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11 **UNITED STATES DISTRICT COURT**
 12 **EASTERN DISTRICT OF CALIFORNIA**

13 LISA WATSON and ANGELA KEERS,
 14 individually and on behalf of all others
 15 similarly situated,

16 Plaintiffs,

17 v.

18 CRUMBL LLC, CRUMBL IP, LLC,
 19 CRUMBL FRANCHISING, LLC, and
 20 CRUMBL ENTERPRISES, LLC,

21 Defendants.

Case No.: 2:23-cv-01770-DJC-CKD

Hon. Daniel J. Calabretta

**CONFIDENTIALITY STIPULATION
 AND [PROPOSED] PROTECTIVE
 ORDER**

22 WHEREAS, Plaintiffs Lisa Watson and Angela Keers, individually and on behalf of
 23 all others similarly situated (“Plaintiffs”), and Defendants Crumbl LLC, Crumbl IP, LLC,
 24 Crumbl Franchising, LLC, and Crumbl Enterprises, LLC (“Defendants” and collectively
 25 with Plaintiffs, the “Parties”) to the above-captioned case (the “Action”), are engaged in
 26 discovery proceedings, which may include, among other things, taking depositions,
 27 responding to interrogatories, responding to requests for admissions, and producing
 28 documents for inspection and copying;

1 WHEREAS, the Parties may be required in the course of discovery to produce or
2 disclose confidential and/or proprietary business information, trade secret information, or
3 other information that is non-public and sensitive in nature;

4 WHEREAS, the parties having agreed to the following terms of confidentiality, and
5 the Court having found that good cause exists for entry of this Confidentiality Stipulation
6 and Proposed Protective Order (“Stipulation”);

7 WHEREAS, the entry of this Stipulation will expedite the flow of discovery material,
8 facilitate prompt resolution of disputes over confidentiality, and, pursuant to Rule 26(c) of
9 the Federal Rules of Civil Procedure, promote fair and expeditious resolution of this
10 litigation;

11 THEREFORE, IT IS HEREBY STIPULATED and ORDERED that:

12 1. This Stipulation shall govern the handling of all information, material, and
13 documents (as defined in Fed. R. Civ. P. 34(a)) disclosed during the course of the Action
14 by any Party or by any non-party acting voluntarily or in response to Court-authorized
15 discovery, including taking depositions, responding to interrogatories, responding to
16 requests for admissions, and producing documents for inspection and copying (“Litigation
17 Material”).

18 2. As used herein:

19 (a) “Producing Party” shall mean any Party or any non-party producing
20 Litigation Material.

21 (b) “Receiving Party” shall mean any Party or any non-party receiving
22 Litigation Material.

23 3. Confidential Information. As used in this Order, “Confidential Information”
24 means information (including tangible things) designated as “CONFIDENTIAL-SUBJECT
25 TO PROTECTIVE ORDER” by the Producing Party that falls within one or more of the
26 following categories: (a) information prohibited from disclosure by statute; (b) information
27 that reveals trade secrets; (c) research, technical, commercial, customer, or financial
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1 information that the party has maintained as confidential; (d) medical information
2 concerning any individual; (e) personal identity information; (f) income tax returns
3 (including attached schedules and forms), W-2 forms and 1099 forms; (g) sensitive
4 personal information; (h) personnel or employment records of a person who is not a party
5 to the case; or (g) information (regardless of how it is generated, stored or maintained)
6 that qualifies for protection under Federal Rule of Civil Procedure 26(c). Information or
7 documents that are available to the public may not be designated as Confidential
8 Information.

9 4. Designation. A Party or non-party may designate as Confidential
10 Information any Litigation Material, in whole or in part, for protection under this Order by
11 placing or affixing the words “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER”
12 on the document and on all copies in a manner that will not interfere with the legibility of
13 the document.

