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11 STARBUCKS CORPORATION

12 **UNITED STATES DISTRICT COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**

14 RAKESH JOSHI and PRANIKA
15 JOSHI,

16 Plaintiffs,

17 vs.

18 STARBUCKS CORPORATION, a
19 Washington corporation, and DOES 1
20 through 10, inclusive,

21 Defendant.

Case No. 2:09-CV-00095-FCD-DAD

**STIPULATED PROTECTIVE
ORDER**

1 In connection with the production of confidential documents and other
2 confidential information in this action, plaintiffs Rakesh Joshi and Pranika Joshi
3 (“Plaintiffs”) and defendant Starbucks Corporation (“Defendant”), through their
4 respective counsel (collectively, the “Parties” or individually, “Party”), hereby enter
5 into this Stipulated Protective Order (“Stipulated Protective Order”).

6 **I. PURPOSE OF THIS PROTECTIVE ORDER**

7 The purpose of this Stipulated Protective Order is to provide a means for
8 limiting access to and use and disclosure of Confidential Documents or Information
9 that are produced in this action. Any unauthorized disclosure of Confidential
10 Documents or Information in violation of this Order may be subject to discipline by
11 the contempt powers of this Court.
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13 **II. DESIGNATION OF “CONFIDENTIAL DOCUMENTS OR**
14 **INFORMATION”**

15 The Parties may designate such documents or information as “Confidential” in
16 accordance with the following procedures:

17 **A. “Confidential” Documents or Information.**

18 Either Party may designate documents or information as “Confidential” if it
19 has a reasonable good faith belief that the disclosure of said documents or
20 information absent the protections of this order will have the effect of causing harm
21 to the producing party’s competitive position or privacy interests or a third party’s
22 privacy interests because the documents or information embody (a) sensitive,
23 competitive or other confidential business information; (b) sensitive financial
24 information; (c) sensitive product information; (d) sensitive personal information; (e)
25 other sensitive material that the Party does not customarily disclose to the public; or
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1 (f) documents or information that the Party currently maintains as Confidential and is
2 seeking to maintain as Confidential for purposes of this action.

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4 **B. Time of Designation**

5 Unless otherwise agreed between counsel for the Parties, the designation of
6 Confidential Documents or Information shall be made at the time of the production of
7 documents.

8 **C. Manner of Designation**

9 The designation of Confidential Documents or Information shall be made in
10 the following manner:

11 1. For documents, by placing the notation “Confidential” on each page of
12 such document;

13 2. For tangible items, including any documents or information produced on
14 magnetic disks or other computer related media, by placing the notation
15 “Confidential” on the object and, if applicable, on the container thereof or if such are
16 not practicable, as otherwise agreed by the Parties. In the event either Party generates
17 any “hard copy” or printout from any “Confidential Material,” that Party must
18 immediately stamp each page “Confidential”, and the hard copy or printout shall be
19 treated as “Confidential Information pursuant to this Stipulated Protective Order.”

20 **D. Retroactive Designation**

21 1. Inadvertent production of any Confidential Documents or Information
22 without a designation of confidentiality will not be deemed to waive a later claim as
23 to confidentiality or privilege, or prevent the Party claiming said confidentiality from
24 re-designating such documents or information as “Confidential” promptly after
25 discovery of the inadvertent production.
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1 2. Within a reasonable time after production, either Party may retroactively
2 designate (or withdraw a designation) of Confidential Documents or Information,
3 regarding any material that it has produced, provided however, that such retroactive
4 designation (or withdrawal) shall be in accordance with the terms of this Order. Such
5 retroactive designation (or withdrawal) shall be accomplished by notifying counsel
6 for the non-designating Party in writing of such retroactive designation (or
7 withdrawal). Upon receipt of any such written re-designation, counsel (i) shall not
8 make any further disclosure or communication of such retroactively designated
9 material except as provided for in this Order; (ii) shall take reasonable steps to notify
10 all persons known to have possession of any retroactively designated material of the
11 effect of such re-designation under this Order; and (iii) shall take reasonable steps to
12 procure all copies of such retroactively designated material from any persons known
13 to have possession of any such retroactively designated material who are not entitled
14 to receipt under this Order.

