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 SAN JOSE DIVISION

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 AVON PRODUCTS, INC.

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 13 **UNITED STATES DISTRICT COURT**
 14 **NORTHERN DISTRICT OF CALIFORNIA**

15 JACQUELINE CAVALIER
 16 NELSON, an individual, on behalf
 of herself, and on behalf of all
 17 persons similarly situated,

Case No. C 13-02276 ~~HRB~~ **EJD (HRL)**

Plaintiff,

STIPULATED PROTECTIVE ORDER

v.

MODIFIED BY THE COURT

20 AVON PRODUCTS, INC.; and
 21 DOES 1 through 50, inclusive,

(RE: DOCKET No. 24)

Defendants.

I. PURPOSES AND LIMITATIONS

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 25 Disclosure and discovery activity in this action are likely to involve
 26 production of confidential, proprietary, or private information for which special
 27 protection from public disclosure and from use for any purpose other than
 28 prosecuting this litigation may be warranted. Accordingly, the parties hereby
 stipulate to and petition the court to enter the following Stipulated Protective Order.

1 The parties acknowledge that this Order does not confer blanket protections on all
2 disclosures or responses to discovery and that the protection it affords from public
3 disclosure and use extends only to the limited information or items that are entitled
4 to confidential treatment under the applicable legal principles. The parties further
5 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
6 Order does not entitle them to file confidential information under seal; Civil Local
7 Rule 79-5 and ~~General Order 62~~ set forth the procedures that must be followed and
8 the standards that will be applied when a party seeks permission from the court to
9 file material under seal.

10 **II. DEFINITIONS**

- 11 A. Challenging Party: a Party or Non-Party that challenges the designation of
12 information or items under this Order.
- 13 B. "CONFIDENTIAL" Information or Items: any personal, private, and/or
14 generally not disseminated information which relates to Plaintiff, or to Avon's
15 current or former employees, officers, directors, managers, or agents,
16 including but not limited to: information contained in personnel files; payroll
17 and benefit records; records of disciplinary action; performance evaluations;
18 personal financial information; personal identifiers such as social security
19 numbers and dates of birth; protected health information subject to HIPAA, 45
20 C.F.R., §164.512, *et. seq.*; private medical records; and communications
21 relating to the foregoing materials. The term "CONFIDENTIAL" as used
22 herein also means proprietary business information relating to Avon, including
23 but not limited to Avon's financial information, trade secrets, practices,
24 procedures, business information, compensation data, sales methods and
25 strategies, and related products and services including communications
26 regarding the same. Any document encompassing the above information
27 contains information not readily available to the general public and some of
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1 these documents contain personal and highly confidential information relating
2 to Parties and non-parties to this action. Additional information may be later
3 identified which shall also be considered "CONFIDENTIAL" and such
4 information shall be given similar protections pursuant to this Stipulated
5 Protective Order as specifically designated by and agreed to by the Parties
6 during the course of this matter.

- 7 C. Counsel (without qualifier): Outside Counsel of Record and House Counsel
8 (as well as their support staff).
- 9 D. Designating Party: a Party or Non-Party that designates information or items
10 that it produces in disclosures or in responses to discovery as
11 "CONFIDENTIAL."
- 12 E. Disclosure or Discovery Material: all items or information, regardless of the
13 medium or manner in which it is generated, stored, or maintained (including,
14 among other things, documents, testimony, interrogatory responses,
15 transcripts, and tangible things), that are produced or generated in disclosures
16 or responses to discovery in this matter.
- 17 F. Expert: a person with specialized knowledge or experience in a matter
18 pertinent to the litigation who has been retained by a Party or its counsel to
19 serve as an expert witness or as a consultant in this action.
- 20 G. House Counsel: attorneys who are employees of a party to this action. House
21 Counsel does not include Outside Counsel of Record or any other outside
22 counsel.
- 23 H. Non-Party: any natural person, partnership, corporation, association, or other
24 legal entity not named as a Party to this action.
- 25 I. Outside Counsel of Record: attorneys who are not employees of a party to this
26 action but are retained to represent or advise a party to this action and have
27 appeared in this action on behalf of that party or are affiliated with a law firm
28 which has appeared on behalf of that party.

- 1 J. Party: any party to this action, including all of its officers, directors,
2 employees, consultants, retained experts, and Outside Counsel of Record (and
3 their support staffs).
- 4 K. Producing Party: a Party or Non-Party that produces Disclosure or Discovery
5 Material in this action.
- 6 L. Professional Vendors: persons or entities that provide litigation support
7 services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or
9 medium) and their employees and subcontractors.
- 10 M. Protected Material: any Disclosure or Discovery Material that is designated as
11 “CONFIDENTIAL.”
- 12 N. Receiving Party: a Party that receives Disclosure or Discovery Material from
13 a Producing Party.

