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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PACIFIC AMERICAN FISH CO.,
INC., an California corporation,

Plaintiff,

v.

LINKFRESH, INC., a Delaware
corporation; and DOES 1-10,
inclusive,

Defendant.

Case No.: 2:17-cv-06999-R-E

[Assigned to Honorable Manuel L. Real,
and Magistrate Judge Frederick F. Eick]

[Los Angeles Superior Court Case No.:
BC672402 Filed: August 15, 2017]

**PROTECTIVE ORDER GOVERNING
CONFIDENTIAL INFORMATION**

Having reviewed the Joint Stipulation for Protective Order entered into between
plaintiffs, The Print Lab, Inc., Staci Stewart, Tommy Gelinias and Juan Flores
(collectively, "plaintiffs"), and defendant, Scottsdale Insurance Company
("defendant") in the above-caption litigation pending before this Court (the
"Litigation"), this Court issues the following Protective Order Governing Confidential
Information:

1 1. This Protective Order governs the use of all produced documents, responses
2 to interrogatories and requests for admissions, deposition transcripts, and any other
3 information, documents, objects or things, as well as any and all copies, abstracts,
4 digests, notes, and summaries thereof, that have been or will be produced by any party
5 or third-party (the “Producing Party”) in this Litigation pursuant to the Federal Rules
6 of Civil Procedure. These materials are collectively referred to hereinafter as
7 “Discovery Material.”

8 2. Any Discovery Material produced by any party or third-party as part of
9 discovery in this Litigation may be designated by the Producing Party as
10 “CONFIDENTIAL” as follows:

11 a. The Producing Party may designate as “CONFIDENTIAL” any
12 Discovery Material that it produces in this Litigation which it believes in
13 good faith constitutes, contains, reflects or discloses confidential, non-
14 public research and analysis, development or commercial or personal
15 information or Discovery Material protected by the attorney-client and/or
16 work-product privileges, or other information for which a good faith
17 claim of need of protection from disclosure can be made under the
18 Federal Rules of Civil Procedure and/or other applicable law
19 (“Confidential Material”).

20 3. No Discovery Material shall be marked “CONFIDENTIAL” if it:

21 a. Was known to the receiving party without obligation of
22 confidentiality prior to disclosure by the Producing Party, as evidenced
23 by the receiving party’s written records;

24 b. Is subsequently disclosed to the receiving party by a third-party
25 having no obligation of confidentiality to the Producing Party with
26 respect to such information;

27 c. Is independently developed by employee(s) of the receiving party
28 who had no access to such information before such development; or

1 d. Is published or becomes generally known to the public through
2 means not constituting a breach of this Protective Order or an obligation
3 of confidentiality to the producing party.

4 e. Furthermore, information already in the possession of the
5 Receiving Party shall not become Confidential Information merely
6 because the Producing Party produces copies stamped Confidential
7 Information.

8 4. Any Discovery Material that is produced during this Litigation
9 voluntarily, in response to a discovery request, or pursuant to a Court Order, in oral,
10 written, or other form, including but not limited to transcripts, exhibits, answers to
11 interrogatories, as well as any physical object, recording, electronic file, or other thing,
12 that is asserted by the Producing Party to contain or constitute Confidential Material
13 shall be so designated by the Producing Party.

14 a. Documents and Physical Items: If Confidential Material is
15 contained in a document or other physical item, such documents and
16 physical items shall be clearly and prominently marked on their face with
17 the appropriate legend: "CONFIDENTIAL". When an item (such as a
18 disk) containing more than one electronic file is produced, each electronic
19 file on that disk that is confidential should be branded with the legend
20 "CONFIDENTIAL" and have "CONFIDENTIAL" in the file name of each
21 file designated as such.

22 b. Transcripts: Deposition or other pretrial testimony may be
23 designated as "Confidential" by (i) a statement on the record, by counsel,
24 at the time of such disclosure, or (ii) written notice sent to all counsel of
25 record for the parties within fifteen (15) business days after receipt of the
26 transcript of the deposition or other pretrial testimony unless the parties
27 agree to an extension of this time period for designation. Notwithstanding
28 any provision of this subsection, Discovery Material used or referenced

1 during a deposition or other pretrial testimony shall maintain any
2 confidentiality designation accorded such material hereunder regardless of the
3 designation of any part of the transcript.

