

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**

KORE ESSENTIALS, INC., a
California corporation,

Plaintiff,

vs.

NEXBELT, LLC, a California limited
liability company; and DOES 1-10,
inclusive,

Defendants.

CASE NO. 3:17-CV-02129-CAB-
JMA

HON. CATHY ANN
BENCIVENGO

**STIPULATED PROTECTIVE
ORDER**

NEXBELT, LLC, a California limited
liability company,

Counterclaimant,

vs.

KORE ESSENTIALS, INC., a
California corporation,

Counterdefendant.

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

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

10 DEFINITIONS

11 1. The term “Confidential Information” will mean and include information
12 contained or disclosed in any materials, including documents, portions of documents,
13 answers to interrogatories, responses to requests for admissions, trial testimony,
14 deposition testimony, and transcripts of trial testimony and depositions, including data,
15 summaries, and compilations derived therefrom that is deemed to be Confidential
16 Information by any party to which it belongs.

17 2. The term “materials” will include, but is not limited to: documents;
18 correspondence; memoranda; bulletins; blueprints; specifications; customer lists or other
19 material that identify customers or potential customers; price lists or schedules or other
20 matter identifying pricing; minutes; telegrams; letters; statements; canceled checks;
21 contracts; invoices; drafts; books of account; worksheets; notes of conversations; desk
22 diaries; appointment books; expense accounts; recordings; photographs; motion pictures;
23 compilations from which information can be obtained and translated into reasonably
24 useable form through detection devices; sketches; drawings; notes (including laboratory
25 notebooks and records); reports; instructions; disclosures; other writings; models and
26 prototypes and other physical objects.

27 3. The term “counsel” will mean outside counsel of record, and other attorneys,
28 secretaries, and other support staff employed in the law firms identified as follows: San

1 Diego IP Law Group LLP and Cypress LLP.

2 GENERAL RULES

3 4. Each party to this litigation that produces or discloses any materials, answers
4 to interrogatories, responses to requests for admission, trial testimony, and transcripts of
5 trial testimony and depositions, or information that the producing party believes should
6 be subject to this Protective Order may designate the same as “CONFIDENTIAL” or
7 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY.”

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

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

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

26 6. Whenever a deposition taken on behalf of any party involves a disclosure of
27 Confidential Information of any party:
28

- a. the deposition or portions of the deposition must be designated as containing Confidential Information subject to the provisions of this Order; such designation must be made on the record whenever possible, but a party may designate portions of depositions as containing Confidential Information after transcription of the proceedings; [A] party will have until fourteen (14) days after receipt of the deposition transcript to inform the other party or parties to the action of the portions of the transcript to be designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY.”
- b. the disclosing party will have the right to exclude from attendance at the deposition, during such time as the Confidential Information is to be disclosed, any person other than the deponent, counsel (including their staff and associates), the court reporter, and the person(s) agreed upon pursuant to paragraph 8 below; and
- c. the originals of the deposition transcripts and all copies of the deposition must bear the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY,” as appropriate, and the original or any copy ultimately presented to a court for filing must not be filed unless it can be accomplished under seal, identified as being subject to this Order, and protected from being opened except by order of this Court.

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

1 7. All Confidential Information designated as “CONFIDENTIAL” or
2 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” must not be disclosed by
3 the receiving party to anyone other than those persons designated within this order and
4 must be handled in the manner set forth below and, in any event, must not be used for any
5 purpose other than in connection with this litigation, unless and until such designation is
6 removed either by agreement of the parties, or by order of the Court.

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

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

- 26 (a) Executives who are required to participate in policy decisions with
27 reference to this action;
- 28 (b) Technical personnel of the parties with whom Counsel for the parties

1 find it necessary to consult, in the discretion of such counsel, in
2 preparation for trial of this action; and

3 (c) Stenographic and clerical employees associated with the individuals
4 identified above.

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

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

15 12. Before any materials produced in discovery, answers to interrogatories,
16 responses to requests for admissions, deposition transcripts, or other documents which
17 are designated as Confidential Information are filed with the Court for any purpose, the
18 party seeking to file such material must seek permission of the Court to file the material
19 under seal.

20 13. Subject to public policy, and further court order, nothing shall be filed under
21 seal, and the court shall not be required to take any action, without separate prior order by
22 the Judge before whom the hearing or proceeding will take place, after application by the
23 affected party with appropriate notice to opposing counsel.