14 III. SCOPE

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

3 4 **IV. DURATION**

5 Even after final disposition of this litigation, the confidentiality obligations
6 imposed by this Order shall remain in effect until a Designating Party agrees
7 otherwise in writing or a court order otherwise directs. Final disposition shall be
8 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
9 or without prejudice; and (2) final judgment herein after the completion and
10 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
11 including the time limits for filing any motions or applications for extension of time
12 pursuant to applicable law. **FOR A PERIOD OF SIX MONTHS AFTER FINAL**
13 **DISPOSITION OF THIS LITIGATION, THIS COURT WILL RETAIN JURISDICTION TO**
14 **ENFORCE THE TERMS OF THIS ORDER.**

15 **V. DESIGNATING PROTECTED MATERIAL**

16 A. Exercise of Restraint and Care in Designating Material for Protection. Each
17 Party or Non-Party that designates information or items for protection under this
18 Order must take care to limit any such designation to specific material that qualifies
19 under the appropriate standards. The Designating Party must designate for
20 protection only those parts of material, documents, items, or oral or written
21 communications that qualify – so that other portions of the material, documents,
22 items, or communications for which protection is not warranted are not swept
23 unjustifiably within the ambit of this Order.

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

1 If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection, that Designating Party must
3 promptly notify all other Parties that it is withdrawing the mistaken designation.
4

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

9 Designation in conformity with this Order requires:

- 10 1. for information in documentary form (e.g., paper or electronic
11 documents, but excluding transcripts of depositions or other pretrial or
12 trial proceedings), that the Producing Party affix the legend
13 "CONFIDENTIAL" to each page that contains protected material. If
14 only a portion or portions of the material on a page qualifies for
15 protection, the Producing Party also must clearly identify the protected
16 portion(s) (e.g., by making appropriate markings in the margins). A
17 Party or Non-Party that makes original documents or materials available
18 for inspection need not designate them for protection until after the
19 inspecting Party has indicated which material it would like copied and
20 produced. During the inspection and before the designation, all of the
21 material made available for inspection shall be deemed
22 "CONFIDENTIAL." After the inspecting Party has identified the
23 documents it wants copied and produced, the Producing Party must
24 determine which documents, or portions thereof, qualify for protection
25 under this Order. Then, before producing the specified documents, the
26 Producing Party must affix the "CONFIDENTIAL" legend to each page
27 that contains Protected Material. If only a portion or portions of the
28 material on a page qualifies for protection, the Producing Party also

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must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

- 2. for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party identify all protected testimony on the record, either during the deposition, hearing, or other proceeding, or within fourteen (14) calendar days after receipt of the transcript.
- 3. for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

C. Inadvertent Failures to Designate. The inadvertent or unintentional disclosure of Confidential Information to the Receiving Party shall not preclude the Producing Party from later designating such information as "CONFIDENTIAL," provided that it shall not be considered a violation of this Order to disclose such undesignated Confidential Information any time prior to the Producing Party's designation of such information as "CONFIDENTIAL." In the event that the Producing Party inadvertently fails to stamp or otherwise to designate information as "CONFIDENTIAL" at the time of its disclosure, the Producing Party shall not be deemed to have waived its right to stamp or otherwise to designate the information as "CONFIDENTIAL."

VI. CHALLENGING CONFIDENTIALITY DESIGNATIONS

A. Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's

1 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,
2 unnecessary economic burdens, or a significant disruption or delay of the litigation, a
3 Party does not waive its right to challenge a confidentiality designation by electing
4 not to mount a challenge promptly after the original designation is disclosed. No
5 Party concedes that any information designated by any person as
6 “CONFIDENTIAL” does in fact contain or reflect Confidential Information as
7 defined herein.

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9 B. Meet and Confer. If, during the pendency of this litigation, any Party wishes
10 to object to any designations of Protected Material, the following procedure shall
11 apply: The Challenging Party shall initiate the dispute resolution process by
12 providing written notice of each designation it is challenging and describing the basis
13 for each challenge no later than twenty-one (21) calendar days after receipt of the
14 Protected Material, unless good cause can be shown why the Challenging Party
15 failed to object within the time parameters set forth herein. To avoid ambiguity as to
16 whether a challenge has been made, the written notice must recite that the challenge
17 to confidentiality is being made in accordance with this specific paragraph of the
18 Protective Order. The parties shall attempt to resolve each challenge in good faith
19 and must begin the process by conferring directly (in voice to voice dialogue; other
20 forms of communication are not sufficient) within fourteen (14) calendar days of the
21 date of service of notice. In conferring, the Challenging Party must explain the basis
22 for its belief that the confidentiality designation was not proper and must give the
23 Designating Party an opportunity to review the designated material, to reconsider the
24 circumstances, and, if no change in designation is offered, to explain the basis for the
25 chosen designation. A Challenging Party may proceed to the next stage of the
26 challenge process only if it has engaged in this meet and confer process first or
27 establishes that the Designating Party is unwilling to participate in the meet and
28 confer process in a timely manner.