4 c. Information in Other Forms: All Confidential Material not reduced
5 to documentary, tangible, or physical forms or that cannot be
6 conveniently designated shall be designated by the Producing Party
7 by notifying all parties of the appropriate designation in writing.

8 5. In the absence of written permission from the Producing Party or court
9 Order, Discovery Material designated as "CONFIDENTIAL" shall not be disclosed to
10 any person other than the following individuals, who are each deemed a "Qualified
11 Person" under this Paragraph:

12 a. counsel of record for parties to this Litigation and their support
13 staff, including paralegals and clerical assistants;

14 b. parties and their representatives, officers, agents, and/or employees
15 who are directly involved in, and whose access to such Discovery
16 Material is reasonably required for, the management, prosecution,
17 defense, or settlement of this Litigation or the supervision of counsel of
18 record;

19 c. party and non-party witnesses (whether percipient or expert) who
20 are called to be deposed during discovery or trial, whether willingly or
21 under subpoena issued by a court of competent jurisdiction over the
22 witness;

23 d. stenographic, court reporting, or clerical personnel;

24 e. in-house counsel for the parties to this Litigation;

25 f. subject to the provisions of paragraph 7 below, experts and
26 consultants and their staff who are employed for the purposes of this
27 Litigation; and
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- 1 g. the Court, including necessary secretarial, clerical, and support
- 2 personnel assisting the Court;
- 3 h. regulatory authorities upon formal demand, or to satisfy legal or
- 4 regulatory requirements, and
- 5 i. commercial photocopying firms or ESI vendors employed by a
- 6 Party to this Litigation.

7 6. The inadvertent or unintentional disclosure by the Producing Party of
8 Confidential Material, regardless of whether the material was so designated at the time
9 of disclosure, shall not be deemed a waiver in whole or in part of the Producing Party's
10 claim of confidentiality, either as to the specific information disclosed or as to any
11 other information relating to the same or related subject matter, provided that the
12 Producing Party shall promptly upon discovery of the inadvertent or unintentional
13 disclosure notify the receiving party in writing that the information is Confidential.
14 Such notification shall constitute a designation of the information and thereby subject
15 it to the provisions of this Protective Order. Disclosure by the receiving party of
16 inadvertently or unintentionally disclosed Confidential Material prior to receipt of such
17 notice shall not be deemed a violation of this Protective Order. However, those
18 persons to whom disclosure was made are to be advised by the receiving party that the
19 information is Confidential and must be treated in accordance with this Protective
20 Order, and the receiving party must make a good faith effort to retrieve and return all
21 copies of such inadvertently disclosed information which have been disseminated to
22 unauthorized persons, including any notes, summaries, compilations or other
23 documents concerning same.

24 7. No person described under Paragraphs 5(f) may access Discovery
25 Material designated "CONFIDENTIAL" until such person agrees to be bound by the
26 terms of the Protective Order by executing the undertaking in Exhibit A. Before any
27 other person described in Paragraph 5 is shown any Discovery Material designated
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1 “CONFIDENTIAL”, that person must be shown a copy of the Court’s Protective Order
2 and instructed that he or she is bound by its provisions.

3 8. If a producing party inadvertently produces documents or other tangible
4 items that it considers privileged or attorney work-product, in whole or in party, it may
5 retrieve such documents or items, or parts thereof, as follows:

6 a. the producing party must give written notice to all parties who
7 received copies of the inadvertently produced document or material in
8 question. This notice must state the nature of the producing party’s claim
9 that the inadvertently produced document is privileged or otherwise
10 protected.

11 b. Upon receipt of such notice, all parties who have received copies
12 of the inadvertently produced documents or material shall promptly
13 return it to the producing party and destroy any other copies thereof. In
14 the event that only portions of a document or material are claimed to be
15 privileged or otherwise protected, the producing party shall furnish
16 redacted copies of such documents or material, removing only the part(s)
17 thereof claimed to be privileged or otherwise protected, to all parties.

18 c. If a party receiving notice of an inadvertent production of a
19 document or material challenges the producing party’s claim of
20 protection, the recipient of such notice may promptly move for an order
21 compelling production of such documents or material on the ground that
22 the claim of protection is not well founded. However, the party moving
23 to compel cannot contend that the producing party waived the protection
24 by the inadvertent production. If Discovery Material subject to a claim of
25 attorney-client privilege, work product protection, or any other privilege
26 or immunity is inadvertently produced, such production shall in no way
27 prejudice or otherwise constitute a waiver of, or estoppel as to, any claim
28 of privilege, work product protection, or other ground for withholding

1 production to which any Producing Party would otherwise be entitled.
2 Any inadvertently produced materials shall be returned promptly to the
3 Producing Party upon request and all copies destroyed.

4 9. The parties may also informally agree in writing that Confidential
5 Material may be disclosed to a person not otherwise qualified under this Protective
6 Order to receive such information. In the event that a party intends to disclose
7 Confidential Material to a person not qualified to receive such information hereunder
8 (for example, for use at a deposition), and the parties cannot informally agree, a party
9 may request the Court rule on such disclosure.

10 10. All Confidential Material produced in this Litigation may be used only for
11 purposes of this Litigation, including the Litigation itself, any appeals, and settlement
12 and/or licensing negotiations intended to resolve this Litigation. All Confidential
13 Material shall be maintained and used by the parties and any person listed in Paragraph
14 5 only in the strictest of confidence and not disclosed to any other person without the
15 prior, written consent of the Producing Party or upon order by the Court.

16 11. Deposition Procedures: In the event that a deposition in this litigation is
17 attended by a person not authorized to receive Confidential Material, then any other
18 party may have such person excluded from the deposition during any portion(s) of the
19 deposition that it reasonably believes may result in the disclosure of its Confidential
20 Material.

21 12. Response to a Subpoena / Court Order: In the event that a receiving party
22 receives a subpoena or is ordered by another court or governmental entity to produce
23 the Confidential Material of another party, the receiving party shall notify the
24 Producing Party immediately of that subpoena or order and shall promptly provide said
25 subpoena or order, if it is in writing, to the Producing Party so that the Producing Party
26 may object to the subpoena or order. If the Producing Party chooses to object to the
27 subpoena or order, it shall provide a copy of said objection to the receiving party. If
28 the receiving party receives nothing from the Producing Party prior to the time for its

1 compliance with the subpoena or order, the receiving party may comply with its
2 obligations under the subpoena or order.

3 13. Before any Confidential Material, or any papers containing or making
4 reference to the contents of such Confidential Material, is filed with the Court for any
5 purpose, the party seeking to file such Confidential material or papers must seek
6 permission of the Court to file the Confidential Material or documents under Seal. The
7 restrictions, if any, that will govern the use of Confidential Material at trial or hearings
8 will be determined at a later date by the court, in consultation with the parties.

9 14. Notwithstanding any other provision of this Protective Order, a party
10 producing Confidential Material may choose to withdraw its designation by doing so
11 in writing.

12 15. Nothing in this Protective Order constitutes a finding or admission that
13 any of the information disclosed or contained in the designated items is or is not
14 confidential, and nothing herein shall prevent any party from contending, during the
15 progress of this Litigation, that any or all of such information is not confidential. Any
16 party may request from the Producing Party a change in the designation of any item or
17 information and/or permission to disclose such item or information to persons in
18 addition to those specified herein in Paragraph 5. Such request shall be in writing,
19 state the grounds, and be served on all counsel including counsel for the Producing
20 Party. The requested change shall occur or the requested permission shall be granted,
21 unless an objection for good cause is served on the requesting party within twenty (20)
22 business days after service of such request. In the event such objection is timely
23 served, neither the requested change shall occur nor the requested permission shall be
24 granted, until the objection is resolved by written agreement of the parties or Order of
25 this Court. In any disagreement over a designation, the party making the designation
26 bears the ultimate burden of showing that the designation is proper. No party to this
27 Litigation shall be obligated to challenge the propriety of any designation, and a failure
28 to do so shall not act as a waiver of its right to make a subsequent attack on the

1 propriety of such designation, nor shall such failure to challenge constitute an
2 admission that any information is, in fact, confidential. Any designation of
3 information as Confidential Material shall govern hereunder unless and until such
4 designation is modified by the designating party, the Court, or agreement of the
5 parties.

6 16. Production by Non-Parties: If any Confidential Material is produced by a
7 non-party to this Litigation, such non-party shall be considered a Producing Party
8 within the meaning of those terms as used in the context of this Stipulation for a
9 Protective Order and shall have the right to designate information as “Confidential.”

