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Bryan Cave Leighton Paiser LLP
120 Broadway, Suite 300
Santa Monica, California 90401-2386

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION - RIVERSIDE**

ROGER COFFELT, JR., individually, and
on behalf of all those similarly situated,

Plaintiff,

v.

THE KROGER CO., THE PICTSWEET
COMPANY, CRF FROZEN FOODS,
LLC, AND DOES 1 through 25, inclusive,

Defendants.

Case No. 5:16-CV-01471 JGB (KKx)

~~[PROPOSED]~~ **STIPULATED
PROTECTIVE ORDER**

First Amended Complaint filed:
October 7, 2016

NOTE CHANGES MADE BY THE COURT

1 Subject to the provisions of Rule 26 of the Federal Rules of Civil Procedure,
2 Plaintiff Roger Coffelt, Jr. (“Plaintiff”) and Defendants The Kroger Co. (“Kroger”),
3 The Pictsweet Company (“Pictsweet”) and CRF Frozen Foods, LLC (“CRF”), by
4 and through their respective undersigned counsel of record, hereby submit this
5 Stipulated Protective Order for the Court’s approval and entry.

6 Statement of Good Cause: The parties seek entry of this Stipulated protective
7 Order because discovery materials produced or information otherwise disclosed
8 during the course of discovery in this action may contain private consumer and
9 customer information, non-public competitive, pricing, trade secret and financial
10 information, personnel information or other kinds of commercially sensitive and
11 personal information that the producing party, based on a good faith belief is subject
12 to confidentiality protection under relevant law, deems confidential. Accordingly, to
13 expedite the flow of information, to facilitate the prompt resolution of disputes over
14 confidentiality of discovery materials, to adequately protect information the parties
15 are entitled to keep confidential, to ensure that the parties are permitted reasonable
16 necessary uses of such material in preparation for and in the conduct of trial, to
17 address their handling at the end of the litigation, and serve the ends of justice, a
18 protective order for such information is justified in this matter. It is the intent of the
19 parties that information will not be designated as confidential for tactical reasons and
20 that nothing be so designated without a good faith belief that it has been maintained
21 in a confidential, non-public manner, and there is good cause why it should not be
22 part of the public record of this case.

23 In order to reasonably preserve the confidentiality of such information the
24 parties stipulate and agree as follows:

25 1. This Stipulated Protective Order shall apply to all materials, documents
26 and information (including copies, excerpts and summaries of such materials,
27 documents, and information) designated as “CONFIDENTIAL,” “RESTRICTED”
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1 or “ATTORNEY’S EYES ONLY” under Paragraph 2 below, and produced by any
2 party or non-party during the course of this action, including materials, documents
3 and information produced pursuant to Rules 26, 33, or 34 of the Federal Rules of
4 Civil Procedure, or by informal request or agreement, answers to interrogatories and
5 requests for admissions, documents subpoenaed in connection with deposition
6 testimony, and deposition transcripts (hereinafter referred to collectively as
7 “Discovery Materials”). The parties acknowledge that this Order does not confer
8 blanket protections on all disclosures or responses to discovery and that the
9 protection it affords from public disclosure and use extends only to the limited
10 information or items entitled to confidential treatment under applicable law. The
11 parties further acknowledge that the terms of this Stipulated Protective Order do not
12 apply to the Court or Court personnel, who are subject only to the Court’s internal
13 procedures regarding the handling of materials filed or lodged, including material
14 filed or lodged under seal. Further, the parties acknowledge that any use of protected
15 Discovery Materials at trial shall be governed by the orders of the trial judge. This
16 Stipulated Protective Order does not govern the use of protected Discovery Materials
17 at trial.

