation until the Court rules on the challenge.

26  
27  
28

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

2           7.1     Protected Material must be stored and maintained by a Receiving Party at a  
3 location and in a secure manner that ensures that access is limited to the persons  
4 authorized under this Stipulated Protective Order.

5           7.2     Access to and/or Disclosure of Highly Confidential Materials designated as  
6 “Highly Confidential” shall be permitted only to the following persons:

7           a.     Trial Counsel for the Parties, their partners and associates, and staff and  
8 supporting personnel of such attorneys, such as paralegal assistants,  
9 secretarial, stenographic and clerical employees and contractors, and  
10 outside copying services and/or Professional Vendors, who are working  
11 on this Proceeding (or any further proceedings herein) under the direction  
12 of such attorneys and to whom it is necessary that the Highly  
13 Confidential Materials be Disclosed for purposes of this Proceeding.  
14 Such employees, assistants, contractors and agents to whom such access  
15 is permitted and/or Disclosure is made shall, prior to such access or  
16 Disclosure, be advised of, and become subject to, the provisions of this  
17 Protective Order;

18           b.     In-house counsel to the Parties and the paralegal employed by such  
19 counsel. Provided, however, that each non-lawyer given access to Highly  
20 Confidential Materials shall be advised that such Materials are being  
21 Disclosed pursuant to, and are subject to, the terms of this Protective  
22 Order and that they may not be Disclosed other than pursuant to its terms  
23 and in-house counsel warrants and represents that such Highly  
24 Confidential Materials will not be disclosed, discussed, or shared with  
25 others within BPWCP;

26           c.     Outside experts or expert consultants consulted (and their support staff)  
27 by the Parties or their counsel in connection with the Proceeding, whether  
28

1 or not retained to testify at any oral hearing; provided, however, that prior  
2 to the Disclosure of Highly Confidential Materials to any such expert or  
3 expert consultant, counsel for the Party making the Disclosure shall  
4 deliver a copy of this Protective Order to such person, shall explain its  
5 terms to such person, and shall secure the signature of such person on a  
6 statement in the form attached hereto as Exhibit A prior to the Disclosure  
7 of Highly Confidential Materials. It shall be the obligation of counsel,  
8 upon learning of any breach or threatened breach of this Protective Order  
9 by any such expert or expert consultant, to promptly notify counsel for  
10 the Designating Party of such breach or threatened breach;

11 d. Mock jury participants, provided, however, that prior to the Disclosure of  
12 Highly Confidential Materials to any such mock jury participant, counsel  
13 for the Party making the Disclosure shall deliver a copy of this Protective  
14 Order to such person, shall explain that such person is bound to follow  
15 the terms of such Order, and shall secure the signature of such person on  
16 a statement in the form attached hereto as Exhibit A;

17 e. Any person who authored, received, saw or was otherwise familiar with a  
18 document or thing marked “Highly Confidential,” including any person  
19 otherwise familiar with the Highly Confidential Information contained  
20 therein, but only to the extent of that person’s prior familiarity with the  
21 Highly Confidential Information;

22 f. Court reporters in this Proceeding (whether at depositions, hearings, or  
23 any other proceeding); and

24 g. the Court.

25 7.3 Access to and/or Disclosure of Confidential Materials designated as  
26 “Confidential” shall be permitted only to the following persons:

27 a. the Court;

