

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

CONSUELO ROUGEAUX,  
Plaintiff,  
v.  
L. BRANDS, INC., et al.,  
Defendants.

Case No.: 17cv1622-JM(RBB)  
**ORDER GRANTING JOINT  
MOTION REQUESTING ENTRY OF  
PROTECTIVE ORDER [ECF NO. 26]  
– AS MODIFIED BY THE COURT**

The Court recognizes that at least some of the documents and information (“materials”) being sought through discovery in the above-captioned action are, for competitive reasons, normally kept confidential by the parties. The parties have agreed to be bound by the terms of this Protective Order (“Order”) in this action.

The materials to be exchanged throughout the course of the litigation between the parties may contain trade secret or other confidential research, technical, cost, price, marketing or other commercial information, as is contemplated by Federal Rule of Civil Procedure 26(c)(1)(G). The purpose of this Order is to protect the confidentiality of such materials as much as practical during the litigation. THEREFORE:

1 DEFINITIONS

2 1. The term “confidential information” will mean and include information and  
3 materials that have been designated by counsel as “CONFIDENTIAL” or  
4 “CONFIDENTIAL - FOR COUNSEL ONLY”, which may include documents  
5 portions of documents, answers to interrogatories, responses to requests for admissions,  
6 trial testimony, excerpts of deposition testimony, and excerpts of transcripts of trial  
7 testimony, including data, summaries, and compilations derived therefrom that is  
8 deemed to be confidential information by any party to which it belongs.

9 2. The term “materials” will be limited to documents as defined by Rule 34 of the  
10 Federal Rules of Civil Procedure, and confidential information arising from the documents  
11 identified as:

- 12 a. “Maintenance made easy” training video;
- 13 b. “Store Safety Inspection Form”;
- 14 c. Daily Coverage Overview;
- 15 d. General housekeeping policy;
- 16 e. CSL module;
- 17 f. Emergency Procedures;
- 18 g. Diagram of Store; and
- 19 h. General Safety Matters.

20 Prior to the disclosure of additional confidential materials during the course of  
21 the litigation that are not identified in this Protective Order, the parties agree to meet and  
22 confer about disclosure of such documents, and the applicability of this Protective Order  
23 to any such documents.

24 3. The term “counsel” will mean outside counsel of record, and the attorneys,  
25 paralegals, secretaries, and other support staff employed in the law firms identified below: Hariri  
26 Law Group for Plaintiff, and Wilson Elser Moskowitz Edelman & Dicker LLP and Perez &  
27 Morris LLC for Defendants. “Counsel” also includes in-house attorneys and legal staff for  
28 Defendants.

1 GENERAL RULES

2 4. Each party to this litigation that produces or discloses any materials answers to  
3 interrogatories, responses to requests for admission, trial testimony information that the producing  
4 party believes should be subject to this Protective Order may designate the same as  
5 “CONFIDENTIAL” or “CONFIDENTIAL - FOR COUNSEL ONLY.”

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

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

15 5. In the event the producing party elects to produce materials for inspection, no  
16 marking need be made by the producing party in advance of the initial inspection. For purposes  
17 of the initial inspection, all materials produced will be considered as “CONFIDENTIAL - FOR  
18 COUNSEL ONLY,” and must be treated as such pursuant to the terms of this Order. Thereafter,  
19 upon selection of specified materials for copying by the inspecting party, the producing party  
20 must, within a reasonable time prior to producing those materials to the inspecting party, mark the  
21 copies of those materials that contain confidential information with the appropriate confidentiality  
22 marking.

23 6. Whenever a deposition taken on behalf of any party involves a disclosure of  
24 confidential information of any party:

25 a. the deposition or portions of the deposition must be designated as  
26 containing confidential information subject to the provisions depositions as containing  
27 confidential information after transcription of the proceedings. A party will have until  
28 fourteen (14) days after receipt of the deposition transcript to inform the other party or

1 parties to the action of the portions of the transcript to be designated  
2 “CONFIDENTIAL” or “CONFIDENTIAL- FOR COUNSEL ONLY”;

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

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

13 7. All confidential information designated as “CONFIDENTIAL” or  
14 “CONFIDENTIAL FOR COUNSEL ONLY” must not be disclosed by the receiving party to  
15 anyone other than those persons designated within this order and must be handled in the manner  
16 set forth below and, in any event, must not be used for any purpose other than in connection with  
17 this litigation, unless and until such designation is removed either by agreement of the parties, or  
18 by order of the Court.

