

1 SEBASTIAN L. MILLER (SBN 265793)
sebastian@sebastianmillerlaw.com
2 SEBASTIAN MILLER LAW, P.C.
900 Lafayette Street, Suite 201
3 Santa Clara, CA 95050
Telephone: (408) 348-1728
4 Facsimile: (408) 716-3149

5 Attorneys for Plaintiff
Andrew Perkins

6 EMMA LUEVANO (SBN 198421)
eyl@msk.com
7 JUSTINE LAZARUS (SBN 247471)
jwl@msk.com
8 MITCHELL SILBERBERG & KNUPP LLP
9 11377 West Olympic Boulevard
Los Angeles, CA 90064-1683
10 Telephone: (310) 312-2000
Facsimile: (310) 312-3100

11 Attorneys for Defendant
12 NESTLÉ DREYER'S ICE CREAM COMPANY

13 UNITED STATES DISTRICT COURT
14 EASTERN DISTRICT OF CALIFORNIA
15 FRESNO DIVISION

16 ANDREW PERKINS,
17 Plaintiff,

18 v.

19 NESTLÉ DREYER'S ICE CREAM
20 COMPANY,
21 Defendant.

CASE NO. 1:16-cv-01877-LJO-SKO

STIPULATED PROTECTIVE ORDER

22
23
24
25
26
27
28

1 Plaintiff Andrew Perkins (“Plaintiff”) and Defendant Nestlé Dreyer’s Ice Cream Company
2 (“Defendant” and, together with Plaintiff, the “Parties”) hereby agree as follows:

3 1. INTRODUCTION

4 A. PURPOSES AND LIMITATIONS

5 Discovery in this action is likely to involve production of confidential, proprietary or
6 private information for which special protection from public disclosure and from use for any
7 purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties hereby
8 stipulate to and petition the Court to enter the following Stipulated Protective Order. The Parties
9 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
10 discovery and that the protection it affords from public disclosure and use extends only to the
11 limited information or items that are entitled to confidential treatment under the applicable legal
12 principles.

13 B. GOOD CAUSE STATEMENT

14 This action is likely to involve valuable technical and/or proprietary information for which
15 special protection from public disclosure and from use for any purpose other than prosecution of
16 this action is warranted. Such confidential and proprietary materials and information consist of,
17 among other things, information regarding Defendant’s confidential business practices, including
18 relevant human resources and safety policies and practices, confidential information implicating
19 privacy rights of third parties, including personnel documentation, and information otherwise
20 generally unavailable to the public, or which may be privileged or otherwise protected from
21 disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly,
22 to expedite the flow of information, to facilitate the prompt resolution of disputes over
23 confidentiality of discovery materials, to adequately protect information the parties are entitled to
24 keep confidential, to ensure that the parties are permitted reasonable necessary uses of such
25 material in preparation for and in the conduct of trial, to address their handling at the end of the
26 litigation, and serve the ends of justice, a protective order for such information is justified in this
27 matter. It is the intent of the parties that information will not be designated as confidential for
28 tactical reasons and that nothing be so designated without a good faith belief that it has been

1 maintained in a confidential, non-public manner, and there is good cause why it should not be part
2 of the public record of this case.

3 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

4 The Parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated
5 Protective Order does not entitle them to file confidential information under seal; Local Rule 141
6 sets forth the procedures that must be followed and the standards that will be applied when a party
7 seeks permission from the Court to file material under seal.

8 Any document that is not confidential, privileged, or otherwise protectable in its entirety
9 will not be filed under seal if the confidential portions can be redacted. If documents can be
10 redacted, then a redacted version for public viewing, omitting only the confidential, privileged, or
11 otherwise protectable portions of the document, shall be filed.

12 D. REASONS A COURT ORDER IS REQUIRED

13 Given the subject matter of this litigation, the Parties have requested and intend to produce
14 highly confidential medical information (including Plaintiff's medical information), information
15 regarding third parties, and Defendant's trade secret information. The Parties' need for protection
16 should be addressed by a Court order, as opposed to a private agreement between the Parties,
17 because the sanctions available for violation of the Parties' Stipulated Protective Order are
18 necessary given the sensitive nature of the documents and information to be produced. In
19 addition, only a Court order sufficiently protects the Parties' interests if a non-party seeks access
20 or use of the Parties' unfiled discovery materials at any future time.

21 2. DEFINITIONS

22 2.1 Action: the instant action, titled *Perkins v. Nestlé Dreyer's Ice Cream Company*,
23 Case No. 1:16-cv-01877-LJO-SKO.

24 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
25 information or items under this Order.

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

1 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their support
2 staff).

3 2.5 Designating Party: a Party or Non-Party that designates information or items that it
4 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

5 2.6 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 things,
7 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
8 responses to discovery in this matter.

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

12 2.8 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 2.9 Non-Party: any natural person, partnership, corporation, association or other legal
15 entity not named as a Party to this action.

16 2.10 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 that has appeared on behalf of that
19 Party, and includes support staff.

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

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

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

28

1 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
2 “CONFIDENTIAL.”

3 2.15 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 Material
7 (as defined above), but also (1) any information copied or extracted from Protected Material;
8 (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
9 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

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

12 4. DURATION

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

20 5. DESIGNATING PROTECTED MATERIAL

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

28

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

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

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
9 (see, *e.g.*, second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered,
10 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
11 designated before the material is disclosed or produced.

