

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
TRACEY A. KENNEDY, Cal. Bar No. 150782
3 tkennedy@sheppardmullin.com
NORA K. STILES, Cal. Bar No. 280692
4 nstiles@sheppardmullin.com
333 South Hope Street, 43rd Floor
5 Los Angeles, California 90071-1422
Telephone: 213-620-1780
6 Facsimile: 213-620-1398

7 MORGAN P. FORSEY, Cal. Bar No. 241207
mforsey@sheppardmullin.com
8 Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
9 Telephone: 415-434-9100
Facsimile: 415-434-3947

10 Attorneys for Defendant Taco Bell Corp.
11

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14

15 BERNARDINA RODRIQUEZ, on
behalf of herself, all others similarly
16 situated,

17 Plaintiff,

18 v.

19 TACO BELL CORP., a California
corporation; and DOES 1-50 inclusive,
20

21 Defendants.
22

Case No. 1:13-cv-1498-SAB

**STIPULATED PROTECTIVE
ORDER**

[Eastern District Local Rule 141.1]

Trial Date: April 19, 2016
23
24
25
26
27
28

1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production
3 of confidential, proprietary, or private information for which special protection from
4 public disclosure and from use for any purpose other than prosecuting this litigation
5 may be warranted. This information includes, but is not limited to, private information
6 concerning various aspects of the employment of Defendant Taco Bell Corp.'s current
7 and former employees, including but not limited to, rates of compensation and
8 taxation and/or other withholdings, job history (including promotions and demotions),
9 hours of work, work locations, employee purchase records (to the extent such records
10 exist) and personnel documents/information, such as, dates of hire and termination,
11 on-duty meal period agreements, disciplinary actions related to misuse of employee
12 discounts, time keeping, meal and rest periods and/or attendance, and proprietary and
13 private information relating to policies and practices, financial and business
14 information and methodologies at Defendant Taco Bell Corp.'s current and former
15 corporate-owned restaurant locations. In light of the significant impact on the privacy
16 interests of non-party employees, which Defendant Taco Bell Corp. is bound to
17 protect by California law, such private and proprietary information requires protection
18 beyond mere agreement of the parties. Accordingly, the parties hereby stipulate to and
19 petition the court to enter the following Stipulated Protective Order.

20 The parties acknowledge that this Order does not confer blanket protections on
21 all disclosures or responses to discovery and that the protection it affords from public
22 disclosure and use extends only to the limited information or items that are entitled to
23 confidential treatment under the applicable legal principles. The parties further
24 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order
25 does not entitle them to file confidential information under seal; Local Rule 141 sets
26 forth the procedures that must be followed and the standards that will be applied when
27 a party seeks permission from the court to file material under seal.

1 2. DEFINITIONS

2 2.1 Challenging Party: a Party or Non-Party that challenges the
3 designation of information or items under this Order.

4 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
5 how it is generated, stored or maintained) or tangible things that qualify for
6 protection under Federal Rule of Civil Procedure 26(c).

7 2.3 Counsel (without qualifier):

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

9 2.4 Designating Party:

10 a Party or Non-Party that designates information or items that it produces in
11 disclosures or in responses to discovery as “CONFIDENTIAL.”

12 2.5 Disclosure or Discovery Material: all items or information, regardless
13 of the medium or manner in which it is generated, stored, or maintained (including,
14 among other things, testimony, transcripts, and tangible things), that are produced or
15 generated in disclosures or responses to discovery in this matter.

16 2.6 Expert: a person with specialized knowledge or experience in a matter
17 pertinent to the litigation who has been retained by a Party or its counsel to serve as
18 an expert witness or as a consultant in this action.

19 2.7 House Counsel: attorneys who are employees of a party to this action.
20 House Counsel does not include Outside Counsel of Record or any other outside
21 counsel.

22 2.8 Non-Party: any natural person, partnership, corporation, association, or
23 other legal entity not named as a Party to this action.

