



GIBBS & FUERST LLP

25240 HANCOCK AVENUE, SUITE 305
MURRIETA, CA 92562
TELEPHONE (951)816-3435
FACSIMILE (951)816-3436

Michael T. Gibbs, Bar No. 076519
Thomas M. Regan, Bar No. 292430

Attorneys for Defendant COSTCO WHOLESALE CORPORATION

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

JOHN C. SCHIAVONE,

Plaintiff,

vs.

COSTCO WHOLESALE COMPANY, et al.

Defendants.

Case No. 5:20-CV-00213-JGB-SP

STIPULATED PROTECTIVE ORDER

1. A. PURPOSES AND LIMITATIONS

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

1 79-5 sets forth the procedures that must be followed and the standards that will be
2 applied when a party seeks permission from the court to file material under seal.

3 B. GOOD CAUSE STATEMENT

4 This action is likely to involve valuable confidential, commercial, proprietary, or
5 private information for which special protection from public disclosure and from use for
6 any purpose other than prosecution of this action is warranted. Such confidential and
7 proprietary materials and information consist of, among other things, confidential
8 business information, information regarding confidential business practices, or other
9 confidential or commercial information, information otherwise generally unavailable to
10 the public, or which may be privileged or otherwise protected from disclosure under
11 state or federal statutes, court rules, case decisions, or common law. Accordingly, to
12 expedite the flow of information, to facilitate the prompt resolution of disputes over
13 confidentiality of discovery materials, to adequately protect information the parties are
14 entitled to keep confidential, to ensure that the parties are permitted reasonable
15 necessary uses of such material in preparation for and in the conduct of trial, to address
16 their handling at the end of the litigation, and serve the ends of justice, a protective
17 order for such information is justified in this matter. It is the intent of the parties that
18 information will not be designated as confidential for tactical reasons and that nothing
19 be so designated without a good faith belief that it has been maintained in a
20 confidential, non-public manner, and there is good cause why it should not be part of
21 the public record of this case.

22 2. DEFINITIONS

23 2.1 Action: John C. Schiavone v. Costco Wholesale Company, Case No. 5:20-
24 CV-00213-JGB-SP.

25 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
26 information or items under this Order.

27 2.3 "CONFIDENTIAL" Information or Items: information (regardless of how it is
28 generated, stored or maintained) or tangible things that qualify for protection under
Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
Statement.

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

1 2.5 Designating Party: a Party or Non-Party that designates information or items
2 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

3 2.6 Disclosure or Discovery Material: all items or information, regardless of the
4 medium or manner in which it is generated, stored, or maintained (including, among
5 other things, testimony, transcripts, and tangible things), that are produced or generated
6 in disclosures or responses to discovery in this matter.

7 2.7 Expert: a person with specialized knowledge or experience in a matter
8 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
9 expert witness or as a consultant in this Action.

10 2.8 House Counsel: attorneys who are employees of a party to this Action.
11 House Counsel does not include Outside Counsel of Record or any other outside
12 counsel.

13 2.9 Non-Party: any natural person, partnership, corporation, association, or other
14 legal entity not named as a Party to this action.

15 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
16 this Action but are retained to represent or advise a party to this Action and have
17 appeared in this Action on behalf of that party or are affiliated with a law firm which has
18 appeared on behalf of that party, and includes support staff.

19 2.11 Party: any party to this Action, including all of its officers, directors,
20 employees, consultants, retained experts, and Outside Counsel of Record (and their
21 support staffs).

22 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
23 Discovery Material in this Action.

24 2.13 Professional Vendors: persons or entities that provide litigation support
25 services (e.g., photocopying, videotaping, translating, preparing exhibits or
26 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
27 their employees and subcontractors.

28 2.14 Protected Material: any Disclosure or Discovery Material that is designated
as “CONFIDENTIAL.”

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

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1 3. SCOPE

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

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

9 4. DURATION

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

17 5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

8 Designation in conformity with this Order requires:

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

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

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

(c) for information produced in some form other than documentary and for any
other tangible items, that the Producing Party affix in a prominent place on the exterior
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 protection,
2 the Producing Party, to the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
4 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 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

9 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
10 confidentiality at any time that is consistent with the Court’s Scheduling Order.

