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23 **UNITED STATES DISTRICT COURT**
24 **EASTERN DISTRICT OF CALIFORNIA**

25 MARCELLA JOHNSON,
26 Plaintiff,

27 v.

28 BLUESTEM BRANDS, INC. dba
FINGERHUT,
Defendant.

Case No. 2:17-cv-01094-JAM-KJN
*Assigned to the Honorable John A.
Mendez; referred to Magistrate Judge
Kendall J. Newman*

STIPULATED PROTECTIVE ORDER

Complaint Filed: May 25, 2017
Trial: TBD

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, plaintiff Marcella Johnson and Defendant Bluestem
6 Brands, Inc. (collectively, the “Parties”) hereby stipulate to and petition the court to
7 enter the following Stipulated Protective Order. The Parties acknowledge that this
8 Order does not confer blanket protections on all disclosures or responses to discovery
9 and that the protection it affords from public disclosure and use extends only to the
10 limited information or items that are entitled to confidential treatment under the
11 applicable legal principles. The Parties further acknowledge, as set forth in Section
12 12.3, below, that this Stipulated Protective Order does not entitle them to file
13 confidential information under seal; Civil Local Rule 141 sets forth the procedures
14 that must be followed and the standards that will be applied when a party seeks
15 permission from the court to file material under seal.

16 **2. DEFINITIONS**

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

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

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

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

27 2.5 Disclosure or Discovery Material: all items or information, regardless of
28 the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things) that are produced or
2 generated in disclosures or responses to discovery in this matter.

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

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

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

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

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

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

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

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

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

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1 **3. SCOPE**

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

16 **4. DURATION**

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

25 **5. DESIGNATING PROTECTED MATERIAL**

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.

27 Each Party or Non-Party that designates information or items for protection under this
28 Order must take care to limit any such designation to specific material that qualifies

1 under the appropriate standards. The Designating Party must designate for protection
2 only those parts of material, documents, items, or oral or written communications that
3 qualify – so that other portions of the material, documents, items, or communications
4 for which protection is not warranted are not swept unjustifiably within the ambit of
5 this Order.

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

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

14 5.2 Manner and Timing of Designations. Except as otherwise provided in
15 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
16 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
17 under this Order must be clearly so designated before the material is disclosed or
18 produced.

19 Designation in conformity with this Order requires:

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

27 A Party or Non-Party that makes original documents or materials
28 available for inspection need not designate them for protection until after the

1 inspecting Party has indicated which material it would like copied and
2 produced. During the inspection and before the designation, all of the material
3 made available for inspection shall be deemed “CONFIDENTIAL.” After the
4 inspecting Party has identified the documents it wants copied and produced, the
5 Producing Party must determine which documents, or portions thereof, qualify
6 for protection under this Order. Then, before producing the specified
7 documents, the Producing Party must affix the “CONFIDENTIAL” legend to
8 each page that contains Protected Material. If only a portion or portions of the
9 material on a page qualifies for protection, the Producing Party also must
10 clearly identify the protected portion(s) (e.g., by making appropriate markings
11 in the margins).

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

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

21 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
22 failure to designate qualified information or items does not, standing alone, waive the
23 Designating Party’s right to secure protection under this Order for such material.
24 Upon timely correction of a designation, the Receiving Party must make reasonable
25 efforts to assure that the material is treated in accordance with the provisions of this
26 Order.

27 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

1 designation of confidentiality at any time. Unless a prompt challenge to a Designating
2 Party's confidentiality designation is necessary to avoid foreseeable, substantial
3 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
4 litigation, a Party does not waive its right to challenge a confidentiality designation by
5 electing not to mount a challenge promptly after the original designation is disclosed.

6 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
7 resolution process by providing written notice of each designation it is challenging
8 and describing the basis for each challenge. To avoid ambiguity as to whether a
9 challenge has been made, the written notice must recite that the challenge to
10 confidentiality is being made in accordance with this specific paragraph of the
11 Protective Order. The parties shall attempt to resolve each challenge in good faith and
12 must begin the process by conferring directly (in voice to voice dialogue; other forms
13 of communication are not sufficient) within 14 days of the date of service of notice.
14 In conferring, the Challenging Party must explain the basis for its belief that the
15 confidentiality designation was not proper and must give the Designating Party an
16 opportunity to review the designated material, to reconsider the circumstances, and, if
17 no change in designation is offered, to explain the basis for the chosen designation. A
18 Challenging Party may proceed to the next stage of the challenge process only if it has
19 engaged in this meet and confer process first or establishes that the Designating Party
20 is unwilling to participate in the meet and confer process in a timely manner.

