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Counsel for Defendant

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

20 BRENDAN PEACOCK, on
 21 Behalf of Himself, and All Others
 22 Similarly Situated,
 23
 24 Plaintiff,
 25
 26 v.
 27 PABST BREWING COMPANY,
 28 LLC,
 Defendant.

Case No: 2:18-cv-00568-TLN-CKD
CLASS ACTION
**STIPULATED PROTECTIVE
 ORDER; ORDER**

Complaint Filed: March 15, 2018
 Trial Date: None Set

BN 44534600v1

1 IT IS HEREBY STIPULATED and agreed by and between counsel for the
2 above-captioned parties that, upon, the Court’s approval, the terms and conditions
3 of the Stipulated Protective Order (“Order”) should be entered as follows.

4 At least some of the documents and information being sought through
5 discovery in the above-captioned action are, for competitive reasons, normally kept
6 confidential. The parties have agreed to be bound by the terms of this Order in this
7 action.

8 Pursuant to Local Rule 141.1(c)(1), the materials to be exchanged throughout
9 the course of the litigation between the parties may contain trade secret or other
10 confidential, proprietary, or competitive research, technical, price, marketing or
11 other commercial information, as is contemplated by Federal Rule of Civil
12 Procedure 26(c)(7).

13 Pursuant to Local Rule 141.1(c)(2), there is a need to protect this type of
14 information. A party’s trade secret, confidential, competitive, proprietary, or
15 personal information could be abused if it were not limited to this lawsuit. For
16 example, third party competitors or other individuals could exploit the following
17 types of information to their advantage if made public: (1) a party’s financial
18 information; (2) research, development and technical information; (3) pricing
19 information; and (4) internal marketing information. In some cases, disclosure of
20 this type of information could breach confidentiality agreements or violate privacy
21 or consumer protection laws.

22 The purpose of this Order is to protect the confidentiality of such materials as
23 much as practical during the litigation.

24 Pursuant to Local Rule 141.1(c)(3), the parties seek a Protective Order as
25 opposed to entering into a private agreement because the proposed Order provides
26 mechanisms for the resolution of disputes and the handling of designated evidence
27 that involve the Court.

1 **DEFINITIONS**

2 1. The term “Confidential Information” will mean and includes
3 information contained or disclosed in any materials, including documents, portions
4 of documents, answers to interrogatories, responses to requests for admissions, trial
5 testimony, deposition testimony, and transcripts of trial testimony and depositions,
6 including data, summaries, and compilations derived therefrom that is deemed to be
7 Confidential Information by any party to which it belongs.

8 2. The term “materials” will include, but is not limited to: documents;
9 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or
10 other material that identify customers or potential customers; spreadsheets; price
11 lists or schedules or other matter identifying pricing; minutes; telegrams; letters;
12 statements; drafts; books of account; worksheets; notes of conversations; desk
13 diaries; appointment books; banking information; recordings; photographs; motion
14 pictures; compilations from which information can be obtained and translated into
15 reasonably usable form through detection devices; sketches; drawings; notes;
16 reports; instructions; disclosures; other writings; models and prototypes and other
17 physical objects.

18 3. The term “counsel” will mean outside counsel of record, and other
19 attorneys, paralegals, secretaries, and other support staff employed in the law firms
20 identified below:

- 21 (a) Buchalter, A Professional Corporation
- 22 (b) Beck & Lee Trial Lawyers
- 23 (c) Cullin O’Brien Law, P.A.

24 The term “counsel” shall also include corporate counsel employed by
25 defendant Pabst Brewing Company, LLC (“Defendant”).

26 **GENERAL RULES**

27 4. Each party to this litigation that produces or discloses any materials,
28 answers to interrogatories, responses to requests for admission, trial testimony,

1 deposition testimony, and transcripts of trial testimony and depositions, or
2 information that the producing party believes should be subject to this Protective
3 Order may designate the same as “CONFIDENTIAL” or “CONFIDENTIAL - FOR
4 COUNSEL ONLY.”

5 (a) Designation as “CONFIDENTIAL”: Any party may designate
6 information as “CONFIDENTIAL” only if, in the good faith belief of such party and
7 its counsel, the unrestricted disclosure of such information could be potentially
8 prejudicial to the business or operations or interests of such party.

