

1 *Counsel of Record listed on following page*

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAURENCE E. STEVENSON, an individual; on behalf of himself and all other similarly situated current and former employees,

Plaintiff,

v.

DOLLAR TREE STORES, INC., a Virginia corporation; and DOES 1 through 50, Inclusive,

Defendants.

Case No. 11-CV-01433 KJM CKD

STIPULATION AND PROTECTIVE AND FEDERAL RULES OF EVIDENCE, RULES 502(d) AND (e) CLAWBACK ORDER

Complaint Filed: April 22, 2011
Trial Date: None Set

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20 Attorneys for Plaintiff,
Laurence E. Stevenson
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1 Plaintiff Laurence Stevenson (“Plaintiff”) and Defendant Dollar Tree Stores, Inc.
2 (“Defendant”) (collectively the “Parties”), by their respective counsel, hereby stipulate and agree as
3 follows:

4 **WHEREAS**, the Parties anticipate that during the course of the above-captioned
5 litigation (“Action”), the Parties will produce or provide documents and information (including
6 electronic data), which one or more Parties contend contain trade secrets or other sensitive, private,
7 confidential or proprietary information;

8 **WHEREAS**, the Parties wish to protect the confidentiality of such documents and
9 information and to ensure that the Parties can obtain and pursue discovery with the minimum of
10 delay and expense;

11 **WHEREAS**, the Parties have agreed to stipulate to protect certain privileged and
12 otherwise protected documents, data (including electronically stored information), and other
13 information, including without limitation, metadata (collectively, “document” or “documents”),
14 against claims of waiver and inadvertent production in the event they are produced during the course
15 of this Action whether pursuant to a Court Order, a Parties’ discovery request or informal
16 production.

17 **WHEREAS**, the Parties wish to comply with discovery deadlines and complete
18 discovery as expeditiously as possible, while preserving and without waiving any privilege,
19 including without limitation the attorney-client privilege, work product doctrine, or other applicable
20 privilege, applicable to the information contained in the documents produced, including as against
21 third parties and other Federal and State proceedings, and in addition to their agreement, need the
22 additional protections of a Court Order under Federal Rules of Evidence, Rule 502(d) and (e) to do
23 so.

24 **WHEREAS**, this Stipulation is designed to foreclose any argument the disclosure of
25 documents subject to a legally recognized claim of privilege, including without limitation the
26 attorney-client privilege, work product doctrine, or other applicable privilege, by the Producing
27 Party was not inadvertent, that the Producing Party did not take reasonable steps to prevent the
28 disclosure of privileged documents, that the Producing Party did not take reasonable or timely steps

1 to rectify such disclosure and/or acts as a waiver of applicable privileges or protections associated
2 with such documents.

3 **THEREFORE**, the Parties seek the entry of an Order, pursuant to Federal Rules of
4 Civil Procedure, Rule 26(c) and the Court’s Status (Pretrial Scheduling) Order [Docket No. 32],
5 governing the disclosure of documents and information therein pertaining to “Confidential
6 Information” on the terms set forth herein, as well as an Order, pursuant to Federal Rules of
7 Evidence, Rule 502, governing the return of inadvertently produced documents and data and
8 affording the Parties the protections of Federal Rules of Evidence 502(d) and (e), on the terms set
9 forth herein.

10 **IT IS HEREBY AGREED, STIPULATED AND ORDERED THAT:**

11 1. In connection with discovery and other proceedings in this Action, the Parties
12 may designate any document, thing, material, testimony or other information derived therefrom, as
13 “Confidential Information” under the terms of this Stipulated Protective Order (“Order”). Neither
14 Party shall designate any discovery material as “Confidential Information” without first making a
15 determination that the information is properly subject to protection under Federal Rules of Civil
16 Procedure, Rule 26(c) and that such protection is warranted in good faith. “Confidential
17 Information” shall not be disclosed except as provided for herein.

