

1 Farschad Farzan, Bar No. 215194
 2 *ffarzan@perkinscoie.com*
 3 Jonmi N. Koo, Bar No. 233136
 4 *jkoo@perkinscoie.com*
 5 PERKINS COIE LLP
 6 Four Embarcadero Center, Suite 2400
 7 San Francisco, CA 94111-4131
 8 Telephone: 415.344.7000
 9 Facsimile: 415.344.7050

6 Attorneys for Defendant
 STARBUCKS CORPORATION

7 Richard J. Meehan, Bar No. 130956
 8 Law Office of Richard J. Meehan
 9 703 2nd St., Suite 308
 10 P.O. Box 369
 11 Santa Rosa, CA 95402
 12 Telephone: 707.528.4409
 13 Facsimile: 707.528.3381

11 Attorneys for Plaintiff
 12 SEAN GUNN

13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA

16 SEAN GUNN,
 17
 18 Plaintiff,
 19
 20 v.
 21 STARBUCKS CORPORATION,
 22
 23 Defendant.

Case No.: C 09-05981 JSW

~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER REGARDING
 CONFIDENTIAL INFORMATION

1 Plaintiff Sean Gunn (“Plaintiff”) and Defendant Starbucks Corporation (“Defendant”), by
2 and through their respective undersigned counsel, hereby stipulate and agree to, and request entry
3 of, the following Protective Order:

4 1. The Order shall be applicable to and govern all discovery taken pursuant to the
5 Federal Rules of Civil Procedure, including documents and other tangible objects produced in
6 response to requests for production or as part of answers to interrogatories, responses to requests
7 for admissions, and depositions.

8 2. A party or third party may designate as “Confidential” any material that the party
9 in good faith believes constitutes or includes proprietary business or financial information, or
10 personal information or information furnished to it in confidence by any third-party, which
11 information is not known or freely accessible to the general public. Good faith also exists where
12 the disclosure would violate the legitimate privacy interests of either party or third parties.

13 3. Information or materials designated as “Confidential” may be disclosed to the
14 parties for the purposes of the litigation, but must be protected against disclosure to third parties.
15 Absent a specific order by this Court, once designated as “Confidential,” such designated
16 information shall be used solely in connection with this litigation, and not for any business,
17 competitive, governmental, or other purpose or function, and such information shall not be
18 disclosed to anyone except as provided herein.

19 4. The designation of information or material as “Confidential” for purposes of this
20 Protective Order shall be made in the following manner by the party or nonparty seeking
21 protection:

22 (a) in the case of documents, exhibits, briefs, memoranda, interrogatory
23 responses, responses to requests for admission, or other materials (apart from depositions or other
24 pretrial or trial testimony): by affixing the legend “CONFIDENTIAL” to any document
25 containing any confidential information or material;

26 (b) in the case of depositions by a statement on the record, by counsel, during
27 such deposition that the entire transcript or a portion thereof shall be designated as “Confidential”
28 hereunder. If any document or information designated as “Confidential” is used during the course

1 of a deposition, that portion of the deposition record reflecting such confidential information shall
2 be stamped “Confidential,” and access thereto shall be limited pursuant to the other terms of this
3 Protective Order.

4 5. Information or material designated as “Confidential,” or copies or extracts
5 therefrom and compilations and summaries thereof, may be disclosed or made available in whole
6 or in part only to the following persons:

7 (a) parties’ outside counsel of record in this action and regular and temporary
8 employees of such counsel to whom it is necessary that the information or material be shown for
9 the purposes of this litigation;

10 (b) the parties and employees of the parties, including in-house counsel, whose
11 assistance is needed by counsel for the purposes of this litigation;

12 (c) subject to the provisions of paragraph 6 herein, outside experts, advisors,
13 and consultants (including their employees and support staff) retained by counsel of record in this
14 litigation, provided that such experts, consultants, or investigators shall not be employees of a
15 party or otherwise working for or on behalf of a party in connection with that party’s business.
16 Outside experts, advisors, and consultants must be retained solely for the purpose of advising and
17 assisting outside counsel or giving expert testimony in this action or any other action between the
18 parties;

19 (d) the Court,

20 (e) court reporters employed in connection with this action;