24 2.9 Outside Counsel of Record: attorneys who are not employees of a
25 party to this action but are retained to represent or advise a party to this action and
26 have appeared in this action on behalf of that party or are affiliated with a law firm
27 which has appeared on behalf of that party.
28

1 2.10 Party: any party to this action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and their
3 support staffs).

4 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in this action.

6 2.12 Professional Vendors: persons or entities that provide litigation
7 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 2.13 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL.”

12 2.14 Receiving Party: a Party that receives Disclosure or Discovery
13 Material from a Producing Party.

14 3. SCOPE
15

16 The protections conferred by this Stipulation and Order cover not only
17 Protected Material (as defined above), but also (1) any information copied or extracted
18 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
19 Protected Material; and (3) any testimony, conversations, or presentations by Parties
20 or their Counsel that might reveal Protected Material. However, the protections
21 conferred by this Stipulation and Order do not cover the following information: (a)
22 any information that is in the public domain at the time of disclosure to a Receiving
23 Party or becomes part of the public domain after its disclosure to a Receiving Party as
24 a result of publication not involving a violation of this Order, including becoming part
25 of the public record through trial or otherwise; and (b) any information known to the
26 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
27 disclosure from a source who obtained the information lawfully and under no
28

1 obligation of confidentiality to the Designating Party. Any use of Protected Material at
2 trial shall be governed by a separate agreement or order.

3 4. DURATION

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

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

1 5.2 Manner and Timing of Designations.

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

6 Designation in conformity with this Order requires:

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

1 b) for testimony given in deposition or in other pretrial or trial
2 proceedings, that the Designating Party identify on the record, before
3 the close of the deposition, hearing, or other proceeding, all protected
4 testimony.

5 c) for information produced in some form other than documentary and for
6 any other tangible items, that the Producing Party affix in a prominent
7 place on the exterior of the container or containers in which the
8 information or item is stored the legend "CONFIDENTIAL." If only a
9 portion or portions of the information or item warrant protection, the
10 Producing Party, to the extent practicable, shall identify the protected
11 portion(s).

12 5.3 Inadvertent Failures to Designate.

13 If timely corrected, an inadvertent failure to designate qualified information
14 or items does not, standing alone, waive the Designating Party's right to secure
15 protection under this Order for such material. Upon timely correction of a
16 designation, the Receiving Party must make reasonable efforts to assure that the
17 material is treated in accordance with the provisions of this Order.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges.

20 Any Party or Non-Party may challenge a designation of confidentiality at any
21 time. Unless a prompt challenge to a Designating Party's confidentiality designation
22 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
23 burdens, or a significant disruption or delay of the litigation, a Party does not waive
24 its right to challenge a confidentiality designation by electing not to mount a
25 challenge promptly after the original designation is disclosed.

26 6.2 Meet and Confer.

27 The Challenging Party shall initiate the dispute resolution process by
28 providing written notice of each designation it is challenging and describing the

1 basis for each challenge. To avoid ambiguity as to whether a challenge has been
2 made, the written notice must recite that the challenge to confidentiality is being
3 made in accordance with this specific paragraph of the Protective Order. The parties
4 shall attempt to resolve each challenge in good faith and must begin the process by
5 conferring directly (in voice to voice dialogue; other forms of communication are
6 not sufficient) within 14 days of the date of service of notice. In conferring, the
7 Challenging Party must explain the basis for its belief that the confidentiality
8 designation was not proper and must give the Designating Party an opportunity to
9 review the designated material, to reconsider the circumstances, and, if no change in
10 designation is offered, to explain the basis for the chosen designation. A
11 Challenging Party may proceed to the next stage of the challenge process only if it
12 has engaged in this meet and confer process first or establishes that the Designating
13 Party is unwilling to participate in the meet and confer process in a timely manner.

14 6.3 Judicial Intervention.