9 (b) Designation as “CONFIDENTIAL - FOR COUNSEL ONLY”:
10 Any party may designate information as “CONFIDENTIAL - FOR COUNSEL
11 ONLY” only if, in the good faith belief of such party and its counsel, the information
12 is among that considered to be most sensitive by the party, including but not limited
13 to trade secret or other confidential or proprietary research, development, financial
14 or other commercial information.

15 5. In the event the producing party elects to produce materials for
16 inspection, no marking need be made by the producing party in advance of the initial
17 inspection. For purposes of the initial inspection, all materials produced will be
18 considered as “CONFIDENTIAL - FOR COUNSEL ONLY,” and must be treated
19 as such pursuant to the terms of this Order. Thereafter, upon selection of specified
20 materials for copying by the inspecting party, the producing party must, within a
21 reasonable time prior to producing those materials to the inspecting party, mark the
22 copies of those materials that contain Confidential Information with the appropriate
23 confidentiality marking.

24 6. Whenever a deposition taken on behalf of any party involves a
25 disclosure of Confidential Information of any party:

26 (a) the deposition or portions of the deposition must be designated
27 as containing Confidential Information subject to the provisions of this Order; such
28 designation must be made on the record whenever possible, but a party may

1 designate portions of depositions as containing Confidential Information after
2 transcription of the proceedings; a party will have until fourteen (14) days after
3 receipt of the deposition transcript to inform the other party or parties to the action
4 of the portions of the transcript to be designated “CONFIDENTIAL” or
5 “CONFIDENTIAL - FOR COUNSEL ONLY.”

6 (b) the disclosing party will have the right to exclude from
7 attendance at the deposition, during such time as the Confidential Information is to
8 be disclosed, any person other than the deponent, counsel (including their staff and
9 associates), the court reporter, and the person(s) agreed upon pursuant to paragraph
10 8 below; and

11 (c) the originals of the deposition transcripts and all copies of the
12 deposition must bear the legend “CONFIDENTIAL” or “CONFIDENTIAL - FOR
13 COUNSEL ONLY,” as appropriate, and the original or any copy ultimately
14 presented to a court for filing must not be filed unless it can be accomplished under
15 seal, identified as being subject to this Order, and protected from being opened
16 except by order of this Court.

17 7. All Confidential Information designated as “CONFIDENTIAL” or
18 “CONFIDENTIAL - FOR COUNSEL ONLY” must not be disclosed by the
19 receiving party to anyone other than those persons designated within this Order and
20 must be handled in the manner set forth below and, in any event, must not be used
21 for any purpose other than in connection with this litigation, unless and until such
22 designation is removed either by agreement of the parties, or by order of the Court.

23 8. Information designated “CONFIDENTIAL - FOR COUNSEL ONLY”
24 must be viewed only by counsel (as defined in paragraph 3) of the receiving party,
25 and by independent experts under the conditions set forth in this Paragraph. The
26 right of any independent expert to receive any Confidential Information will be
27 subject to the advance approval of such expert by the producing party or by
28 permission of the Court. The party seeking approval of an independent expert must

1 provide the producing party with the name and curriculum vitae of the proposed
2 independent expert, and an executed copy of the form attached hereto as Exhibit A,
3 in advance of providing any Confidential Information of the producing party to the
4 expert. Any objection by the producing party to an independent expert receiving
5 Confidential Information must be made in writing within fourteen (14) days
6 following receipt of the identification of the proposed expert. Confidential
7 Information may be disclosed to an independent expert if the fourteen (14) day
8 period has passed and no objection has been made. The approval of independent
9 experts must not be unreasonably withheld.

10 9. Information designated “CONFIDENTIAL” must be viewed only by
11 counsel (as defined in paragraph 3) of the receiving party, by independent experts
12 (pursuant to the terms of paragraph 8), and by the additional individuals listed below,
13 provided each such individual has read this Order in advance of disclosure and has
14 agreed in writing to be bound by its terms:

15 (a) Executives who are required to participate in policy decisions
16 with reference to this action;

17 (b) Technical personnel of the parties with whom Counsel for the
18 parties find it necessary to consult, in the discretion of such counsel, in preparation
19 for trial of this action; and

20 (c) Stenographic and clerical employees associated with the
21 individuals identified above.