15 **E. Resolution of Disputes Regarding Designation**

16 If either Party, at any time, wishes to have the “Confidential” designation of
17 any particular Confidential Documents or Information removed or changed, that
18 Party shall first request in writing that the Party having made the designation at issue
19 change its designation. Thereafter, the Parties shall make good faith efforts to
20 resolve the dispute. If the designating Party refuses to agree to remove or change the
21 designation, then the Party that requests that the designation be so removed may
22 make a motion before this Court for an order removing or changing the designation;
23 provided, however, that the designating Party shall have the burden of proving that
24 such particular Confidential Document or Information are properly designated as
25 “Confidential” pursuant to paragraph III. At all times during the process of
26 challenging a designation, the Parties shall treat the Confidential Documents or
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1 Information as originally designated until a change is agreed to or the motion is
2 decided by the Court and written notice of such decision is served on the Parties.

3 Any motion filed with respect to this Stipulated Protective Order or documents
4 labeled “Confidential” must comply with the local rules of the United States District
5 Court for the Eastern District of California.

6 **F. Designation of Third Party Documents.**

7 Documents and/or information produced by a third party in response to a
8 subpoena or during deposition in the course of this litigation may involve receipt of
9 information, documents, things or testimony which include, contain or comprise
10 protected information that may or may not be appropriate for “Confidential”
11 designation under this Order. Unless otherwise agreed in writing between counsel
12 for the parties, documents and information so produced by a third party shall be
13 treated as follows: First of all, all such documents and information shall
14 automatically be deemed to be and shall be treated as “Confidential” for five [5]
15 business days following their actual receipt by both counsel for Plaintiffs and counsel
16 for Defendant in this action, in order to enable each such counsel to determine
17 whether in their view any protected information is embodied therein. If no
18 designation of the information as “Confidential” by the Designating Party is received
19 by the non-Designating Party within five [5] business days after said production, then
20 the information will not be protected by this Protective Order except pursuant to
21 subsequent designation by a party hereto or pursuant to a subsequent agreement of
22 the parties or Court order; if however a written designation of “Confidential” is made
23 by a Designating Party and is received by the non-Designating Party within five [5]
24 business days after said production of documents or information by the non-party,
25 then the information will be subject to this Protective Order and will be deemed to be
26 “Confidential” (as requested by the Designating Party); provided, however, that the
27 designation may be challenged as any such designation.

1 Lastly, to the extent third party documents or information contains information
2 that is confidential and/or proprietary to the third party, said third party can avail
3 itself of the protections set forth in this Order and designate documents and/or
4 information it produces accordingly by executing this Order and agreeing to be bound
5 by its terms.

6 **III. PERSONS TO WHOM CONFIDENTIAL DOCUMENTS OR**
7 **INFORMATION MAY BE DISCLOSED**

9 **A. Disclosure of Documents or Information Designated as**
10 **“Confidential”**

11 Documents or Information designated as “Confidential” may be disclosed and
12 copies may be provided only to:

- 13 1. Counsel of record;
- 14 2. Expert witnesses or consultants retained by the Parties or their respective
15 counsel in connection with this action who have complied with paragraph IV(C),
16 below;
- 17 3. Outside court reporting services and court reporters as may be
18 reasonably necessary in connection with the preparation or conduct of this action;
- 19 4. This Court and its personnel, or any other tribunal of competent
20 jurisdiction having involvement in this matter and its personnel; and
- 21 5. Any mediator or arbitrator selected by the Parties to mediate or arbitrate
22 this action.
- 23 6. Representatives of the Parties.

1 **B. Additional Authorized Disclosure of Documents or Information**
2 **Designated as “Confidential”**

3 Notwithstanding anything to the contrary in paragraphs IV(A) above,
4 particular Confidential Documents or Information that have been designated as
5 “Confidential” may be disclosed and copies may be provided:

6 1. To Persons who are explicitly named on the document as the authors or
7 addressees or to persons who may be shown to be an author or recipient of any
8 particular document;

9 2. To any other persons with the prior written consent of the designating
10 Party; and

11 3. To any other persons with the prior authorization of this Court or any
12 other tribunal of competent jurisdiction having involvement in this matter.

