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

CHERYL JACKSON, et al., individually
and on behalf of all others
similarly situated,

Plaintiffs,

v.

TELEBRANDS CORP., et al.,

Defendants.

CASE NO.: 2:17-cv-04107-PSG-KS

Assigned to: Hon. Philip S. Gutierrez

Hon. Karen L. Stevenson

STIPULATED PROTECTIVE ORDER

1 ADDITIONAL COUNSEL

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1 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on
2 the parties' Stipulation for Protective Order ("Stipulation") filed on February 26,
3 2018, the terms of the protective order to which the parties have agreed are adopted
4 as a protective order of this Court (which generally shall govern the pretrial phase
5 of this action) except to the extent, as set forth below, that those terms have been
6 modified by the Court's amendment of Section 6, "CHALLENGING
7 CONFIDENTIALITY DESIGNATIONS" of the Stipulation. The Court's additions
8 to the terms of the proposed protective order are indicated in bold typeface.

9
10 Plaintiffs Cheryl Jackson, Erika Hartweg, and Bowen Lord, individually and on
11 behalf of the Putative Class, and Defendants Telebrands Corp. and Moulton Logistics
12 Management, hereby agree and stipulate as follows:

13 WHEREAS, to facilitate the production and receipt of information during
14 discovery in the above-captioned litigation ("the Litigation"), the parties agree and
15 stipulate, through their respective counsel, to the entry of the following Protective Order
16 for the protection of Confidential Materials (as defined herein) that may be produced or
17 otherwise disclosed during the course of this Litigation by any party or non-party. The
18 Court has been fully advised in the premises and has found good cause for its entry.

19 Accordingly, IT IS HEREBY ORDERED that the terms and conditions of this
20 Protective Order shall govern the handling of discovery materials in the Litigation:

21 1. **A. Purposes and Limitations:** Discovery in this action is likely to
22 involve production of confidential, proprietary, or private information for which
23 special protection from public disclosure and from use for any purpose other than
24 prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to
25 and petition the Court to enter the following Stipulated Protective Order. The parties
26 acknowledge that this Order does not confer blanket protections on all disclosures
27 or responses to discovery and that the protection it affords from public disclosure and
28 use extends only to the limited information or items that are entitled to confidential

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

6 **B. Good Cause Statement:** This action is likely to involve trade
7 secrets, customer and pricing lists and other valuable research, development,
8 commercial, financial, technical and/or proprietary information for which special
9 protection from public disclosure and from use for any purpose other than
10 prosecution of this action is warranted. Such confidential and proprietary materials and
11 information consist of, among other things, confidential business or financial
12 information, information regarding confidential business practices, or other confidential
13 research, development, or commercial information (including information implicating
14 privacy rights of third parties), information otherwise generally unavailable to the
15 public, or which may be privileged or otherwise protected from disclosure under state
16 or 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 are
19 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 address
21 their handling at the end of the litigation, and serve the ends of justice, a protective
22 order for such information is justified in this matter. It is the intent of the parties that
23 information will not be designated as confidential for tactical reasons and that
24 nothing be so designated without a good faith belief that it has been maintained in a
25 confidential, non-public manner, and there is good cause why it should not be part of
26 the public record of this case.

27 2. DEFINITIONS

28 2.1 Action: *Jackson, et al. v. Telebrands Corp., and Moulton*

1 *Logistics Management*, Case No. 2:17-cv-04107-PSG-KS.

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

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

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

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

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

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

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

25 2.9 Non-Party: any natural person, partnership, corporation,
26 association, or other legal entity not named as a Party to this action.

27 2.10 Outside Counsel of Record: attorneys who are not employees
28

1 of a party to this Action but are retained to represent or advise a party to this
2 Action and have appeared in this Action on behalf of that party or are
3 affiliated with a law firm which has appeared on behalf of that party, and
4 includes support staff.

5 2.11 Party: any party to this Action, including all of its officers,
6 directors, employees, consultants, retained experts, and Outside Counsel of
7 Record (and their support staffs).

8 2.12 Producing Party: a Party or Non-Party that produces
9 Disclosure or Discovery Material in this Action.