18 2. “Confidential Information” includes any document, database, thing, material,
19 testimony, or other information derived therefrom, that the designating Party contends in good faith
20 should be protected on the grounds that it constitutes a trade secret under the law, or that it contains
21 research, development, commercial, operational, personal, sensitive, private, financial and tax,
22 business confidential or proprietary information. Sensitive, private personal information, includes
23 but is not limited to, social security numbers, driver’s license numbers, and individuals’ home
24 addresses and telephone numbers, the public disclosure of which would be detrimental to a Party’s
25 competitive interests or the privacy rights of its current and former employees.

26 3. Documents that are confidential under this Order shall be so designated by
27 writing, typing, stamping or otherwise affixing the legend “Confidential Information” (and such
28 other and further legend as may reasonably be included to specify such confidentiality) on copies of

1 the document. Stamping the legend “Confidential Information” on the cover of any multi-page
2 document (or on the cover of a disc containing electronic data) shall designate all pages of the
3 document as confidential, and all data contained on a disc as confidential, unless otherwise indicated
4 by the producing party. Confidential documents (including deposition transcripts) also may be so
5 designated after production by written communication and reproduction with a “Confidential
6 Information” legend for purposes of substitution of the original documentation, and all Parties shall
7 use their best efforts to ensure that no prior disclosure shall be used or re-disclosed contrary to the
8 terms of this Order.

9 4. The inadvertent or unintentional disclosure of “Confidential Information”
10 shall not be deemed a waiver in whole or in part of a Party’s claim of confidentiality. Any such
11 inadvertently or unintentionally disclosed “Confidential Information” shall be designated as
12 “Confidential Information” as soon as reasonably possible after the producing Party becomes aware
13 of the inadvertent or unintentional disclosure and the producing Party shall provide counsel for the
14 other Parties with a duplicate copy bearing the legend “Confidential Information,” whereupon the
15 unmarked copies will be returned or destroyed as directed by the Producing Party.

16 5. Portions of transcripts of depositions, in which any “Confidential
17 Information” is quoted, paraphrased, discussed, or referred to, or in which the subject matter covered
18 by any “Confidential Information” is discussed or referred to, shall be subject to the same
19 confidential treatment as provided herein for the underlying “Confidential Information” and shall be
20 designated as confidential. Requests for such Confidential treatment may be made at the deposition
21 or at the latest within seven (7) calendar days after receipt of an official transcript thereof. All
22 transcripts of depositions shall be treated as Confidential for at least that 7-day period.

23 6. Recognizing the legitimate confidentiality needs of the Parties, discovery
24 responses marked Confidential pursuant to the definition set forth in Paragraph 2(a) herein shall only
25 be used by the Parties to this Action, and no one else, for purposes of resolution of the claims
26 asserted in this Action, any trial and appeal of this Action, and enforcement of any award or
27 judgment thereon. Information designated as “Confidential Information” under this Order, and any
28 summaries, copies (including electronic copies), abstracts, or other documents derived in whole or in

1 part from information, designated as Confidential, shall be used only by the Parties to this Action;
2 for the purpose of the prosecution, defense, or settlement of the claims asserted in this Action, any
3 trial and appeal of this Action and the enforcement of any award or judgment based on such claims,
4 and for no other purpose.

5 7. "Confidential Information" produced pursuant to this Order may be disclosed
6 or made available only to counsel for a Party (including the paralegal, clerical, and secretarial staff
7 employed by such counsel), to a trier of fact or law in any forum in which the claims asserted in this
8 Action may be adjudicated or enforced and the administrators of that forum, and to "Qualified
9 Persons." A Qualified Person is a person who falls into one of the categories set forth below:

10 (a) A Party, or a current or former officer, director, or employee of a Party
11 deemed necessary by counsel to aid in the prosecution, defense or settlement of this Action;

12 (b) Experts or consultants (together with their staff) retained by such counsel
13 to assist in the prosecution, defense or settlement of this Action, who execute **Attachment A**;
14 provided; however, prior to disclosure to an expert or consultant, the Party that wishes to make the
15 disclosure shall determine whether that expert or consultant has worked for a competitor discount
16 variety retailer during the previous five (5) years and, if so, shall require the expert or consultant to
17 execute the Authorization attached to this Stipulation as **Attachment A**, affirming that the opposing
18 Party's Confidential Information shall not be revealed outside this litigation to the expert or
19 consultant's own clients.

