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**UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA**

JAMES BOSWELL and MICHELLE SALAZAR-NAVARRO, on behalf of themselves, all others similarly situated and the general public,

Plaintiffs,

v.

COSTCO WHOLESALE CORPORATION,

Defendant.

Case No: 8:16-cv-00278-DOC-DFM

**STIPULATED PROTECTIVE ORDER**

**[C.D. CAL. CIV. L.R. 7-1]**

**Discovery Document:**  
 Referred to Magistrate Judge Douglas F. McCormick

1 **1. GOOD CAUSE STATEMENT**

2 Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may be  
5 warranted, including Costco Wholesale Corporation’s (“Costco’s”) non-public financial  
6 information (e.g., reports showing revenues and costs associated with its products, etc.);  
7 Costco’s agreements with third-parties and/or other documents exchanged with them, to the  
8 extent that they constitute and/or contain non-public, confidential information (e.g.,  
9 information that sets forth pricing, volume, manufacturing processes, etc.); and Plaintiffs’  
10 personal and confidential information. Accordingly, the parties hereby stipulate to and  
11 petition the Court to enter this Stipulated Protective Order, in order to expedite the flow of  
12 information and protect information that the parties are entitled to keep confidential. The  
13 parties acknowledge that this Order does not confer blanket protections on all disclosures or  
14 responses to discovery and that the protection it affords from public disclosure and use  
15 extends only to the limited information or items that are entitled to confidential treatment  
16 under the applicable legal principles. The parties further acknowledge, as set forth in  
17 Section 12.3, below, that this Stipulated Protective Order does not entitle them to file  
18 confidential information under seal, and that Civil Local Rule 79-5 sets forth the procedures  
19 that must be followed and the standards that will be applied when a party seeks permission  
20 from the Court to file material under seal.

21 **2. DEFINITIONS**

22 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
23 information or items under this Order.

24 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
25 generated, stored or maintained) or tangible things that qualify for protection under Federal  
26 Rule of Civil Procedure 26(c).

1           2.3 Counsel: Outside counsel hired by a Party and House Counsel (as well as their  
2 support staff).

3           2.4 Designating Party: a Party or Non-Party that designates information or items  
4 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

5           2.5 Disclosure or Discovery Material: all items or information, regardless of the  
6 medium or manner in which it is generated, stored, or maintained (including, among other  
7 things, testimony, transcripts, and tangible things), that are produced or generated in  
8 disclosures or responses to discovery in this matter.

9           2.6 Expert: a person with specialized knowledge or experience in a matter  
10 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
11 expert witness or as a consultant in this action.

12           2.7 House Counsel: attorneys who are employees of a party to this action. House  
13 Counsel does not include Outside Counsel of Record or any other outside counsel.

14           2.8 Non-Party: any natural person, partnership, corporation, association, or other  
15 legal entity not named as a Party to this action.

16           2.9 Outside Counsel of Record: attorneys who are not employees of a party to this  
17 action but are retained to represent or advise a party to this action and have appeared in this  
18 action on behalf of that party or are affiliated with a law firm which has appeared on behalf  
19 of that party (as well as their support staff).

20           2.10 Party: any party to this action, including all of its officers, directors,  
21 employees, consultants, retained experts, and Counsel (and their support staff).

22           2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
23 Material in this action.

24           2.12 Professional Vendors: persons or entities that provide litigation support  
25 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations,  
26 and organizing, storing, or retrieving data in any form or medium) and their employees and  
27 subcontractors that are hired by a Party or their Counsel.

1           2.13 Protected Material: any Disclosure or Discovery Material that is designated as  
2 “CONFIDENTIAL.”

3           2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a  
4 Producing Party.

5 **3. SCOPE**

6           The protections conferred by this Stipulation and Order cover not only Protected  
7 Material (as defined above), but also (1) any information copied or extracted from Protected  
8 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3)  
9 any testimony, conversations, or presentations by Parties or their Counsel that might reveal  
10 Protected Material. However, the protections conferred by this Stipulation and Order do not  
11 cover the following information: (a) any information that is in the public domain at the time  
12 of disclosure to a Receiving Party or becomes part of the public domain after its disclosure  
13 to a Receiving Party as a result of publication not involving a violation of this Order,  
14 including becoming part of the public record through trial or otherwise; and (b) any  
15 information known to the Receiving Party prior to the disclosure or obtained by the  
16 Receiving Party after the disclosure from a source who obtained the information lawfully  
17 and under no obligation of confidentiality to the Designating Party. Any use of Protected  
18 Material at trial shall be governed by a separate agreement or order.