21 (f) graphics or design services retained by counsel for a party for purposes of
22 preparing demonstrative or other exhibits for deposition, trial, or other court proceedings in this
23 action, subject to and conditioned upon compliance with Paragraph 6 herein;

24 (g) non-technical jury or trial consulting services retained by counsel for a
25 party, subject to and conditioned upon compliance with Paragraph 6 herein;

26 (h) witnesses, including non-party witnesses, in preparation for, and in the
27 course of, depositions or interviews, or at trial, if, in the reasonable good faith opinion of the
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1 parties' counsel, examination with respect to such information is necessary for legitimate
2 discovery or trial purposes; and

3 (i) any other person only upon order of the Court or upon written consent of
4 the party producing the confidential information or material, subject to and conditioned upon
5 compliance with Paragraph 6 herein.

6 6. The undersigned counsel shall maintain a list of persons to whom "Confidential"
7 material is disclosed, and such list shall be available for inspection by the Court. The persons
8 receiving "Confidential" material are enjoined from disclosing it to any other person, except as
9 permitted by this Order.

10 7. If a party wishes to submit to the Court any "Confidential" material, the party shall
11 attempt to obtain agreement from the party that designated the material "Confidential" that the
12 material need not be filed under seal. If no agreement is reached, the parties shall proceed
13 pursuant to Civil Local Rule 79-5. The parties will not file any document under seal except
14 pursuant to a Court order that authorizes the sealing of the particular document, or portions
15 thereof. The parties agree that no opposition will be filed to any motion filed pursuant to this
16 paragraph. Nothing in this section shall prevent a party from filing its own "Confidential"
17 material not under seal.

18 8. A party or third party shall not be obligated to challenge the propriety of a
19 "Confidential" designation at the time made, and failure to do so shall not preclude a subsequent
20 challenge. A party may challenge the other party's designation by serving a written objection
21 upon the producing party. The producing party shall notify the challenging party in writing of the
22 bases for the asserted designation within ten (10) days after receiving any written objection. The
23 parties shall confer in good faith as to the validity of the designation within five (5) days after the
24 challenging party has received the notice of the bases for the asserted designation. To the extent
25 the parties are unable to reach an agreement as to the designation, the objecting party may make
26 an appropriate application to this Court within fifteen (15) days after conferring with the
27 producing party, with confidential portions thereof to be filed provisionally under seal, requesting
28 that specifically identified documents, information, and/or deposition testimony be excluded from

1 the provisions of this Protective Order or downgraded in terms of the degree of protection
2 provided. Failure to make an application within this period shall constitute a waiver of the
3 objection. Until a dispute over the asserted designation is finally resolved by the parties or the
4 Court, all parties and persons shall treat the information or materials in question as designated.

5 9. All "Confidential" information and material covered by this Protective Order shall
6 be kept in secure facilities, and access to those facilities shall be permitted only to those
7 designated persons set forth in this Protective Order.

8 10. All counsel for the parties who have access to information or material designated
9 as "Confidential" under this Protective Order acknowledge they are bound by this Order and
10 submit to the jurisdiction of this Court for purposes of enforcing this Order.

11 11. Entering into, agreeing to, and/or producing or receiving information or material
12 designated as "Confidential" or otherwise complying with the terms of this Protective Order, shall
13 not:

14 (a) operate as an admission by any party that any particular information or
15 material designated as "Confidential" contains or reflects trade secrets, or proprietary or
16 commercially sensitive information, or any other type of confidential information;

17 (b) operate as an admission by any party that the restrictions and procedures
18 set forth herein constitute or do not constitute adequate protection for any particular information
19 deemed by any party to be "Confidential";

20 (c) prejudice in any way the rights of the parties to object to the production of
21 documents they consider not subject to discovery;

22 (d) prejudice in any way the rights of any party to object to the authenticity or
23 admissibility into evidence of any document, testimony, or other evidence subject to this
24 Protective Order;

25 (e) prejudice in any way the rights of a party to seek a determination by the
26 Court whether any information or material should be subject to the terms of this Protective Order;

27 (f) prejudice in any way the rights of a party to petition the Court for a further
28 protective order relating to any purportedly confidential information;

1 (g) prejudice in any way the rights of a party to make a showing that
2 information or materials of proprietary or competitive value, but which is not specifically
3 included in the categories of “Confidential” information or materials itemized in Paragraph 2
4 above, is properly designated “Confidential”; or

5 (h) prevent the parties to this Protective Order from agreeing in writing or on
6 the record during a deposition or hearing in this action to alter or waive the provisions or
7 protections provided for herein with respect to any particular information or material.

