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15 UNITED STATES DISTRICT COURT

17 JAMES MOORE,
 18 Plaintiff,
 19 vs.
 20 PFLUG PACKAGING &
 FULFILLMENT, INC.,
 21 Defendant.
 22

Case No. 4:17-cv-05823-YGR
STIPULATED ~~PROPOSED~~
PROTECTIVE ORDER
 as modified by the Court

23 **1. PURPOSES AND LIMITATIONS**

24 Disclosure and discovery activity in this action are likely to involve production of
 25 confidential, proprietary, or private information for which special protection from public
 26 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
 27 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 28 Protective Order. The parties acknowledge that this Order does not confer blanket protections on

1 all disclosures or responses to discovery and that the protection it affords from public disclosure
2 and use extends only to the limited information or items that are entitled to confidential treatment
3 under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3,
4 below, that this Stipulated Protective Order does not entitle them to file confidential information
5 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards
6 that will be applied when a party seeks permission from the court to file material under seal.

7 **2. DEFINITIONS**

8 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
9 information or items under this Order.

10 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
11 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
12 of Civil Procedure 26(c).

13 2.3 Counsel: Counsel of Record for a Party (as well as their support staff).

14 2.4 Designating Party: a Party or Non-Party that designates information or items that it
15 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

16 2.5 Disclosure or Discovery Material: all items or information, regardless of the
17 medium or manner in which it is generated, stored, or maintained (including, among other things,
18 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
19 responses to discovery in this matter.

20 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
21 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
22 consultant in this action.

23 2.7 Non-Party: any natural person, partnership, corporation, association, or other legal
24 entity not named as a Party to this action.

25 2.8 Party: any party to this action, including all of its officers, directors, employees,
26 consultants, retained experts, and Counsel of Record (and their support staffs).

27 2.9 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
28 Material in this action.

1 2.10 Professional Vendors: persons or entities that provide litigation support services
2 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
3 organizing, storing, or retrieving data in any form or medium) and their employees and
4 subcontractors.

5 2.11 Protected Material: any Disclosure or Discovery Material that is designated as
6 “CONFIDENTIAL”

7 2.12 Receiving Party: a Party that receives Disclosure or Discovery Material from a
8 Producing Party.

9 **3. SCOPE**

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

22 **4. DURATION**

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

1 applicable law.

2 **5. DESIGNATING PROTECTED MATERIAL**

3 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
4 or Non-Party that designates information or items for protection under this Order must take care to
5 limit any such designation to specific material that qualifies under the appropriate standards. The
6 Designating Party must designate for protection only those parts of material, documents, items, or
7 oral or written communications that qualify – so that other portions of the material, documents,
8 items, or communications for which protection is not warranted are not swept unjustifiably within
9 the ambit of this Order.

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

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

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

21 Designation in conformity with this Order requires:

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

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

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

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

12 Transcripts containing Protected Material shall have an obvious legend on the title
13 page that the transcript contains Protected Material, and the title page shall be followed by a list of
14 all pages (including line numbers as appropriate) that have been designated as Protected Material.

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

20 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
21 designate qualified information or items does not, standing alone, waive the Designating Party’s
22 right to secure protection under this Order for such material. Upon timely correction of a
23 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
24 in accordance with the provisions of this Order.

25 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
27 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
28 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic

1 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
2 challenge a confidentiality designation by electing not to mount a challenge promptly after the
3 original designation is disclosed.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
5 process by providing written notice of each designation it is challenging and describing the basis
6 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
7 notice must recite that the challenge to confidentiality is being made in accordance with this
8 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
9 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
10 forms of communication are not sufficient) within 14 days of the date of service of notice. In
11 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
12 designation was not proper and must give the Designating Party an opportunity to review the
13 designated material, to reconsider the circumstances, and, if no change in designation is offered, to
14 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of
15 the challenge process only if it has engaged in this meet and confer process first or establishes that
16 the Designating Party is unwilling to participate in the meet and confer process in a timely
17 manner.

18 6.3 Judicial Intervention. **If the Parties cannot resolve a challenge without court**
19 **intervention, the parties shall follow the Court’s Standing Order in Civil Cases regarding**
20 **Discovery and Discovery Motions. The parties may file a joint letter brief regarding**
21 **retaining confidentiality within 21 days of the initial notice of challenge or within 14 days of**
22 **the parties agreeing that the meet and confer process will not resolve their dispute,**
23 **whichever is earlier. Failure by a Designating Party to file such discovery dispute letter**
24 **within the applicable 21 or 14 day period (set forth above) with the Court shall automatically**
25 **waive the confidentiality designation for each challenged designation. If, after submitting a**
26 **joint letter brief, the Court allows that a motion may be filed, any such motion must be**
27 **accompanied by a competent declaration affirming that the movant has complied with the**
28 **meet and confer requirements imposed in the preceding paragraph. The Court, in its**

1 discretion, may elect to transfer the discovery matter to a Magistrate Judge.

2 In addition, the parties may file a joint letter brief regarding a challenge to a
3 confidentiality designation at any time if there is good cause for doing so, including a
4 challenge to the designation of a deposition transcript or any portions thereof. If, after
5 submitting a joint letter brief, the Court allows that a motion may be filed, any motion
6 brought pursuant to this provision must be accompanied by a competent declaration
7 affirming that the movant has complied with the meet and confer requirements imposed by
8 the preceding paragraph. The Court, in its discretion, may elect to refer the discovery
9 matter to a Magistrate Judge.

