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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

STEPHANIE ESCOBAR, individually
and on behalf of all others similarly
situated,

Plaintiff,

vs.

JUST BORN, INC., and DOES 1
through 10, inclusive,

Defendants.

CASE NO. 2:17-cv-01826-TJH(PJWx)

*Assigned to The Hon. Terry J.
Hatter—Courtroom 9B*

**STIPULATED PROTECTIVE
ORDER**

Trial Date: None Set

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in

1 Section 12.3, below, that this Stipulated Protective Order does not entitle them to
2 file confidential information under seal; Civil Local Rule 79-5 sets forth the
3 procedures that must be followed and the standards that will be applied when a party
4 seeks permission from the court to file material under seal.

5 B. GOOD CAUSE STATEMENT

6 This action is likely to involve trade secrets, marketing and manufacturing
7 information and other valuable research, development, commercial, financial,
8 technical and/or proprietary information for which special protection from public
9 disclosure and from use for any purpose other than prosecution of this action is
10 warranted. Such confidential and proprietary materials and information consist of,
11 among other things, confidential business or financial information, information
12 regarding confidential business practices, or other confidential research,
13 development, or commercial information (including information implicating privacy
14 rights of third parties), information otherwise generally unavailable to the public, or
15 which may be privileged or otherwise protected from disclosure under state or
16 federal statutes, court rules, case decisions, or common law. Accordingly, to
17 expedite the flow of information, to facilitate the prompt resolution of disputes over
18 confidentiality of discovery materials, to adequately protect information the parties
19 are entitled to keep confidential, to ensure that the parties are permitted reasonable
20 necessary uses of such material in preparation for and in the conduct of trial, to
21 address their handling at the end of the litigation, and serve the ends of justice, a
22 protective order for such information is justified in this matter. It is the intent of the
23 parties that information will not be designated as confidential for tactical reasons
24 and that nothing be so designated without a good faith belief that it has been
25 maintained in a confidential, non-public manner, and there is good cause why it
26 should not be part of the public record of this case.

27 2. DEFINITIONS

28 2.1 Action: *Escobar v. Just Born, Inc.*, CASE NO. 2:17-cv-01826-BRO-

1 PJW.

2 2.2 Challenging Party: a Party or Non-Party that challenges the designation
3 of information or items under this Order.

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

8 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
9 their support staff).

10 2.5 Designating Party: a Party or Non-Party that designates information or
11 items that it produces in disclosures or in responses to discovery as
12 “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY.”

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

17 2.7 Expert: a person with specialized knowledge or experience in a matter
18 pertinent to the litigation who has been retained by a Party or its counsel to serve as
19 an expert witness or as a consultant in this Action.

20 2.8 House Counsel: attorneys who are employees of a party to this Action.
21 House Counsel does not include Outside Counsel of Record or any other outside
22 counsel.

23 2.9 Non-Party: any natural person, partnership, corporation, association, or
24 other legal entity not named as a Party to this action.

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

1 2.11 Party: any party to this Action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this Action.

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

10 2.14 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES
12 ONLY.”

13 2.15 Receiving Party: a Party that receives Disclosure or Discovery
14 Material from a Producing Party.

15 3. SCOPE

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

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

23 4. DURATION

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

1 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
2 including the time limits for filing any motions or applications for extension of time
3 pursuant to applicable law.

4 5. DESIGNATING PROTECTED MATERIAL

5 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

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

26 Designation in conformity with this Order requires:

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

1 the Producing Party affix at a minimum, the legend “CONFIDENTIAL” or
2 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” (hereinafter
3 “CONFIDENTIALITY legend”), to each page that contains protected material. If
4 only a portion or portions of the material on a page qualifies for protection, the
5 Producing Party also must clearly identify the protected portion(s) (e.g., by making
6 appropriate markings in the margins).

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

19 (b) all depositions or portions of depositions taken in this action that
20 contain Protected Material may be designated “Confidential” or “Confidential-
21 Attorneys’ Eyes Only” and thereby obtain the protections accorded other
22 “Confidential” or “Confidential – Attorneys’ Eyes Only” documents.
23 Confidentiality designations for depositions shall be made either on the record or by
24 written notice to the other party within 14 days of receipt of the final transcript.
25 Unless otherwise agreed depositions shall be treated as “Confidential – Attorneys’
26 Eyes Only” until 14 days after receipt of the final transcript. The deposition of any
27 witness (or any portion of such deposition) that includes Protected Material shall be
28 taken only in the presence of persons who are qualified to have access to such

1 information pursuant to this Order.

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

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

18 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
19 resolution process under Local Rule 37.1 et seq.

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

28

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

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

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

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

24 (d) the court and its personnel;

25 (e) court reporters and their staff;

26 (f) insurers participating in the handling of this matter and professional
27 jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure
28 is reasonably necessary for this Action and who have signed the “Acknowledgment

1 and Agreement to Be Bound” (Exhibit A);

2 (g) persons shown on the face of the document to have authored or
3 received it;

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

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

15 7.3 Disclosure of “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
16 Information or Items. Unless otherwise ordered by the court or permitted in writing
17 by the Designating Party, a Receiving Party may disclose any information or item
18 designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY ” only to the persons
19 or category of persons described above in paragraphs 7.2(a) and 7.2(c) through (i).

