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7 **BLUESTEM BRANDS, INC.**

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

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13 **RENE BRIGNONE,**  
14 Plaintiff,

15 v.

16 **BLUESTEM BRANDS, INC. dba**  
17 **FINGERHUT,**  
18 Defendant.

Case No. 2:16-cv-01703-TLN-KJN  
*Assigned to District Judge Troy L.  
Nunley; referred to Magistrate Judge  
Kendall J. Newman*

**STIPULATED PROTECTIVE  
ORDER**

Complaint Filed: July 22, 2016

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production  
3 of confidential, proprietary, or private information for which special protection from  
4 public disclosure and from use for any purpose other than prosecuting this litigation  
5 may be warranted. Accordingly, the parties hereby stipulate to and petition the court  
6 to enter the following Stipulated Protective Order. The parties acknowledge that this  
7 Order does not confer blanket protections on all disclosures or responses to discovery  
8 and that the protection it affords from public disclosure and use extends only to the  
9 limited information or items that are entitled to confidential treatment under the  
10 applicable legal principles. The parties further acknowledge, as set forth in Section  
11 12.3, below, that this Stipulated Protective Order does not entitle them to file  
12 confidential information under seal; Local Rule 141 sets forth the procedures that  
13 must be followed and the standards that will be applied when a party seeks permission  
14 from the court to file material under seal.

15 **2. DEFINITIONS**

16 2.1 Challenging Party: a Party or Non-Party that challenges the designation  
17 of information or items under this Order.

18 2.2 “CONFIDENTIAL” Information or Items: information (regardless of  
19 how it is generated, stored or maintained) or tangible things that qualify for protection  
20 under Federal Rule of Civil Procedure 26(c) or any state or federal law.

21 2.3 Counsel (without qualifier): Outside Counsel of Record and House  
22 Counsel (as well as their support staff).

23 2.4 Designating Party: a Party or Non-Party that designates information or  
24 items that it produces in disclosures or in responses to discovery as  
25 “CONFIDENTIAL.”

26 2.5 Disclosure or Discovery Material: all items or information, regardless of  
27 the medium or manner in which it is generated, stored, or maintained (including,  
28 among other things, testimony, transcripts, and tangible things), that are produced or

1 generated in disclosures or responses to discovery in this matter.

2       2.6 Expert: a person with specialized knowledge or experience in a matter  
3 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
4 expert witness or as a consultant in this action.

5       2.7 House Counsel: attorneys who are employees of a party to this action.  
6 House Counsel does not include Outside Counsel of Record or any other outside  
7 counsel.

8       2.8 Non-Party: any natural person, partnership, corporation, association, or  
9 other legal entity not named as a Party to this action.

10       2.9 Outside Counsel of Record: attorneys who are not employees of a party  
11 to this action but are retained to represent or advise a party to this action and have  
12 appeared in this action on behalf of that party or are affiliated with a law firm which  
13 has appeared on behalf of that party.

14       2.10 Party: any party to this action, including all of its officers, directors,  
15 employees, consultants, retained experts, and Outside Counsel of Record (and their  
16 support staffs).

17       2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
18 Discovery Material in this action.

19       2.12 Professional Vendors: persons or entities that provide litigation support  
20 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
21 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
22 and their employees and subcontractors.

23       2.13 Protected Material: any Disclosure or Discovery Material that is  
24 designated as “CONFIDENTIAL.”

25       2.14 Receiving Party: a Party that receives Disclosure or Discovery Material  
26 from a Producing Party.

27 **3. SCOPE**

28       The protections conferred by this Stipulation and Order cover not only

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

#### 14 **4. DURATION**

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

#### 23 **5. DESIGNATING PROTECTED MATERIAL**

##### 24 5.1 Exercise of Restraint and Care in Designating Material for Protection.

25 Each Party or Non-Party that designates information or items for protection under this  
26 Order must take care to limit any such designation to specific material that qualifies  
27 under the appropriate standards. The Designating Party must designate for protection  
28 only those parts of material, documents, items, or oral or written communications that

1 qualify – so that other portions of the material, documents, items, or communications  
2 for which protection is not warranted are not swept unjustifiably within the ambit of  
3 this Order.