- 1 b. Trial Counsel for the Parties, their partners and associates, and staff and  
2 supporting personnel of such attorneys, such as paralegal assistants,  
3 secretarial, stenographic and clerical employees and contractors, and  
4 outside copying services and/or Professional Vendors, who are working  
5 on this Proceeding (or any further proceedings herein) under the direction  
6 of such attorneys;
- 7 c. In-house counsel to the Parties and the paralegal employed by such  
8 counsel. Provided, however, that each non-lawyer given access to  
9 Confidential Materials shall be advised that such Materials are being  
10 Disclosed pursuant to, and are subject to, the terms of this Protective  
11 Order and that they may not be Disclosed other than pursuant to its  
12 terms;
- 13 d. Those officers, directors, partners, members, employees and agents of all  
14 non-designating Parties that counsel for such Parties deems necessary to  
15 aid counsel in the prosecution and defense of this Proceeding; provided,  
16 however, that prior to the Disclosure of Confidential Materials to any  
17 such officer, director, partner, member, employee or agent, counsel for  
18 the Party making the Disclosure shall deliver a copy of this Protective  
19 Order to such person, shall explain that such person is bound to follow  
20 the terms of such Order, and shall secure the signature of such person on  
21 a statement in the form attached hereto as Exhibit A;
- 22 e. Court reporters in this Proceeding (whether at depositions, hearings, or  
23 any other proceeding);
- 24 f. Any deposition, trial or hearing witness in the Proceeding who previously  
25 has had access to the Confidential Materials, or who is currently or was  
26 previously an officer, director, partner, member, employee or agent of an  
27 entity that has had access to the Confidential Materials;
- 28

- 1 g. Any deposition or non-trial hearing witness in the Proceeding who  
2 previously did not have access to the Confidential Materials; provided,  
3 however, that each such witness given access to Confidential Materials  
4 shall be advised that such Materials are being Disclosed pursuant to, and  
5 are subject to, the terms of this Protective Order and that they may not be  
6 Disclosed other than pursuant to its terms;
- 7 h. Mock jury participants, provided, however, that prior to the Disclosure of  
8 Confidential Materials to any such mock jury participant, counsel for the  
9 Party making the Disclosure shall deliver a copy of this Protective Order  
10 to such person, shall explain that such person is bound to follow the  
11 terms of such Order, and shall secure the signature of such person on a  
12 statement in the form attached hereto as Exhibit A;
- 13 i. Outside experts or expert consultants consulted by the Parties or their  
14 counsel in connection with the Proceeding, whether or not retained to  
15 testify at any oral hearing; provided, however, that prior to the Disclosure  
16 of Confidential Materials to any such expert or expert consultant, counsel  
17 for the Party making the Disclosure shall deliver a copy of this Protective  
18 Order to such person, shall explain its terms to such person, and shall  
19 secure the signature of such person on a statement in the form attached  
20 hereto as Exhibit A. It shall be the obligation of counsel, upon learning of  
21 any breach or threatened breach of this Protective Order by any such  
22 expert or expert consultant, to promptly notify counsel for the  
23 Designating Party of such breach or threatened breach; and
- 24 j. any other person that the Designating Party agrees to in writing.

25 7.4 Highly Confidential and Confidential Materials shall be used by the  
26 persons receiving them only for the purposes of preparing for, conducting,  
27 participating in the conduct of, and/or prosecuting and/or defending the Proceeding,  
28

1 and not for any business or other purpose whatsoever. Access to and/or Disclosure of  
2 Highly Confidential Materials designated as “Highly Confidential” or Confidential  
3 Materials designated “Confidential” shall not be permitted to anybody (including but  
4 not limited, to any BPWCP franchisees not parties to the Proceedings and/or counsel  
5 for any BPWCP franchisees not parties to the Proceedings) other than those persons  
6 specified above unless otherwise specified in a court order permitting such disclosure.

7 **8. RELIEF FROM THE PROTECTIVE ORDER**

8 8.1 Any Party to the Proceeding (or other person subject to the terms of this  
9 Protective Order) may ask the Court, after appropriate notice to the other Parties to the  
10 Proceeding, to modify or grant relief from any provision of this Protective Order.