13 4. If a document designated as “Confidential” refers to the conduct or
14 affairs of a potential witness, the Party’s counsel of record may and shall discuss such
15 conduct or affairs with such person without revealing the existence of the document,
16 or its authors or source.

17 **C. Disclosure to Experts or Consultants**

18 Prior to disclosing or providing copies of any Confidential Documents or
19 Information to any expert or consultant pursuant to paragraphs IV(A) or IV(B),
20 above, the Parties shall first obtain the agreement of the expert, consultant or anyone
21 else to whom such disclosure will be made to be bound by the terms of this Stipulated
22 Protective Order as set forth in the attached “Acknowledgment and Agreement To Be
23 Bound.” Specifically, the expert or consultant shall acknowledge that, during the
24 course of his or her retention, the expert or consultant may have access to, and
25 become acquainted with Confidential Documents or Information, which are regularly
26 used in the operation of the businesses of the designating Party and in which the
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1 designating Party has an expectation of confidentiality. The expert or consultant
2 shall agree not to disclose such Confidential Documents or Information, directly or
3 indirectly, to any person or entity not subject to this Stipulated Protective Order or
4 use them in any way outside the specific scope of his/her retention as an expert
5 witness in this action, or at any time thereafter.

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7 **D. Return of Confidential Documents or Information by Experts and**
8 **Consultants**

9 Confidential Documents or Information disclosed to any expert or consultant
10 may be retained by such expert or consultant provided that such expert or consultant
11 subsequently destroys any and all copies of such Confidential Documents or
12 Information upon the termination of their engagement.

13 **IV. USE OF CONFIDENTIAL DOCUMENTS OR INFORMATION**

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15 **A. Use of Confidential Documents or Information Generally**

16 Confidential Documents or Information shall only be used by the Parties, their
17 respective agents, and any other persons to whom such Confidential Documents or
18 Information may be disclosed pursuant to this Stipulated Protective Order: (1) in this
19 action; (2) as otherwise compelled by lawful process (provided the designating Party
20 is given a reasonable notice to object); or (3) as otherwise required by law.

21 Notwithstanding the foregoing, nothing in this Stipulated Protective Order shall
22 prevent or limit the designating Party from disclosing Confidential Documents or
23 Information they so designate.

24 **B. Use of Confidential Documents or Information in the Conduct of**
25 **this Action**

26 1. Confidential Documents or Information may be used by counsel for the
27 non-designating Party in good faith in connection with investigating this action,
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1 provided that the Confidential Documents or Information are protected pursuant to
2 the terms and conditions of this Stipulated Protective Order.

3 2. The terms of this Stipulated Protective Order do not apply to evidence
4 presented at court proceedings and/or trial in this matter. Any protective measures
5 relating to Confidential Documents or Information should be taken up with the
6 judicial officer conducting the particular proceeding at the appropriate time.

7 3. If either Party seeks to file pleadings or other documents with this Court
8 that contains the other Party's Confidential Documents or Information, it may do so
9 only if: (a) reasonably necessary to the proceeding; and (b) the filing Party informs
10 the designating Party of such filing concurrently with the filing of such documents
11 with the Court. Pursuant to Local Rule 39-141, the proposed filing shall be
12 accompanied by an application to file the papers, or the portion thereof containing the
13 protected information, under seal. The application shall be directed to the judge to
14 whom the underlying papers are directed. In addition, such pleadings shall not be
15 filed electronically but shall be filed in person or by mail pursuant to this Court's
16 procedures for such filing.

17 **V. RETURN OF CONFIDENTIAL DOCUMENTS, TESTIMONY, OR**
18 **INFORMATION**

19 Upon written request after the final conclusion of this action, the Parties shall:
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21 A. Return to the other Party any and all Confidential Documents or
22 Information so designated by that Party and all copies thereof in its possession,
23 custody and control or otherwise destroy such documents;

24 B. Ensure that all Confidential Documents or Information in the possession,
25 custody or control of any permitted parties or third parties are returned to the
26 designating Party or are otherwise destroyed; and
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1 C. Destroy all notes, memoranda or other documents that contain excerpts
2 from any of the Confidential Documents or Information. Notwithstanding the
3 foregoing, attorney work product, attorney-client communications, and information
4 derived from Confidential Documents or Information may be retained by the non-
5 designating Party and its counsel.

