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9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

11 CRESTONE GROUP, LLC,
 12 Plaintiff,
 13 v.
 14 STARBUCKS CORPORATION, dba
 15 STARBUCKS COFFEE COMPANY,
 16 Defendant.

Case No. 09-CV-1119 JM (BLM)

**(1) ORDER GRANTING JOINT MOTION
 FOR PROTECTIVE ORDER AND (2)
 PROTECTIVE ORDER**

[Doc. No. 10]

17 The Court recognizes that at least some of the documents and information (“materials”) being
 18 sought through discovery in the above-captioned action are, for competitive reasons, normally kept
 19 confidential by the parties. Because the parties have agreed to be bound by the terms of this
 20 Protective Order (“Order”) in this action, and good cause appearing, the joint motion is **GRANTED**
 21 and the Order is as follows:

22 The materials to be exchanged throughout the course of the litigation between the parties may
 23 contain trade secret or other confidential research, technical, cost, price, marketing or other
 24 commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(7). The purpose
 25 of this Order is to protect the confidentiality of such materials as much as practical during the
 26 litigation. **THEREFORE:**

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1 **DEFINITIONS**

2 1. The term “Confidential Information” shall mean and include information contained or
3 disclosed in any materials, including documents, portions of documents, answers to interrogatories,
4 responses to requests for admissions, trial testimony, deposition testimony, and transcripts of trial
5 testimony and depositions, including data, summaries, and compilations derived therefrom that is
6 deemed to be Confidential Information by any party to which it belongs.

7 2. The term “materials” shall include, but shall not be limited to: documents;
8 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other material that
9 identify customers or potential customers; price lists or schedules or other matter identifying pricing;
10 minutes; telegrams; letters; statements; cancelled checks; contracts; invoices; drafts; books of
11 account; worksheets; notes of conversations; desk diaries; appointment books; expense accounts;
12 recordings; photographs; motion pictures; compilations from which information can be obtained and
13 translated into reasonably usable form through detection devices; sketches; drawings; notes (including
14 laboratory notebooks and records); reports; instructions; disclosures; other writings; models and
15 prototypes and other physical objects.

16 3. The term “counsel” shall mean outside counsel of record, and other attorneys,
17 paralegals, secretaries, and other support staff employed in the law firms identified below:
18 Luce, Forward, Hamilton & Scripps LLP and Perkins Coie LLP. “Counsel” shall also include
19 Elizabeth Burnett, in-house attorney for Crestone Group, LLC and Caitlin Moughon, in-house
20 attorney for Starbucks Corporation.

21 **GENERAL RULES**

22 4. Each party to this litigation that produces or discloses any materials, answers to
23 interrogatories, responses to requests for admission, trial testimony, deposition testimony, and
24 transcripts of trial testimony and depositions, or information that the producing party believes should
25 be subject to this Protective Order may designate the same as “CONFIDENTIAL” or
26 “CONFIDENTIAL – FOR COUNSEL ONLY.”

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1 a. Designation as “CONFIDENTIAL”: Any party may designate information as
2 “CONFIDENTIAL” only if, in the good faith belief of such party and its counsel, the unrestricted
3 disclosure of such information could be potentially prejudicial to the business or operations of such
4 party.

5 b. Designation as “CONFIDENTIAL – FOR COUNSEL ONLY”: Any party may
6 designate information as “CONFIDENTIAL – FOR COUNSEL ONLY” only if, in the good faith
7 belief of such party and its counsel, the information is among that considered to be most sensitive by
8 the party, including but not limited to trade secret or other confidential research, development,
9 financial or other commercial information.

10 5. In the event the producing party elects to produce materials for inspection, no marking
11 need be made by the producing party in advance of the initial inspection. For purposes of the initial
12 inspection, all materials produced shall be considered as “CONFIDENTIAL – FOR COUNSEL
13 ONLY,” and shall be treated as such pursuant to the terms of this Order. Thereafter, upon selection of
14 specified materials for copying by the inspecting party, the producing party shall, within a reasonable
15 time prior to producing those materials to the inspecting party, mark the copies of those materials that
16 contain Confidential Information with the appropriate confidentiality marking.

17 6. Whenever a deposition taken on behalf of any party involves a disclosure of
18 Confidential Information of any party:

19 a. said deposition or portions thereof shall be designated as containing
20 Confidential Information subject to the provisions of this Order; such designation shall be
21 made on the record whenever possible, but a party may designate portions of depositions as
22 containing Confidential Information after transcription of the proceedings; a party shall have
23 until fifteen (15) days after receipt of the deposition transcript to inform the other party or
24 parties to the action of the portions of the transcript designated “CONFIDENTIAL” or
25 “CONFIDENTIAL – FOR COUNSEL ONLY;”

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1 b. the disclosing party shall have the right to exclude from attendance at said
2 deposition, during such time as the Confidential Information is to be disclosed, any person
3 other than the deponent, counsel (including their staff and associates), the court reporter, and
4 the person(s) agreed upon pursuant to paragraph 8 below; and

5 c. the originals of said deposition transcripts and all copies thereof shall bear the
6 legend “CONFIDENTIAL” or “CONFIDENTIAL – FOR COUNSEL ONLY,” as appropriate,
7 and the original or any copy ultimately presented to a court for filing shall not be filed unless it
8 can be accomplished under seal, identified as being subject to this Order, and protected from
9 being opened except by order of this Court.