21 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
22 court intervention, the Designating Party shall file and serve a motion to retain
23 confidentiality under Civil Local Rule 230 or 251 (and in compliance with Civil Local
24 Rule 141, if applicable) within 21 days of the initial notice of challenge or within 14
25 days of the parties agreeing that the meet and confer process will not resolve their
26 dispute, whichever is earlier. Each such motion must be accompanied by a competent
27 declaration affirming that the movant has complied with the meet and confer
28 requirements imposed in the preceding paragraph. Failure by the Designating Party to

1 make such a motion including the required declaration within 21 days (or 14 days, if
2 applicable) shall automatically waive the confidentiality designation for each
3 challenged designation. In addition, the Challenging Party may file a motion
4 challenging a confidentiality designation at any time if there is good cause for doing
5 so, including a challenge to the designation of a deposition transcript or any portions
6 thereof. Any motion brought pursuant to this provision must be accompanied by a
7 competent declaration affirming that the movant has complied with the meet and
8 confer requirements imposed by the preceding paragraph. The burden of persuasion
9 in any such challenge proceeding shall be on the Designating Party. Frivolous
10 challenges, and those made for an improper purpose (e.g., to harass or impose
11 unnecessary expenses and burdens on other parties) may expose the Challenging Party
12 to sanctions. Unless the Designating Party has waived the confidentiality designation
13 by failing to file a motion to retain confidentiality as described above, all parties shall
14 continue to afford the material in question the level of protection to which it is entitled
15 under the Producing Party's designation until the court rules on the challenge.

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

17 7.1 Basic Principles. A Receiving Party may use Protected Material that is
18 disclosed or produced by another Party or by a Non-Party in connection with this case
19 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
20 Material may be disclosed only to the categories of persons and under the conditions
21 described in this Order. When the litigation has been terminated, a Receiving Party
22 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
27 otherwise ordered by the court or permitted in writing by the Designating Party, a
28 Receiving Party may disclose any information or item designated "CONFIDENTIAL"

1 only to:

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

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

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

14 (d) the court and its personnel;

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

19 (f) during their depositions, witnesses in the action to whom disclosure is
20 reasonably necessary and who have signed the "Acknowledgment and
21 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the
22 Designating Party or ordered by the court. Pages of transcribed deposition
23 testimony or exhibits to depositions that reveal Protected Material must be
24 separately bound by the court reporter and may not be disclosed to anyone
25 except as permitted under this Stipulated Protective Order.

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

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1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
 2 **IN OTHER LITIGATION**

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

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

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

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

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

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

24 The terms of this Order are applicable to information produced by a Non-Party
 25 in this action and designated as “CONFIDENTIAL.” Such information produced by
 26 Non-Parties in connection with this litigation is protected by the remedies and relief
 27 provided by this Order. Nothing in these provisions should be construed as
 28 prohibiting a Non-Party from seeking additional protections.

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

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

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

11 (3) make the information requested available for inspection by the Non-
12 Party.

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

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

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

3 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
4 **PROTECTED MATERIAL**

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

15 **12. MISCELLANEOUS**

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
17 person to seek its modification by the court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this
19 Protective Order no Party waives any right it otherwise would have to object to
20 disclosing or producing any information or item on any ground not addressed in this
21 Stipulated Protective Order. Similarly, no Party waives any right to object on any
22 ground to use in evidence of any of the material covered by this Protective Order.

23 12.3 Filing Protected Material. Without written permission from the
24 Designating Party or a court order secured after appropriate notice to all interested
25 persons, a Party may not file in the public record in this action any Protected Material.
26 A Party that seeks to file under seal any Protected Material must comply with Civil
27 Local Rule 141. Protected Material may only be filed under seal pursuant to a court
28 order authorizing the sealing of the specific Protected Material at issue. Pursuant to

1 Civil Local Rule 141, a sealing order will issue only upon a request establishing that
2 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise
3 entitled to protection under the law. If a Receiving Party's request to file Protected
4 Material under seal pursuant to Civil Local Rule 141 is denied by the court, then the
5 Receiving Party may file the information in the public record unless otherwise
6 instructed by the court.

7 **13. FINAL DISPOSITION**

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

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: October 12, 2017

DOLL AMIR & ELEY LLP

By: /s/ Chelsea L. Diaz .

Chelsea L. Diaz
Attorneys for Defendant
BLUESTEM BRANDS, INC.

DATED: October 12, 2017

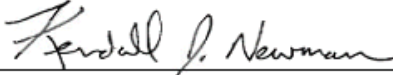
KIMMEL & SILVERMAN, P.C.

By: /s/ Rachel Rebecca Stevens .

Rachel Rebecca Stevens
Attorneys for Plaintiff
MARCELLA JOHNSON

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: October 12, 2017


KENDALL J. NEWMAN
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 October
____, 2017 in the case of *Marcella Johnson v. Bluestem Brands, Inc., et al.*, case
number 17-CV-01094-JAM-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: _____