22 10. With respect to material designated “CONFIDENTIAL” or
23 “CONFIDENTIAL - FOR COUNSEL ONLY,” any person indicated on the face of
24 the document to be its originator, author or a recipient of a copy of the document,
25 may be shown the same.

26 11. All information which has been designated as “CONFIDENTIAL” or
27 “CONFIDENTIAL - FOR COUNSEL ONLY” by the producing or disclosing party,
28 and any and all reproductions of that information, must be retained in the custody of

1 the counsel for the receiving party identified in paragraph 3, except that independent
2 experts authorized to view such information under the terms of this Order may retain
3 custody of copies such as are necessary for their participation in this litigation.

4 12. Before any materials produced in discovery, answers to interrogatories,
5 responses to requests for admissions, deposition transcripts, or other documents
6 which are designated as Confidential Information are filed with the Court for any
7 purpose, the party seeking to file such material must seek permission of the Court to
8 file the material under seal.

9 13. At any stage of these proceedings, any party may object to a designation
10 of the materials as Confidential Information. The party objecting to confidentiality
11 must notify, in writing, counsel for the designating party of the objected-to materials
12 and the grounds for the objection. If the dispute is not resolved consensually
13 between the parties within seven (7) days of receipt of such a notice of objections,
14 the objecting party may move the Court for a ruling on the objection. The materials
15 at issue must be treated as Confidential Information, as designated by the designating
16 party, until the Court has ruled on the objection or the matter has been otherwise
17 resolved.

18 14. No document shall be filed under seal unless counsel secures a court
19 order allowing the filing of a document under seal. An application to file a document
20 under seal shall be served on opposing counsel, and on the person or entity that has
21 custody and control of the document, if different from opposing counsel. If the
22 application to file under seal a document designated as confidential is being made
23 by the non-designating party, then, upon request, the designating party must
24 promptly provide the applicant with a legal basis for the confidential designation to
25 include within the application. If opposing counsel, or the person or entity that has
26 custody and control of the document, wishes to oppose the application, he/she must
27 contact the chambers of the judge who will rule on the application, to notify the
28 judge's staff that an opposition to the application will be filed.

1 15. All Confidential Information must be held in confidence by those
2 inspecting or receiving it, and must be used only for purposes of this action. Counsel
3 for each party, and each person receiving Confidential Information must take
4 reasonable precautions to prevent the unauthorized or inadvertent disclosure of such
5 information. If Confidential Information is disclosed to any person other than a
6 person authorized by this Order, the party responsible for the unauthorized
7 disclosure must immediately bring all pertinent facts relating to the unauthorized
8 disclosure to the attention of the other parties and, without prejudice to any rights
9 and remedies of the other parties, make every effort to prevent further disclosure by
10 the party and by the person(s) receiving the unauthorized disclosure.

11 16. No party will be responsible to another party for disclosure of
12 Confidential Information under this Order if the information in question is not
13 labeled or otherwise identified as such in accordance with this Order.

14 17. If a party, through inadvertence, produces any Confidential Information
15 without labeling or marking or otherwise designating it as such in accordance with
16 this Order, the designating party may give written notice to the receiving party that
17 the document or thing produced is deemed Confidential Information, and that the
18 document or thing produced should be treated as such in accordance with that
19 designation under this Order. The receiving party must treat the materials as
20 confidential, once the designating party so notifies the receiving party. If the
21 receiving party has disclosed the materials before receiving the designation, the
22 receiving party must notify the designating party in writing of each such disclosure.
23 Counsel for the parties will agree on a mutually acceptable manner of labeling or
24 marking the inadvertently produced materials as “CONFIDENTIAL” or
25 “CONFIDENTIAL - FOR COUNSEL ONLY” - SUBJECT TO PROTECTIVE
26 ORDER.

1 18. Nothing within this Order will prejudice the right of any party to object
2 to the production of any discovery material on the grounds that the material is
3 protected as privileged or as attorney work product.

4 19. Nothing in this Order will bar counsel from rendering advice to their
5 clients with respect to this litigation and, in the course thereof, relying upon any
6 information designated as Confidential Information, provided that the contents of
7 the information must not be disclosed.

