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 15 **MARY DARENSBURG**

16 **UNITED STATES DISTRICT COURT**  
 17 **NORTHERN DISTRICT OF CALIFORNIA**  
 18

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 20 **MARY DARENSBURG,**

21 Plaintiff,

22 v.

23 **BLUESTEM BRANDS, INC. dba**  
 24 **FINGERHUT,**

25 Defendant.  
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Case No. 3:17-cv-03027-WHA  
*Assigned to the Honorable William Alsup*

**STIPULATED PROTECTIVE ORDER**

Complaint Filed: May 25, 2017  
 Trial: July 23, 2018

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 Mary Darensburg 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 79-5 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 7 (and in compliance with Civil Local Rule 79-  
24 5, if applicable) within 21 days of the initial notice of challenge or within 14 days of  
25 the parties agreeing that the meet and confer process will not resolve their dispute,  
26 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 79-5. 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 79-5, 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 79-5(d) is denied by the court, then  
5 the Receiving Party may file the information in the public record pursuant to Civil  
6 Local Rule 79-5(e) unless otherwise 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 3, 2017

**DOLL AMIR & ELEY LLP**

By: /s/ Chelsea L. Diaz .  
Chelsea L. Diaz  
Attorneys for Defendant  
BLUESTEM BRANDS, INC.


DATED: October 3, 2017

**KIMMEL & SILVERMAN, P.C.**

By: /s/ Rachel Rebecca Stevens .  
Rachel Rebecca Stevens  
Attorneys for Plaintiff  
MARY DARENSBURG

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

DATED: October 3, 2017.

  
\_\_\_\_\_  
The Honorable William Alsup  
United States District Court Judge