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6 **Attorney for Plaintiff Vernisha Castle**

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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10

11 VERNISHA CASTLE, an individual,) No. 2:13-cv-00648-MCE-DAD
12 Plaintiff,)
13 v.) **STIPULATION AND PROTECTIVE**
14 TARGET CORPORATION, a Corporation;) **ORDER**
and DOES 1 through 20, inclusive,)
15 Defendants.)
16

17 1. PURPOSES AND LIMITATIONS

18 Disclosure and discovery activity in this action are likely to involve production of
19 confidential, proprietary, or private information for which special protection from public
20 disclosure and from use for any purpose other than prosecuting this litigation may be
21 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter into
22 the following Stipulated Protective Order. The parties acknowledge that this Order does
23 not confer blanket protections on all disclosures or responses to discovery and that the
24 protection it affords from public disclosure and use extends only to the limited information
25 or items that are entitled to confidential treatment under the applicable legal principles.

26 2. DEFINITIONS

27 2.1 Challenging Party: a Party or Non-Party that challenges the designation
28

1 of information or items under this Order.

2 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
3 generated, stored or maintained) or tangible things that qualify for protection under Federal
4 Rules of Evidence and/or Procedure.

5 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
6 (as well as their support staff).

7 2.4 Designating Party: a Party or Non-Party that designates information or items
8 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

9 2.5 Disclosure of Discovery Material: all items or information, regardless of the
10 medium or manner in which it is generated, stored, or maintained (including, among other
11 things, testimony, transcripts, and tangible things), that are produced or generated in
12 disclosures or responses to discovery in this matter.

13 2.6 Expert: a person with specialized knowledge or experience in a matter
14 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
15 expert witness or as a consultant in this action.

16 2.7 House Counsel: attorneys who are employees of a party to this action.
17 House Counsel does not include Outside Counsel of Record or any other outside counsel.

18 2.8 Non-Party: any natural person, partnership, corporation, association, or
19 other legal entity not named as a Party to this action.

20 2.9 Outside Counsel of Record: attorneys who are not employees of a party to
21 this action but are retained to represent or advise a party to this action and have appeared
22 in this action on behalf of that party or are affiliated with a law firm which has appeared on
23 behalf of that party.

24 2.10 Party: any party to this action, including all of its officers, directors,
25 employees, consultants, retained experts, and Outside Counsel of Record (and their
26 support staffs).

27 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
28 Material in this action.

1 2.12 Professional Vendors: persons or entities that provide litigation support
2 services (e.g., photocopying, videotaping, translating, preparing exhibits or
3 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
4 their employees and subcontractors.

5 2.13 Protected Material: any Disclosure or Discovery Material that is designated
6 as "CONFIDENTIAL."

7 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from
8 a Producing Party.

9 3. SCOPE

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

23 4. DURATION

24 Even after final disposition of this litigation, the confidentiality obligations imposed
25 by this Order shall remain in effect until a Designating Party agrees otherwise in writing or
26 a court order otherwise directs. Final disposition shall be deemed to be the later of (1)
27 dismissal of all claims and defenses in this action, with or without prejudice; and (2) final
28 judgment herein after the completion and exhaustion of all appeals, rehearings, remands,

1 trials, or reviews of this action, including the time limits for filing any motions or applications
2 for extension of time pursuant to applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
5 Party or Non-Party that designates information or items for protection under this Order
6 must take care to limit any such designation to specific material that qualifies under the
7 appropriate standards. The Designating Party must designate for protection only those
8 parts of material, documents, items, or oral or written communications that qualify – so that
9 other portions of the material, documents, items, or communications for which protection is
10 not warranted are not swept unjustifiably within the ambit of this Order.

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

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

19 5.2 Manner and Timing of Designations. Except as otherwise provided in this
20 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
21 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
22 must be clearly so designated before the material is disclosed or produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic
25 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),
26 that the Producing Party affix the legend "CONFIDENTIAL" to each page that contains
27 protected material. If only a portion or portions of the material on a page qualifies for
28 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by

1 making appropriate markings in the margins).