11 **9. EFFECT OF THE PROTECTIVE ORDER**

12 9.1 Compliance with the terms of this Protective Order shall not:

- 13 a. operate as an admission by any person that any particular Document,  
14 Testimony, or Information marked “Highly Confidential” or  
15 “Confidential” contains or reflects trade secrets, proprietary, confidential  
16 or competitively sensitive business, commercial, financial or personal  
17 information; or  
18 b. prejudice in any way the right of any Party (or any other person subject to  
19 the terms of this Protective Order):  
20 i. to seek a determination by the Court of whether any  
21 particular Highly Confidential or Confidential Material  
22 should be subject to protection as “Highly Confidential” or  
23 “Confidential” under the terms of this Protective Order; or  
24 ii. to seek relief from the Court on appropriate notice to all  
25 other Parties to the Proceeding from any provision(s) of this  
26 Protective Order, either generally or as to any particular  
27 Document, Material or Information.  
28

1           9.2 Any Information that may be produced by a non-Party witness in  
2 discovery in the Proceeding pursuant to subpoena or otherwise may be designated by  
3 such non-Party as “Highly Confidential” or “Confidential” under the terms of this  
4 Protective Order, and any such designation by a non-Party shall have the same force  
5 and effect, and create the same duties and obligations, as if made by one of the Parties.  
6 Any such designation shall also function as a consent by such producing Party to the  
7 authority of the Court in the Proceeding to resolve and conclusively determine any  
8 motion or other application made by any person or Party with respect to such  
9 designation, or any other matter otherwise arising under this Protective Order.

10           9.3 If any person subject to this Protective Order who has custody of any  
11 Highly Confidential or Confidential Materials receives a subpoena or other process  
12 (“Subpoena”) from any government or other person or entity demanding production of  
13 Highly Confidential and/or Confidential Materials, the recipient of the Subpoena shall  
14 promptly give notice of the same by electronic mail transmission, followed by either  
15 express mail or overnight delivery to counsel of record for the Designating Party, and  
16 shall furnish such counsel with a copy of the Subpoena. Upon receipt of this notice,  
17 the Designating Party may, in its sole discretion and at its own cost, move to quash or  
18 limit the Subpoena, otherwise oppose production of the Highly Confidential and/or  
19 Confidential Materials, and/or seek to obtain confidential treatment of such Highly  
20 Confidential and/or Confidential Materials from the subpoenaing person or entity to  
21 the fullest extent available under law. The recipient of the Subpoena may not produce  
22 any Documents, Testimony or Information pursuant to the Subpoena prior to the date  
23 specified for production on the Subpoena.

24           9.4 Nothing in this Protective Order shall be construed to preclude either  
25 Party from asserting in good faith that certain Highly Confidential or Confidential  
26 Materials require additional protection. The Parties shall meet and confer to agree  
27 upon the terms of such additional protection.  
28



1           9.5 If, after entry of this Protective Order, any Highly Confidential and/or  
2 Confidential Materials submitted by a Designating Party under the terms of this  
3 Protective Order is Disclosed by a non-Designating Party to any person other than in  
4 the manner authorized by this Protective Order, the non-Designating Party responsible  
5 for the Disclosure shall bring all pertinent facts relating to the Disclosure of such  
6 Highly Confidential and/or Confidential Materials to the immediate attention of the  
7 Designating Party.

8           9.6 This Protective Order is entered without prejudice to the right of any  
9 Party to knowingly waive the applicability of this Protective Order to any Highly  
10 Confidential and/or Confidential Materials designated by that Party. If the Designating  
11 Party uses Highly Confidential or Confidential Materials in a non-Confidential  
12 manner, then the Designating Party shall advise that the designation no longer applies.

13           9.7 Nothing in this Protective Order shall affect the admissibility into  
14 evidence of Highly Confidential or Confidential Materials, or abridge the rights of any  
15 person to seek judicial review or to pursue other appropriate judicial action with  
16 respect to any ruling made by the Court concerning the issue of the status of Protected  
17 Material.

18           10.    **MISCELLANEOUS**

19           10.1 Nothing in this Protective Order abridges the right of any person to seek  
20 its modification by the Court in the future.