10 2.13 Professional Vendors: persons or entities that provide
11 litigation support services (e.g., photocopying, videotaping, translating,
12 preparing exhibits or demonstrations, and organizing, storing, or retrieving
13 data in any form or medium) and their employees and subcontractors.

14 2.14 Protected Material: any Disclosure or Discovery Material that
15 is designated as “CONFIDENTIAL.”

16 2.15 Receiving Party: a Party that receives Disclosure or Discovery
17 Material from a Producing Party.

18 3. SCOPE

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

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

26 4. DURATION

27 Once a case proceeds to trial, all of the information that was designated as
28 confidential or maintained pursuant to this protective order becomes public and will

1 be presumptively available to all members of the public, including the press, unless
2 compelling reasons supported by specific factual findings to proceed otherwise are
3 made to the trial judge in advance of the trial. See Kamakana v. City and County
4 of Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”
5 showing for sealing documents produced in discovery from “compelling reasons”
6 standard when merits-related documents are part of court record). Accordingly, the
7 terms of this protective order do not extend beyond the commencement of the trial.

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

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

1 produced.

2 Designation in conformity with this Order requires:

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

11 A Party or Non-Party that makes original documents available for
12 inspection need not designate them for protection until after the inspecting Party has
13 indicated which documents it would like copied and produced. During the
14 inspection and before the designation, all of the material made available for
15 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party
16 has identified the documents it wants copied and produced, the Producing Party must
17 determine which documents, or portions thereof, qualify for protection under this
18 Order. Then, before producing the specified documents, the Producing Party must
19 affix the “CONFIDENTIAL legend” to each page that contains Protected Material.

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

23 (c) for information produced in some form other than
24 documentary and for any other tangible items, that the Producing Party
25 affix in a prominent place on the exterior of the container or containers in
26 which the information is stored the “CONFIDENTIAL legend.” If only a
27 portion or portions of the information warrants protection, the Producing
28 Party, to the extent practicable, shall identify the protected portion(s).

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the Designating Party’s right to secure protection under this Order for such material.
4 Upon timely correction of a designation, the Receiving Party must make reasonable
5 efforts to assure that the material is treated in accordance with the provisions of this
6 Order.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Any Party or Non-Party, **after complying with the**
9 **Court’s pre-motion procedures**, may challenge a designation of confidentiality at any
10 time that is consistent with the Court’s Scheduling Order

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
12 resolution process under Local Rule 37.1 et seq.

13 6.3 The burden of persuasion in any such challenge proceeding shall be on the
14 Designating Party. If the Designating Party does not initiate the discovery
15 motion process under Local Rule 37 within ten (10) days of a challenge, the
16 subject Protected Material designation is effectively withdrawn and the
17 subject documents and material may be used for all purposes in this
18 Litigation. Unless the Designating Party has waived or withdrawn the confidentiality
19 designation, all parties shall continue to afford the material in question the level of
20 protection to which it is entitled under the Producing Party’s designation until the
21 Court rules on the challenge.

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
7 ordered by the court or permitted in writing by the Designating Party, a Receiving
8 Party may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

17 (d) the court and its personnel;

18 (e) court reporters and their staff;

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

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

24 (h) during their depositions, witnesses, and attorneys for witnesses, in the
25 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
26 requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not
27 be permitted to keep any confidential information unless they sign the
28 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed

1 by the Designating Party or ordered by the court. Pages of transcribed deposition
2 testimony or exhibits to depositions that reveal Protected Material may be separately
3 bound by the court reporter and may not be disclosed to anyone except as permitted
4 under this Stipulated Protective Order; and

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

7 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
8 OTHER LITIGATION

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

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

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

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

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

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

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

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

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

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

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

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

28 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

9 This Order shall not limit or restrict a Receiving Party’s use of information that the
10 Receiving Party can demonstrate: (i) was lawfully in the Receiving Party’s possession
11 prior to such information being designated as protected material in the Litigation and that
12 the receiving Party is not otherwise obligated to treat as confidential; (ii) was obtained
13 without any benefit or use of protected material from a third party having the right to
14 disclose such information to the Receiving Party without restriction or obligation of
15 confidentiality; (iii) was independently developed by it after the time of disclosure by
16 personnel who did not have access to the Designating Party’s protected material; or (iv)
17 has been published to the general public. If the Receiving Party believes that the
18 Designating Party has designated information that is covered by any of the preceding
19 categories as Confidential Material, the Receiving Party shall challenge the propriety of
20 such designation using the procedure outlined in paragraph 6 above. Any challenged
21 designation remains in force until the propriety of such designation has been decided as
22 outlined above.

