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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MARIE FALCONE, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

NESTLÉ USA, INC., a Delaware  
Corporation; and DOES 1 TO 100,

Defendant.

CASE NO. 19-CV-00723-L-DEB

**PROTECTIVE ORDER**

The Court recognizes that at least some of the documents and information (“materials,” as defined below) 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 (including information regarding proprietary manufacturing processes, proprietary business systems, and economically sensitive information), as is contemplated by Federal Rule of Civil Procedure

1 26(c)(1)(G), as well as private or personally identifiable information of Plaintiff and  
2 other consumers. The purpose of this Order is to protect the confidentiality of such  
3 materials as much as practical during the litigation. THEREFORE:

4 **DEFINITIONS**

5 1. The term “confidential information” means and includes information  
6 contained or disclosed in any materials, including documents, portions of documents,  
7 answers to interrogatories, responses to requests for admissions, trial testimony,  
8 deposition testimony, and transcripts of trial testimony and depositions, including data,  
9 summaries, and compilations derived therefrom that is deemed to be confidential  
10 information by any party to which it belongs.

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

21 3. The term “counsel” means outside counsel of record, and other attorneys,  
22 paralegals, secretaries, and other support staff who are both assigned to this action and  
23 employed in the following law firms: (1) Gibson, Dunn & Crutcher, LLP; (2) Schonbrun  
24 Seplow Harris Hoffman & Zeldes, LLP; and (3) Reese LLP. “Counsel” also includes in-  
25 house attorneys for Defendant Nestlé USA, Inc., and any authorized third party vendor  
26 retained by the parties or their counsel to aid in the discovery process (including, for  
27 example, e-Discovery vendors and/or attorneys retained on a contract basis to aid in  
28 document review and production), who acknowledges and signs the agreement to abide

1 by this order, which is attached hereto as Exhibit A.

2 **GENERAL RULES**

3 4. Each party to, or third party that has become involved in, this litigation that  
4 produces or discloses any materials, answers to interrogatories, responses to requests for  
5 admission, trial testimony, deposition testimony, and transcripts of trial testimony and  
6 depositions, or information that the producing party believes should be subject to this  
7 Protective Order may designate the same as “CONFIDENTIAL” or “CONFIDENTIAL  
8 - FOR ATTORNEYS’ EYES ONLY.”

9 a. Designation as “CONFIDENTIAL”: Any producing party may  
10 designate information as “CONFIDENTIAL” only if, in the good  
11 faith belief of such party and its counsel: (i) the unrestricted  
12 disclosure of such information could be potentially prejudicial to the  
13 business or operations of such party, or (ii) the information  
14 constitutes sensitive, private, or personally identifiable information  
15 of a consumer.

16 b. Designation as “CONFIDENTIAL - FOR ATTORNEYS’ EYES  
17 ONLY”: Any producing party may designate information as  
18 “CONFIDENTIAL - FOR ATTORNEYS’ EYES ONLY” only if, in  
19 the good faith belief of such party and its counsel, the information is  
20 among that considered to be most sensitive by the party, including  
21 but not limited to trade secret or other confidential research,  
22 development, financial or other commercial information.

23 In making the designation discussed above, the parties shall comply with the following:  
24 Where the material is a document in electronic or hard copy form, the designation shall  
25 be made, where possible, on the face of the document; where that is not possible, the  
26 designation shall be made in a reasonable manner. Unless impossible, the designation  
27 shall be made in a manner which is the same as or similar to the manner used to associate  
28 a Bates number with the material.

1           5.       Whenever a deposition taken on behalf of any party involves a disclosure  
2 of confidential information of any party to, or third party that has become involved in,  
3 the litigation:

- 4           a.       the deposition or portions of the deposition must be designated as  
5 containing confidential information subject to the provisions of this  
6 Order; such designation must be made on the record whenever  
7 possible, but a disclosing party may designate portions of depositions  
8 as containing confidential information after transcription of the  
9 proceedings; the disclosing party will have until fourteen (14) days  
10 after receipt of the deposition transcript to inform the other party or  
11 parties to the action of the portions of the transcript to be designated  
12 “CONFIDENTIAL” or “CONFIDENTIAL - FOR ATTORNEYS’  
13 EYES ONLY.”
- 14           b.       the disclosing party will have the right to exclude from attendance at  
15 the deposition, during such time as the confidential information is to  
16 be disclosed, any person other than the deponent, counsel (including  
17 their staff and associates), the court reporter, and the person(s) agreed  
18 upon pursuant to paragraph 7 below; and
- 19           c.       the originals of the deposition transcripts and all copies of the  
20 deposition must bear the legend “CONFIDENTIAL” or  
21 “CONFIDENTIAL – FOR ATTORNEYS’ EYES ONLY,” as  
22 appropriate, and the original or any copy ultimately presented to a  
23 court for filing must not be filed unless it can be accomplished under  
24 seal, identified as being subject to this Order, and protected from  
25 being opened except by order of this Court.