20 7.4 The Designating Party’s counsel shall be notified at least 11 days prior
21 to disclosure pursuant to paragraphs 7.2 (c), 7.2(f), and 7.2(h) to a person who is
22 known to be an employee of any competitor of the party whose designated
23 documents are sought to be disclosed. Such notice shall provide a reasonable
24 description of the outside independent person to whom disclosure is sought
25 sufficient to permit objection to be made. If a party objects in writing to such
26 disclosure within 10 days after receipt of notice, no disclosure shall be made until
27 the party seeking disclosure obtains the prior approval of the Court or the objecting
28 party.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
2 PRODUCED IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that
6 Party must:

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

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

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

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

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

26 (a) The terms of this Order are applicable to information produced by a
27 Non-Party in this Action and designated as “CONFIDENTIAL” or
28 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced

1 by Non-Parties in connection with this litigation is protected by the remedies and
2 relief provided by this Order. Nothing in these provisions should be construed as
3 prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

24 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this
27 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
28 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts

1 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
2 persons to whom unauthorized disclosures were made of all the terms of this Order,
3 and (d) request such person or persons to execute the “Acknowledgment and
4 Agreement to Be Bound” that is attached hereto as Exhibit A.

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
6 PROTECTED MATERIAL

7 Pursuant to Federal Rule of Evidence 502(d), the production or disclosure of
8 any discovery material made in connection with this action that a party claims was
9 inadvertent and should not have been produced or disclosed for any reason,
10 including but not limited to attorney-client privilege, work-product, or
11 confidentiality (“Inadvertently Produced Material”) will not be deemed to be a
12 waiver in whole or in part of privilege, confidentiality, and any other protections o
13 which the party would have been entitled had the Inadvertently Produced Material
14 not inadvertently been disclosed, either as to the specific information and/or
15 documents disclosed or as to any other related information and/or documents in this
16 case and in any other federal or state proceeding. In the event of such claimed
17 inadvertent disclosure, the following procedures shall be followed:

18 (a) The party producing the document (the “Producing Party”) shall notify
19 lead counsel for the receiving parties in writing within a reasonable period of time
20 from the discovery of the inadvertent production by specifically identifying the
21 affected material;

22 (b) If the Producing Party requests the return of any such Inadvertently
23 Produced Material, those to whom the request is made shall return to the producing
24 party immediately all copies of the affected material within their possession,
25 custody, or control-including all copies in the possession of experts, consultants, or
26 others to whom the Inadvertently Produced Material was provided;

27 (c) In addition, all notes or other work product of the receiving party
28 reflecting the contents of such Inadvertently Produced Material shall be

1 destroyed, and such returned or destroyed material shall be deleted from any
2 litigation-support or other database;

3 (d) The receiving party shall confirm in writing within 5 business days of
4 being notified of the inadvertent production that all copies of the Inadvertently
5 Produced Material have been returned or destroyed; and

6 (e) The party returning such Inadvertently Produced Material may thereafter
7 seek reproduction of any such documents pursuant to applicable law.

8 12. MISCELLANEOUS

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the Court in the future.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this
12 Protective Order no Party waives any right it otherwise would have to object to
13 disclosing or producing any information or item on any ground not addressed in this
14 Stipulated Protective Order. Similarly, no Party waives any right to object on any
15 ground to use in evidence of any of the material covered by this Protective Order.

16 12.3 Filing Protected Material. A Party that seeks to file under seal any
17 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
18 only be filed under seal pursuant to a court order authorizing the sealing of the
19 specific Protected Material at issue. If a Party's request to file Protected Material
20 under seal is denied by the court, then the Receiving Party may file the information
21 in the public record unless otherwise instructed by the court.

22 13. FINAL DISPOSITION

23 After the final disposition of this Action, as defined in paragraph 4, within 60
24 days of a written request by the Designating Party, each Receiving Party must return
25 all Protected Material to the Producing Party or destroy such material. As used in
26 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
27 summaries, and any other format reproducing or capturing any of the Protected
28 Material. Whether the Protected Material is returned or destroyed, the Receiving

1 Party must submit a written certification to the Producing Party (and, if not the same
2 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
3 (by category, where appropriate) all the Protected Material that was returned or
4 destroyed and (2) affirms that the Receiving Party has not retained any copies,
5 abstracts, compilations, summaries or any other format reproducing or capturing any
6 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
7 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
8 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
9 reports, attorney work product, and consultant and expert work product, even if such
10 materials contain Protected Material. Any such archival copies that contain or
11 constitute Protected Material remain subject to this Protective Order as set forth in
12 Section 4 (DURATION).

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

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

17 DATED __11/28/2017_____

18 /s/ Ryan J. Clarkson
19 Attorneys for Plaintiff

20 DATED: __11/28/2017_____

21 /s/ Eric Y. Kizirian
22 Attorneys for Defendant

23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

24
25 DATED: November 29, 2017

26 Patrick J. Walsh

27 The Hon. Patrick J. Walsh
28 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 [date] in the case of *Escobar v. Just Born, Inc.*, CASE NO. 2:17-cv-01826-BRO-
PJW. 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: _____