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

7 5.2 Manner and Timing of Designations. Except as otherwise provided in  
8 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
9 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
10 under this Order must be clearly so designated before the material is disclosed or  
11 produced.

12 Designation in conformity with this Order requires:

13 (a) for information in documentary form (e.g., paper or electronic  
14 documents, but excluding transcripts of depositions or other pretrial or trial  
15 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each  
16 page that contains protected material.

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

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

26 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
27 failure to designate qualified information or items does not, standing alone, waive the  
28 Designating Party’s right to secure protection under this Order for such material.

1 Upon timely correction of a designation, the Receiving Party must make reasonable  
2 efforts to assure that the material is treated in accordance with the provisions of this  
3 Order.

4 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
6 designation of confidentiality at any time. Unless a prompt challenge to a Designating  
7 Party's confidentiality designation is necessary to avoid foreseeable, substantial  
8 unfairness, unnecessary economic burdens, or a significant disruption or delay of the  
9 litigation, a Party does not waive its right to challenge a confidentiality designation by  
10 electing not to mount a challenge promptly after the original designation is disclosed.

11 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
12 resolution process by providing written notice of each designation it is challenging  
13 and describing the basis for each challenge. To avoid ambiguity as to whether a  
14 challenge has been made, the written notice must recite that the challenge to  
15 confidentiality is being made in accordance with this specific paragraph of the  
16 Protective Order. The parties shall attempt to resolve each challenge in good faith and  
17 must begin the process by conferring directly (in voice to voice dialogue; other forms  
18 of communication are not sufficient) within 14 days of the date of service of notice.  
19 In conferring, the Challenging Party must explain the basis for its belief that the  
20 confidentiality designation was not proper and must give the Designating Party an  
21 opportunity to review the designated material, to reconsider the circumstances, and, if  
22 no change in designation is offered, to explain the basis for the chosen designation. A  
23 Challenging Party may proceed to the next stage of the challenge process only if it has  
24 engaged in this meet and confer process first or establishes that the Designating Party  
25 is unwilling to participate in the meet and confer process in a timely manner.

26 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without  
27 court intervention, the Challenging Party may file a motion challenging a  
28 confidentiality designation at any time if there is good cause for doing so, including a

1 challenge to the designation of a deposition transcript or any portions thereof. Any  
2 motion brought pursuant to this provision must be accompanied by a competent  
3 declaration affirming that the movant has complied with the meet and confer  
4 requirements imposed by the preceding paragraph.

5 The burden of persuasion in any such challenge proceeding shall be on the  
6 Designating Party. Frivolous challenges, and those made for an improper purpose  
7 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
8 expose the Challenging Party to sanctions.

9 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

10 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
11 disclosed or produced by another Party or by a Non-Party in connection with this case  
12 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
13 Material may be disclosed only to the categories of persons and under the conditions  
14 described in this Order. When the litigation has been terminated, a Receiving Party  
15 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

19 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
20 otherwise ordered by the court or permitted in writing by the Designating Party, a  
21 Receiving Party may disclose any information or item designated “CONFIDENTIAL”  
22 only to:

23 (a) the Receiving Party’s Outside Counsel of Record in this action, as  
24 well as employees of said Outside Counsel of Record to whom it is reasonably  
25 necessary to disclose the information for this litigation and who have signed the  
26 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A;

27 (b) the officers, directors, and employees (including House Counsel)  
28 of the Receiving Party to whom disclosure is reasonably necessary for this litigation

1 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit  
2 A);

3 (c) Experts (as defined in this Order) of the Receiving Party to whom  
4 disclosure is reasonably necessary for this litigation and who have signed the  
5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

6 (d) the court and its personnel;

7 (e) court reporters and their staff, professional jury or trial consultants,  
8 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary  
9 for this litigation and who have signed the “Acknowledgment and Agreement to Be  
10 Bound” (Exhibit A);

11 (f) during their depositions, witnesses in the action to whom  
12 disclosure is reasonably necessary and who have signed the “Acknowledgment and  
13 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating  
14 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to  
15 depositions that reveal Protected Material must be separately bound by the court  
16 reporter and may not be disclosed to anyone except as permitted under this Stipulated  
17 Protective Order.

