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 21 CARLOS DOMINGUEZ

22 UNITED STATES DISTRICT COURT
 23 CENTRAL DISTRICT OF CALIFORNIA
 24 WESTERN DIVISION

25 CARLOS DOMINGUEZ, an
 26 individual,

27 Plaintiff,

28 v.

29 JO-ANN STORES, LLC, a limited
 30 liability company,

31 Defendant.

Case No. 2:16-cv-6576 MRW

**STIPULATED PROTECTIVE
 ORDER**

1 1. INTRODUCTION

2 1.1 PURPOSES AND LIMITATIONS

3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public disclosure
5 and from use for any purpose other than prosecuting this litigation may be warranted.
6 Accordingly, the parties hereby stipulate to and petition the Court to enter the
7 following Stipulated Protective Order. The parties acknowledge that this Order does
8 not confer blanket protections on all disclosures or responses to discovery and that the
9 protection it affords from public disclosure and use extends only to the limited
10 information or items that are entitled to confidential treatment under the applicable
11 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
12 that this Stipulated Protective Order does not entitle them to file confidential
13 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
14 followed and the standards that will be applied when a party seeks permission from
15 the court to file material under seal.

16 1.2 GOOD CAUSE STATEMENT

17 Good cause exists for this pretrial protective order, in that both parties will be
18 producing documents in this case that they consider to be private, confidential, and/or
19 otherwise sensitive. Defendant will be producing documents from its employees’
20 personnel files and workplace investigation records that include information that it
21 considers to be private, confidential, and/or sensitive, including information about the
22 employees’ job performance, interactions with co-employees and supervisors, and
23 other sensitive information that is kept under lock and key. Defendant will also be
24 producing information that it considers to be proprietary and confidential about the
25 corporation, including sales and revenue data, labor numbers and rates, operational
26 projections, and reorganization plans, that is not accessible to the public and, which, if
27 disclosed, Defendant believes could cause competitive harm to its business. Plaintiff
28 will be producing confidential documents that relate to his compensation with one or

1 more other employers besides Defendant, and other documents of a private and
2 personal nature. Plaintiff also anticipates that Defendant will request certain of his
3 medical records, which are private and confidential under federal and state privacy
4 laws such as HIPPA, as potentially relevant to Plaintiff's damages claims

5 2. DEFINITIONS

6 2.1 Action: the pending lawsuit titled *Carlos Dominguez v. Jo-Ann*
7 *Stores, LLC*, United States District Court, Central District of California, Case No.
8 2:16-cv-6576 MRW.

9 2.2 Challenging Party: a Party or Non-Party that challenges the
10 designation of information or items under this Order.

11 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
12 how it is generated, stored or maintained) or tangible things that qualify for protection
13 under Federal Rule of Civil Procedure 26(c), and as specified above in the Good
14 Cause Statement.

15 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
16 their support staff).

17 2.5 Designating Party: a Party or Non-Party that designates information
18 or items that it produces in disclosures or in responses to discovery as
19 "CONFIDENTIAL."

20 2.6 Disclosure or Discovery Material: all items or information, regardless
21 of the medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced or
23 generated in disclosures or responses to discovery in this matter.

24 2.7 Expert: a person with specialized knowledge or experience in a
25 matter pertinent to the litigation who has been retained by a Party or its counsel to
26 serve as an expert witness or as a consultant in this Action.

27 2.8 House Counsel: attorneys who are employees of a party to this
28 Action. House Counsel does not include Outside Counsel of Record or any other

1 outside counsel.

2 2.9 Non-Party: any natural person, partnership, corporation, association,
3 or other legal entity not named as a Party to this action.

4 2.10 Outside Counsel of Record: attorneys who are not employees of a
5 party to this Action but are retained to represent or advise a party to this Action and
6 have appeared in this Action on behalf of that party or are affiliated with a law firm
7 which has appeared on behalf of that party, and includes support staff.

8 2.11 Party: any party to this Action, including all of its officers, directors,
9 employees, consultants, retained experts, and Outside Counsel of Record (and their
10 support staffs).

11 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
12 Discovery Material in this Action.

13 2.13 Professional Vendors: persons or entities that provide litigation
14 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
15 demonstrations, and organizing, storing, or retrieving data in any form or medium)
16 and their employees and subcontractors.

17 2.14 Protected Material: any Disclosure or Discovery Material that is
18 designated as "CONFIDENTIAL."

19 2.15 Receiving Party: a Party that receives Disclosure or Discovery
20 Material from a Producing Party.

21 3. SCOPE

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

27 Any use of Protected Material at trial will be governed by the orders of
28 the trial judge. This Order does not govern the use of Protected Material at trial.

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4. DURATION

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

5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

5.2 Manner and Timing of Designations. Except as otherwise provided in

1 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
2 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
3 under this Order must be clearly so designated before the material is disclosed or
4 produced.

5 Designation in conformity with this Order requires:

6 (a) for information in documentary form (e.g., paper or electronic
7 documents, but excluding transcripts of depositions or other pretrial or trial
8 proceedings), that the Producing Party affix at a minimum, the legend
9 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
10 contains protected material. If only a portion or portions of the material on a page
11 qualifies for protection, the Producing Party also must clearly identify the protected
12 portion(s) (e.g., by making appropriate markings in the margins).

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

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

1 (c) for information produced in some form other than documentary and
2 for any other tangible items, that the Producing Party affix in a prominent place on the
3 exterior of the container or containers in which the information is stored the legend
4 “CONFIDENTIAL.” If only a portion or portions of the information warrants
5 protection, the Producing Party, to the extent practicable, will identify the protected
6 portion(s).