19 **4. DURATION**

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

1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
3 Party or Non-Party that designates information or items for protection under this Order  
4 must take care to limit any such designation to specific material that qualifies under the  
5 appropriate standards. The Designating Party must designate for protection only those  
6 materials, documents, items, or oral or written communications that qualify – so that other  
7 materials, documents, items, or communications for which protection is not warranted are  
8 not swept unjustifiably within the ambit of this Order.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
10 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
11 unnecessarily encumber or delay the case development process or to impose unnecessary  
12 expenses and burdens on other parties) may expose the Designating Party to sanctions. If it  
13 comes to a Designating Party’s attention that information or items that it designated for  
14 protection do not qualify for protection, that Designating Party must promptly notify all  
15 other Parties that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
17 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
18 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
19 must be clearly so designated before the material is disclosed or produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic images of  
22 documents (e.g., .pdf, .jpg, .tiff etc.), but excluding transcripts of depositions or other  
23 pretrial or trial proceedings), that the Producing Party affix the legend “CONFIDENTIAL”  
24 to each page that contains protected material or, in the case of responses to interrogatories  
25 or requests for admission, a statement that the information provided is “CONFIDENTIAL”  
26 in the response.

1 A Party or Non-Party that makes original documents or materials available for  
2 inspection need not designate them for protection until after the inspecting Party has  
3 indicated which material it would like copied and produced. During the inspection and  
4 before the designation, all of the material made available for inspection shall be deemed  
5 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants  
6 copied and produced, the Producing Party must determine which documents qualify for  
7 protection under this Order. Then, before producing the specified documents, the Producing  
8 Party must affix the “CONFIDENTIAL” legend to each page that contains Protected  
9 Material.

10 (b) for testimony given in deposition or in other pretrial proceedings, that the  
11 Designating Party identify (a) on the record, before the close of the deposition, hearing, or  
12 other proceeding; or (b) within thirty (30) days of receipt of a transcript of that deposition or  
13 proceeding (other than a rough transcript), all protected testimony.

14 (c) for information produced in some form other than documentary and for any  
15 other tangible items, that the Producing Party affix in a prominent place on the exterior of  
16 the container or containers in which the information or item is stored the legend  
17 “CONFIDENTIAL.” If only a portion or portions of the information stored in a container  
18 warrant protection, the Producing Party, to the extent practicable, shall identify the  
19 protected portion(s).

20 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified  
21 information or items does not, standing alone, waive the Designating Party’s right to secure  
22 protection under this Order for such material. Upon correction of such an inadvertent failure  
23 to designate qualified information or items, the Receiving Party must make reasonable  
24 efforts to assure that the material is treated in accordance with the provisions of this Order.

## 25 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

26 6.1 Timing of Challenges. Any Party may challenge a designation of  
27 confidentiality at any time. Unless a prompt challenge to a Designating Party’s  
28

1 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
2 unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party  
3 does not waive its right to challenge a confidentiality designation by electing not to mount a  
4 challenge promptly after the original designation is disclosed.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution  
6 process under Civil Local Rule 37-1, et seq.

7 6.3 Judicial Intervention. The burden of persuasion in any such challenge shall be  
8 on the Designating Party. Frivolous challenges, and those made for an improper purpose  
9 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
10 expose the Challenging Party to sanctions. Unless the Designating Party has waived or  
11 withdrawn the confidentiality designation, all parties shall continue to afford the material in  
12 question the level of protection to which it is entitled under the Producing Party's  
13 designation until the Court rules on the challenge.

14 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
16 disclosed or produced by another Party or by a Non-Party in connection with this case only  
17 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material  
18 may be disclosed only to the categories of persons and under the conditions described in  
19 this Order. When the litigation has been terminated, a Receiving Party must comply with  
20 the provisions of section 13 below (FINAL DISPOSITION).

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

24 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
25 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party  
26 may disclose any information or item designated "CONFIDENTIAL" only to:

- 27 (a) the Receiving Party's Counsel, as well as employees of said Counsel;

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

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

6 (d) the Court and its personnel;

7 (e) court reporters and their staff;

8 (f) professional jury or trial consultants and mock jurors who have signed the  
9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (g) Professional Vendors to whom disclosure is reasonably necessary for this  
11 litigation (provided that a representative of each vendor shall be made aware of and confirm  
12 in writing that the vendor will comply with the Protective Order); and

13 (h) during their depositions, witnesses in the action to whom disclosure is  
14 reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions  
15 that reveal Protected Material must be separately bound by the court reporter and may not  
16 be disclosed to anyone except as permitted under this Stipulated Protective Order.

17 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
18 **OTHER LITIGATION**

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

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

24 (b) promptly notify in writing the party who caused the subpoena or order to issue  
25 in the other litigation that some or all of the material covered by the subpoena or order is  
26 subject to this Protective Order. Such notification shall include a copy of this Stipulated  
27 Protective Order; and  
28



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

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

11 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED**  
12 **IN THIS LITIGATION**

13 (a) The terms of this Order are applicable to information produced by a Non-Party  
14 in this action and designated as “CONFIDENTIAL.” Such information produced by Non-  
15 Parties in connection with this litigation is protected by the remedies and relief provided by  
16 this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from  
17 seeking additional protections.