12 Designation in conformity with this Order requires:

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

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

1 (b) for testimony given in depositions that the Designating Party identifies the
2 Disclosure or Discovery Material on the record, before the close of the deposition all protected
3 testimony.

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

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
10 designate qualified information or items does not, standing alone, waive the Designating Party's
11 right to secure protection under this Order for such material. Upon timely correction of a
12 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
13 in accordance with the provisions of this Order.

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
16 confidentiality at any time that is consistent with the Scheduling Order for this case that the Court
17 entered on March 16, 2017.

18 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
19 process under either Local Rule 251 or Judge Oberto's procedures for an Informal Telephonic
20 Conference re Discovery Dispute.

21 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via either a joint
22 stipulation pursuant to Local Rule 251(c) or Judge Oberto's procedures for an Informal
23 Telephonic Conference re Discovery Dispute.

24 6.4 The burden of persuasion in any such challenge proceeding shall be on the
25 Designating Party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass
26 or impose unnecessary expenses and burdens on other Parties) may expose the Challenging Party
27 to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality
28

1 designation, all Parties shall continue to afford the material in question the level of protection to
2 which it is entitled under the Producing Party's designation until the Court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
5 produced by another Party or by a Non-Party in connection with this Action only for prosecuting,
6 defending or attempting to settle this Action. Such Protected Material may be disclosed only to the
7 categories of persons and under the conditions described in this Order. When the Action has been
8 terminated, a Receiving Party must comply with the provisions of Section 13 below (FINAL
9 DISPOSITION).

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

12 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
13 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
14 information or item designated "CONFIDENTIAL" only to:

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

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

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

23 (d) the Court and its personnel;

24 (e) court reporters and their staff;

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

28

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

3 (h) during their depositions, witnesses, and attorneys for witnesses, in the
4 Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that
5 the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep
6 any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound”
7 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of
8 transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be
9 separately bound by the court reporter and may not be disclosed to anyone except as permitted
10 under this Stipulated Protective Order; and

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

13 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
14 LITIGATION

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

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

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

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

26 If the Designating Party timely seeks a protective order, the Party served with the subpoena
27 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
28 before a determination by the court from which the subpoena or order issued, unless the Party has

1 obtained the Designating Party's permission. The Designating Party shall bear the burden and
2 expense of seeking protection in that court of its confidential material and nothing in these
3 provisions should be construed as authorizing or encouraging a Receiving Party in this Action to
4 disobey a lawful directive from another court.

5 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
6 LITIGATION

7 (a) The terms of this Order are applicable to information produced by a Non-
8 Party in this Action and designated as "CONFIDENTIAL." Such information produced by Non-
9 Parties in connection with this litigation is protected by the remedies and relief provided by this
10 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
11 additional protections.

12 In the event that a Party is required, by a valid discovery request, to produce a Non-Party's
13 confidential information in its possession, and the Party is subject to an agreement with the Non-
14 Party not to produce the Non-Party's confidential information, then the Party shall:

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

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

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

23 (b) If the Non-Party fails to seek a protective order from this Court within 14
24 days of receiving the notice and accompanying information, the Receiving Party may produce the
25 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
26 seeks a protective order, the Receiving Party shall not produce any information in its possession or
27 control that is subject to the confidentiality agreement with the Non-Party before a determination
28

1 by the Court. Absent a court order to the contrary, the Non-Party shall bear the burden and
2 expense of seeking protection in this Court of its Protected Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
12 MATERIAL

13 When a Producing Party gives notice to Receiving Parties that certain inadvertently
14 produced material is subject to a claim of privilege or other protection, the obligations of the
15 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
16 provision is not intended to modify whatever procedure may be established in an e-discovery order
17 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
18 502(d) and (e), insofar as the Parties reach an agreement on the effect of disclosure of a
19 communication or information covered by the attorney-client privilege or work product protection,
20 the Parties may incorporate their agreement in the stipulated protective order submitted to the
21 Court.

22 12. MISCELLANEOUS

23 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
24 seek its modification by the Court in the future.

25 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
26 Order, no Party waives any right it otherwise would have to object to disclosing or producing any
27 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
28

1 Party waives any right to object on any ground to use in evidence of any of the material covered
2 by this Protective Order.

3 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
4 Material must comply with Local Civil Rule 141. Protected Material may only be filed under seal
5 pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a
6 Party's request to file Protected Material under seal is denied by the Court, then the Receiving
7 Party may file the information in the public record unless otherwise instructed by the Court.

8 13. FINAL DISPOSITION

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

25 14. VIOLATION

26 Any violation of this Order may be punished by appropriate measures including, without
27 limitation, contempt proceedings and/or monetary sanctions.

28

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: May 5, 2017

3
4 /s/ Sebastian Miller [as authorized on May 5, 2017]
5 Attorneys for Plaintiff

6
7 DATED: May 5, 2017

8
9 /s/ Emma Luevano
10 Attorneys for Defendant

11 ORDER

12
13 IT IS SO ORDERED.

14 Dated: May 9, 2017

/s/ Sheila K. Oberto
15 UNITED STATES MAGISTRATE JUDGE

16
17
18
19
20
21
22
23
24
25
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

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 Eastern District of California on [date] in the case of *Andrew
Perkins v. Nestlé Dreyer’s Ice Cream Company*, Case No. 1:16-cv-01877-LJO-SKO. 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 Eastern District of California for 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: _____