2 A Party or Non-Party that makes original documents or materials available for
3 inspection need not designate them for protection until after the inspecting Party has
4 indicated which material it would like copied and produced. During the inspection and
5 before the designation, all of the material made available for inspection shall be deemed
6 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied
7 and produced, the Producing Party must determine which documents, or portions thereof,
8 qualify for protection under this Order. Then, before producing the specified documents,
9 the Producing Party must affix the “CONFIDENTIAL” legend to each page that contains
10 Protected Material. If only a portion or portions of the material on a page qualifies for
11 protection, the Producing Party must also clearly identify the protected portion(s) (e.g., by
12 making appropriate markings in the margins).

13 (b) for testimony given in deposition or in other pretrial or trial
14 proceedings, that the Designating Party identify on the record, before the close of the
15 deposition, hearing, or other proceeding, all protected testimony.

16 (c) for information produced in some form other than documentary and for
17 any other tangible items, that the Producing Party affix in a prominent place on the exterior
18 of the container or containers in which the information or items is stored the legend
19 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant
20 protection, the Producing Party, to the extent practicable, shall identify the protected
21 portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure
23 to designate qualified information or items does not, standing alone, waive the Designating
24 Party’s right to secure protection under this Order for such material. Upon timely
25 correction of a designation, the Receiving Party must make reasonable efforts to assure
26 that the material is treated in accordance with the provisions of this Order.

27 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

28 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation

1 of confidentiality within 21 days of the initial notice of challenge or within 14 days of the
2 parties agreeing that the meet and confer process will not resolve their dispute, whichever
3 is earlier. Each such motion must be accompanied by a competent declaration affirming
4 that the movant has complied with the meet and confer requirements imposed in the
5 preceding paragraph. Failure by the Designating Party to make such a motion including
6 the required declaration within 21 days (or 14 days, if applicable) shall automatically waive
7 the confidentiality designation for each challenged designation. In addition, the
8 Challenging Party may file a motion challenging a confidentiality designation at any time if
9 there is good cause for doing so, including a challenge to the designation of a deposition
10 transcript or any portions thereof. Any motion brought pursuant to this provision must be
11 accompanied by a competent declaration affirming that the movant has complied with the
12 meet and confer requirements imposed by the preceding paragraph. Unless a prompt
13 challenge to a Designating Party's confidentiality designation is necessary to avoid
14 foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
15 disruption or delay of the litigation, a Party does not waive its right to challenge a
16 confidentiality designation by electing not to mount a challenge promptly after the original
17 designation is disclosed.

18 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
19 process by providing written notice of each designation it is challenging and describing the
20 basis for each challenge. To avoid ambiguity as to whether a challenge has been made,
21 the written notice must recite that the challenge to confidentiality is being made in
22 accordance with this specific paragraph of the Protective Order. The parties shall attempt
23 to resolve each challenge in good faith and must begin the process by conferring directly
24 (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days
25 of the date of service of notice. In conferring, the Challenging Party must explain the basis
26 for its belief that the confidentiality designation was not proper and must give the
27 Designating Party an opportunity to review the designated material, to reconsider the
28 circumstances, and, if no change in designation is offered, to explain the basis for the

1 chosen designation. A Challenging Party may proceed to the next stage of the challenge
2 process only if it has engaged in this meet and confer process first or establishes that the
3 Designating Party is unwilling to participate in the meet and confer process in a timely
4 manner.

5 6.3. Judicial Intervention. If the Parties cannot resolve a challenge without court
6 intervention, the Designating Party shall file and serve a motion to retain confidentiality in
7 accordance with the Local Rules of Court and the Federal Rules of Civil Procedure. Each
8 such motion must be accompanied by a competent declaration affirming that the movant
9 has complied with the meet and confer requirements imposed in the preceding paragraph.
10 Failure by the Designating Party to make such a motion including the required declaration
11 shall automatically waive the confidentiality designation for each challenged designation.
12 In addition, the Challenging Party may file a motion challenging a confidentiality
13 designation at any time if there is good cause for doing so, including a challenge to the
14 designation of a deposition transcript or any portions thereof. Any motion brought
15 pursuant to this provision must be accompanied by a competent declaration affirming that
16 the movant has complied with the meet and confer requirements imposed by the preceding
17 paragraph.