18 2. Any information disclosed in discovery by a party or non-party may be
19 designated as “CONFIDENTIAL,” “RESTRICTED” or “ATTORNEY’S EYES
20 ONLY” by any party or non-party in good faith. For the purposes of this Stipulated
21 Protective Order, “CONFIDENTIAL” information shall mean information which
22 constitutes, reflects or discloses confidential, competitively sensitive or proprietary
23 information which the designating person wishes to maintain in confidence,
24 including proprietary sales, marketing, licensing, operational or other proprietary
25 information not otherwise publicly available. For purposes of this Stipulated
26 Protective Order, “RESTRICTED” means the following types of documents and
27 information: (1) non-public communications with regulators or other governmental
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1 bodies that are intended to be kept confidential and/or are protected from disclosure
2 by statute or regulation; (2) financial information not publicly filed with any federal
3 or state regulatory authority or otherwise publicly available; (3) trade secret
4 information as defined under California Civil Code section 3426.1 or an applicable,
5 equivalent statute from another state; (4) tax, medical or other personal information
6 (including, without limitation, social security numbers) relating to any person or
7 entity; (5) information, material and/or other documents reflecting non-public
8 business or financial strategies, and/or confidential competitive information which, if
9 disclosed, would result in prejudice or harm to the disclosing party; (6) information
10 pertaining to a Defendant’s customer that is not publicly available, including private
11 consumer information that contains identifying, contact or private financial
12 information; and (7) information relating to non-public administrative or regulatory
13 proceedings. For purposes of this Stipulated Protective Order, “ATTORNEY’S
14 EYES ONLY” means information pertaining to a Defendant’s customer that is not
15 publicly available, including private consumer information that contains identifying,
16 contact or private financial information provided by a consumer to Defendant, or
17 non-public information regarding such customer based upon that customer
18 conducting business with said Defendant, including, for example, information
19 pertaining to customers of Kroger’s Ralph’s card or other customer loyalty
20 club/program. Any party may seek an amendment to the Protective Order to
21 designate confidential documents and information in addition to the categories
22 described in this Paragraph 2 before production of any such documents and
23 information. The parties agree to meet and confer in good faith and attempt to reach
24 an agreement on any request by a party to designate such additional categories of
25 confidential documents or information. It is the intent of the parties that information
26 will not be designated as confidential for tactical reasons and that nothing shall be so
27 designated without a good faith belief that it has been maintained in a confidential,
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1 non-public manner, and that there is good cause why it should not be part of the
2 public record of this case.

3 3. CONFIDENTIAL, RESTRICTED and ATTORNEY’S EYES ONLY
4 Discovery Materials shall not be disclosed by any means to any person or entity for
5 any other purpose whatsoever except the prosecution or defense of this case.

6 4. CONFIDENTIAL Discovery Materials may only be disclosed to the
7 following persons:

8 a. Attorneys of record or in-house counsel for the parties in this
9 action and the staff of their respective law firms or in-house legal departments
10 working on this case, including all partners and associate attorneys of such attorneys’
11 law firms or in-house counsels’ legal departments and all clerks, employees,
12 independent contractors, investigators, paralegals, assistants, secretaries, staff and
13 stenographic, computer, audio-visual and clerical employees and agents thereof
14 when operating under the direct supervision of such partners or associate attorneys
15 and who are actually working on this action, all of whom shall be bound by this
16 Stipulated Protective Order;

17 b. Experts or consultants for each side retained for the purpose of
18 assisting counsel in the prosecution or defense of this litigation or testifying at trial,
19 to the extent deemed necessary in good faith by the retaining counsel to enable a
20 consultant or expert to evaluate the proposed retention and/or provide such
21 assistance or testimony (plus such clerical personnel of each such consultant or
22 expert required to carry out duties assigned to them by each consultant or expert),
23 and provided that the expert, consultant or other personnel are not competitors of, or
24 are employed by competitors of, the party that owns the CONFIDENTIAL
25 Discovery Materials, and will not gain any competitive advantage by having access
26 to the CONFIDENTIAL Discovery Materials;

27 c. Named parties, or officers, directors, partners and employees
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1 whom counsel in good faith believes are reasonably necessary to assist counsel in
2 this case;

3 d. Persons noticed for depositions or designated as trial witnesses
4 (and their counsel, if any) to the extent reasonably deemed by counsel to be
5 necessary in good faith in connection with that person's testimony or counsel's
6 preparation of their case, and provided that such persons are not competitors of, or
7 employed by competitors of, the party that owns the CONFIDENTIAL Discovery
8 Materials, and will not gain any competitive advantage by having access to the
9 CONFIDENTIAL Discovery Materials;

10 e. The Court and Court personnel to whom disclosure is reasonably
11 necessary for this litigation;

12 f. Stenographic reporters and videographers engaged for
13 depositions or other proceedings necessary for the conduct of this case;

14 g. Professional jury or trial consultants, mock jurors, and
15 Professional Vendors to whom disclosure is reasonably necessary for this action;

16 h. Any mediator or settlement officer, and their supporting
17 personnel, mutually agreed upon by any of the parties engaged in settlement
18 discussions;

19 i. Outside photocopying, data processing or graphic services
20 employed by a party or its counsel to assist in this litigation; and

21 j. Any person who created, authored or received the particular
22 information sought to be disclosed to that person.