20 (c) Witnesses testifying at deposition or at any hearing in this matter either
21 during their testimony or in preparation therefore; however, if a witness refuses to sign the
22 Nondisclosure Agreement, the Parties shall meet and confer with each other and, if necessary,
23 submit the issue to the Court prior to the disclosure to the witness of any "Confidential Information;"

24 (d) Any person to whom disclosure is reasonably necessary to enforce any
25 award or judgment rendered against any Party in this proceeding; and

26 (e) Any other person ordered by the Court or as to whom all Parties in writing
27 agree.
28

1 8. Any person or entity to whom “Confidential Information” is disclosed
2 pursuant to Subparagraphs 7 (a)-(e), above, shall, prior to receiving such Confidential Information,
3 be provided with a copy of this Order and shall execute a Nondisclosure Agreement in the form set
4 forth in **Attachment A** hereto, such forms to be maintained by counsel for the Party sharing
5 “Confidential Information” and undertaking to have such forms executed.

6 9. On the request of any Party, any person who is not a Qualified Person shall be
7 excluded from any deposition during the period in which “Confidential Information” is used,
8 referred to or discussed.

9 10. The restrictions set forth in this Order shall not:

10 (a) Apply to any discovery matter which a Party can show was lawfully
11 possessed, obtained, or developed by it other than through discovery in this Action;

12 (b) Apply to any information which lawfully is or lawfully becomes public
13 knowledge in a manner that is not in violation of this Order;

14 (c) Operate as an admission by the recipient that any of the information
15 contains or reflects “Confidential Information;”

16 (d) Prejudice in any way the right of any Party or non-party to object on any
17 basis to the production of discovery matter it considers not subject to discovery;

18 (e) Prejudice in any way the right of any Party or non-party to seek a
19 determination from the Court as to whether particular information shall be produced;

20 (f) Prevent the Parties from entering into a written agreement to alter or waive
21 the provisions or protections provided herein, generally or with respect to any “Confidential
22 Information;”

23 (g) Prejudice in any way the right of any Party or non-party to seek such
24 additional or other protection as that Party may deem appropriate with regard to the confidentiality
25 of the information;

26 (h) Be construed to require any Party to produce information that it considers
27 privileged or otherwise not subject to discovery; and,
28

1 (i) Be deemed a waiver of any objections a Party otherwise would have to any
2 discovery request propounded in this Action or a waiver of any third party's claim to right of
3 privacy.

4 11. Any Party believing in good faith that materials designated as "Confidential"
5 by another is public or is otherwise not entitled to such designation may at any time advise the
6 designating Party of that belief in writing, providing a brief statement of the basis for that belief,
7 with service on all other Parties. The Party that designated the materials as "Confidential" shall have
8 twenty-one (21) days from the receipt of such written notice to apply to the Court for an order
9 confirming the confidentiality designation or to seek a separate protective order regarding the
10 document or information contained therein. The designating Party shall bear the burden of showing
11 that the materials in question qualify for protection under applicable law. If following a duly noticed
12 motion pursuant to Local Rule 302, the Magistrate Judge sustains the designation; the provisions of
13 this Protective Order shall continue to apply. If following a duly noticed motion, the Magistrate
14 Judge denies the designation; the materials in question shall no longer be subject to the provisions of
15 this Protective Order. Should the designating Party fail to move to confirm its designation with the
16 Magistrate Judge pursuant this Paragraph, the materials in question shall no longer be subject to the
17 provisions of this Protective Order. Any information or documents designated as "Confidential
18 Information," which have been challenged pursuant to this paragraph shall be treated as
19 "Confidential Information" in accordance with the terms of this Protective Order until: (i) twenty-
20 one (21) days from the receipt of such written notice challenging the designation have elapsed
21 without the designating Party moving for an order from the Magistrate Judge confirming such
22 designation; or (ii) if the designating Party has moved for an order confirming the designation, the
23 Magistrate Judge rules otherwise. A Party does not, however, waive its right to challenge a
24 confidentiality designation by electing not to mount a challenge promptly after the original
25 designation is disclosed.