6 **VI. PUBLIC DOCUMENTS**

7 None of the restrictions set forth in this Stipulated Protective Order shall apply
8 to any documents or other information that become public knowledge by means not
9 in violation of the provisions of this Stipulated Protective Order. Nothing in this
10 Stipulated Protective Order shall prevent either Party from using any information that
11 it properly possessed prior to receipt of any Confidential Documents or Information
12 from the designating Party or that is discovered independently by the non-designating
13 Party. The terms for the treatment of Confidential Documents or Information
14 pursuant to the Stipulated Protective Order shall be effective only upon the entry of
15 this Stipulated Protective Order.
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17 **VII. NO PROBATIVE VALUE**

18 This Stipulated Protective Order shall not aggregate or diminish any
19 contractual, statutory or other legal obligation or right of any party or person with
20 respect to any Confidential Documents or Information. The fact that information is
21 designated “Confidential” under the Stipulated Protective Order shall not be deemed
22 to be determinative of what a trier of fact may determine to be confidential or
23 proprietary. This Stipulated Protective Order shall be without prejudice to the right
24 of any party to bring information before this Court, regardless of (a) whether any
25 particular material is or is not Confidential, or (b) whether any particular information
26 or material is or is not entitled to a greater or lesser degree of protection under the
27 terms of this Stipulated Protective Order, provided that in doing so, the party
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1 complies with the procedures set forth herein. The fact that any information is
2 disclosed, used, or produced in any proceeding in this action shall not be offered in
3 any other action or proceeding before this or any other Court, agency or tribunal as
4 evidence of or concerning whether or not such information is admissible, confidential
5 or proprietary.

6 **VIII. NO IMPLIED WAIVER OF ADMISSION**

7 No party shall be obligated to challenge the proprietary nature of any
8 designation of “Confidential” information, and the failure to do so shall not constitute
9 a waiver or otherwise preclude a subsequent challenge to the designation.
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11 **IX. MODIFICATION OF THIS STIPULATED PROTECTIVE ORDER**

12 The Parties hereto may modify the terms of this Stipulated Protective Order by
13 further stipulation. However, no modification by the parties shall have the force or
14 effect of a court order unless the Court approves the modification. Alternatively, any
15 party hereto may seek an order of this Court to modify the terms of this Stipulated
16 Protective Order. Any motion seeking such modification must be served upon all
17 counsel of record and filed in accordance with this Court’s filing procedures.

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1 **X. EXECUTION AND COUNTERPART**

2 This Stipulated Protective Order may be executed in one or more counterparts,
3 each of which shall be deemed to be an original, but all of which together shall
4 constitute one and the same instrument. Facsimile signatures shall be binding upon
5 the Parties hereto and may be submitted and considered as originals.

6 **SO STIPULATED.**

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8 Dated: August 27, 2009

WILLENKEN WILSON LOH & LIEB, LLP

9
10 *s/Eileen M. Ahern*

11 _____
Eileen M. Ahern
12 Attorneys for Defendant
13 Starbucks Corporation

14 DATED: August 27, 2009

BUCHE & ASSOCIATES, P.C.

15
16 *s/John K. Buche*

17 _____
John K. Buche
18 Attorneys for Plaintiffs
19 Rakesh Joshi and Pranika Joshi

20 **ORDER**

21 IT IS SO ORDERED.

22 Dated: August 27, 2009.

23 *Dale A. Drozd*
24 _____
DALE A. DROZD
25 UNITED STATES MAGISTRATE JUDGE

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Acknowledgment and Agreement To Be Bound

I hereby acknowledge that I may receive information designated as “Confidential” from counsel to a party to this action. I hereby certify my understanding that such information will be provided to me pursuant to the terms and restrictions of the above Stipulated Protective Order that has been entered by the Court; that I have been given a copy of, and have read and understand, such Stipulated Protective Order; that I agree to be bound by the terms thereof; and that I irrevocably submit to the personal jurisdiction of the Court in connection with any proceeding to enforce the Stipulated Protective Order that may involve me.

ACKNOWLEDGED AND AGREED:

Name:

Address:

Employer:

Title:

Dated:
