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8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

11 NEYDA FLORES,
 12 Plaintiff,
 13 vs.
 14 COSTCO WHOLESALE
 15 CORPORATION; DOES 1 through 10,
 16 Defendants.

Case No: 2:20-cv-09264-FMO-JC

STIPULATED PROTECTIVE ORDER

[CHANGES MADE BY COURT TO PARAGRAPHS 7.2(h) & 8]

1. A. PURPOSES AND LIMITATIONS

19 Discovery in this action is likely to involve production of confidential, proprietary,
 20 or private information for which special protection from public disclosure and from use
 21 for any purpose other than prosecuting this litigation may be warranted. Accordingly, the
 22 parties hereby stipulate to and petition the Court to enter the following Stipulated
 23 Protective Order. The parties acknowledge that this Order does not confer blanket
 24 protections on all disclosures or responses to discovery and that the protection it affords
 25 from public disclosure and use extends only to the limited information or items that are
 26 entitled to confidential treatment under the applicable legal principles. The parties further
 27 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does
 28 not entitle them to file confidential information under seal; Local Rule 79-5 sets forth the

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1 procedures that must be followed and the standards that will be applied when a party seeks
2 permission from the court to file material under seal.

3
4 **B. GOOD CAUSE STATEMENT**

5 Defendant COSTCO WHOLESALE CORPORATION (“Costco”) maintains that
6 its procedures, operations and training materials are confidential, proprietary, commercial
7 information pertaining to the internal operations of Costco. Costco maintains that
8 dissemination of any information learned throughout the pendency of this action could
9 have the same negative effect on the company as dissemination of the above-referenced
10 materials. To allow the dissemination of confidential and/or proprietary information
11 would compromise Costco’s market position and business interests by exposing its
12 confidential business information to competitors and individuals outside the Costco
13 corporation. Dissemination of these materials to outside parties exposes the Company’s
14 methodologies and could subject Costco to unwarranted criticism from competitors or
15 other third parties. Such unwarranted criticism could have potentially damaging effects on
16 the company’s public image and affect its relationship with consumers. Further, allowing
17 distribution of Costco’s policies, procedures and training materials could provide potential
18 plaintiffs and attorneys with unfair and unwarranted insight into the company’s internal
19 practices which, in turn, could hinder the company in subsequent litigation.

20 As such, this action is likely to involve commercial, confidential, and/or proprietary
21 information for which special protection from public disclosure and from use for any
22 purpose other than prosecution of this action is warranted.

23 In light of the nature of the claims and allegations in this case and the parties’
24 representations that discovery in this case will involve the production of confidential
25 records, and in order to expedite the flow of information, to facilitate the prompt
26 resolution of disputes over confidentiality of discovery materials, to adequately protect
27 information the parties are entitled to keep confidential, to ensure that the parties are
28 permitted reasonable necessary uses of such material in connection with this action, to

1 address their handling of such material at the end of the litigation, and to serve the ends
2 of justice, a protective order for such information is justified in this matter. The parties
3 shall not designate any information/documents as confidential without a good faith belief
4 that such information/documents have been maintained in a confidential, non-public
5 manner, and that there is good cause or a compelling reason why it should not be part of
6 the public record of this case.

7
8 **2. DEFINITIONS**

9 2.1 Action: The instant action: *Neyda Flores v. Costco Wholesale*
10 *Corporation*; Case No. 2:20-cv-09264-FMO-JC.

11 2.2 Challenging Party: a Party or Non-Party that challenges the
12 designation of information or items under this Order.

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

17 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
18 support staff).

19 2.5 Designating Party: a Party or Non-Party that designates information or items
20 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

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

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

1 2.8 House Counsel: attorneys who are employees of a party to this Action. House
2 Counsel does not include Outside Counsel of Record or any other outside counsel.

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

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

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

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

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

18 2.14 Protected Material: any Disclosure or Discovery Material that is designated
19 as “CONFIDENTIAL.”

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

22
23 **3. SCOPE**

24 The protections conferred by this Order cover not only Protected Material (as
25 defined above), but also (1) any information copied or extracted from Protected
26 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and
27 (3) any deposition testimony, conversations, or presentations by Parties or their Counsel
28 that might reveal Protected Material, other than during a court hearing or at trial.

1 Any use of Protected Material during a court hearing or at trial shall be governed
2 by the orders of the presiding judge. This Order does not govern the use of Protected
3 Material during a court hearing or at trial.

4 5 **4. DURATION**

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

13 14 **5. DESIGNATING PROTECTED MATERIAL**

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
16 Party or Non-Party that designates information or items for protection under this Order
17 must take care to limit any such designation to specific material that qualifies under the
18 appropriate standards. The Designating Party must designate for protection only those
19 parts of material, documents, items, or oral or written communications that qualify so that
20 other portions of the material, documents, items, or communications for which protection
21 is not warranted are not swept unjustifiably within the ambit of this Order.

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

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

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

5 Designation in conformity with this Order requires:

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

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

23 (b) for testimony given in depositions that the Designating Party identifies on the
24 record, before the close of the deposition as protected testimony.

25 (c) for information produced in some form other than documentary and for any
26 other tangible items, that the Producing Party affix in a prominent place on the exterior
27 of the container or containers in which the information is stored the legend

28 ///

1 “CONFIDENTIAL.” If only a portion or portions of the information warrants protection,
2 the Producing Party, to the extent practicable, shall identify the protected portion(s).5.3

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

8
9 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
11 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

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

14 6.3 The burden of persuasion in any such challenge proceeding shall be on the
15 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
16 to harass or impose unnecessary expenses and burdens on other parties) may expose the
17 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
18 the confidentiality designation, all parties shall continue to afford the material in
19 question the level of protection to which it is entitled under the Producing Party’s
20 designation until the Court rules on the challenge.

21
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 Action
25 only for prosecuting, defending, or attempting to settle this Action. Such Protected
26 Material may be disclosed only to the categories of persons and under the conditions
27 described in this Order. When the Action has been terminated, a Receiving Party must
28 comply with the provisions of Section 13 below.

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

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
5 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
6 may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

15 (d) the court and its personnel;

16 (e) court reporters and their staff;

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

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

22 (h) during their depositions, witnesses, and attorneys for witnesses, in the
23 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
24 requests that the witness sign the “Acknowledgment and Agreement to Be Bound” form
25 attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential
26 information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit
27 A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
28 transcribed deposition testimony or exhibits to depositions that reveal Protected Material

1 may be separately bound by the court reporter and may not be disclosed to anyone except
2 as permitted under this Stipulated Protective Order; and

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

5
6 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
7 **PRODUCED IN OTHER LITIGATION**

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

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

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

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

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

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1 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
2 **PRODUCED 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 a
7 Non-Party from seeking additional protections.

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

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

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

20 (c) If a Non-Party represented by counsel fails to commence the process called
21 for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the notice and
22 accompanying information or fails contemporaneously to notify the Receiving Party that
23 it has done so, the Receiving Party may produce the Non-Party’s confidential information
24 responsive to the discovery request. If an unrepresented Non-Party fails to seek a
25 protective order from this court within 14 days of receiving the notice and accompanying
26 information, the Receiving Party may produce the Non-Party’s confidential information
27 responsive to the discovery request. If the Non-Party timely seeks a protective order, the
28 Receiving Party shall not produce any information in its possession or control that is

1 subject to the confidentiality agreement with the Non-Party before a determination by the
2 court unless otherwise required by the law or court order. Absent a court order to the
3 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
4 court of its Protected Material.

5
6 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

15
16 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
17 **OTHERWISE PROTECTED MATERIAL**

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

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28 ///

1 **12. MISCELLANEOUS**

2 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
3 to seek its modification by the Court in the future.

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

8 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
9 Material must comply with Civil Local Rule 79-5 and with any pertinent orders of the
10 assigned District Judge and Magistrate Judge. If a Party's request to file Protected Material
11 under seal is denied by the court, then the Receiving Party may file the information in the
12 public record unless otherwise instructed by the court.

13 **13. FINAL DISPOSITION**

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

1 materials contain Protected Material. Any such archival copies that contain or constitute
2 Protected Material remain subject to this Protective Order as set forth in Section 4.

3
4 **14. BREACH**

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

7
8 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

9 DATED: June 2, 2021

MANNING LAW OFFICE

10
11 By: /s/Babak Hashemi
12 JOSEPH R. MANNING, ESQ.
13 BABAK HASHEMI, ESQ.
14 Attorneys for Plaintiff, NEYDA FLORES

15 DATED: June 7, 2021

McCUNE & HARBER, LLP

16
17 By: /s/ Amy A. Evenstad
18 STEPHEN M. HARBER, ESQ.
19 AMY A. EVENSTAD, ESQ.
Attorneys for Defendant, COSTCO
WHOLESALE CORPORATION

20 **IT IS SO ORDERED AS MODIFIED.**

21
22 DATED: June 7, 2021

23
24 /s/
25 Honorable Jacqueline Chooljian
26 United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2
3
4 I, _____, [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Stipulated Protective Order that was
7 issued by the United States District Court for the Central District of California on June 7,
8 2021 in the case of *Neyda Flores v. Costco Wholesale Corporation*; Case No. 2:20-cv-
9 09264-FMO-JC.

10 I agree to comply with and to be bound by all the terms of this Stipulated
11 Protective Order and I understand and acknowledge that failure to so comply could
12 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
13 that I will not disclose in any manner any information or item that is subject to this
14 Stipulated Protective Order to any person or entity except in strict compliance with the
15 provisions of this Order.

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

23
24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____