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

26 7. ACCESS TO AND USE OF PROTECTED MATERIAL

27 7.1 Basic Principles. A Receiving Party may use Protected Material that is
28 disclosed or produced by another Party or by a Non-Party in connection with this case only

1 for prosecuting, defending, or attempting to settle this litigation. Such Protected Material
2 may be disclosed only to the categories of persons and under the conditions described in
3 this Order. When the litigation has been terminated, a Receiving Party must comply with
4 the provisions of section 13 below (FINAL DISPOSITION).

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

8 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
9 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
10 may disclose any information or item designated "CONFIDENTIAL" only to:

11 (a) the Receiving Party's Outside Counsel of Record in this action, as well
12 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
13 disclose the information for this litigation and who have signed the "Acknowledgment and
14 Agreement to Be Bound" that is attached hereto as Exhibit A;

15 (b) the officers, directors, and employees (including House Counsel) of
16 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who
17 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

21 (d) the court and its personnel;

22 (e) court reporters and their staff; professional jury or trial consultants,
23 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for
24 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
25 (Exhibit A);

26 (f) during their depositions, witnesses in the action to whom disclosure is
27 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be
28 Bound" (Exhibit A), **unless otherwise agreed by the Designating Party or ordered by**

1 the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal
2 Protected Material must be separately bound by the court reporter and may not be
3 disclosed to anyone except as permitted under this Stipulated Protective Order;

4 (g) the author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information.

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
7 OTHER LITIGATION.

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

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

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

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

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

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

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

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party's confidential information in its possession, and the Party is subject to
10 an agreement with the Non-Party not to produce the Non-Party's confidential information,
11 then the Party shall:

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

15 (2) promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
17 specific description of the information requested; and

18 (3) make the information requested available for inspection by the
19 Non-Party.

20 (c) If the Non-Party fails to object or seek a protective order from this
21 court within 14 days of receiving the notice and accompanying information, the Receiving
22 Party may produce the Non-Party's confidential information responsive to the discovery
23 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not
24 produce any information in its possession or control that is subject to the confidentiality
25 agreement with the Non-Party before a determination by the court.¹ Absent a court order
26 to the contrary, the Non-Party shall bear the burden and expense of seeking protection in

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28 ¹ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a
Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 this court of its Protected Material.

2 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
4 Protected Material to any person or in any circumstance not authorized under this
5 Stipulated Protective Order, the Receiving Party must immediately (1) notify in writing the
6 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
7 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
8 unauthorized disclosures were made of all the terms of this Order, and (d) request such
9 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is
10 attached hereto as Exhibit A.

11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
12 PROTECTED 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
15 the Receiving Parties the parties shall work together to address said matter as well as
16 within the Federal Rules of Civil Procedure; insofar as the parties reach an agreement on
17 the effect of disclosure of a communication or information covered by the attorney-client
18 privilege or work product protection, the parties may incorporate their agreement in the
19 stipulated protective order submitted to the court.

20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
22 to seek its modification by the court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
24 Order no Party waives any right it otherwise would have to object to disclosing or
25 producing any information or item on any ground not addressed in this Stipulated
26 Protective Order. Similarly, no Party waives any right to object on any ground to use in
27 evidence of any of the material covered by this Protective Order.

28 12.3 Filing Protected Material. Without written permission from the Designating

1 Party or a court order secured after appropriate notice to all interested persons, a Party
2 may not file in the public record in this action any Protected Material. A Party that seeks to
3 file under seal any Protected Material must comply with appropriate Local Rules, Court
4 Rules and/or applicable Federal Rules of Civil Procedure.

5 13. FINAL DISPOSITION

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

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DATED: June 10, 2014

LELAND, SCHULTZ, MORRISSEY &
KNOWLES, LLP

By /s/ Andrew J. Morrissey
ANDREW J. MORRISSEY
Attorney for Plaintiff Vernisha Castle

(signatures cont'd on next page)

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DATED: June 9, 2014

CAROTHERS, DISANTE &
FREUDENBERGER, LLP

By /s/ Nicole A. Legrottaglie
NICOLE A. LEGROTTAGLIE
Attorney for Defendant Target Corporation

ORDER

Pursuant to the parties' stipulation, IT IS SO ORDERED.

Dated: June 11, 2014



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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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 Vernisha Castle v. Target
Corporation. 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 the purpose of 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: _____
[printed name]

Signature: _____
[signature]