19 8. Information designed “CONFIDENTIAL – FOR COUNSEL ONLY” may be  
20 viewed only by counsel (as defined in paragraph 3) of the receiving party and by  
21 independent experts who have signed a certification to keep all such information  
22 confidential consistent with this Protective Order. Information designated  
23 “confidential” may be viewed only by counsel (as defined in paragraph 3) of the  
24 receiving party, by independent experts (pursuant to the terms of this Protective Order),  
25 by court personnel, and by the additional individuals listed below, provided each such  
26 individual has read this Order in advance of disclosure and has agreed in writing to be  
27 bound by its terms:

28 ///

1           a.       Executives who are required to participate in policy decisions with  
2 reference to this action;

3           b.       Technical personnel of the parties with whom Counsel for the parties  
4 find it necessary to consult, in the discretion of such counsel, in preparation for trial of  
5 this action; and

6           c.       Stenographic and clerical employees associated with the individuals  
7 identified above.

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

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

17          11.      At any stage of these proceedings, any party may object to a designation of the  
18 materials as confidential information. The party objecting to confidentiality must notify, in  
19 writing, counsel for the designating party of the objected-to materials and the grounds for the  
20 objection. If the dispute is not resolved consensually between the parties within seven (7)  
21 days of receipt of such a notice of objections, the objecting party may move the Court  
22 for a ruling on the objection. The materials at issue must be treated as confidential  
23 information, as designated by the designating party, until the Court has ruled on the  
24 objection or the matter has been otherwise resolved.

25          12.      All confidential information must be held in confidence by those inspecting or  
26 receiving it, and must be used only for purposes of this action. Counsel for each party, and each  
27 person receiving confidential information must take reasonable precautions to prevent the  
28 unauthorized or inadvertent disclosure of such information. If confidential information is

1 disclosed to any person other than a person authorized by this Order, the party responsible for the  
2 unauthorized disclosure must immediately bring all pertinent facts relating to the unauthorized  
3 disclosure to the attention of the other parties and, without prejudice to any rights and remedies of  
4 the other parties, make every effort to prevent further disclosure by the party and by the person(s)  
5 receiving the unauthorized disclosure.

6 13. No party will be responsible to another party for disclosure of confidential  
7 information under this Order if the information in question is not labeled or otherwise identified  
8 as such in accordance with this Order.

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

20 15. Nothing within this order will prejudice the right of any party to object to the  
21 production of any discovery material on the grounds that the material is protected as privileged or  
22 as attorney work product.

23 16. Nothing in this Order will bar counsel from rendering advice to their clients with  
24 respect to this litigation and, in the course thereof, relying upon any information designated as  
25 confidential information, provided that the contents of the information must not be disclosed.

26 17. This Order will be without prejudice to the right of any party to oppose production  
27 of any information for lack of relevance or any other ground other than the mere presence of  
28 confidential information. The existence of this Order must not be used by either party as a basis

1 for discovery that is otherwise improper under the Federal Rules of Civil Procedure.

2 18. Nothing within this order will be construed to prevent disclosure of confidential  
3 information if such disclosure is required by law or by order of the Court.

4 19. No items will be electronically filed under seal without a prior application  
5 to, and order from, the judge presiding over the hearing or trial. Only when the judge  
6 presiding over the hearing or trial permits filing an item or items under seal may  
7 confidential material be filed with the Court under seal.

8 Whenever the Court grants a party permission to file an item under seal, a  
9 duplicate disclosing all nonconfidential information shall be filed and made part of the  
10 public record. The item may be redacted to eliminate confidential material from the  
11 public document. The public document shall be titled to show that it corresponds to an  
12 item filed under seal, e.g., “Redacted Copy of Sealed Declaration of John Smith in  
13 Support of Motion for Summary Judgment.” The public redacted documents shall be  
14 filed within twenty-four hours of the Court order authorizing the filing of a document  
15 under seal.

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

28 ///

1           21.    The restrictions and obligations set forth within this order will not apply to any  
2 information that: (a) the parties agree should not be designated confidential information; (b) the  
3 parties agree, or the Court rules, is already public knowledge; (c) the parties agree, or the Court  
4 rules, has become public knowledge other than as a result of disclosure by the receiving party, its  
5 employees, or its agents in violation of this Order; or (d) has come or will come into the receiving  
6 party's legitimate knowledge independently of the production by the designating party. Prior  
7 knowledge must be established by pre-production documentation.

8           22.    The restrictions and obligations within this order will not be deemed to prohibit  
9 discussions of any confidential information with anyone if that person already has or obtains  
10 legitimate possession of that information.


11          23.    Transmission by e-mail or some other currently utilized method of transmission is  
12 acceptable for all notification purposes within this Order.

13          24.    This Order may be modified by agreement of the parties, subject to approval by the  
14 Court.

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

19                **IT IS SO ORDERED.**

20  
21 Dated: April 24, 2018

  
Hon. Ruben B. Brooks  
United States Magistrate Judge