1 C. Judicial Intervention. If the Parties cannot resolve a challenge without court
 2 intervention, ~~the Designating Party shall file and serve a motion to retain~~ **THEY SHALL COMPLY WITH THE UNDERSIGNED'S STANDING**
 3 ~~confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule~~ **ORDER RE CIVIL DISCOVERY DISPUTES.**
 4 ~~79-5 and General Order 62, if applicable) within 21 calendar days of the initial notice~~
 5 of challenge or within 14 calendar days of the parties agreeing that the meet and
 6 confer process will not resolve their dispute, whichever is earlier. ~~Each such motion~~ **IN EACH DISCOVERY**
 7 ~~must be accompanied by a competent declaration affirming that the movant has~~ **DISPUTE JOINT REPORT (DDJR), THE PARTIES MUST ATTEST THAT**
 8 ~~complied with the meet and confer requirements imposed in the preceding~~
 9 paragraph. Failure by the Designating Party to ~~make such a motion including the~~ **SEEK COURT INTERVENTION**
 10 ~~required declaration~~ within 21 calendar days (or 14 calendar days, if applicable) shall
 11 automatically waive the confidentiality designation for each challenged designation.
 12 In addition, the Challenging Party may file a motion challenging a confidentiality
 13 designation at any time if there is good cause for doing so, including a challenge to
 14 the designation of a deposition transcript or any portions thereof. ~~Any motion~~ **IN DDJR**
 15 brought pursuant to this provision, ~~must be accompanied by a competent declaration~~ **THE PARTIES MUST ATTEST THAT**
 16 ~~affirming that the movant has complied with~~ the meet and confer requirements
 17 imposed by the preceding paragraph.

18 The burden of persuasion in any such challenge proceeding shall be on the
 19 Designating Party. Frivolous challenges, and those made for an improper purpose
 20 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
 21 expose the Challenging Party to sanctions. Unless the Designating Party has
 22 waived the confidentiality designation by failing to ~~file a motion to retain~~ **SEEK COURT INTERVENTION**
 23 ~~confidentiality~~ as described above, all parties shall continue to afford the material in
 24 question the level of protection to which it is entitled under the Producing Party's
 25 designation until the court rules on the challenge.

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- 6. any third-party mediator selected by the Parties or assigned to assist by the Court, or their administrative staff;
- 7. during their depositions, witnesses in the action to whom disclosure is reasonably necessary, unless otherwise agreed by the Designating Party or ordered by the court (pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order); and
- 8. the author or recipient of a document containing the information.

Each person or entity in subsections (1) through ~~(8)~~ ^{(3) AND (5)-(8)} of paragraph VII(B), to whom any Protected Material is to be disclosed, shall be provided with a copy of this Stipulated Protective Order prior to such disclosure and agree to comply with its terms.

**VIII. PROTECTED MATERIAL SUBPOENAED
OR ORDERED PRODUCED IN OTHER LITIGATION**

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

- 1. promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
- 2. promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and
- 3. cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

1 If the Designating Party timely seeks a protective order, the Party served with
2 the subpoena or court order shall not produce any information designated in this
3 action as "CONFIDENTIAL" before a determination by the court from which the
4 subpoena or order issued, unless the Party has obtained the Designating Party's
5 permission. The Designating Party shall bear the burden and expense of seeking
6 protection in that court of its confidential material – and nothing in these provisions
7 should be construed as authorizing or encouraging a Receiving Party in this action
8 to disobey a lawful directive from another court.

9
10 **IX. A NON-PARTY'S PROTECTED MATERIAL SOUGHT**
11 **TO BE PRODUCED IN THIS LITIGATION**

12 1. The terms of this Order are applicable to information produced by a
13 Non-Party in this action and designated as "CONFIDENTIAL." Such information
14 produced by Non-Parties, either voluntarily or pursuant to a subpoena or a court
15 order, in connection with this litigation may be designated in the same manner and
16 shall receive the same level of protection under this Stipulated Protective Order as
17 any Party to this proceeding. Nothing in these provisions should be construed as
18 prohibiting a Non-Party from seeking additional protections. A Non-Party's use of
19 this Stipulated Protective Order to protect its "Confidential Information" does not
20 entitle that non-party to gain access to Confidential Information produced by any
21 Party or other non-party in this Proceeding.