23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
24 PROTECTED MATERIAL

25 When a Producing Party gives notice to Receiving Parties that certain
26 inadvertently produced material is subject to a claim of privilege or other protection, the
27 obligations of the Receiving Parties are those set forth in Federal Rule of Civil
28 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure

1 may be established in an e-discovery order that provides for production without
2 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as
3 the parties reach an agreement on the effect of disclosure of a communication or
4 information covered by the attorney-client privilege or work product protection, the
5 parties may incorporate their agreement in the stipulated protective order submitted to
6 the court.

7 12. MISCELLANEOUS

8 12.1. Right to Further Relief. Nothing in this Order abridges the right of any
9 person to seek its modification by the Court in the future.

10 12.2. Right to Assert Other Objections. By stipulating to the entry of this
11 Protective Order no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in this
13 Stipulated Protective Order. Similarly, no Party waives any right to object on any
14 ground to use in evidence of any of the material covered by this Protective Order.

15 12.3. Filing Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
17 only be filed under seal pursuant to a court order authorizing the sealing of the
18 specific Protected Material at issue. If a Party's request to file Protected Material
19 under seal is denied by the court, then the Receiving Party may file the information in
20 the public record unless otherwise instructed by the court.

21 13. FINAL DISPOSITION

22 After the final disposition of this Action, as defined in paragraph 4, within 60 days
23 of a written request by the Designating Party, each Receiving Party must return all
24 Protected Material to the Producing Party or destroy such material. As used in this
25 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
26 summaries, and any other format reproducing or capturing any of the Protected
27 Material. Whether the Protected Material is returned or destroyed, the Receiving
28 Party must submit a written certification to the Producing Party (and, if not the same

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

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

15 DATED: March 6, 2018

BESHADA FARNESE LLP

16 By: s/ Peter J. Farnese
17 Peter J. Farnese

18 *Attorneys for Defendant Telebrands Corp. and*
19 *Moulton Logistics Management*

20 DATED: March 6, 2018

21 CAFFERTY CLOBES MERIWETHER &
22 SPRENGEL LLP

23 By: s/ Bryan L. Clobes
24 Bryan L. Clobes

25 *Attorneys for Plaintiffs and the Putative Class*
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1 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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4 DATED: March 6, 2018

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KAREN STEVENSON
6 **UNITED STATES MAGISTRATE JUDGE**

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty
5 of perjury that I have read in its entirety and understand the Stipulated Protective Order
6 that was issued by the United States District Court for the Central District of California
7 on _____ [date] in the case of *Jackson, et al. v. Telebrands Corp., and Moulton*
8 *Logistics Management*, Case No. 2:17-cv-04107-PSG-KS. I agree to comply with and to
9 be bound by all the terms of this Stipulated Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and punishment in
11 the nature of contempt. I solemnly promise that I will not disclose in any manner any
12 information or item that is subject to this Stipulated Protective Order to any person or
13 entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Central District of California for the purpose of enforcing the terms of this Stipulated
16 Protective Order, even if such enforcement proceedings occur after termination of this
17 action. I hereby appoint _____ [print or type full
18 name] of _____ [print or type full address and
19 telephone number] as my California agent for service of process in connection with this
20 action or any proceedings related to enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____

SIGNATURE ATTESTATION

Pursuant to Civil Local Rule 5-1(i), I attest that concurrence in the filing of this document has been obtained from the signatory listed above.

Dated: March 6, 2018

By: /s/ Bryan L. Clobes

Bryan L. Clobes, Esq.

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