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
8 failure to designate qualified information or items does not, standing alone, waive the
9 Designating Party’s right to secure protection under this Order for such material.
10 Upon timely correction of a designation, the Receiving Party must make reasonable
11 efforts to assure that the material is treated in accordance with the provisions of this
12 Order.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
15 designation of confidentiality at any time that is consistent with the Court’s
16 Scheduling Order.

17 6.2 Meet and Confer. The Challenging Party will initiate the dispute
18 resolution process (and, if necessary, file a discovery motion) under Local Rule 37.1
19 et seq.

20 6.3 The burden of persuasion in any such challenge proceeding will be on
21 the Designating Party. Frivolous challenges, and those made for an improper purpose
22 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
23 expose the Challenging Party to sanctions. Unless the Designating Party has waived or
24 withdrawn the confidentiality designation, all parties will continue to afford the
25 material in question the level of protection to which it is entitled under the Producing
26 Party’s designation until the Court rules on the challenge.

27 7. ACCESS TO AND USE OF PROTECTED MATERIAL

1 7.1 Basic Principles. A Receiving Party may use Protected Material that
2 is disclosed or produced by another Party or by a Non-Party in connection with this
3 Action only for prosecuting, defending, or attempting to settle this Action. Such
4 Protected Material may be disclosed only to the categories of persons and under the
5 conditions described in this Order. When the Action has been terminated, a Receiving
6 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

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

14 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
15 well as employees of said Outside Counsel of Record to whom it is reasonably
16 necessary to disclose the information for this Action;

17 (b) the officers, directors, and employees (including House Counsel) of
18 the Receiving Party to whom disclosure is reasonably necessary for this Action;

19 (c) Experts (as defined in this Order) of the Receiving Party to whom
20 disclosure is reasonably necessary for this Action and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (d) the Court and its personnel;

23 (e) court reporters and their staff;

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

27 (g) the author or recipient of a document containing the information or a
28 custodian or other person who otherwise possessed or knew the information;

1 (h) during their depositions, witnesses, and attorneys for witnesses, in the
2 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
3 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will
4 not be permitted to keep any confidential information unless they sign the
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
6 by the Designating Party or ordered by the court. Pages of transcribed deposition
7 testimony or exhibits to depositions that reveal Protected Material may be separately
8 bound by the court reporter and may not be disclosed to anyone except as permitted
9 under this Stipulated Protective Order; and

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

12 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
13 OTHER LITIGATION

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

17 (a) promptly notify in writing the Designating Party. Such notification
18 will include a copy of the subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order
20 to issue in the other litigation that some or all of the material covered by the subpoena
21 or order is subject to this Protective Order. Such notification will include a copy of
22 this Stipulated Protective Order; and

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

25 If the Designating Party timely seeks a protective order, the Party served
26 with the subpoena or court order will not produce any information designated in this
27 action as “CONFIDENTIAL” before a determination by the court from which the
28 subpoena or order issued, unless the Party has obtained the Designating Party’s

1 permission. The Designating Party will bear the burden and expense of seeking
2 protection in that court of its confidential material and nothing in these provisions
3 should be construed as authorizing or encouraging a Receiving Party in this Action to
4 disobey a lawful directive from another court.

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

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

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

16 (1) promptly notify in writing the Requesting Party and the Non-Party
17 that some or all of the information requested is subject to a confidentiality agreement
18 with a Non-Party;

19 (2) promptly provide the Non-Party with a copy of the Stipulated
20 Protective Order in this Action, the relevant discovery request(s), and a reasonably
21 specific description of the information requested; and

22 (3) make the information requested available for inspection by the Non-
23 Party, if requested.

24 (c) If the Non-Party fails to seek a protective order from this court within
25 14 days of receiving the notice and accompanying information, the Receiving Party
26 may produce the Non-Party's confidential information responsive to the discovery
27 request. If the Non-Party timely seeks a protective order, the Receiving Party will not
28 produce any information in its possession or control that is subject to the

1 confidentiality agreement with the Non-Party before a determination by the court.
2 Absent a court order to the contrary, the Non-Party will bear the burden and expense
3 of seeking protection in this court of its Protected Material.

4 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

13 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE 14 PROTECTED MATERIAL

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

25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right of
27 any person to seek its modification by the Court in the future.
28

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

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

12 13. FINAL DISPOSITION

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

1 constitute Protected Material remain subject to this Protective Order as set forth in
2 Section 4 (DURATION).

3 14. Any willful violation of this Order may be punished by civil or criminal
4 contempt proceedings, financial or evidentiary sanctions, reference to disciplinary
5 authorities, or other appropriate action at the discretion of the Court.

6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7
8 Dated: February 13, 2017

9 /s/ Benjamin L. Webster
10 BENJAMIN L. WEBSTER
11 BRITNEY N. TORRES
12 LITTLER MENDELSON, P.C.
Attorneys for Defendant
JO-ANN STORES, LLC

13 Dated: February 13, 2017

14 /s/ Mark C. Gabel (Approved 2/13/17)
15 MARK C. GABEL
16 GABEL LAW FIRM, P.C.
Attorneys for Plaintiff
CARLOS DOMINGUEZ

17 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

18
19 Dated: February 14, 2017

20 
21 HON. MICHAEL R. WILNER
22 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [full name], of _____
_____ [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 February ____, 2017 in the case of *Carlos Dominguez v. Jo-Ann Stores,*
LLC, Case No. 2:16-cv-6576 MRW. 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 _____ [full
name] of _____ [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 signed: _____

Printed name: _____

Title/Employer: _____

Signature: _____