23 5. RESTRICTED Discovery Material may only be disclosed to the
24 following persons:

25 a. Attorneys of record or in-house counsel for the parties in this
26 action and the staff of their respective law firms or in-house legal departments
27 working on this case, including all partners and associate attorneys of such attorneys'

1 law firms or in house counsels' legal departments and all clerks, employees,
2 independent contractors, investigators, paralegals, assistants, secretaries, staff and
3 stenographic, computer, audio-visual and clerical employees and agents thereof
4 when operating under the direct supervision of such partners or associate attorneys
5 and who are actually working on this action, all of whom shall be bound by this
6 Stipulated Protective Order;

7 b. Experts or consultants for each side retained for the purpose of
8 assisting counsel in the prosecution or defense of this litigation or testifying at trial,
9 to the extent deemed necessary in good faith by the retaining counsel to enable a
10 consultant or expert to evaluate the proposed retention and/or provide such
11 assistance or testimony (plus such clerical personnel of each such consultant or
12 expert required to carry out duties assigned to them by each consultant or expert),
13 and provided that the expert, consultant or other personnel are not competitors of, or
14 employed by competitors of, the party that owns the RESTRICTED Discovery
15 Materials, and will not gain any competitive advantage by having access to the
16 RESTRICTED Discovery Materials;

17 c. The Court and Court personnel to whom disclosure is reasonably
18 necessary for this litigation;

19 d. Professional jury or trial consultants, mock jurors, and
20 Professional Vendors to whom disclosure is reasonably necessary for this action;

21 e. Any mediator or settlement officer, and their supporting
22 personnel, mutually agreed upon by any of the parties engaged in settlement
23 discussions;

24 f. Stenographic reporters and videographers engaged for
25 depositions or other proceedings necessary for the conduct of this case; and

26 g. Any person who created, authored or previously received the
27 particular RESTRICTED information sought to be disclosed.

1 Except as permitted above, RESTRICTED Discovery Materials shall not be
2 furnished, shown or disclosed to the parties. But such materials may be used to
3 examine any author(s) or recipient(s) of the document, employees of the designating
4 party, or expert witnesses for the designating party who have been provided the
5 RESTRICTED Discovery Materials.

6 6. ATTORNEY’S EYES ONLY Discovery Material: In the case of
7 personalized loyalty card information, including names, addresses, telephone
8 numbers, other contact information, credit card numbers and other identifying
9 information, or shopping choices identifiable to any such personal information, shall
10 only be disclosed to the class administrator, and only for good cause. “Anonymized”
11 loyalty card data, showing purchases but not who the purchasers were or their
12 contact or personal information, shall be deemed “RESTRICTED”. With respect to
13 all other ATTORNEY’S EYES ONLY information, same may only be disclosed to
14 the following persons,:

15 a. Attorneys of record or for the parties in this action and the staff of
16 their respective law firms or in-house legal departments working on this case,
17 including all partners and associate attorneys of such attorneys’ law firms or in house
18 counsels’ legal departments and all clerks, employees, independent contractors,
19 investigators, paralegals, assistants, secretaries, staff and stenographic, computer,
20 audio-visual and clerical employees and agents thereof when operating under the
21 direct supervision of such partners or associate attorneys and who are actually
22 working on this action, all of whom shall be bound by this Stipulated Protective
23 Order.;

24 b. The Court and Court personnel to whom disclosure is reasonably
25 necessary for this litigation; and

26 c. Any person who created, authored or previously received the
27 particular ATTORNEY’S EYES ONLY information sought to be disclosed.
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1 7. Nothing in this Stipulated Protective Order shall prohibit disclosure of
2 CONFIDENTIAL, RESTRICTED or ATTORNEY’S EYES ONLY Discovery
3 Material in response to compulsory process or the process of any governmental
4 regulatory agency. If any person subject to this Stipulated Protective Order,
5 including a person subject to a Confidentiality Agreement under this Stipulated
6 Protective Order, is served with such process or receives notice of any subpoena or
7 other discovery request seeking CONFIDENTIAL, RESTRICTED or
8 ATTORNEY’S EYES ONLY Discovery Material, such person shall promptly (not
9 more than three (3) working days after receipt of such process or notice) notify the
10 Designating Party of such process or request, shall cooperate with respect to all
11 reasonable procedures sought to be pursued by the Designating Party whose
12 protected material may be affected, and shall afford a reasonable opportunity for the
13 Designating Party to oppose the process or to seek a protective order.