8 12. This Protective Order has no effect upon, and shall not apply to, a party’s use or
9 disclosure of its own confidential information for any purpose. Nothing contained herein shall
10 impose any restrictions on the use or disclosure by a party of documents, information or material
11 designated as “Confidential” obtained lawfully by such party independently of any proceedings in
12 this action, or which:

13 (a) was already known to such party by lawful means prior to acquisition from,
14 or disclosure by, the other party in this action;

15 (b) is or becomes publicly known through no fault or act of such party; or

16 (c) is rightfully received by such party from a third party which has authority
17 to provide such information or material and without restriction as to disclosure.

18 13. In the event that information requested from a party contains a third-party’s
19 confidential or proprietary information, the producing party will make a good faith attempt to
20 obtain consent of the non-party prior to disclosing such information. If the producing party
21 cannot obtain the third-party’s consent, the producing party will notify the requesting party of (a)
22 the existence of the information, and (b) the identity of the non-party. If possible, the producing
23 party may also redact the third party’s confidential information to protect the third-party’s
24 interests.

25 14. It is the present intention of the parties that the provisions of this Protective Order
26 shall govern discovery and other pretrial and trial proceedings in this action. Nonetheless, each of
27 the parties hereto shall be entitled to seek modification of this Protective Order by application to
28 the Court on notice to the other party hereto for good cause.

1 15. The parties agree to be bound by the terms of this Protective Order pending its
2 entry by the Court, or pending the entry of an alternative thereto which is satisfactory to all
3 parties, and any violation of its terms shall be subject to the same sanctions and penalties as if the
4 Protective Order had been entered by the Court.

5 16. The provisions of this Protective Order shall, absent written permission of the
6 producing party or further order of the Court, continue to be binding throughout and after the
7 conclusion of this action, including without limitation any appeals therefrom. Within sixty (60)
8 days of the final resolution of all related litigation between the parties covered by this Protective
9 Order, all "Confidential" material and all copies thereof, shall be (1) upon request, returned to the
10 party that produced it, or (2) destroyed. Counsel and the parties shall certify in writing that they
11 have complied with this section.

12 17. In the event that any information or material designated as "Confidential"
13 hereunder is used in any court proceeding in this action or any appeal therefrom, such information
14 or material shall not lose its status as "Confidential" through such use, to the extent allowable by
15 law. Counsel for the parties shall confer on such procedures as are necessary to protect the
16 confidentiality of any documents, information, and transcripts used in the course of any court
17 proceedings, and shall incorporate such procedures, as appropriate, in the pre-trial order, subject
18 to court approval.

19 18. If any party (a) is subpoenaed in another action, (b) is served with a discovery
20 demand in another action to which it is a party, or (c) is served with any other legal process by
21 one not a party to this action, seeking information or material which was produced or designated
22 as "Confidential" by someone other than that party, the party shall give prompt actual written
23 notice, by hand or facsimile transmission, within ten (10) days of receipt of such subpoena,
24 demand, or legal process, to those who produced or designated the information or material
25 "Confidential." Should the person seeking access to the information or material take action
26 against the party or anyone else covered by this Protective Order to enforce such a subpoena,
27 demand, or other legal process, the party shall respond by setting forth the existence of this
28 Protective Order. Once notification is given pursuant to this provision, it shall be the obligation

1 of the party or person that designated the information or materials at issue to challenge such a
2 subpoena, demand, or other legal process, and not the obligation of the party or person that
3 received the subpoena, demand, or other legal process.

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5 DATED: September 1, 2010

PERKINS COIE LLP

6 By: _____ /s/
7 Jonmi N. Koo

8 Attorneys for Defendant
9 STARBUCKS CORPORATION

10 DATED: September 1, 2010

LAW OFFICES OF RICHARD J. MEECHAN

11 By: _____ /s/
12 Richard J. Meechan

13 Attorneys for Plaintiff
14 SEAN GUNN

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

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19 Dated: September 1, 2010


United States District Court Judge