15 If the Parties cannot resolve a challenge without court intervention, the
16 Designating Party shall file and serve a motion to retain confidentiality within 21
17 days of the initial notice of challenge or within 14 days of the parties agreeing that
18 the meet and confer process will not resolve their dispute, whichever is earlier. Each
19 such motion must be accompanied by a competent declaration affirming that the
20 movant has complied with the meet and confer requirements imposed in the
21 preceding paragraph. Failure by the Designating Party to make such a motion
22 including the required declaration within 21 days (or 14 days, if applicable) shall
23 automatically waive the confidentiality designation for each challenged designation.
24 In addition, the Challenging Party may file a motion challenging a confidentiality
25 designation at any time if there is good cause for doing so, including a challenge to
26 the designation of a deposition transcript or any portions thereof. Any motion
27 brought pursuant to this provision must be accompanied by a competent declaration
28

1 affirming that the movant has complied with the meet and confer requirements
2 imposed by the preceding paragraph.

3 The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party. Frivolous challenges, and those made for an improper purpose
5 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
6 expose the Challenging Party to sanctions. Unless the Designating Party has waived
7 the confidentiality designation by failing to file a motion to retain confidentiality as
8 described above, all parties shall continue to afford the material in question the level
9 of protection to which it is entitled under the Producing Party's designation until the
10 court rules on the challenge.

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 Basic Principles.

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

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

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items.

23 Unless otherwise ordered by the court or permitted in writing by the
24 Designating Party, a Receiving Party may disclose any information or item
25 designated "CONFIDENTIAL" only to:

- 26 a) the Receiving Party's Outside Counsel of Record in this action, as well
27 as employees of said Outside Counsel of Record to whom it is
28 reasonably necessary to disclose the information for this litigation;

- 1 b) the officers, directors, and employees (including House Counsel) of the
2 Receiving Party to whom disclosure is reasonably necessary for this
3 litigation;
- 4 c) Experts (as defined in this Order) of the Receiving Party to whom
5 disclosure is reasonably necessary for this litigation;
- 6 d) the court and its personnel;
- 7 e) court reporters and their staff, professional jury or trial consultants,
8 mock jurors, and Professional Vendors to whom disclosure is
9 reasonably necessary for this litigation;
- 10 f) during their depositions, witnesses in the action to whom disclosure is
11 reasonably necessary, unless otherwise agreed by the Designating Party
12 or ordered by the court. Pages of transcribed deposition testimony or
13 exhibits to depositions that reveal Protected Material must be separately
14 bound by the court reporter and may not be disclosed to anyone except
15 as permitted under this Stipulated Protective Order.
- 16 g) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the
18 information.

19 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
20 OTHER LITIGATION

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

- 24 a) promptly notify in writing the Designating Party. Such notification
25 shall include a copy of the subpoena or court order;
- 26 b) promptly notify in writing the party who caused the subpoena or order
27 to issue in the other litigation that some or all of the material covered
28

1 by the subpoena or order is subject to this Protective Order. Such
2 notification shall include a copy of this Stipulated Protective Order; and
3 c) cooperate with respect to all reasonable procedures sought to be
4 pursued by the Designating Party whose Protected Material may be
5 affected.

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

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

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

22 b) In the event that a Party is required, by a valid discovery request, to
23 produce a Non-Party’s confidential information in its possession, and
24 the Party is subject to an agreement with the Non-Party not to produce
25 the Non-Party’s confidential information, then the Party shall:
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- i. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;
- ii. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and
- iii. make the information requested available for inspection by the Non-Party.

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

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, and (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order.

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,
5 the 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
7 may be established in an e-discovery order that provides for production without
8 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar
9 as the 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
12 to the court.

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief.

14 Nothing in this Order abridges the right of any person to seek its modification
15 by the court in the future.

16 12.2 Right to Assert Other Objections.

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

22 12.3 Filing Protected Material.

23 Without written permission from the Designating Party or a court order
24 secured after appropriate notice to all interested persons, a Party may not file in the
25 public record in this action any Protected Material. A Party that seeks to file under
26 seal any Protected Material must comply with Local Rule 141. Protected Material
27 may only be filed under seal pursuant to a court order authorizing the sealing of the
28 specific Protected Material at issue.