14 8. Before disclosing CONFIDENTIAL Discovery Materials to persons
15 within the categories in Paragraphs 4(b), (d), (g), (i) and (j) above, the attorney
16 disclosing the materials shall advise such persons of the restrictions of this Stipulated
17 Protective Order and obtain written assurance in the form attached as Exhibit A that
18 such person will be bound by its provisions. By signing this Stipulated Protective
19 Order, counsel shall bind the parties whom they represent. Counsel for the party
20 seeking to disclose CONFIDENTIAL Discovery Materials to any person pursuant to
21 Paragraphs 4(b), (d), (g), (i) and (j) shall be responsible for retaining the executed
22 originals of all such Confidentiality Agreements and certifying that such individuals
23 have complied with the requirements of the Protective Order.

24 9. Before disclosing RESTRICTED Discovery Materials to persons within
25 the categories in Paragraphs 5(b), (d) and (g) above, the attorney disclosing the
26 materials shall advise such persons of the restrictions of this Stipulated Protective
27 Order and obtain written assurance in the form attached as Exhibit A that such
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1 person will be bound by the provisions of the Protective Order. By signing this
2 Stipulation, counsel shall bind the parties whom they represent. Counsel for the
3 party seeking to disclose RESTRICTED Discovery Materials to any person pursuant
4 to Paragraphs 5(b), (d) and (g) shall be responsible for retaining the executed
5 originals of all such Confidentiality Agreements and certifying that such individuals
6 have complied with the requirements of the Protective Order.

7 10. Before disclosing ATTORNEY’S EYES ONLY Discovery Materials to
8 persons within the categories in Paragraphs 6(a), above, and subject to the
9 restrictions on personalized loyalty card information set out herein, the attorney
10 disclosing the materials shall advise such persons of the restrictions of this
11 Stipulation and accompanying Protective Order and obtain written assurance in the
12 form attached as Exhibit A that such person will be bound by the provisions of the
13 Protective Order. By signing this Stipulation, counsel shall bind the parties whom
14 they represent. Counsel for the party seeking to disclose ATTORNEY’S
15 EYESONLY Discovery Materials to any person pursuant to Paragraphs 6(a), shall be
16 responsible for retaining the executed originals of all such Confidentiality
17 Agreements and certifying that such individuals have complied with the
18 requirements of the Protective Order.

19 11. All CONFIDENTIAL Discovery Materials shall be designated and
20 stamped “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” prior to their
21 production. All RESTRICTED Discovery Materials shall be designated and
22 stamped “RESTRICTED – SUBJECT TO PROTECTIVE ORDER” prior to their
23 production. All “ATTORNEY’S EYES ONLY” Discovery Materials shall be
24 designated and stamped “ATTORNEY’S EYES ONLY – SUBJECT TO
25 PROTECTIVE ORDER” prior to their production. In the event that a party
26 inadvertently fails to designate any CONFIDENTIAL, RESTRICTED or
27 ATTORNEY’S EYES ONLY Discovery Materials, the producing party may
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1 thereafter make such a designation by notifying the receiving party in writing, and
2 the initial failure to so mark material shall not be deemed a waiver of its
3 confidentiality.

4 12. In connection with the taking of any deposition in this action:

5 a. The party who noticed or requested the deposition shall, prior to
6 the commencement of testimony at such deposition, serve a copy of the Protective
7 Order in this action upon the officer reporting the deposition. Such officer shall
8 acknowledge service of a copy of the Protective Order in the action, and shall agree
9 that he/she, his/her employees, and his/her agents shall be bound by the terms of the
10 Order, and shall make no use or disclosure of CONFIDENTIAL or RESTRICTED
11 Discovery Materials unless expressly permitted by the terms of the Protective Order
12 in this action, or by the express consent of all parties and any designating person who
13 are or may become subject to the provisions of the Protective Order in this action.
14 Such officer shall provide copies of the deposition transcript or deposition exhibits
15 only to attorneys for the parties and, if the deposition is of a third person or entity, to
16 that deponent or his/her attorney unless otherwise agreed by the disclosing entity.