26           6.       All confidential information designated as “CONFIDENTIAL” or  
27 “CONFIDENTIAL - FOR ATTORNEYS’ EYES ONLY” must not be disclosed in any  
28 form by the receiving party to anyone other than those persons designated within this

1 Order and must be handled in the manner set forth below and, in any event, must not be  
2 used for any purpose other than in connection with this litigation, unless and until such  
3 designation is removed either by agreement of the parties, or by order of the Court.

4 7. Confidential information designated “CONFIDENTIAL – FOR  
5 ATTORNEYS’ EYES ONLY” must be viewed only by counsel (as defined in paragraph  
6 3), the Court and its personnel, independent experts (including professional jury or trial  
7 consultants), and mock jurors.

8 8. Confidential information designated “CONFIDENTIAL” must be viewed  
9 only by counsel (as defined in paragraph 3), the Court and its personnel, independent  
10 experts (including professional jury or trial consultants), mock jurors, and the additional  
11 individuals listed below, provided each such individual has read this Order in advance  
12 of disclosure and has agreed in writing to be bound by its terms:

- 13 a. technical personnel of the parties with whom Counsel for the parties  
14 find it necessary to consult, in the discretion of such counsel, in  
15 preparation for trial of this action;  
16 b. stenographic and clerical employees associated with the individuals  
17 identified above; and  
18 c. any person that the parties agree in writing may have access to such  
19 confidential information.

20 9. Confidential information designated “CONFIDENTIAL” or  
21 “CONFIDENTIAL – FOR ATTORNEYS’ EYES ONLY” may be shown to any person  
22 indicated on the face of the document to be its originator, author, or a recipient of a copy  
23 of the document.

24 10. Under no circumstances may confidential information designated  
25 “CONFIDENTIAL” be disclosed to any individual who is currently an officer, director,  
26 or employee of any entity that is engaged in formulating, manufacturing, advertising,  
27 and/or sale of food or beverage products (“Competitor”). Confidential information  
28 designated “CONFIDENTIAL” also may not be disclosed under any circumstances to

1 any individual who is currently a consultant or agent for any Competitor in areas relating  
2 to the formulation, manufacture, advertisement, and/or sale of food or beverage  
3 products.

4 11. All confidential information which has been designated as  
5 “CONFIDENTIAL” or “CONFIDENTIAL - FOR ATTORNEYS’ EYES ONLY” by  
6 the producing or disclosing party, and any and all reproductions of that information,  
7 must be retained in the custody of the counsel for the receiving party identified in  
8 paragraph 3, except that independent experts authorized to view such information under  
9 the terms of this Order may retain custody of copies such as are necessary for their  
10 participation in this litigation.

11 12. Before any materials produced in discovery, answers to interrogatories,  
12 responses to requests for admissions, deposition transcripts, or other documents which  
13 are designated as confidential information are filed with the Court for any purpose, the  
14 party seeking to file such material must seek permission of the Court to file the material  
15 under seal.

16 13. No party may file any document under seal, except pursuant to a court order  
17 that authorizes the filing of the document, or portion of the document, under seal. A  
18 sealing order will issue only upon a showing that the information is privileged or  
19 protectable under the law. The party seeking to file under seal must limit its sealing  
20 request to the specific portion of the document that contains the confidential or  
21 privileged material.

22 14. Parties seeking to file material under seal shall comply with the Local Rules  
23 of this Court and shall comply with the rules and procedures set forth in the Electronic  
24 Case Filing Administrative Policies and Procedures Manual of this Court, including but  
25 not limited to the rules and procedures set forth in Section 2.j (regarding Sealed and  
26 Juvenile Documents).