26 12. Pursuant to the Court's Status (Pretrial Scheduling) Order on file herein
27 [Docket No. 32], should any Party desire to file with the Court any document that is redacted or that
28 has been marked as "Confidential" or such that the document is subject to sealing, that Party must

1 provide the designating Party with sufficient notice in advance of such filing to allow the designating
2 Party to seek an order of sealing or redaction from the Court. *Id.* at VII. *See also* Local Rules 140
3 and 141. A Party seeking to submit documents in redacted form must seek a protective order or
4 order authorizing redaction pursuant to Local Rule 140. For documents a Party wishes to seal, the
5 designating Party shall prepare a “Notice of Request to Seal or Redact Documents,” a Request to
6 Seal or Redact Documents,” a proposed order, and all documents covered by the Request as required
7 pursuant to Local Rule 141(b).

8 13. All “Confidential Information” produced in this proceeding shall be used by
9 the Party to whom such documents are produced solely for purposes of the investigation and/or
10 resolution of the claims arising in this Action, any trial and appeal of this Action, and the
11 enforcement of any award thereon and for no other purpose.

12 14. Pursuant to Federal Rules of Evidence, Rule 502(d) and (e), the Parties agree
13 to and the Court orders, protection of privileged (including by the work product doctrine) documents
14 and electronically stored information against claims of waiver (including as against third parties and
15 in other federal and state proceedings) in the event they are produced during the course of this
16 Action, whether pursuant to a Court Order, a party’s discovery request, or informal production, as
17 follows:

18 (a) The inadvertent production of documents by a Producing Party subject to a
19 legally recognized claim of privilege, including without limitation the attorney-client privilege, and
20 work product doctrine, to a Receiving Party, shall in no way constitute the voluntary disclosure of
21 such document, data or information;

22 (b) The inadvertent production of any document in this Action shall not result
23 in the waiver of any privilege, evidentiary protection, or work product associated with such
24 document as to the Receiving Party, or any third parties, and shall not result in any waiver, including
25 subject matter waiver, of any kind;

26 (c) If, during the course of this Action, a Party determines that any document
27 produced by another Party is on its face subject to a legally recognizable privilege, the Receiving
28 Party shall: (i) refrain from reading the document any more closely than is necessary to ascertain that

1 it is privileged; (ii) immediately notify the Producing Party in writing that it has discovered
2 documents believed to be privileged or work product; (iii) specifically identify the documents by
3 Bates number range or hash value range, and, (iv) where possible, return, sequester, or destroy all
4 copies of such documents, along with any notes, abstracts or compilations of the content thereof,
5 within five (5) days of discovery by the Receiving Party. Where such documents cannot be
6 destroyed or separated it shall not be reviewed, disclosed, or otherwise used by the Receiving Party.
7 Notwithstanding, the Receiving Party is under no obligation to search or review the Producing
8 Party's documents to identify potentially privileged or work product protected documents;

9 (d) If the Producing Party intends to assert a claim of privilege or work product
10 protection over documents identified by the Receiving Party, the Producing Party will, within five
11 (5) business days of receiving the Receiving Party's written notification, inform the Receiving Party
12 of such intention in writing and shall provide the Receiving Party with a log for such document, data
13 or information that is consistent with the requirements of the Federal Rules of Civil Procedure,
14 setting forth the basis for the claim of privilege or work product protection, and in the event, if any
15 portion of the document does not contain privileged or work product information, the Producing
16 Party shall also provide to the Receiving Party a redacted copy of the document that omits the
17 information that the Producing Party believes is subject to a claim of privilege or work product
18 protection;