17 b. Counsel for any party hereto may, either during any such
18 deposition or within thirty days of receipt of the transcript, designate any specific
19 portion of the deposition transcript along with the deposition exhibits, as
20 CONFIDENTIAL or RESTRICTED Discovery Material. If the deposition is of a
21 third person or entity not joined herein, that third person or entity may use the same
22 designation process set forth in this Paragraph.

23 c. Relating to deposition testimony, the witness or his counsel shall
24 invoke the provisions of the Protective Order in this action by stating on the record
25 during the deposition that specific testimony relating to or containing
26 CONFIDENTIAL or RESTRICTED information given at the deposition is
27 designated CONFIDENTIAL or RESTRICTED. No person shall attend those
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1 portions of the depositions designated CONFIDENTIAL or RESTRICTED unless
2 such person is an authorized recipient of CONFIDENTIAL or RESTRICTED
3 information under the terms of this Protective Order, or in the event the parties have
4 agreed to use CONFIDENTIAL or RESTRICTED Discovery Material to examine a
5 non-party witness who has refused to sign the form specified in Paragraph 9 or 10,
6 above, whichever is applicable. Any court reporter who transcribes
7 CONFIDENTIAL or RESTRICTED testimony in this action at a deposition shall
8 agree, before transcribing any such testimony, that all CONFIDENTIAL or
9 RESTRICTED testimony is and shall remain as such and shall not be disclosed
10 except as provided in this Stipulation Protective Order; copies of any transcript,
11 reporter's notes, or any other transcription records of any such testimony prepared by
12 the court reporter, will be marked "CONFIDENTIAL – SUBJECT TO
13 PROTECTIVE ORDER" or "RESTRICTED – SUBJECT TO PROTECTIVE
14 ORDER," as appropriate, and will be retained in absolute confidentiality and
15 safekeeping by such reporter or delivered to the attorneys of record or filed under
16 seal with the Court.

17 d. Counsel for the person being deposed shall, within thirty days
18 after the transcript has been received by such counsel, be permitted to designate any
19 portions of the transcript which contain testimony concerning CONFIDENTIAL or
20 RESTRICTED Discovery Materials and not so designated during deposition
21 testimony, which portions after such designation shall be treated as
22 CONFIDENTIAL or RESTRICTED Discovery Materials. In the event a party
23 discloses information later designated CONFIDENTIAL or RESTRICTED to an
24 entity or person not listed in Paragraphs 4 or 5, as applicable, that party will have
25 those documents returned to the party and take all reasonable and appropriate steps
26 to ensure that the material does not become publicly available.

27 13. When a party to this Stipulation designates the testimony (including
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1 proposed testimony) of a person being deposed as CONFIDENTIAL or
2 RESTRICTED Discovery Material, and objection is made to such designation, such
3 testimony shall not be withheld because such objection has been made to the
4 CONFIDENTIAL or RESTRICTED designation. Such testimony shall be treated as
5 CONFIDENTIAL or RESTRICTED Discovery Material, as designated, until a
6 stipulation or order on motion that it should not be so treated.

7 14. A privilege or protection is not waived by disclosure connected with the
8 litigation pending before the court. If a party inadvertently produces information
9 that it later discovers, or in good faith later asserts, to be privileged or otherwise
10 protected from disclosure, the producing party must immediately notify all parties in
11 writing of the inadvertent production and the basis for the privilege or other
12 protection from production, and request in writing the return or confirmed
13 destruction of the privileged or protected information. Within five days of receiving
14 such notification, and in compliance with the receiving parties' ethical obligations
15 under the law, all receiving parties who have not already reviewed such materials or
16 who have reviewed the materials but do not contest the applicability of the privilege
17 asserted must return or confirm destruction of all such materials, including copies
18 and/or summaries thereof. However, should a receiving party contest the
19 applicability of a privilege asserted with respect to an inadvertently produced
20 document which the receiving party has already reviewed, the receiving party may
21 temporarily retain the document or documents at issue for the sole purpose of
22 contesting the applicability of the privilege asserted. Within two (2) business days of
23 the issuance of a court order deeming the contested documents at issue privileged,
24 however, the receiving party must return or confirm destruction of all such materials,
25 including copies and/or summaries thereof.