14 a. As used in this Order, “copies” includes electronic images, duplicates,
15 extracts, summaries, or descriptions that contain the Confidential
16 Information. The marking “CONFIDENTIAL - SUBJECT TO
17 PROTECTIVE ORDER” shall be applied prior to or at the time of the
18 documents are produced or disclosed.

19 b. Applying the marking “CONFIDENTIAL - SUBJECT TO PROTECTIVE
20 ORDER” to a document does not mean that the document has any
21 status or protection by statute or otherwise except to the extent and for
22 the purposes of this Order.

23 c. Any copies that are made of any documents marked “CONFIDENTIAL -
24 SUBJECT TO PROTECTIVE ORDER” shall also be so marked, except
25 that indices, electronic databases, or lists of documents that do not
26 contain substantial portions or images of the text of marked documents
27

1 and do not otherwise disclose the substance of the Confidential
2 Information are not required to be marked.

3 5. Depositions. Unless all parties agree on the record at the time the
4 deposition testimony is taken, all deposition testimony taken in this case shall be treated
5 as Confidential Information until thirty (30) days after notification from the court reporter
6 that the transcript is available. Within this time period, a party may serve a Notice of
7 Designation to all parties of record as to specific portions of the testimony that are
8 designated Confidential Information, and thereafter only those portions identified in the
9 Notice of Designation shall be protected by the terms of this Order.

10 6. Protection of Confidential Material.

11 a. *General Protections.* Confidential Information shall not be used or
12 disclosed by the parties, counsel for the parties or any other persons
13 identified in subparagraph (b) for any purpose whatsoever other than in
14 this litigation, including any appeal thereof.

15 b. *Limited Third-Party Disclosures.* The parties and counsel for the parties
16 shall not disclose or permit the disclosure of any Confidential Information
17 to any third person or entity except as set forth in subparagraphs (i)-(ix).
18 Subject to these requirements, the following categories of persons may
19 be allowed to review Confidential Information:

- 20 i. Counsel. Counsel for the parties and employees of counsel who
21 have responsibility for the action;
- 22 ii. Parties. Individual parties and employees of a party to the extent
23 counsel determines in good faith that the employee's assistance
24 is reasonably necessary to the conduct of the litigation in which
25 the information is disclosed;
- 26 iii. The Court and its personnel;
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- 1 iv. Court Reporters and Recorders. Court reporters and recorders
2 engaged for depositions;
- 3 v. Contractors. Those persons specifically engaged for the limited
4 purpose of making copies of documents or organizing or
5 processing documents, including outside vendors hired to
6 process electronically stored documents;
- 7 vi. Consultants and Experts. Consultants, investigators, or experts
8 employed by the parties or counsel for the parties to assist in the
9 preparation and trial of this action but only after such persons
10 have signed the "Acknowledgment" (Attachment A);
- 11 vii. Witnesses at depositions. During their depositions, witnesses in
12 this action to whom disclosure is reasonably necessary.
13 Witnesses shall not retain a copy of documents containing
14 Confidential Information, except witnesses may receive a copy of
15 all exhibits marked at their depositions in connection with review
16 of the transcripts. Pages of transcribed deposition testimony or
17 exhibits to depositions that are designated as Confidential
18 Information pursuant to the process set out in this Order must be
19 separately bound by the court reporter and may not be disclosed
20 to anyone except as permitted under this Order.
- 21 viii. Author or recipient. The author or recipient of the document (not
22 including a person who received the document in the course of
23 litigation); and
- 24 ix. Third Parties. Confidential Information produced during discovery
25 in this litigation may be disclosed, if reasonably necessary, to
26 third parties who have signed the "Acknowledgment" (Attachment
27 A) for the limited purpose of conducting third-party discovery
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1 10. Challenges by a Party to Designation as Confidential Information. The
2 designation of any material or document as Confidential Information is subject to
3 challenge by any party. The following procedure shall apply to any such challenge.