27 15. An unredacted copy of any motion to seal shall be served on opposing  
28 counsel and, if applicable, on any third party that produced any confidential information

1 that is sought to be sealed through the motion.

2 16. During the pendency of a motion to seal, a party may file public versions  
3 of briefs, documents, and confidential information that it is seeking to have sealed  
4 through the motion, which redact the confidential information that is sought to be sealed.  
5 A public version shall be titled to show that it corresponds to an item subject to a motion  
6 to seal, e.g., “Redacted Copy of Declaration of John Smith in Support of Motion for  
7 Summary Judgment.”

8 17. At any stage of the proceedings, any party may object to a designation of  
9 materials as confidential information. The objecting party must notify the designating  
10 party, in writing, of the materials objected to and the ground(s) for the objection.  
11 Thereafter, lead counsel (or attorneys with full authority to make decisions and bind the  
12 client without later seeking approval from a supervising attorney) must promptly meet  
13 and confer, pursuant to Local Rule 26.1.a. If the dispute is not resolved within seven (7)  
14 days of receipt of the objections, and after counsel have thoroughly and completely met  
15 and conferred, the parties must place a joint call to the assigned magistrate judge’s  
16 chambers to explain the dispute and the parties’ respective positions. The materials at  
17 issue must be treated as confidential until the Court has ruled on the objection or the  
18 matter has been otherwise resolved.

19 18. All confidential information must be held in confidence by those inspecting  
20 or receiving it, and must be used only for purposes of this action. Counsel for each party,  
21 and each person receiving confidential information must take reasonable precautions to  
22 prevent the unauthorized or inadvertent disclosure of such information. If confidential  
23 information is disclosed to any person other than a person authorized by this Order, the  
24 party responsible for the unauthorized disclosure must immediately bring all pertinent  
25 facts relating to the unauthorized disclosure to the attention of the other parties and,  
26 without prejudice to any rights and remedies of the other parties, make every effort to  
27 prevent further disclosure by the party and by the person(s) receiving the unauthorized  
28 disclosure.

1           19. No party will be responsible to another party for disclosure of confidential  
2 information under this Order if the information in question is not labeled or otherwise  
3 identified as such in accordance with this Order.

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

16           21. Nothing within this Order will prejudice the right of any party to object to  
17 the production of any discovery material on the grounds that the material is protected as  
18 privileged or as attorney work product.

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

23           23. This Order will be without prejudice to the right of any party to oppose  
24 production of any information for lack of relevance or any other ground other than the  
25 mere presence of confidential information. The existence of this Order must not be used  
26 by either party as a basis for discovery that is otherwise improper under the Federal  
27 Rules of Civil Procedure or the Local Rules of this Court.

28           24. Nothing within this Order will be construed to prevent disclosure of



1 confidential information if such disclosure is required by law or by order of the Court.

2 25. Upon final termination of this action, including any and all appeals, counsel  
3 for each party must, upon request of the producing party: (i) return all confidential  
4 information to the party that produced the information, including any copies, excerpts,  
5 and summaries of that information, or must destroy the same at the option of the  
6 receiving party, and (ii) purge all such information from all machine-readable media on  
7 which it resides. Notwithstanding the foregoing, counsel for each party may retain all  
8 pleadings, briefs, memoranda, motions, and other documents filed with the Court that  
9 refer to or incorporate confidential information, and will continue to be bound by this  
10 Order with respect to all such retained information. Further, attorney work product  
11 materials that contain confidential information need not be destroyed, but, if they are not  
12 destroyed, the person in possession of the attorney work product will continue to be  
13 bound by this Order with respect to all such retained information. Within thirty (30) days  
14 of the final termination of this action, including any and all appeals, the receiving party  
15 must, upon request by the producing party, submit a written certification to the  
16 producing party that it has complied with the terms of this Paragraph.

17 26. Upon final termination of this action, including any and all appeals, the  
18 Court shall return all confidential or sealed documents to the producing party, including  
19 any copies, excerpts, and summaries of that information, within sixty (60) days. Any  
20 action by the Court pursuant to this Paragraph must be preceded by an *ex parte* motion  
21 for an order authorizing the return of all “CONFIDENTIAL” or “CONFIDENTIAL -  
22 ATTORNEYS’ EYES ONLY” material to the producing party.