10 7. All Confidential Information designated as “CONFIDENTIAL” or “CONFIDENTIAL
11 – FOR COUNSEL ONLY” shall not be disclosed by the receiving party to anyone other than those
12 persons designated herein and shall be handled in the manner set forth below and, in any event, shall
13 not be used for any purpose other than in connection with this litigation, unless and until such
14 designation is removed either by agreement of the parties, or by order of the Court.

15 8. Information designated “CONFIDENTIAL – FOR COUNSEL ONLY” shall be viewed
16 only by counsel (as defined in paragraph 3) of the receiving party, and by independent experts under
17 the conditions set forth in this Paragraph. The right of any independent expert to receive any
18 Confidential Information shall be subject to the advance approval of such expert by the producing
19 party or by permission of the Court. The party seeking approval of any independent expert shall
20 provide the producing party with the name and curriculum vitae of the proposed independent expert,
21 and an executed copy of the form attached hereto as Exhibit A, in advance of providing any
22 Confidential Information of the producing party to the expert. Any objection by the producing party
23 to an independent expert receiving Confidential Information must be made in writing within fourteen
24 (14) days following receipt of the identification of the proposed expert. Confidential Information may
25 be disclosed to an independent expert if the fourteen (14) day period has passed and no objection has
26 been made. The approval of independent experts shall not be unreasonably withheld.

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1 9. Information designated “CONFIDENTIAL” shall be viewed only by counsel (as
2 defined in paragraph 3) of the receiving party, by independent experts (pursuant to the terms of
3 paragraph 8), and by the additional individuals listed below, provided each such individual has read
4 this Order in advance of disclosure and has agreed in writing to be bound by its terms:

5 (a) Executives who are required to participate in policy decisions with reference to
6 this action;

7 (b) Technical personnel of the parties with whom Counsel for the parties find it
8 necessary to consult, in the discretion of such counsel, in preparation for trial of this
9 action; and

10 (c) Stenographic and clerical employees associated with the individuals identified
11 above.

12 10. With respect to material designated “CONFIDENTIAL” or “CONFIDENTIAL – FOR
13 COUNSEL ONLY,” any person indicated on the face of the document to be its originator, author or a
14 recipient of a copy thereof, may be shown the same.

15 11. All information which has been designated as “CONFIDENTIAL” or
16 “CONFIDENTIAL – FOR COUNSEL ONLY” by the producing or disclosing party, and any and all
17 reproductions thereof, shall be retained in the custody of the counsel for the receiving party identified
18 in paragraph 3, except that independent experts authorized to view such information under the terms
19 of this Order may retain custody of copies such as are necessary for their participation in this
20 litigation.

21 12. Before any materials produced in discovery, answers to interrogatories, responses to
22 requests for admissions, deposition transcripts, or other documents which are designated as
23 Confidential Information are filed with the Court for any purpose, the party seeking to file such
24 material shall seek permission of the Court to file said material under seal.

25 13. At any stage of these proceedings, any party may object to a designation of the
26 materials as Confidential Information. The party objecting to confidentiality shall notify, in writing,
27 counsel for the designating party of the objected-to materials and the grounds for the objection. If the
28 dispute is not resolved consensually between the parties within seven (7) business days of receipt of

1 such a notice of objections, the objecting party may move the Court for a ruling on the objection. The
2 materials at issue shall be treated as Confidential Information, as designated by the designating party,
3 until the Court has ruled on the objection or the matter has been otherwise resolved.

4 14. All Confidential Information shall be held in confidence by those inspecting or
5 receiving it, and shall be used only for purposes of this action. Counsel for each party, and each
6 person receiving Confidential Information shall take reasonable precautions to prevent the
7 unauthorized or inadvertent disclosure of such information. If Confidential Information is disclosed to
8 any person other than a person authorized by this Order, the party responsible for the unauthorized
9 disclosure must immediately bring all pertinent facts relating to the unauthorized disclosure to the
10 attention of the other parties and, without prejudice to any rights and remedies of the other parties,
11 make every effort to prevent further disclosure by the party and by the person(s) receiving the
12 unauthorized disclosure.

13 15. No party shall be responsible to another party for disclosure of Confidential
14 Information under this Order if the information in question is not labeled or otherwise identified as
15 such in accordance with this Order.