24 14. If the Court grants a party permission to file an item under seal, a duplicate
25 disclosing all nonconfidential information, if any, shall be filed and made part of the
26 public record. The item may be redacted to eliminate confidential material from the
27 document. The document shall be titled to show that it corresponds to an item filed under
28 seal, e.g., “Redacted Copy of Sealed Declaration of John Smith in Support of Motion for

1 Summary Judgment.” The sealed and redacted documents shall be filed simultaneously.

2 15. At any stage of these proceedings, any party may object to a designation of
3 the materials as Confidential Information. The party objecting to confidentiality must
4 notify, in writing, counsel for the designating party of the objected-to materials and the
5 grounds for the objection. If the dispute is not resolved consensually between the parties
6 within seven (7) days of receipt of such a notice of objections, the objecting party may
7 move the Court for a ruling on the objection. The materials at issue must be treated as
8 Confidential Information, as designated by the designating party, until the Court has ruled
9 on the objection or the matter has been otherwise resolved.

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

20 17. No party will be responsible to another party for disclosure of Confidential
21 Information under this Order if the information in question is not labeled or otherwise
22 identified as such in accordance with this Order.

23 18. If a party, through inadvertence, produces any Confidential Information
24 without labeling or marking or otherwise designating it as such in accordance with this
25 Order, the designating party may give written notice to the receiving party that the
26 document or thing produced is deemed Confidential Information, and that the document
27 or thing produced should be treated as such in accordance with that designation under this
28 Order. The receiving party must treat the materials as confidential, once the designating

1 party so notifies the receiving party. If the receiving party has disclosed the materials
2 before receiving the designation, the receiving party must notify the designating party in
3 writing of each such disclosure. Counsel for the parties will agree on a mutually
4 acceptable manner of labeling or marking the inadvertently produced materials as
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” -
6 SUBJECT TO PROTECTIVE ORDER.

7 19. Nothing within this order will prejudice the right of any party to object to the
8 production of any discovery material on the grounds that the material is protected as
9 privileged or as attorney work product.

10 20. Nothing in this Order will bar counsel from rendering advice to their clients
11 with respect to this litigation and, in the course thereof, relying upon any information
12 designated as Confidential Information, provided that the contents of the information
13 be disclosed.

14 21. This Order will be without prejudice to the right of any party to oppose
15 production of any information for lack of relevance or any other ground other than the
16 mere presence of Confidential Information. The existence of this Order must not be used
17 by either party as a basis for discovery that is otherwise improper under the Federal Rules
18 of Civil Procedure.

19 22. Nothing within this order will be construed to prevent disclosure of
20 Confidential Information if such disclosure is required by law or by order of the Court.

21 23. Upon final termination of this action, including any and all appeals, counsel
22 for each party must, upon request of the producing party, return all Confidential
23 Information to the party that produced the information, including any copies, excerpts,
24 and summaries of that information, or must destroy same at the option of the receiving
25 party, and must purge all such information from all machine-readable media on which it
26 resides. Notwithstanding the foregoing, counsel for each party may retain all pleadings,
27 briefs, memoranda, motions, and other documents filed with the Court that refer to or
28 incorporate Confidential Information, and will continue to be bound by this Order with

1 respect to all such retained information. Further, attorney work product materials that
2 contain Confidential Information need not be destroyed, but, if they are not destroyed, the
3 person in possession of the attorney work product will continue to be bound by this Order
4 with respect to all such retained information.

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


13 25. The restrictions and obligations within this order will not be deemed to
14 prohibit discussions of any Confidential Information with anyone if that person already
15 has or obtains legitimate possession of that information.

16 26. Transmission by facsimile is acceptable for all notification purposes within
17 this order.

18 27. This Order may be modified by agreement of the parties, subject to approval
19 by the Court.

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

24 IT IS SO ORDERED this 7th day of February, 2018

25
26 
27 _____
28 Jan M. Adler
United States Magistrate Judge

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**

KORE ESSENTIALS, INC., a California corporation,
Plaintiff/Counter-Defendant,
v.
NEXBELT, LLC, a California limited liability company; and DOES 1-10, inclusive,
Defendant/Counter-Claimant.

Case No.: 3:17-CV-02129-CAB-JMA
**AGREEMENT TO BE BOUND BY
THE PROTECTIVE ORDER**

I, _____ declare and say that:

1. I am employed as _____

by _____.

2. I have read the Protective Order entered in *KORE ESSENTIALS, INC. v. NEXBELT, LLC ET AL.*, Case No. 3:17-CV-02129-CAB-JMA, and have received a copy of the Protective Order.

3. I promise that I will use any and all “Confidential” or “Highly Confidential – Outside Counsel Only” information, as defined in the Protective Order, given to me only

1 in a manner authorized by the Protective Order, and only to assist counsel in the litigation
2 of this matter.

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

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

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

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

13
14 Date: _____

15
16 By: _____
17
18
19
20
21
22
23
24
25
26
27
28