4 a. *Meet and Confer.* A party challenging the designation of Confidential
5 Information must do so in good faith and must begin the process by
6 conferring directly with counsel for the designating party. The party
7 challenging the designation shall initiate the meet and confer process by
8 providing written notice of each designation it is challenging and
9 describing the basis for each challenge. To avoid ambiguity as to
10 whether a challenge has been made, the written notice must recite that
11 the challenge to confidentiality is being made in accordance with this
12 specific paragraph of the Stipulation. Failure to cite to this specific
13 paragraph does not render the notice or challenge invalid, and the
14 designating party may inquire as to whether the challenge is being made
15 in accordance with this specific paragraph. In the notice, the challenging
16 party must explain the basis for its belief that the confidentiality
17 designation was not proper and must give the designating party an
18 opportunity to review the designated material, to reconsider the
19 designation, and, if no change in designation is offered, to explain the
20 basis for the designation. The designating party must respond to the
21 notice within ten (10) business days.

22 b. *Judicial Intervention.* A party that elects to challenge a confidentiality
23 designation may file and serve a motion that identifies the challenged
24 material and sets forth in detail the basis for the challenge. Each such
25 motion must be accompanied by a competent declaration that affirms
26 that the movant has complied with the meet and confer requirements of
27 this procedure. The burden of persuasion in any such challenge
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1 proceeding shall be on the designating party. Until the Court rules on
2 the challenge, all parties shall continue to treat the materials as
3 Confidential Information under the terms of this Order.

4 11. Use of Confidential Documents or Information at Trial. Nothing in this Order
5 shall be construed to affect the use of any document, material, or information at any trial
6 or hearing. A party that intends to present or that anticipates that another party may
7 present Confidential information at a hearing or trial shall bring that issue to the Court's
8 and parties' attention by motion or in a pretrial memorandum without disclosing the
9 Confidential Information. The Court may thereafter make such orders as are necessary
10 to govern the use of such documents or information at trial.

11 12. Confidential Information Subpoenaed or Ordered Produced in Other
12 Litigation.

13 a. If a Receiving Party is served with a subpoena or an order issued in
14 other litigation that would compel disclosure of any material or document
15 designated in this action as Confidential Information, the Receiving
16 Party must so notify the designating party, in writing, immediately and in
17 no event more than three court days after receiving the subpoena or
18 order. Such notification must include a copy of the subpoena or court
19 order.

20 b. The Receiving Party also must immediately inform in writing the party
21 who caused the subpoena or order to issue in the other litigation that
22 some or all of the material covered by the subpoena or order is the
23 subject of this Order. In addition, the Receiving Party must deliver a
24 copy of this Order promptly to the party in the other action that caused
25 the subpoena to issue.

26 c. The purpose of imposing these duties is to alert the interested persons
27 to the existence of this Order and to afford the designating party in this
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1 case an opportunity to try to protect its Confidential Information in the
2 court from which the subpoena or order issued. The designating party
3 shall bear the burden and the expense of seeking protection in that court
4 of its Confidential Information, and nothing in these provisions should be
5 construed as authorizing or encouraging a Receiving Party in this action
6 to disobey a lawful directive from another court. The obligations set forth
7 in this paragraph remain in effect while the party has in its possession,
8 custody, or control Confidential Information by the other party to this
9 case.

10 13. Third-Party Discovery.

11 a. Confidential information produced during discovery in this litigation may
12 be disclosed, if reasonably necessary, to third parties for the limited
13 purpose of conducting third-party discovery pursuant to Fed. R. Civ. P.
14 45 subpoenas so long as the third parties to whom confidential
15 information is disclosed agree to treat the information as confidential
16 pursuant to this Protective Order and sign the "Acknowledgment"
17 (Attachment A). In advance of receipt of the confidential information, a
18 third-party must: (1) agree to be bound by the terms of this Protective
19 Order; or (2) must otherwise show an already-existing confidential
20 relationship between the third-party and the Producing Party which
21 would apply to the confidential information.