19 (e) If, during the course of this Action, a Party determines it has produced a
20 document protected from discovery by a legally recognized claim of privilege or work product
21 protection, the Producing Party may notify the Receiving Party of such inadvertent production in
22 writing, and demand the return of such documents. Such notice shall be in writing, however, it may
23 be delivered orally on the record at a deposition, promptly followed up in writing. The Producing
24 Party's written notice will identify the document, data and/or information inadvertently produced by
25 bates number range or hash value range, the privilege or work product claimed, and the basis for the
26 assertion of the privilege and shall provide the Receiving Party with a log for such document that is
27 consistent with the requirements of the Federal Rules of Civil Procedure, setting forth the basis for
28 the claim of privilege or work product protection, and in the event any portion of the document that

1 does not contain privileged or work-product information, the Producing Party shall also provide to
2 the Receiving Party a redacted copy of the document that omits the information that the Producing
3 Party believes is subject to a claim of privilege or work product protection. After receiving such
4 written notification, the Receiving Party must, within five (5) business days of receiving the written
5 notification, return, sequester, or destroy the specified document and any copies, along with any
6 notes, abstracts, or compilations of the content thereof;

7 (f) To the extent that an inadvertently produced document has been loaded
8 into a litigation review database, the Producing Party can elect to either (i) have the document
9 returned or destroyed *via* an extraction of the electronic copies from the database; or (ii) have the
10 document disabled from further use or otherwise rendered inaccessible to the Receiving Party in the
11 litigation review database. If the Producing Party selections option (f)(i), it shall bear the costs of
12 the return or destruction of such electronic copies;

13 (g) To the extent that the information contained in a document subject to a
14 claim of privilege or work product protection has already been used in or described in other
15 documents generated or maintained by the Receiving Party, then the Receiving Party will sequester
16 such documents until the claim has been resolved. If the Receiving Party disclosed the specified
17 document before being notified of its inadvertent production, it must take reasonable steps to retrieve
18 the specified document. The Producing Party shall preserve the specified document until the claim is
19 resolved;

20 (h) The Receiving Party's return, sequestering, or destruction of such
21 privileged or protected documents as provided herein will not act as a waiver of the Requesting
22 Party's right to move for the production of the returned, sequestered, or destroyed documents on the
23 ground that the documents are not, in fact, subject to a viable claim of privilege or protection.
24 However, the Receiving Party is prohibited and estopped from arguing that the production of the
25 documents in this matter acts as a waiver of an applicable privilege or work product protection, that
26 the disclosure of the documents was not inadvertent, that the Producing Party did not take reasonable
27 steps to prevent the disclosure of the privileged documents or that the Producing Party failed to take
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1 reasonable or timely steps to rectify the error pursuant to Federal Rules of Civil Procedure, Rule
2 26(b)(5)(B), or otherwise;

3 (i) Either Party may submit the specified documents to the Court for *in*
4 *camera* review for a determination of the claim of privilege or work product protection and will
5 provide the Court with the grounds for the asserted privilege or work product protection. During the
6 Court's review, the Receiving Party may not use the documents for any purpose absent this Court's
7 Order. Any Party may request expedited treatment of any request for the Courts determination of
8 the claim;

9 (j) Upon a determination by the Court that the specified documents are
10 protected by the applicable privilege or evidentiary protection, and if the specified documents have
11 been sequestered rather than returned or destroyed, the specified documents shall be returned or
12 destroyed; and,

13 (k) Nothing contained herein is intended to, or shall serve to, limit a Party's
14 right and obligation to conduct a review of documents for relevance, responsiveness, or the
15 segregation of privileged and/or protected information.

16 15. All "Confidential Information" shall be returned to the Producing Party as
17 follows:

18 (a) Within thirty (30) calendar days of the conclusion of the litigation by
19 settlement, dismissal or entry of judgment, and subject to subparagraphs (c) and (d) below, all
20 "Confidential Information" information, including any and all copies (including electronically-stored
21 copies), abstracts, summaries, physical media by which data was transmitted, and readable reports or
22 output from the physical media by which data was transmitted, shall be returned to the producing
23 party, destroyed, or in the case of electronically-stored copies – erased. Counsel for each Party shall
24 additionally certify to counsel for the opposing Party, in writing and under penalty of perjury, that
25 any and all such "Confidential Information," including any and all copies (including electronically-
26 stored copies), abstracts, summaries, physical media by which data was transmitted, and readable
27 reports or output from the physical media by which data was transmitted, or produced by the
28 opposing Party, has been returned, destroyed, or in the case of electronically-stored copies – erased.