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

13 6.3 The burden of persuasion in any such challenge proceeding shall be on the
14 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
15 to harass or impose unnecessary expenses and burdens on other parties) may expose
16 the Challenging Party to sanctions. Unless the Designating Party has waived or
17 withdrawn the confidentiality designation, all parties shall continue to afford the material
18 in question the level of protection to which it is entitled under the Producing Party’s
19 designation until the Court rules on the challenge.

20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

21 7.1 Basic Principles. A Receiving Party may use Protected Material that is
22 disclosed or produced by another Party or by a Non-Party in connection with this Action
23 only for prosecuting, defending, or attempting to settle this Action. Such Protected
24 Material may be disclosed only to the categories of persons and under the conditions
25 described in this Order. When the Action has been terminated, a Receiving Party must
26 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

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1 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by
2 the court or permitted in writing by the Designating Party, a Receiving Party may
3 disclose any information or item designated "CONFIDENTIAL" only to:

4 (a) the Receiving Party's Outside Counsel of Record in this Action, as well as
5 employees of said Outside Counsel of Record to whom it is reasonably necessary to
6 disclose the information for this Action;

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

9 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
10 is reasonably necessary for this Action and who have signed the "Acknowledgment and
11 Agreement to Be Bound" (Exhibit A);

12 (d) the court and its personnel;

13 (e) court reporters and their staff;

14 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to
15 whom disclosure is reasonably necessary for this Action and who have signed the
16 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

19 (h) during their depositions, witnesses ,and attorneys for witnesses, in the Action
20 to whom disclosure is reasonably necessary provided: (1) the deposing party requests
21 that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be
22 permitted to keep any confidential information unless they sign the "Acknowledgment
23 and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating
24 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to
25 depositions that reveal Protected Material may be separately bound by the court
26 reporter and may not be disclosed to anyone except as permitted under this Stipulated
27 Protective Order; and

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

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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

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

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

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

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

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

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

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

(b) In the event that a Party is required, by a valid discovery request, to produce
a Non-Party’s confidential information in its possession, and the Party is subject to an

1 agreement with the Non-Party not to produce the Non-Party's confidential information,
2 then the Party shall:

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

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

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

11 (c) If the Non-Party fails to seek a protective order from this court within 14 days
12 of receiving the notice and accompanying information, the Receiving Party may produce
13 the Non-Party's confidential information responsive to the discovery request. If the Non-
14 Party timely seeks a protective order, the Receiving Party shall not produce any
15 information in its possession or control that is subject to the confidentiality agreement
16 with the Non-Party before a determination by the court. Absent a court order to the
17 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
18 court of its Protected Material.

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

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

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1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

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

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
14 person 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
16 Protective Order no Party waives any right it otherwise would have to object to
17 disclosing or producing any information or item on any ground not addressed in this
18 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground
19 to use in 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. Protected Material may only be filed
22 under seal pursuant to a court order authorizing the sealing of the specific Protected
23 Material at issue. If a Party's request to file Protected Material under seal is denied by
24 the court, then the Receiving Party may file the information in the public record unless
25 otherwise instructed by the court.

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1 13. FINAL DISPOSITION

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

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

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4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5 DATED: November 3, 2020

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7 /s/Matthew S. Manacek

8 LARSON O'BRIEN, LLP
9 MATTHEW S. MANACEK
10 Attorneys for Plaintiff JOHN C. SCHIAVONE

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13 DATED: November 3, 2020

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15 /s/Michael T. Gibbs

16 GIBBS & FUERST, LLP
17 MICHAEL T. GIBBS
18 THOMAS M. REGAN
19 Attorneys for Defendant COSTCO WHOLESALE CORPORATION

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23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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25 DATED: November 18, 2020

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Hon. Sheri Pym
United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety
and understand the Stipulated Protective Order that was issued by the United States
District Court for the Central District of California on [date] in the case of John C.
Schiavone v. Costco Wholesale Company, Case No. 5:20-CV-00213-JGB-SP. I agree
to comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions
and punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Stipulated Protective Order to
any person or entity except in strict compliance with the provisions of this Order.

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____