22 b. Third parties may designate documents produced pursuant to third-party
23 subpoenas as confidential consistent with the procedures outlined
24 herein.

25 16. No Waiver. The procedures set forth herein shall not affect the rights of the
26 Parties to object to the production of documents, testimony or other materials on grounds
27 other than those related to trade secrets or proprietary information, nor shall it relieve a
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1 party of the necessity of providing proper responses to discovery requests. Furthermore,
2 nothing in this Order shall require the production of documents, things or other information
3 that any party contends is protected from disclosure by the attorney-client privilege or the
4 work-product doctrine.

5 17. No Effect on Admissibility. Nothing in this Order shall be construed to affect
6 the admissibility of any document, material, or information at any trial or hearing.

7 18. Privileged Material. If a Receiving Party receives Litigation Material that the
8 Producing Party deems to contain inadvertently disclosed information protected by the
9 attorney-client privilege, the work product doctrine, or any other recognized privilege or
10 protection ("Privileged Material"), the Receiving Party shall, upon receipt of demand by
11 the Producing Party, immediately return the Litigation Material containing the Privileged
12 Material without reserving a copy or copies. The inadvertent disclosure by any person of
13 any Privileged Material shall not waive any such privilege or protection, for the Privileged
14 Material or for the subject matter of that material, in this Action or any other state or federal
15 proceeding or other proceeding, pursuant to Federal Rule of Evidence 502 and Federal
16 Rule of Civil Procedure 26(b)(5)(B). This Stipulation shall not excuse a Producing Party
17 from taking reasonable steps to identify, in advance of production, its documents and
18 information which contain Privileged Material. It is expressly contemplated that
19 computerized searches of data using keywords and search terms to identify Privileged
20 Material shall be considered sufficient and reasonable measures to support the assertion
21 of inadvertent production.

22 19. Miscellaneous. Entering into or otherwise complying with this Stipulation or
23 producing or receiving Confidential Litigation Material shall not:

- 24 a. prevent any Party or non-party from using in this or any other matter, or
25 disclosing to any person or entity as it deems appropriate, its own
26 Confidential Information, and any such use or disclosure shall not be
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1 deemed a waiver of any Party's or non-party's rights or obligations under
2 this Stipulation;

- 3 b. prevent any Party or non-party from using in this or any other matter, or
4 disclosing to any person as it deems appropriate, any information that:
5 (i) was publicly available or generally known at the time of disclosure, (ii)
6 became publicly available or generally known after the time of disclosure
7 through no fault of any Receiving Party, (iii) was known or possessed at
8 the time of disclosure by the Receiving Party intending to use the
9 information, (iv) was received from a third party who was under no
10 obligation of confidentiality to the Producing Party, or (v) was developed
11 independently of the disclosure; and
- 12 c. operate as an admission that any particular Confidential Litigation
13 Material contains, reflects or otherwise discloses any type of trade secret
14 information, or other Confidential information.

15 20. Amendments. The provisions of this Stipulation may be modified by
16 agreement of the Parties, and this Stipulation is without prejudice to the rights of any Party
17 to move for relief from any of its provisions, or to seek or agree to different or additional
18 protection for any particular material or information.

19 21. No Probative Value. The fact that a document, item or information is
20 designated as Confidential shall not be deemed to be determinative of what a trier of fact
21 may determine to be confidential or proprietary. This Order shall be without prejudice to
22 the right of any party to bring before the Court the question of: (i) whether any particular
23 information is or is not Confidential; (ii) whether any particular information is or is not
24 entitled to a greater or lesser degree of protection than provided in this Order; or (iii)
25 whether any particular information is or is not relevant to any issue of this case. Absent a
26 stipulation of all parties, or a court order, the fact that information has been designated
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1 Confidential under this Order shall not be admissible during the trial of this Action, and
2 the jury shall not be advised of such designation.