26 15. A Party that seeks to file under seal any CONFIDENTIAL,
27 RESTRICTED and ATTORNEY'S EYES ONLY Discovery Materials must comply
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1 with Civil Local Rule 79-5. Protected Material may only be filed under seal
2 pursuant to a separate court order authorizing the sealing of the specific Protected
3 Material at issue. If a Party's request to file Protected Material under seal is denied
4 by the court, then the Receiving Party may file the information in the public record
5 unless otherwise instructed by the court. The parties stipulate that personalized
6 loyalty card information identifying any customer's name, address, telephone
7 number, contact information, credit card number, or shopping choices as identified to
8 any particular person or his or her personal information, shall not be filed in or made
9 part of the public record, at all, unless otherwise ordered by the Court.

10 16. Nothing in this Stipulated Protective Order shall prevent or otherwise
11 restrict counsel from rendering advice to their client and, in the course thereof,
12 relying generally on the examination of CONFIDENTIAL, RESTRICTED and/or
13 ATTORNEY'S EYES ONLY Discovery Materials; provided, however, that in
14 rendering such advice and otherwise communicating with such client, counsel shall
15 not make specific disclosure of any item so designated except pursuant to paragraph
16 18 or 19 below. Plaintiff's Counsel are prohibited from disclosing
17 CONFIDENTIAL, RESTRICTED or ATTORNEY'S EYES ONLY Discovery
18 Materials pertaining to any other actual or potential plaintiff or any actual or
19 purported class member with any other actual or potential plaintiff.

20 17. Nothing in this Stipulated Protective Order shall restrict the use or
21 disclosure by any party of its own CONFIDENTIAL, RESTRICTED or
22 ATTORNEY'S EYES ONLY Discovery Materials.

23 18. Except for persons identified in subparagraphs 4(a),(c),(e), (h) and
24 5(a),(c),(e), (g) and 6(a) above, no person authorized under the terms of this Order to
25 receive access to CONFIDENTIAL, RESTRICTED and/or ATTORNEY'S EYES
26 ONLY Discovery Materials shall be granted access to them until such person has
27 read this Order and agrees in writing to be bound by it per the form attached hereto
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1 as Exhibit A. Upon order of this Court, for good cause shown, these written
2 agreements (Exhibit A) shall be available for inspection by counsel for other parties
3 or nonparties.

4 19. All CONFIDENTIAL, RESTRICTED and ATTORNEY’S EYES
5 ONLY Discovery Materials produced in this litigation, whether by a party or
6 nonparty, and whether pursuant to Federal Rule of Civil Procedure, subpoena,
7 agreement or otherwise, and all information contained therein or derived therefrom,
8 shall be used solely for the preparation and trial of this action (including any appeals
9 and retrials), and may not be used for any other purpose, including business,
10 governmental or commercial, or any other administrative or judicial proceedings or
11 actions.

12 20. The provisions of this Stipulated Protective Order shall continue to
13 apply to all CONFIDENTIAL, RESTRICTED and ATTORNEY’S EYES ONLY
14 Discovery Materials and information after this action has been terminated. After
15 final disposition of this action (which is defined as the later of (1) dismissal of all
16 claims and defenses in this action, with or without prejudice; and (2) final judgment
17 herein after the completion and exhaustion of all appeals, rehearings, remands, trials,
18 or reviews of this action, including the time limits for filing any motions or
19 applications for extension of time pursuant to applicable law), within 120 days of a
20 written request by the designating party, the receiving parties, at their election, shall
21 either return or destroy all CONFIDENTIAL, RESTRICTED and ATTORNEY’S
22 EYES ONLY Discovery Materials documents, as well as all copies, extracts and
23 summaries thereof, except that counsel for each party may maintain in its files
24 motion papers, trial, deposition, and hearing transcripts, legal memoranda,
25 correspondence, deposition and trial exhibits, expert reports, attorney work product,
26 and consultant and expert work product, even if such material contains protected
27 material or other paper filed with the Court; alternatively, the parties and/or any
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1 producing party may agree upon appropriate methods of destruction. Work product
2 and attorney-client privileged material is exempt from this provision. All counsel of
3 record shall make certification of compliance herewith and shall deliver the same to
4 counsel for the party who produced or designated the documents not more than 150
5 days after final termination of this action. With the exception of personalized loyalty
6 card information, the producing party agrees to make CONFIDENTIAL,
7 RESTRICTED and ATTORNEY’S EYES ONLY Discovery Materials available to
8 the opposing counsel if requested for the purpose of establishing a claim or defense
9 on behalf of the counsel in a controversy between counsel and the party, to establish
10 a defense to a criminal charge or civil claim against counsel based upon conduct in
11 which the party was involved, to respond to allegations in any proceeding
12 concerning the counsels representation of the party, or pursuant to court order.