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

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

- 1 b. promptly provide the Non-Party with a copy of the Stipulated
2 Protective Order in this litigation, the relevant discovery
3 request(s), and a reasonably specific description of the
4 information requested; and
- 5 c. make the information requested available for inspection by the
6 Non-Party.

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

15 *ALL DISCLOSURE AND DISCOVERY DISPUTES ARE SUBJECT TO THE UNDERSIGNED'S*
16 *STANDING ORDER RE CIVIL DISCOVERY DISPUTES.*

17 **X. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
19 Protected Material to any person or in any circumstance not authorized under this
20 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
21 writing the Designating Party of the unauthorized disclosures, (b) use its best
22 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
23 person or persons to whom unauthorized disclosures were made of all the terms of
24 this Order, and (d) request such person or persons review a copy of this Stipulated
25 Protective Order and agree to comply with its terms.
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1 Party's right to raise or to assert any objections heretofore or hereafter raised or
2 asserted, including but not limited to defenses or objections with respect to the use,
3 relevance or admissibility of any documents or their contents. Subject to the Court's
4 rules and procedures, this Protective Order shall not restrict in any manner the right
5 of any party to offer or use as evidence at the trial of this action any of the Protected
6 Material subject to this Protective Order and nothing contained herein shall affect the
7 admissibility or inadmissibility at trial of any evidentiary material.

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9 C. Filing Protected Material. ~~If any Protected Material is filed with the Court, the~~
10 ~~specific information which is protected shall be redacted. The only circumstance in~~
11 ~~which a document is not to be filed electronically is if the entire document~~
12 ~~constitutes Protected Material and there is no other information on the document. If~~
13 ~~possible, in the electronic filing, there will be a notation by the filing party that the~~
14 ~~information being maintained in confidence will be submitted under separate cover~~
15 ~~directly to the Court's chambers via U.S. mail or hand delivery. The submission to~~
16 ~~the Court will include a cover letter to notify that the information is being submitted~~
17 ~~subject to this "Stipulated Protective Order." As an example, if the information~~
18 ~~being maintained in confidence is a medical record with no other information on the~~
19 ~~document, the medical record will be omitted from the electronic filing and~~
20 ~~submitted in whole to the Court with a cover letter as described above.~~

21 Subject to ~~and without waiving the foregoing,~~^A a Party may not file in the
22 public record in this action any Protected Material without written permission from
23 the Designating Party or a court order secured after appropriate notice to all
24 interested persons. A Party that seeks to file under seal any Protected Material must
25 comply with Civil Local Rule 79-5 ~~and General Order 62~~. Protected Material may
26 only be filed under seal pursuant to a court order authorizing the sealing of the
27 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 ~~and General~~
28 ~~Order 62~~, a sealing order will issue only upon a request establishing that the

1 Protected Material at issue is privileged, protectable as a trade secret, or otherwise
 2 entitled to protection under the law. If a Receiving Party's request to file Protected
 3 Material under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is
 4 denied by the court, then the ~~Receiving~~ ^{MOVING} Party ~~may file the information in the public~~ ^{SHALL COMPLY WITH CIVIL LOCAL}
 5 ~~record pursuant to Civil Local Rule 79-5(e)~~ ^{RULE 79-5(f)(2)} unless otherwise instructed by the court.

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 7 D. Modifications. Nothing herein shall preclude a Party from applying to this
 8 Court, with notice to the other, for an order modifying this Stipulated Protective
 9 Order. This Protective Order may be modified by a writing signed by the Parties or
 10 by court order. Nothing in this Protective Order is intended to modify any
 11 pre-existing confidentiality agreement previously entered into by any Party or third
 12 party.

13 E. Counterparts. This Stipulated Protective Order may be executed in any
 14 number of counterparts, each of which shall be deemed to be an original and all of
 15 which shall constitute one and the same agreement.

16 XIII. FINAL DISPOSITION

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 19 Within 60 calendar days after the final disposition of this action, as defined in
 20 paragraph 4, each Receiving Party must return all Protected Material to the
 21 Producing Party or destroy such material. As used in this subdivision, "all
 22 Protected Material" includes all copies, abstracts, compilations, summaries, and any
 23 other format reproducing or capturing any of the Protected Material. Whether the
 24 Protected Material is returned or destroyed, the Receiving Party must submit a
 25 written certification to the Producing Party (and, if not the same person or entity, to
 26 the Designating Party) by the 60 day deadline that affirms that the Receiving Party
 27 has not retained any copies, abstracts, compilations, summaries or any other format
 28 reproducing or capturing any of the Protected Material. Notwithstanding this