10 The burden of persuasion in any such challenge proceeding shall be on the
11 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to
12 harass or impose unnecessary expenses and burdens on other parties) may expose the
13 Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality
14 designation by failing to file a letter brief to retain confidentiality as described above, all
15 parties shall continue to afford the material in question the level of protection to which it is
16 entitled under the Producing Party's designation until the court rules on the challenge.

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

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

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

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

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

5 (b) the officers, directors, and employees of the Receiving Party to whom
6 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment
7 and Agreement to Be Bound” (Exhibit A);

8 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
9 reasonably necessary for this litigation and who have signed the “Acknowledgment and
10 Agreement to Be Bound” (Exhibit A);

11 (d) the court and its personnel;

12 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,
13 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
14 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

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

23 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
24 **OTHER LITIGATION**

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

28 (a) promptly notify in writing the Designating Party. Such notification shall include

1 a copy of the subpoena or court order;

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

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

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

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

17 (a) The terms of this Order are applicable to information produced by a Non-
18 Party in this action and designated as “CONFIDENTIAL”. Such information produced by Non-
19 Parties in connection with this litigation is protected by the remedies and relief provided by this
20 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
21 additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to produce
23 a Non-Party’s confidential information in its possession, and the Party is subject to an agreement
24 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

25 1. promptly notify in writing the Requesting Party and the Non-Party that
26 some or all of the information requested is subject to a confidentiality agreement with a Non-
27 Party;

28 2. promptly provide the Non-Party with a copy of the Stipulated Protective

1 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
2 the information requested; and

3 3. make the information requested available for inspection by the Non-Party.

4 (c) If the Non-Party fails to object or seek a protective order from this court
5 within 14 days of receiving the notice and accompanying information, the Receiving Party may
6 produce the Non-Party's confidential information responsive to the discovery request. If the Non-
7 Party timely seeks a protective order, the Receiving Party shall not produce any information in its
8 possession or control that is subject to the confidentiality agreement with the Non-Party before a
9 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
10 burden and expense of seeking protection in this court of its Protected Material.

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

12 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
13 Material to any person or in any circumstance not authorized under this Stipulated Protective
14 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
15 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
16 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
17 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
18 Agreement to Be Bound" that is attached hereto as Exhibit A.

19 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
20 **PROTECTED MATERIAL**

21 If information produced in discovery is subject to a claim of privilege or other protection,
22 the Producing Party may notify the Receiving Parties of the claim and the basis for it. After being
23 notified, the Receiving Parties must promptly return or destroy the specified information and any
24 copies it has; must not use or disclose the information until the claim of privilege or other
25 protection has been resolved; and must take reasonable steps to retrieve the information if the
26 Receiving Party disclosed it before being notified. If a Receiving Party disputes a Producing
27 Party's claim of privilege or other protection, Receiving Party shall sequester the material and file
28 a motion with the court under seal for a determination of the claim. The producing party must

1 preserve the information until the claim is resolved. Pursuant to Federal Rule of Evidence 502(d)
2 and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or
3 information covered by the attorney-client privilege or work product protection, the parties may
4 incorporate their agreement in the stipulated protective order submitted to the court.

5 **12. MISCELLANEOUS**

6 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
7 seek its modification by the court in the future.

8 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
9 Order no Party waives any right it otherwise would have to object to disclosing or producing any
10 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
11 Party waives any right to object on any ground to use in evidence of any of the material covered
12 by this Protective Order.

13 12.3 Filing Protected Material. Without written permission from the Designating Party
14 or a court order secured after appropriate notice to all interested persons, a Party may not file in
15 the public record in this action any Protected Material. A Party that seeks to file under seal any
16 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
17 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
18 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
19 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
20 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
21 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving
22 Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2)
23 unless otherwise instructed by the court.

24 **13. FINAL DISPOSITION**

25 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
26 Receiving Party must return all Protected Material to the Producing Party or destroy such material.
27 As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations,
28 summaries, and any other format reproducing or capturing any of the Protected Material. Whether

1 the Protected Material is returned or destroyed, the Receiving Party must submit a written
2 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
3 by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected
4 Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained
5 any copies, abstracts, compilations, summaries or any other format reproducing or capturing any
6 of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival
7 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
8 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
9 consultant and expert work product, even if such materials contain Protected Material. Any such
10 archival copies that contain or constitute Protected Material remain subject to this Protective Order
11 as set forth in Section 4 (DURATION).

12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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DATED: April 12, 2018

BURTON EMPLOYMENT LAW GROUP

By: /s/ Jocelyn Burton
Jocelyn Burton
Attorneys for Plaintiff and Cross-Defendant
JAMES MOORE

DATED: April 12, 2018

WENDEL, ROSEN, BLACK & DEAN LLP

By: /s/ Margaret J. Grover
Margaret J. Grover
Attorneys for Defendant and Counter-Claimant
PFLUG PACKAGING & FULFILLMENT, INC.

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ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: April 16, 2018


The Honorable Yvonne Gonzalez Rogers
United States District 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 Northern District of California on [date] in the case of *Moore v. Pflug
Packaging & Fulfillment, Inc.*, Case No. 4:17-cv-05823-YGR. 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 Northern 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: _____
[printed name]

Signature: _____
[signature]