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

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

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

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

27 (b) promptly notify in writing the party who caused the subpoena or  
28 order to issue in the other litigation that some or all of the material covered by the



1 subpoena or order is subject to this Protective Order. Such notification shall include a  
2 copy of this Stipulated Protective Order; and

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

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

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

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

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

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

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

4 (3) make the information requested available for inspection by  
5 the Non-Party.

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

14 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

15 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
16 Protected Material to any person or in any circumstance not authorized under this  
17 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
18 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
19 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
20 persons to whom unauthorized disclosures were made of all the terms of this Order,  
21 and (d) request such person or persons to execute the "Acknowledgment and  
22 Agreement to Be Bound" that is attached hereto as Exhibit A.

23 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
24 **PROTECTED MATERIAL**

25 When a Producing Party gives notice to Receiving Parties that certain  
26 inadvertently produced material is subject to a claim of privilege or other protection,  
27 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
28 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure

1 may be established in an e-discovery order that provides for production without prior  
2 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
3 parties reach an agreement on the effect of disclosure of a communication or  
4 information covered by the attorney-client privilege or work product protection, the  
5 parties may incorporate their agreement in the stipulated protective order submitted to  
6 the court.

7 **12. MISCELLANEOUS**

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
9 person to seek its modification by the court in the future.

10 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
11 Protective Order no Party waives any right it otherwise would have to object to  
12 disclosing or producing any information or item on any ground not addressed in this  
13 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
14 ground to use in evidence of any of the material covered by this Protective Order.

15 12.3 Filing Protected Material. Without written permission from the  
16 Designating Party or a court order secured after appropriate notice to all interested  
17 persons, a Party may not file in the public record in this action any Protected Material.  
18 A Party that seeks to file under seal any Protected Material must comply with Local  
19 Rule 141. Protected Material may only be filed under seal pursuant to a court order  
20 authorizing the sealing of the specific Protected Material at issue. Pursuant to Local  
21 Rule 141, a sealing order will issue only upon a request establishing that the Protected  
22 Material at issue is privileged, protectable as a trade secret, or otherwise entitled to  
23 protection under the law.

24 **13. FINAL DISPOSITION**

25 Within 60 days after the final disposition of this action, as defined in paragraph  
26 4, each Receiving Party must return all Protected Material to the Producing Party or  
27 destroy such material. As used in this subdivision, "all Protected Material" includes  
28 all copies, abstracts, compilations, summaries, and any other format reproducing or

1 capturing any of the Protected Material. Whether the Protected Material is returned or  
2 destroyed, the Receiving Party must submit a written certification to the Producing  
3 Party (and, if not the same person or entity, to the Designating Party) by the 60 day  
4 deadline that (1) identifies (by category, where appropriate) all the Protected Material  
5 that was returned or destroyed and (2) affirms that the Receiving Party has not  
6 retained any copies, abstracts, compilations, summaries or any other format  
7 reproducing or capturing any of the Protected Material. Notwithstanding this  
8 provision, Counsel are entitled to retain an archival copy of all pleadings, motion  
9 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
10 deposition and trial exhibits, expert reports, attorney work product, and consultant and  
11 expert work product, even if such materials contain Protected Material. Any such  
12 archival copies that contain or constitute Protected Material remain subject to this  
13 Protective Order as set forth in Section 4 (DURATION).

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**IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

DATED: January 10, 2017 **KIMMEL & SILVERMAN, P.C.**

By: /s/ Rachel Rebecca Stevens (as  
authorized on January 10, 2017)  
RACHEL REBECCA STEVENS  
Attorneys for Plaintiff,  
RENE BRIGNONE

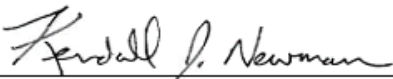
DATED: January 12, 2017 **DOLL AMIR & ELEY LLP**

By: /s/ Hunter R. Eley  
Hunter R. Eley  
Attorneys for Defendant  
BLUESTEM BRANDS, INC.

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**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

Dated: January 12, 2017

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

DOLL AMIR & ELEY LLP

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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 *Rene Brignone v.*  
*Bluestem Brands, Inc. d/b/a Fingerhut*; Case No. 2:16-cv-01703-TLN-KJN. 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: \_\_\_\_\_

Signature: \_\_\_\_\_