13 21. Counsel may at any time request the producing party to eliminate the
14 CONFIDENTIAL, RESTRICTED or ATTORNEY’S EYES ONLY designation of
15 any discovery materials.. The challenging party shall initiate the dispute resolution
16 process pursuant to Local Rule 37-1 *et seq.* The parties must comply with the
17 procedures outlined in Local Rules 37-1 and 37-2, including the preparation of a
18 Joint Stipulation outlining the dispute. The burden of persuasion in any such
19 challenge proceeding shall be on the designating party. Frivolous challenges, and
20 those made for an improper purpose (e.g., to harass or impose unnecessary expenses
21 and burdens on other parties) may expose the challenging party to sanctions. Unless
22 the designating party has waived or withdrawn the confidentiality designation, all
23 parties shall continue to afford the material in question the level of protection to
24 which it is entitled under the Producing Party’s designation until the Court rules on
25 the challenge. The parties stipulate that personalized loyalty card information is and
26 shall remain ATTORNEY’S EYES ONLY, to be produced to the class administrator
27 only, if at all, and not to become part of the public record.
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1 22. With the exception of personalized loyalty card information, this Order
2 may be modified by the Court upon stipulation of the Parties or on the motion of any
3 party. This Order shall remain in effect after the termination of this litigation by final
4 judgment, dismissal or otherwise.

5 23. Subject to the above as to personalized loyalty card information,
6 nothing contained in this Order, nor any action taken in compliance with it, shall:

7 a. Operate as an admission by any party that any particular
8 document or information is, or is not, confidential;

9 b. Operate as an admission by any party that any particular
10 document is, or is not, subject to discovery or admissible in evidence at the trial of
11 this action;

12 c. Prejudice the right of any party to contest the alleged relevancy,
13 admissibility, or discoverability of CONFIDENTIAL, RESTRICTED or
14 ATTORNEY'S EYES ONLY Discovery Materials documents and information
15 sought.

16 24. This Stipulated Protective Order is intended to provide a mechanism for
17 the handling of CONFIDENTIAL, RESTRICTED and ATTORNEY'S EYES
18 ONLY Discovery Materials, the disclosure or production of which there is no
19 objection to other than confidentiality. Each party reserves the right to object to any
20 disclosure of information or production of any documents it deems confidential on
21 any other ground it may deem appropriate. Subject to the above as to personalized
22 loyalty card information, any party may move for relief from, or general or particular
23 modification of, the mechanism for maintaining confidentiality herein set forth or the
24 application of this Order, in any particular circumstance.

25 25. Non-parties who are required to produce confidential information in
26 response to a subpoena in this action, and who in good faith believe that such
27 material contains confidential information, may rely on this Stipulated Protective
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1 Order and apply it to their production in this action.

2 26. Independent experts and consultants authorized to view information or
3 documents designated as CONFIDENTIAL or RESTRICTED under the terms of the
4 Stipulated Protective Order may retain custody of such copies as are necessary for
5 their participation in this litigation. Other appropriate recipients receiving
6 CONFIDENTIAL or RESTRICTED Discovery Materials from counsel shall not
7 retain copies of such materials but shall instead, return such materials to counsel who
8 disclosed the CONFIDENTIAL or RESTRICTED Discovery Materials to the
9 recipient within a reasonable period of time after counsel has determined in good
10 faith that the recipient's assistance in the litigation is no longer needed. The parties
11 and any other person obtaining access to CONFIDENTIAL Discovery Materials
12 pursuant to the Protective Order in this action agree that the Court shall retain
13 jurisdiction following judgment or dismissal to enforce the terms hereof.

14 27. The attorneys of record are responsible for employing reasonable
15 measures to control the duplication of, access to, and distribution of copies of
16 CONFIDENTIAL, RESTRICTED and ATTORNEY'S EYES ONLY Discovery
17 Materials. Parties shall not duplicate any such materials except for working copies
18 and for filing in court under seal. The attorneys of record further are responsible for
19 employing reasonable measures to control the dissemination or revelation of
20 confidential information.