3 22. Court's Jurisdiction. The Court retains jurisdiction to make such
4 amendments to this Stipulation as the Court deems appropriate. The provisions of this
5 Stipulation regarding the use and/or disclosure of Confidential Litigation Material shall
6 survive the termination of this Action, and the Court shall retain jurisdiction with respect
7 to interpreting and enforcing the provisions of this Order.

8 23. Written Notice. Written notice provided under this Order shall be by email
9 to all counsel of record for all parties and by any means designated by counsel for any
10 non-parties or to the non-parties if they are unrepresented by counsel. If no designation
11 is made by counsel for any non-parties or to the non-parties if they are unrepresented by
12 counsel, email shall be deemed sufficient written notice under this Paragraph and this
13 Stipulation.

14 24. Counterparts. This Stipulation may be executed in counterparts.

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

23 26. Final Disposition. Within 60 days after the final disposition of this action
24 (which shall be deemed to be the later of (1) dismissal of all claims and defenses in this
25 action, with or without prejudice; and (2) final judgment herein after the completion and
26 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including
27 the time limits for filing any motions or applications for extension of time pursuant to
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1 applicable law), each Receiving Party must return all Confidential Information to the
2 Producing party or destroy such material. As used in this subdivision, "all Confidential
3 Information" includes all copies, abstracts, compilations, summaries, and any other format
4 reproducing or capturing any of the Confidential Information. Whether the Confidential
5 Information is returned or destroyed, the Receiving Party must submit a written
6 certification to the Producing party (and, if not the same person or entity, to the
7 designating party) by the 60 day deadline that (1) identifies (by category, where
8 appropriate) all the Confidential Information that was returned or destroyed and (2) affirms
9 that the Receiving Party has not retained any copies, abstracts, compilations, summaries
10 or any other format reproducing or capturing any of the Confidential Information.
11 Notwithstanding this provision, counsel are entitled to retain an archival copy of all
12 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
13 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
14 consultant and expert work product, even if such materials contain Confidential
15 Information. Any such archival copies that contain or constitute Confidential Information
16 remain subject to this Order.

17 SO STIPULATED AND AGREED.

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1 **ORDER**

2 The Court has reviewed the parties' stipulated protective order. The stipulation
3 comports with the relevant authorities and the court's applicable local rule. See Local
4 Rule 141.1. The Court APPROVES the protective order, subject to a clarification that
5 the Court will not retain jurisdiction over this protective order once the case is closed.
6 See Local Rule 141.1(f).

7 Dated: September 25, 2024

8 

9 CAROLYN K. DELANEY
10 UNITED STATES MAGISTRATE JUDGE

11
12 4, wats1770.23

13
14
15 Submitted for Entry:

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17 **PHILLIPS GROSSMAN LLP**

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**Admitted pro hac vice*

***Motion to be admitted pro hac vice
forthcoming*

ACKNOWLEDGEMENT

Exhibit A to Stipulated Confidentiality and Protective Order

I, _____, state the following:

1. I have read and understand the attached Stipulated Confidentiality and Protective Order and I attest to my understanding that access to information designated as "CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER" may be provided to me, and that such access shall be pursuant to the terms and conditions and restrictions of the Stipulated Confidentiality and Protective Order. I agree to be bound by the terms of the Stipulated Confidentiality and Protective Order, both with respect to this Court's powers of supervision of the litigation of the above-captioned case and to the party that produced the protected documents and information.

2. I shall not use or disclose to others, except in accordance with the Stipulated Confidentiality and Protective Order, any "Confidential" documents or information. If I fail to abide by the terms of this Stipulated Confidentiality and Protective Order, I understand that I shall be subject to sanctions by way of contempt of court and to separate legal and equitable recourse by the adversely affected party. I further consent to the exercise of personal jurisdiction by this Court and waive any objection as to venue in connection with any effort to enforce this Stipulated Confidentiality and Protective Order.

Date: _____

SIGNATURE: _____

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