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2 **STIPULATED PROTECTIVE ORDER**

3 1. A. Purposes and Limitations

4 Plaintiff Hortense Sims and Defendants FGF Brands (USA) Inc. and FGF
5 Brands, Inc. (collectively, the “Parties”), parties in the above-captioned action
6 (“Action”), have determined that discovery and briefing in this Action may result in the
7 disclosure of confidential, proprietary, business, financial, or otherwise sensitive
8 information. In the interest of protecting the legitimate business concerns of the Parties,
9 their customers, business partners, and other third-parties, as well as the private
10 information of individuals involved in this Action, the Parties hereby have stipulated to
11 the following Protective Order (hereinafter “Order”) pursuant to Fed. R. Civ. P. 26(c).
12 The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
13 Protective Order does not entitle them to file confidential information under seal; Civil
14 Local Rule 79-5 sets forth the procedures that must be followed and the standards that
15 will be applied when a party seeks permission from the court to file material under seal.

16 B. Good Cause Statement

17 The parties in this action are likely to seek discovery of trade secret, confidential
18 and/or proprietary information for which special protection from public disclosure and
19 from use for any purpose other than prosecution of this action is warranted. The parties
20 anticipate that such confidential and proprietary materials and information may consist
21 of, among other things, confidential business or financial information, information
22 regarding confidential business practices, or other confidential research, development,
23 or commercial information (including information implicating privacy rights of third
24 parties), information otherwise generally unavailable to the public, or which may be
25 privileged or otherwise protected from disclosure under state or federal statutes, court
26 rules, case decisions, or common law. Accordingly, to expedite the flow of information,
27 to facilitate the prompt resolution of disputes over confidentiality of discovery
28 materials, to adequately protect information the parties are entitled to keep confidential,
to ensure that the parties are permitted reasonable necessary uses of such material in

1 preparation for and in the conduct of trial, to address their handling at the end of the
2 litigation, and serve the ends of justice, a protective order for such information is
3 justified in this matter. It is the intent of the parties that information will not be
4 designated as confidential for tactical reasons and that nothing be so designated without
5 a good faith belief that it has been maintained in a confidential, non-public manner, and
6 there is good cause why it should not be part of the public record of this case.
7

8 **DEFINITIONS**

9 2.1 Action: means this pending federal lawsuit captioned *Hortense Sims v. FGF*
10 *Brands (USA), Inc.*, Case No. 5:17-cv-01815-DOC-KK.

11 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
12 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
23 other things, testimony, transcripts, and tangible things), that are produced or generated
24 in 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.

28 2.8 House Counsel: attorneys who are employees of a party to this Action. House
Counsel does not include Outside Counsel of Record or any other outside counsel.

1 2.9 Non-Party: any natural person, partnership, corporation, association, or other
2 legal entity not named as a Party to this action.

3 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
4 this Action but are retained to represent or advise a party to this Action and have
5 appeared in this Action on behalf of that party or are affiliated with a law firm which
6 has appeared on behalf of that party, and includes support staff.

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

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
11 Material in this Action.

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

16 2.14 Protected Material: any Disclosure or Discovery Material that is designated
17 as “CONFIDENTIAL.”

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
19 a Producing Party.

20 3. SCOPE

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

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

28 4. DURATION

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

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

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

1 Designation in conformity with this Order requires:

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

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

20 (b) for testimony given in depositions that the Designating Party identify the
21 Disclosure or Discovery Material on the record, before the close of the deposition all
22 protected testimony, or serve written notice of the page and line of the confidential
23 deposition portions, within fourteen (14) days of receiving the final transcript. Until
24 the fourteen-day period to designate the deposition has passed, the entire transcript shall
25 be treated as “CONFIDENTIAL,” unless the Parties otherwise agree.

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

1 “CONFIDENTIAL.” If only a portion or portions of the information warrants
2 protection, the Producing Party, to the extent practicable, shall identify the protected
3 portion(s).
4

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

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

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

Protected Material must be stored and maintained by a Receiving Party at a

1 location and in a secure manner that ensures that access is limited to the persons
2 authorized under this Order.

3
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 disclosure
13 is reasonably necessary for this Action and who have signed the “Acknowledgment and
14 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 Vendors to
18 whom disclosure is reasonably necessary for this Action and who have signed the
19 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

22 and

23 (h) any mediator or settlement officer, and their supporting personnel, mutually
24 agreed upon by any of the parties engaged in settlement discussions.

25 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
26 OTHER LITIGATION

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

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

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

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

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

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

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

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

28 (1) promptly notify in writing the Requesting Party and the Non-Party

1 that some or all of the information requested is subject to a confidentiality
2 agreement with a Non-Party;

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

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

8 (c) If the Non-Party fails to seek a protective order from this court within 14 days
9 of receiving the notice and accompanying information, the Receiving Party may
10 produce the Non-Party's confidential information responsive to the discovery request.
11 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
12 any information in its possession or control that is subject to the confidentiality
13 agreement with the Non-Party before a determination by the court. Absent a court order
14 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
15 in this court of its Protected Material. Nothing herein shall bar a Receiving Party from
16 seeking a protective order against disclosure of information subject to a confidentiality
17 agreement.

18 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

19 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
20 Protected Material to any person or in any circumstance not authorized under this
21 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
22 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
23 all unauthorized copies of the Protected Material, (c) inform the person or persons to
24 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
25 such person or persons to execute the "Acknowledgment and Agreement to Be Bound"
26 that is attached hereto as Exhibit A.

27 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
28 **PROTECTED MATERIAL**

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2 When a Producing Party gives notice to Receiving Parties that certain
3 inadvertently produced material is subject to a claim of privilege or other protection,
4 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
5 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
6 may be established in an e-discovery order that provides for production without prior
7 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
8 parties reach an agreement on the effect of disclosure of a communication or
9 information covered by the attorney-client privilege or work product protection, the
10 parties may incorporate their agreement in the stipulated protective order submitted to
11 the court.

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
14 to seek its modification by the Court in the future.

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

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

26 13. FINAL DISPOSITION

27 After the final disposition of this Action, as defined in Section 4, within 60 days
28 of a written request by the Designating Party, each Receiving Party must return all
Protected Material to the Producing Party or destroy such material. As used in this

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

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

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1 **SO STIPULATED.**

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3 DATED: November 6, 2017

4
5 By: /s/ Ronald A. Marron

6
7 Ronald A. Marron
8 Kas Gallucci
9 Michael T. Houchin

10 LAW OFFICES OF RONALD A. MARRON, APLC
11 *Attorneys for Plaintiff and the Proposed Class*

12
13 DATED: November 6, 2017

14
15 By: /s/ Mary Mazzeo

16 Diana Torres
17 Dale M. Cendali
18 Mary Mazzeo
19 Lauren J. Schweitzer

20 KIRKLAND & ELLIS LLP
21 *Attorneys for Defendants*

22 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

23
24 DATED: November 9, 2017



25
26 _____
27 Hon. Kenly Kiya Kato
28 United States Magistrate Judge

1
2 **EXHIBIT A**

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, _____ [print or type full name],
5 of _____ [print or type full address],
6 declare under penalty of perjury that I have read in its entirety and understand the
7 Stipulated Protective Order that was issued by the United States District Court for the
8 Central District of California on _____ [date] in the case of *Hortense Sims v.*
FGF Brands (USA), Inc., Case No. 5:17-cv-01815-DOC-KK (C.D. Cal.).

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

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

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____