23 27. The restrictions and obligations set forth within this Order will not apply to  
24 any information or documents that: (a) the parties agree should not be designated  
25 confidential information; (b) the parties agree, or the Court rules, is already public  
26 knowledge; (c) the parties agree, or the Court rules, has become public knowledge other  
27 than as a result of disclosure by the receiving party, its employees, or its agents in  
28 violation of this Order; or (d) has come or will come into the receiving party’s legitimate

1 knowledge or possession independently of the production by the designating party.

2 28. The restrictions and obligations within this Order will not be deemed to  
3 prohibit discussions of any confidential information with anyone if that person already  
4 has or obtains legitimate possession of that information.

5 29. If a party is served with a subpoena, court order, or other formal judicial or  
6 regulatory request for information that compels disclosure of any confidential  
7 information (an “Outside Demand”), that party must promptly (within two business  
8 days) notify the producing party in writing. Such notification shall include a copy of the  
9 Outside Demand. The party served with an Outside Demand shall notify in writing the  
10 party who issued the Outside Demand that some or all of the material covered by the  
11 Outside Demand is subject to this Order. Such notification shall include a copy of this  
12 Order. The party receiving an Outside Demand must coordinate and reasonably  
13 cooperate with the producing party whose confidential information may be affected in  
14 responding to the Outside Demand.

15 30. If a third party produces documents or testimony which contain confidential  
16 information of a party, the parties agree that this Order shall allow the relevant party to  
17 designate that confidential information as “CONFIDENTIAL” or “CONFIDENTIAL –  
18 ATTORNEYS’ EYES ONLY” as appropriate.

19 31. Pursuant to Rule 502 of the Federal Rules of Evidence and Rule 4.4 of the  
20 Model Rules of Professional Conduct, an inadvertent production of privileged or  
21 otherwise protected material shall not operate as a waiver of the relevant privilege or  
22 protection in the pending case or in any other federal or state proceeding, and counsel  
23 who receive a document which counsel knows or reasonably should know was  
24 inadvertently sent shall promptly notify the sender. Furthermore, the mere production of  
25 Electronically Stored Information in the litigation as part of a mass production shall not  
26 itself constitute a waiver for any purpose.

27 32. Transmission by email or some other currently utilized method of  
28 transmission is acceptable for all notification purposes within this Order.

1           33. This Order may be modified by agreement of the parties, subject to  
2 approval by the Court.

3           34. The Court may modify the protective order in the interest of justice or for  
4 public policy reasons.

5           **IT IS SO ORDERED.**

6  
7 Dated: April 10, 2023



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8 Daniel E. Butcher  
9 United States Magistrate Judge

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2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF CALIFORNIA  
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6 MARIE FALCONE, individually and  
7 on behalf of all others similarly situated,

8 Plaintiff,

9 v.

10 NESTLÉ USA, INC., a Delaware  
11 Corporation; and DOES 1 TO 100,

12 Defendant.  
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CASE NO. 3:19-cv-00723-L-DEB

**AGREEMENT TO BE BOUND BY  
STIPULATED PROTECTIVE ORDER**

14 I, \_\_\_\_\_, being duly sworn, state that:  
15

16 1. My present employer is \_\_\_\_\_ and the  
17 address of my present employment is \_\_\_\_\_  
18 \_\_\_\_\_.

19 2. My present occupation or job description is \_\_\_\_\_.

20 3. I have carefully read in its entirety and understand the provisions of the  
21 Stipulated Protective Order in this case signed by the Court on \_\_\_\_\_, 2023.

22 I agree to comply with and to be bound by all provisions of the Stipulated Protective  
23 Order, and I understand and acknowledge that failure to so comply could expose me to  
24 sanctions and punishment in the nature of contempt. I solemnly promise that I will not  
25 disclose in any manner any information or item that is subject to the Stipulated  
26 Protective Order to any person or entity except in strict compliance with the provisions  
27 of the Stipulated Protective Order.

28 4. I agree to submit to the jurisdiction of this Court to resolve all disputes

1 relating to this Agreement, my compliance with this Agreement, and the Stipulated  
2 Protective Order, even if such disputes occur after termination of this action.

3  
4 I declare under penalty of perjury that the foregoing is true and correct.

5  
6 Dated: \_\_\_\_\_

7 \_\_\_\_\_  
(Signature)

8  
9 \_\_\_\_\_  
10 (Printed Name)

11  
12 \_\_\_\_\_  
13 (City Where Sworn and Signed)