1 (b) If “Confidential Information” information is furnished to outside experts or
2 consultants pursuant to Paragraph 7(b), the attorney for the Party using such expert or consultant
3 shall have the responsibility of ensuring, within thirty (30) calendar days of the termination of the
4 litigation, that all such “Confidential Information” information including any and all copies
5 (including electronically-stored copies), abstracts, summaries, physical media by which data was
6 transmitted, and readable reports or output from the physical media by which data was transmitted,
7 is returned to the producing Party, destroyed, or in the case of electronically-stored copies – erased,
8 and so certifying in writing under penalty of perjury as provided in sub-part (a) above; and,

9 (c) Counsel of record for the Parties may indefinitely retain one copy of any
10 part of the “Confidential Information” information produced by others, that has become part of the
11 official record of this Action, as well as abstracts or summaries of materials that reference
12 “Confidential Information” information that contain counsels mental impressions or opinions. Such
13 copy shall remain subject to the terms of this Protective Order and shall not be used by the Receiving
14 Party for any other purpose whatsoever, including but not limited to, other litigation.

15 16. Under this Order, Professional Rule of Conduct 3-700 is inapplicable to the
16 “Confidential Information” produced by an opposing Party in discovery; and no copies (electronic or
17 otherwise) of an opposing party’s “Confidential Information” shall be retained as part of any “client
18 file” at the conclusion of this Action.

19 17. This Order shall survive the final termination of this Action and the Court
20 shall retain jurisdiction to enforce, construe, or modify its terms for three (3) years after the final
21 disposition of this Action.

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1 18. Once executed by all Parties, the Stipulation shall be by treated by the Parties
2 as an Order of the Court pending its formal approval by the Court.

3 THE FILER OF THE DOCUMENT ATTESTS THAT THE CONTENT OF THIS
4 DOCUMENT IS ACCEPTABLE TO ALL PERSONS REQUIRED TO SIGN THIS DOCUMENT.

5 Dated: August 23, 2012

Respectfully submitted,

6
7 /s/Constance E. Norton

8 MAUREEN E. MCCLAIN
9 CONSTANCE E. NORTON
10 AIMEE E. AXELROD
11 LITTLER MENDELSON, P.C.
12 A Professional Corporation

Attorneys for Defendant
DOLLAR TREE STORES, INC.

13 Dated: August 23, 2012

Respectfully submitted,

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15 /s/Alfredo Torrijos

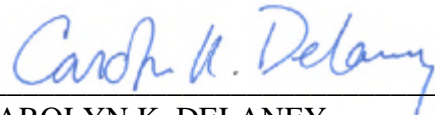
16 DYLAN POLLARD
17 MATT C. BAILEY
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19 MIKE ARIAS
20 ALFREDO TORRIJOS
21 ARIAS, OZZELLO & GIGNAC, LLP

Attorneys for Plaintiff
LAURENCE E. STEVENSON

22 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

23 Dated: August 28, 2012

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25 CAROLYN K. DELANEY
26 UNITED STATES MAGISTRATE JUDGE
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ATTACHMENT A

As a condition to inspecting or otherwise using documents and information produced in the above-captioned Action entitled *Stevenson v. Dollar Tree Stores, Inc.*, I certify that I have read the attached Stipulation and Protective and FRE 502(d) & (e) Clawback Order (the “Stipulation and Order”) regarding the handling of documents and information designated as “Confidential Information” and hereby agree to make no use of such documents and/or information except as permitted by the express terms of the Stipulation and Order, to make no disclosure of such documents and/or information to persons other than those who may have access to it under such Stipulation and Order, to not disclose Confidential Information to my clients other than the Party herein, to return all originals and all copies of such documents and/or information when required to do so under the Stipulation and Order, and otherwise to be bound by all of the terms and provisions of the Stipulation and Order.

Dated: _____

Signed: _____

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