21 28. If some of the same information or materials that have been designated
22 as CONFIDENTIAL, RESTRICTED or ATTORNEY'S EYES ONLY under the
23 terms of this Order are found in a publicly available forum without violating the
24 Order in this action, then such information or materials shall no longer be subject to
25 the restrictions of the Stipulated Protective Order in this action.

26 29. Nothing in this Stipulated Protective Order shall be construed as
27 authorizing a party to disobey a lawful subpoena or court order issued in another
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action.

IT IS SO STIPULATED THROUGH COUNSEL OF RECORD.

Dated: April 13, 2018

**LAW OFFICES OF CLAYEO C.
ARNOLD APLC**

By: /s/ Joshua H. Watson
Clayeo C. Arnold
Joshua H. Watson
Attorneys for Plaintiff

Dated: April 13 2018

MORGAN AND MORGAN

By: /s/ John A. Yanchunis
John A. Yanchunis
Marcio W. Valladares
Attorneys for Plaintiff

1 Dated: April 13, 2018

**BRYAN CAVE LEIGHTON PAISNER
LLP**

2
3 By: /s/ Robert E. Boone III
4 Robert E. Boone III
5 Attorneys for Defendant
6 THE PICTSWEET COMPANY

7 Dated: April 13, 2018

GORDON & HOLMES

8 By: /s/ Frederic L. Gordon
9 Frederic L. Gordon
10 Attorneys for Defendant
11 THE PICTSWEET COMPANY

12 Dated: April 13, 2018

WESIERSKI & SUREK LLP

13 By: /s/ Paul J. Lipman
14 Paul J. Lipman
15 Debbie Yen
16 Attorneys for Defendant
17 THE KROGER CO.

18 Dated: April 13, 2018

FAEGRE BAKER DANIELS LLP

19 By: /s/ Alyssa Rubensdorf
20 (admitted Pro Hac Vice)
21 Sarah L. Brew
22 Tarifa B. Laddon
23 Howard D. Ruddell
24 Attorneys for Defendant
25 CRF FROZEN FOODS, LLC

26 Pursuant to L.R. 5-4.3.4(a)(2)(i), the filer, Robert E. Boone III, attests that all
27 other signatories listed, and on whose behalf the filing is submitted, concur in the
28 filing's content and have authorized the filing.

///

Bryan Cave LLP
120 Broadway, Suite 300
Santa Monica, California 90401-2386

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FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.



Dated: 4/16/18

Hon. Kenly Kiya Kato
United States Magistrate Judge

EXHIBIT A

1
2 1. I, _____, of _____,
3 declare under penalty of perjury under the laws of the United States of America, that
4 I have read the Protective Order entered in Coffelt v. The Kroger Co., et al. Case No.
5 5:16-cv-01471, and agree to be bound by its terms with respect to any documents,
6 material, or information designated or marked “CONFIDENTIAL,”
7 “RESTRICTED” or “ATTORNEY’S EYES ONLY” that are furnished to me.

8 2. I agree: (i) not to disclose to anyone any CONFIDENTIAL,
9 RESTRICTED or ATTORNEY’S EYES ONLY Discovery Materials other than as
10 permitted by the Protective Order and (ii) not to make copies of any documents,
11 materials, or information marked CONFIDENTIAL, RESTRICTED or
12 ATTORNEY’S EYES ONLY furnished to me except as permitted by the Protective
13 Order.

14 3. I agree to return all documents or materials designated as
15 CONFIDENTIAL, RESTRICTED or ATTORNEY’S EYES ONLY to the attorney
16 who presented this Acknowledgement to me within 60 days after the conclusion of
17 this litigation, whether by dismissal, final judgment, or settlement.

18 4. I consent to venue and jurisdiction in the United States District Court
19 for the Central District of California with regard to any proceedings to enforce the
20 terms of the Protective Order, even if such enforcement proceedings occur after
21 termination of this action. I hereby appoint _____ of
22 _____ as my California agent for service of process in
23 connection with this action or any proceedings relate to enforcement of this
24 Stipulated Protective Order.

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1 Date: _____
2 City and State where sworn and signed: _____
3 Printed Name: _____
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5 Signature: _____
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