21           10.2 No Party waives any right it otherwise would have to object to disclosing  
22 or producing any information or item on any ground not addressed in this Protective  
23 Order. Similarly, no Party waives any right to object on any ground to use in evidence  
24 of any of the material covered by this Protective Order.

25           10.3 A Party that seeks to file under seal any Protected Material must comply  
26 with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant  
27 to a court order authorizing the sealing of the specific Protected Material at issue;  
28


1 good cause must be shown in the request to file under seal. If a Party's request to file  
2 Protected Material under seal is denied by the Court, then the Receiving Party may  
3 file the information in the public record unless otherwise instructed by the Court.

4 10.4 Upon written request made within thirty (30) days after the settlement or  
5 other termination of the Proceeding and all other pending actions in which the counsel  
6 of record in this matter represents a party in a pending action brought by BPWCP  
7 Franchisees relating to claims that are similar to those in the Proceeding, the Parties  
8 shall have thirty (30) days to either (a) promptly return to counsel for each  
9 Designating Party all Highly Confidential and Confidential Materials and all copies  
10 thereof (except that counsel for each Party may maintain in its files, in continuing  
11 compliance with the terms of this Protective Order, all work product, and one copy of  
12 each pleading filed with the Court and one copy of each deposition together with the  
13 exhibits marked at the deposition), (b) agree with counsel for the Designating Party  
14 upon appropriate methods and certification of destruction or other disposition of such  
15 Highly Confidential and Confidential Materials, or (c) as to any Documents,  
16 Testimony or other Information not addressed by sub-paragraphs (a) and (b), file a  
17 motion seeking a Court order regarding proper preservation of such Materials, with  
18 such motion strictly complying with the procedures set forth in Local Rules 37-1, 37-  
19 2, and 37-3. To the extent permitted by law the Court shall retain continuing  
20 jurisdiction to review and rule upon the motion referred to in sub-paragraph (c) herein.

21 10.5 Any violation of this Protective Order may be punished by any and all  
22 appropriate measures including, without limitation, contempt proceedings and/or  
23 monetary sanctions.

24 **IT IS SO ORDERED.**

25  
26 DATED: April 28, 2016

By:   
Paul L. Abrams  
United States Magistrate Judge

1  
2  
3  
4

**EXHIBIT A**  
**CERTIFICATION RE HIGHLY CONFIDENTIAL AND/OR CONFIDENTIAL**  
**DISCOVERY MATERIALS**

5 I hereby acknowledge that I, \_\_\_\_\_ [NAME],  
6 \_\_\_\_\_ [POSITION, EMPLOYER], am  
7 about to receive Highly Confidential and/or Confidential Materials (“Confidential  
8 Materials”) supplied in connection with the Proceeding, **CV 15-00140 DDP (PLAx)**. I  
9 certify that I understand that the Confidential Materials are provided to me subject to the  
10 terms and restrictions of the Protective Order filed in this Proceeding. I have been given a  
11 copy of the Protective Order; I have read it, and I agree to be bound by its terms.

12 I understand that Confidential Materials, as defined in the Protective Order, including  
13 any notes or other records that may be made regarding any such materials, shall not be  
14 Disclosed to anyone except as expressly permitted by the Protective Order. I will not copy  
15 or use, except solely for the purposes of this Proceeding, any Confidential Materials  
16 obtained pursuant to this Protective Order, except as provided therein or otherwise ordered  
17 by the Court in the Proceeding.

18 I further understand that I am to retain all copies of all Confidential Materials  
19 provided to me in the Proceeding in a secure manner, and that all copies of such Materials  
20 are to remain in my personal custody until termination of my participation in this  
21 Proceeding, whereupon the copies of such Materials will be returned to counsel who  
22 provided me with such Materials.

23 I declare under penalty of perjury, under the laws of the State of California, that the  
24 foregoing is true and correct.

1 Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_.

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

BY: \_\_\_\_\_

Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip

\_\_\_\_\_  
Telephone Number