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

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

24 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in  
25 this litigation, the relevant discovery request(s), and a reasonably specific description of the  
26 information requested; and

27 (3) make the information requested available for inspection by the Non-Party.  
28

1 (c) If the Non-Party fails to object or seek a protective order from this court within  
2 14 days of receiving the notice and accompanying information, the Receiving Party may  
3 produce the Non-Party's confidential information responsive to the discovery request. If the  
4 Non-Party timely seeks a protective order, the Receiving Party shall not produce any  
5 information in its possession or control that is subject to the confidentiality agreement with  
6 the Non-Party before a determination by the court. Absent a court order to the contrary, the  
7 Non-Party shall bear the burden and expense of seeking protection in this Court of its  
8 Protected Material.

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

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

18 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
19 **PROTECTED MATERIAL**

20 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
21 produced material is subject to a claim of privilege or other protection, the obligations of  
22 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). The  
23 production of a privileged or work-product-protected document, whether inadvertent or  
24 otherwise, is not a waiver of privilege or protection from discovery in this case or in any  
25 other federal or state proceeding. For example, the mere production of privileged or work-  
26 product-protected documents in this case as part of a mass production is not itself a waiver  
27 in this case or in any other federal or state proceeding. This provision shall not prevent a  
28

1 Party from asserting that any claimed privilege or work product protection was waived for  
2 any reason other than its inadvertent production in this litigation.

3 **12. MISCELLANEOUS**

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person  
5 to seek its modification by the Court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
7 Order no Party waives any right it otherwise would have to object to disclosing or  
8 producing any information or item. Similarly, no Party waives any right to object on any  
9 ground to use in evidence of any of the material covered by this Protective Order.

10 12.3 Filing Protected Material. Without written permission from the Designating  
11 Party or a court order secured after appropriate notice to all interested persons, a Party may  
12 not file in the public record in this action any Protected Material. A Party that seeks to file  
13 under seal any Protected Material must comply with Civil Local Rule 79-5. Protected  
14 Material may only be filed under seal pursuant to a court order authorizing the sealing of  
15 the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing order  
16 will issue only upon a request establishing that the Protected Material at issue is privileged,  
17 protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving  
18 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) is  
19 denied by the Court, then the Receiving Party may file the information in the public record  
20 pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the Court.

21 **13. FINAL DISPOSITION**

22 Within 60 days after the final disposition of this action, as defined in paragraph 4,  
23 each Receiving Party must return all Protected Material to the Producing Party or destroy  
24 such material. As used in this subdivision, "all Protected Material" includes all copies,  
25 abstracts, compilations, summaries, and any other format reproducing or capturing any of  
26 the Protected Material. Whether the Protected Material is returned or destroyed, the  
27 Receiving Party must submit a written certification to the Producing Party (and, if not the  
28

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

11 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

12 Dated: August 2, 2016

Dated: August 2, 2016

13  
14 /s/ Jack Fitzgerald

/s/ Frank Broccolo

15 By: Jack Fitzgerald

By: Frank J. Broccolo

16 **THE LAW OFFICE OF JACK  
FITZGERALD, PC**

**LAW OFFICE OF FRANK J.  
BROCCOLO**

17 *On behalf of Plaintiffs and the Proposed*  
18 *Class*

*On behalf of Defendant Costco Wholesale  
Corporation*

19 *Filer's Attestation: Pursuant to Local Rule 5-4.3.4(a)(2)(i), Jack Fitzgerald, hereby*  
20 *attests that concurrence in the filing of this document and its contents was obtained from all*  
21 *signatories listed.*

22  
23 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

24  
25 DATED: August 1, 2016

26   
27 **DOUGLAS F. McCORMICK**  
28 **UNITED STATES MAGISTRATE JUDGE**

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address],  
5 declare under penalty of perjury that I have read in its entirety and understand the Stipulated  
6 Protective Order that was issued by the United States District Court for the Central District  
7 of California on \_\_\_\_\_ [date] in the case of *Boswell et al. v. Costco Wholesale Corp.*,  
8 No. 8:16-cv---278-DOC-DFM (C.D. Cal.). I agree to comply with and to be bound by all  
9 the terms of this Stipulated Protective Order and I understand and acknowledge that failure  
10 to so comply could expose me to sanctions and punishment in the nature of contempt. I  
11 solemnly promise that I will not disclose in any manner any information or item that is  
12 subject to this Stipulated Protective Order to any person or entity except in strict  
13 compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Central District of California for the purpose of enforcing the terms of this Stipulated  
16 Protective Order, even if such enforcement proceedings occur after termination of this  
17 action.

18 I hereby appoint \_\_\_\_\_ [print or type full name] of  
19 \_\_\_\_\_ [print or type full address and telephone  
20 number] as my California agent for service of process in connection with this action or any  
21 proceedings related to enforcement of this Stipulated Protective Order.

22 Date: \_\_\_\_\_

23 City and State where sworn and signed: \_\_\_\_\_

24 Printed name: \_\_\_\_\_

25 [printed name]

26 Signature: \_\_\_\_\_

27 [signature]