8 20. This Order will be without prejudice to the right of any party to oppose
9 production of any information for lack of relevance or any other ground other than
10 the mere presence of Confidential Information. The existence of this Order must not
11 be used by either party as a basis for discovery that is otherwise improper under the
12 Federal Rules of Civil Procedure.

13 21. Nothing within this Order will be construed to prevent disclosure of
14 Confidential Information if such disclosure is required by law or by order of the
15 Court.

16 22. Upon final termination of this action, including any and all appeals,
17 counsel for each party must, upon request of the producing party, return all
18 Confidential Information to the party that produced the information, including any
19 copies, excerpts, and summaries of that information, or must destroy same at the
20 option of the receiving party, and must purge all such information from all machine-
21 readable media on which it resides. Notwithstanding the foregoing, counsel for each
22 party may retain all pleadings, briefs, memoranda, motions, and other documents
23 filed with the Court that refer to or incorporate Confidential Information, and will
24 continue to be bound by this Order with respect to all such retained information.
25 Further, attorney work product materials that contain Confidential Information need
26 not be destroyed, but, if they are not destroyed, the person in possession of the
27 attorney work product will continue to be bound by this Order with respect to all
28 such retained information. Any action by this Court must be preceded by an ex parte

1 motion for an order authorizing the return of all Confidential and Attorneys' Eyes
2 Only Material to the party that produced the information or the destruction thereof.

3 23. The restrictions and obligations set forth within this order will not apply
4 to any information that: (a) the parties agree should not be designated Confidential
5 Information; (b) the parties agree, or the Court rules, is already public knowledge;
6 (c) the parties agree, or the Court rules, has become public knowledge other than as
7 a result of disclosure by the receiving party, its employees, or its agents in violation
8 of this Order; or (d) has come or will come into the receiving party's legitimate
9 knowledge independently of the production by the designating party. Prior
10 knowledge must be established by pre-production documentation.

11 24. The restrictions and obligations within this Order will not be deemed to
12 prohibit discussions of any Confidential Information with anyone if that person
13 already has or obtains legitimate possession of that information.

14 25. Transmission by email or facsimile is acceptable for all notification
15 purposes within this order.

16 26. Without separate court order, this Order does not change, amend, or
17 circumvent any court rule or local rule.

18 27. This Order may be modified by agreement of the parties, subject to
19 approval by the Court.

20 28. The Court may modify the terms and conditions of this Order for good
21 cause, or in the interest of justice, or on its own order at any time in these
22 proceedings. The parties prefer that the Court provide them with notice of the Court's
23 intent to modify the Order and the content of those modifications, prior to entry of
24 such an order.

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DATED: May 25, 2021


Respectfully Submitted,

/s/ Elizabeth Lee Beck
Elizabeth Lee Beck
Counsel for Plaintiff and Putative
Class

/s/ Oren Bitan
Oren Bitan
Counsel for Defendant

IT IS SO ORDERED

Dated: May 27, 2021


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 **AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**

3 I, _____, declare and state that:

4 1. I am employed as _____
5 by _____.

6 2. I have received and read the Protective Order entered in *Peacock v.*
7 *Pabst Brewing Company, LLC*, Case No. 2:18-cv-00568.

8 3. I promise that I will comply with the terms of the Protective Order and
9 that I will use any and all “Confidential” or “Confidential - For Counsel Only”
10 information, as defined in the Protective Order, given to me only in a manner
11 authorized by the Protective Order, and only to assist counsel in the litigation of this
12 matter.

13 4. I promise that I will not disclose or discuss such “Confidential” or
14 “Confidential - For Counsel Only” information with anyone other than the persons
15 described in paragraphs 3, 8 and 9 of the Protective Order.

16 5. I acknowledge that, by signing this agreement, I am subjecting myself
17 to the jurisdiction of the United States District Court for the Eastern District of
18 California with respect to enforcement of the Protective Order.

19 6. I understand that any disclosure or use of “Confidential” or
20 “Confidential - For Counsel Only” information in any manner contrary to the
21 provisions of the Protective Order may subject me to sanctions for contempt of court.
22 I declare under penalty of perjury pursuant to the laws of the United States of
23 America that the foregoing is true and correct.

24
25 Date: _____

26
27 _____
28 Name