

1 **BRYAN CAVE LLP**
 Glenn Plattner, California Bar No. 137454
 2 Shelly C. Gopaul, California Bar No. 246382
 120 Broadway, Suite 300
 3 Santa Monica, California 90401-2386
 Telephone: (310) 576-2100
 4 Facsimile: (310) 576-2200
 Email: glenn.plattner@bryancave.com
 5 shelly.gopaul@bryancave.com

6 Attorneys for Plaintiff
 SHAKEY’S USA, INC.

8 UNITED STATES DISTRICT COURT
 9 EASTERN DISTRICT OF CALIFORNIA

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

11 SHAKEY’S USA, Inc., a Delaware corporation,
 12
 Plaintiff,
 13
 v.
 14
 TUTTO’S PIZZA CORP., business entity
 15 unknown; CM RESTAURANT GROUP, INC., a
 16 California corporation; AMIRA HANNA, an
 individual; and JOSHUA CHO, an individual,
 17
 Defendants.

Case No. 1:09-CV-00093-OWW-DLB
 STIPULATION AND ORDER FOR
 ENTRY OF PERMANENT INJUNCTION
 AND JUDGMENT AGAINST
 DEFENDANT JOSHUA CHO

18
 19
 20
 21
 22
 23
 24
 25
 26
 27
 28

1 PLAINIFF SHAKEY’S USA, INC., a Delaware corporation (“Shakey’s”), on the one
2 hand, and DEFENDANT JOSHUA CHO, an individual (“Cho”), on the other hand, do each
3 individually and collectively stipulate and agree pursuant to Rule 65 of the Federal Rules of Civil
4 Procedure as follows:

5 WHEREAS, Shakey’s previously entered into a Franchise Agreement with James Kim
6 (“Kim”) for the operation of the Shakey’s restaurant located at 4984 E. King Canyon Rd., Fresno,
7 California, 93727 (the “Restaurant”).

8 WHEREAS, on or around August 1, 2006, Kim assigned all of his rights, title and interest
9 in and to the franchise agreement to Eugene and Nancy Yamamoto (the “Yamamotos”), who then
10 operated the Restaurant as a Shakey’s restaurant under a franchise agreement with Shakey’s.

11 WHEREAS, the Yamamotos’ franchise agreement was terminated on February 22, 2007,
12 as a result of the Yamamotos’ multiple breaches of the franchise agreement, however, the
13 Restaurant continued to be operated using Shakey’s trademarks and trade dress.

14 WHEREAS, Shakey’s is informed and believes that after the Yamamotos ceased running
15 the Restaurant, Joshua Cho (“Cho”) was involved with the operation of the Restaurant;

16 WHEREAS, Shakey’s filed a complaint in the United States District Court, Eastern
17 District of California, entitled *Shakey’s USA, Inc. v. Tutto’s Pizza Corp. et al.*, Case No. 1:09-CV-
18 00093-OWW-DLB alleging Federal Trade Dress Infringement, Federal Trademark Infringement,
19 California Common Law Trademark Infringement and Unfair Competition, Federal and State
20 Trademark Dilution, Misappropriation of Trade Secrets, Common Law Misappropriation of Trade
21 Secrets, False Designation of Origin and False Description, Unfair Competition and Temporary
22 Restraining Order and Injunctive Relief (the “Action”);

23 WHEREAS, Cho contends that he no longer has any involvement with the Restaurant;

24 WHEREAS, this injunction is needed to protect Shakey’s trademarks and trade secrets;

25 WHEREAS, Shakey’s and Defendant Joshua Cho (“Cho”) consent to and waive all
26 objections to the non-exclusive personal jurisdiction of, and venue in, the United States District
27 Court, Eastern District of California, for the purposes of all cases and controversies involving this
28

1 Stipulated Injunction and its enforcement and consent to the continued jurisdiction of this Court to
2 enforce this Stipulated Injunction;

3 NOW, THEREFORE, the parties agree as follows:

4 (1) Cho and his agents, directors, officers, and employees are required to:

5 (a) immediately discontinue the use of the Shakey's Marks, including but not
6 limited to Shakey's service marks, trademarks and trade name, the sale of Mojo Potatoes,
7 and the use of any and all signs and printed goods bearing the said Shakey's Marks and/or
8 any references whatever thereto;

9 (b) immediately destroy all materials imprinted with the name "Shakey's"
10 and/or "Shakey's Pizza Parlor and Ye Public House" and/or any other Shakey's Marks;

11 (c) immediately discontinue to operate or do business under any name or in any
12 manner that might tend to give the general public the impression that Cho is any longer
13 connected in any way with Shakey's or any longer has any right to the use of the Shakey's
14 System;

15 (d) immediately discontinue to make, use or avail of any of the trade secrets of,
16 or information imparted by Shakey's or disclose or reveal any such other information or
17 any portion thereof to others;

18 (e) immediately return to Shakey's the Operations Manual and all copies
19 thereof, together with all other material containing trade secrets, operating instructions, or
20 business practices, if any such information is currently in Cho's possession, custody, or
21 control;

22 (f) refrain from occupying, constructing, equipping, ordering or assisting any
23 person or persons in the occupation, construction, or equipping of any premises
24 incorporating the distinctive features or equipment layout which Shakey's has originated
25 and developed and which are identifying characteristics of premises operated by Shakey's
26 franchisees;

27 (g) immediately cease using in the Restaurant, or otherwise, any Shakey's
28 artwork and signs, interior and exterior color schemes distinctive to Shakey's, distinctive

1 window glass and lamps, or other trade dress used by any licensed Shakey's pizza parlor
2 restaurant;

3 (2) That Cho and his employees, agents, servants, attorneys, and those persons in
4 active concert or participation with him are permanently enjoined and restrained from:

5 (a) Doing anything to cause potential purchasers of Cho's goods or services to
6 believe that Cho's goods or services originate with Shakey's or are authorized, endorsed,
7 or affiliated with or sponsored by Shakey's, including but not limited to using the Shakey's
8 Marks, trade secrets or trade dress.

9 **IT IS SO STIPULATED.**

10 Dated: May 31, 2009

Respectfully submitted,

11 **BRYAN CAVE LLP**
12 **GLENN PLATTNER**
13 **SHELLY C. GOPAUL**

14 /s/ SHELLY GOPAUL
15 Shelly C. Gopaul
16 Attorneys for Plaintiff
17 Shakey's USA, Inc.

18 Dated: May 31, 2009

Respectfully submitted,

19 **JOSHUA CHO**

20 By: /s/ JOSHUA CHO
21 Joshua Cho
22 Defendant in *Pro Per*

23 **IT IS SO ORDERED.**

24 DATED: January 8, 2010

/s/ OLIVER W. WANGER
Honorable Oliver W. Wanger
Judge, United States District Court

25
26
27
28