16 16. If a party, through inadvertence, produces any Confidential Information without
17 labeling or marking or otherwise designating it as such in accordance with this Order, the designating
18 party may give written notice to the receiving party that the document or thing produced is deemed
19 Confidential Information, and that the document or thing produced should be treated as such in
20 accordance with that designation under this Order. The receiving party must treat the materials as
21 confidential, once the designating party so notifies the receiving party. If the receiving party has
22 disclosed the materials before receiving the designation, the receiving party must notify the
23 designating party in writing of each such disclosure. Counsel for the parties shall agree on a mutually
24 acceptable manner of labeling or marking the inadvertently produced materials as “CONFIDENTIAL”
25 or “CONFIDENTIAL – FOR COUNSEL ONLY” – SUBJECT TO PROTECTIVE ORDER.

26 17. Nothing herein shall prejudice the right of any party to object to the production of any
27 discovery material on the grounds that the material is protected as privileged or as attorney work
28 product.

1 18. Nothing in this Order shall bar counsel from rendering advice to their clients with
2 respect to this litigation and, in the course thereof, relying upon any information designated as
3 Confidential Information, provided that the contents of the information shall not be disclosed.

4 19. This Order shall be without prejudice to the right of any party to oppose production of
5 any information for lack of relevance or any other ground other than the mere presence of
6 Confidential Information. The existence of this Order shall not be used by either party as a basis for
7 discovery that is otherwise improper under the Federal Rules of Civil Procedure.

8 20. Nothing herein shall be construed to prevent disclosure of Confidential Information is
9 such disclosure is required by law or by order of the Court.

10 21. Upon final termination of this action, including any and all appeals, counsel for each
11 party shall, upon request of the producing party, return all Confidential Information to the party that
12 produced the information, including any copies, excerpts, and summaries thereof, or shall destroy the
13 same at the option of the receiving party, and shall purge all such information from all machine-
14 readable media on which it resides. Notwithstanding the foregoing, counsel for each party may retain
15 all pleadings, briefs, memoranda, motions, and other documents filed with the Court that refer to or
16 incorporate Confidential Information, and will continue to be bound by this Order with respect to all
17 such retained information. Further, attorney work product materials that contain Confidential
18 Information need not be destroyed, but, if they are not destroyed, the person in possession of the
19 attorney work product will continue to be bound by this Order with respect to all such retained
20 information.

21 22. The restrictions and obligations set forth herein shall not apply to any information that:
22 (a) the parties agree should not be designated Confidential Information; (b) the parties agree, or the
23 Court rules, is already public knowledge; (c) the parties agree, or the Court rules, has become public
24 knowledge other than as a result of disclosure by the receiving party, its employees, or its agents in
25 violation of this Order; or (d) has come or shall come into receiving party's legitimate knowledge
26 independently of the production by the designating party. Prior knowledge must be established by
27 pre-production documentation.

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1 23. The restrictions and obligations herein shall not be deemed to prohibit discussions of
2 any Confidential Information with anyone if that person already has or obtains legitimate possession
3 thereof.

4 24. Transmission by facsimile is acceptable for all notification purposes herein.

5 25. This Order may be modified by agreement of the parties, subject to approval by the
6 Court.

7 26. The Court may modify the terms and conditions of this Order for good cause, or in the
8 interest of justice, or on its own order at any time in these proceedings. The parties prefer that the
9 Court provide them with notice of the Court's intent to modify the Order and the content of those
10 modifications, prior to entry of such an order.

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12 **IT IS SO ORDERED** this 7th day of July, 2009.

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Hon. Barbara Lynn Major
Judge of the United States District Court

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EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CRESTONE GROUP, LLC,

Plaintiff,

v.

STARBUCKS CORPORATION, dba
STARBUCKS COFFEE COMPANY,

Defendant.

Case No. 09-CV-1119 JM (BLM)

**AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

I, _____, declare and say that:

1. I am employed as _____ by _____.

2. I have read the Protective Order entered in Crestone Group, LLC v. Starbucks Corporation, dba Starbucks Coffee Company, Case No. 09-CV-1119 JM (BLM), and have received a copy of the Protective Order.

3. I promise that I will use any and all “Confidential” or “Confidential – For Counsel Only” information, as defined in the Protective Order, given to me only in a manner authorized by the Protective Order, and only to assist counsel in the litigation of this matter.

4. I promise that I will not disclose or discuss such “Confidential” or “Confidential – For Counsel Only” information with anyone other than the persons described in paragraphs 3, 8 and 9 of the Protective Order.

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5. I acknowledge that, by signing this agreement, I am subjecting myself to the jurisdiction of the United States District Court for the Southern District of California with respect to enforcement of the Protective Order.

6. I understand that any disclosure or use of “Confidential” or “Confidential – For Counsel Only” information in any manner contrary to the provisions of the Protective Order may subject me to sanctions for contempt of court.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: . 2009 BY:

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