10 17. The designation of any material in accordance with this Protective Order
11 as Confidential Material is intended solely to facilitate the preparation and trial of this
12 Litigation, and treatment of such material by the parties in conformity with such
13 designation will not be construed in any way as an admission or agreement by any
14 party that the designated material constitutes or contains any trade secret or
15 Confidential Material.

16 18. Upon final termination of this Litigation, each party and other person
17 subject to the terms of this Protective Order, including individuals required to execute
18 the undertaking attached hereto as Exhibit A, shall, within sixty (60) days of said
19 termination, assemble (including from all officers, employees, and in-house counsel of
20 the party, all support staff, and all experts and consultants) and return to the Producing
21 Party all Discovery Material designated as “Confidential,” including all copies and
22 other items of such Discovery Material, or in the alternative and at the option of the
23 Receiving Party, either destroy all such confidential Discovery Material, or retain
24 permanently all such confidential Discovery Material so long as the Receiving Party
25 continues to maintain confidentiality.

26 19. Nothing in this Protective Order shall be deemed a waiver of any right
27 that any party might otherwise have under the Federal Rules of Civil Procedure or the
28 Federal Rules of Evidence or the doctrines of attorney-client privilege or attorney

1 work-product. This Protective Order shall be without prejudice to any party to oppose
2 production of any information or items on any ground permitted by the Federal Rules.

3 20. Any party to this Protective Order may, for good cause shown, move the
4 Court for relief from all or any part of this Protective Order or for a modification of its
5 provisions. The Protective Order, however, shall remain in effect until such time as it
6 is modified or rescinded by the Court.

7 21. This Protective Order is not intended to govern the use of confidential
8 Discovery Materials at trial in this action.

9 22. Nothing in this Protective Order shall affect a party's use or disclosure of
10 its own Confidential Material in any way.

11 23. This Protective Order shall be without prejudice to the right of any party
12 hereto to knowingly waive the applicability of this Order to any confidential Discovery
13 Materials designated by that party.

14 24. This Protective Order and the agreements embodied herein shall survive
15 the termination of this action and continue in full force and effect. To the extent
16 permitted by law, the Court shall retain jurisdiction to enforce, modify, or reconsider
17 this Protective Order, even after this action is terminated.

18 25. By signature of their respective counsel affixed below, each of the parties
19 warrants that it knowingly and willingly enters into this Stipulation for a Protective
20 Order. The Stipulation for a Protective Order shall be binding on the parties upon
21 execution by their counsel notwithstanding that the Court may not have entered the
22 corresponding Protective Order. Any modification of the Protective Order, including
23 the incorporation of any additional parties appearing in the litigation must be made in
24 writing.

25 **IT IS SO ORDERED.**

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27 Dated: 1/24/18


Honorable Magistrate Judge

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STIPULATION AND ORDER FOR PROTECTIVE ORDER: EXHIBIT A

UNDERTAKING OF _____
 STATE OF _____)
 COUNTY OF _____)

SS:

I, _____, being first duly sworn on oath, depose and say:

1. I have read and understand the contents of the Protective Order dated _____, filed in the above captioned litigation, and attached hereto.

2. I am properly classified as a "Qualified Person" identified in Paragraph 5 of the Protective Order, and I agree to comply with the conditions provided in the Protective Order prior to any disclosure to me of documents, things and/or any other information designated as containing, in whole or in part, "Confidential Material."

3. I expressly agree that all documents, things and information which are disclosed to me pursuant to the Protective Order shall be maintained in strict confidence, and I shall not disclose or use the original or any copy of, or the subject matter of any of the documents, things or the information they contain, except in accordance with the terms of the Protective Order.

4. I shall not use or refer to any of the documents, things and/or any information that falls within the terms of the Protective Order other than in connection with this litigation and as prescribed in the Protective Order.

5. Further, I shall, upon notification that this litigation has terminated, return any and all originals and/or copies of the documents and things to counsel for the party who provided such documents, and I shall destroy any notes or memoranda I have

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which in any way concern the substance embraced by such documents, things and/or information.

6. I do and shall subject myself to the continuing jurisdiction of the above-captioned Court over my person, wherever I shall be found, for purposes of enforcement of the Protective Order.

Date: _____

[Signature]

[Printed Name]