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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ERLINDA BELANGUE,

Plaintiff,

v.

COSTCO WHOLESALE
CORPORATION, et al.,

Defendants.

Case No.: 23-cv-01850-W-JLB

**ORDER REGARDING THE
PARTIES' JOINT MOTIONS FOR
PROTECTIVE ORDER**

[ECF Nos. 18, 21]

Before the Court are two joint motions for a protective order. (*See* ECF Nos. 18; 21.) The first Joint Motion (ECF No. 18) references Exhibit A, but the filing did not include an Exhibit A. The second Joint Motion (ECF No. 21) complies with Section VI(A) of the undersigned's Civil Chambers Rules. Good cause appearing, the second Joint Motion (ECF No. 21) is **GRANTED**, the parties' first Joint Motion for Protective Order (ECF No. 18) is **DENIED as moot**, and the following Protective Order is entered¹:

¹ The Court has modified Exhibit A to refer to the Southern District of California instead of to the Central District of California.

1 **PROTECTIVE ORDER**

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

6 The materials to be exchanged throughout the course of the litigation between the
7 parties may contain trade secret or other confidential research, technical, cost, price,
8 marketing or other commercial information, as is contemplated by Federal Rule of Civil
9 Procedure 26(c)(1)(G).

10 The purpose of this Order is to protect the confidentiality of such materials as much
11 as practical during the litigation. THEREFORE:

12 **DEFINITIONS**

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

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

1 those materials to the inspecting party, mark the copies of those materials that contain
2 confidential information with the appropriate confidentiality marking.

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

5 a. the deposition or portions of the deposition must be designated as
6 containing confidential information subject to the provisions of this Order; such
7 designation must be made on the record whenever possible, but a party may
8 designate portions of depositions as containing confidential information after
9 transcription of the proceedings; a party will have until 14 calendar days after receipt
10 of the deposition transcript to inform the other party or parties to the action of the
11 portions of the transcript to be designated “CONFIDENTIAL” or
12 “CONFIDENTIAL – FOR COUNSEL ONLY.”

13 b. the disclosing party will have the right to exclude from attendance at
14 the deposition, during such time as the confidential information is to be disclosed,
15 any person other than the deponent, counsel (including their staff and associates),
16 the court reporter, and the person(s) agreed upon pursuant to Paragraph 9 below; and

17 c. the originals of the deposition transcripts and all copies of the
18 deposition must bear the legend “CONFIDENTIAL” or “CONFIDENTIAL – FOR
19 COUNSEL ONLY,” as appropriate, and the original or any copy ultimately
20 presented to a court for filing must not be filed unless it can be accomplished under
21 seal, identified as being subject to this Order, and protected from being opened
22 except by order of the Court.

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

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

15 9. Information designated “confidential” must be viewed only by counsel (as
16 defined in Paragraph 3) of the receiving party, by independent experts (pursuant to the
17 terms of Paragraph 8), by court personnel, and by the additional individuals listed below,
18 provided each such individual has read this Order in advance of disclosure and has
19 executed a copy of the form attached hereto as Exhibit A:

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

22 b. Technical personnel of the parties with whom counsel for the parties
23 find it necessary to consult, in the discretion of such counsel, in preparation for trial
24 of this action; and

25 c. Stenographic and clerical employees associated with the individuals
26 identified above.

27 10. With respect to material designated “CONFIDENTIAL” or
28 “CONFIDENTIAL – FOR COUNSEL ONLY,” any person indicated on the face of the

1 document to be its originator, author, or a recipient of a copy of the document, may be
2 shown the same.

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

9 12. Before any materials produced in discovery, answers to interrogatories or
10 requests for admissions, deposition transcripts, or other documents which are designated
11 as confidential information are filed with the Court for any purpose, the party seeking to
12 file such material must seek permission of the Court to file the material under seal. An
13 application to file a document under seal shall be served on opposing counsel, and on the
14 person or entity that has custody and control of the document, if different from opposing
15 counsel. If the application to file a document designated as confidential under seal is being
16 made by the non-designating party, then, upon request, the designating party must promptly
17 provide the applicant with a legal basis for the confidential designation to include in the
18 application. If opposing counsel, or the person or entity that has custody and control of the
19 document, wishes to oppose the application, he/she must contact the chambers of the judge
20 who will rule on the application, to notify the judge’s staff that an opposition to the
21 application will be filed.

22 13. At any stage of these proceedings, any party may object to a designation of
23 materials as confidential information. The party objecting to confidentiality must notify,
24 in writing, counsel for the designating party of the objected-to materials and the grounds
25 for the objection. If the dispute is not resolved consensually between the parties after
26 meeting and conferring within 14 calendar days of receipt of such a notice of objections,
27 the parties may jointly request the Court’s assistance with the dispute, in accordance with
28 Judge Burkhardt’s Civil Chambers Rules. The materials at issue must be treated as

1 confidential information, as designated by the designating party, until the Court has ruled
2 on the objection or the matter has been otherwise resolved.

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

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

15 16. If a party, through inadvertence, produces any confidential information
16 without labeling or marking or otherwise designating it as such in accordance with this
17 Order, the designating party may give written notice to the receiving party that the
18 document or thing produced is deemed confidential information, and that the document or
19 thing produced should be treated as such in accordance with that designation under this
20 Order. The receiving party must treat the materials as confidential, once the designating
21 party so notifies the receiving party. If the receiving party has disclosed the materials
22 before receiving the designation, the receiving party must notify the designating party in
23 writing of each such disclosure.

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

27 18. Nothing in this Order will bar counsel from rendering advice to their clients
28 with respect to this litigation and, in the course thereof, relying upon any information

1 designated as confidential information, provided that the contents of the information must
2 not be disclosed.

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

8 20. Nothing within this Order will be construed to prevent disclosure of
9 confidential information if 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
11 for each party must, upon request of the producing party, return all confidential information
12 to the party that produced the information, including any copies, excerpts, and summaries
13 of that information, or must destroy same at the option of the receiving party, and must
14 purge all such information from all machine-readable media on which it resides.
15 Notwithstanding the foregoing, counsel for each party may retain all pleadings, briefs,
16 memoranda, motions, and other documents filed with the Court that refer to or incorporate
17 confidential information, and will continue to be bound by this Order with respect to all
18 such retained information. Further, attorney work product materials that contain
19 confidential information need not be destroyed, but, if they are not destroyed, the person
20 in possession of the attorney work product will continue to be bound by this Order with
21 respect to all such retained information.

22 22. Absent an ex parte motion made within 10 calendar days of the termination
23 of the case, the parties understand that the Court will destroy any confidential documents
24 in its possession

25 23. The restrictions and obligations set forth within this Order will not apply to
26 any information that:

- 27 a. the parties agree should not be designated confidential information;
- 28 b. the parties agree, or the Court rules, is already public knowledge;

1 c. the parties agree, or the Court rules, has become public knowledge other
2 than as a result of disclosure by the receiving party, its employees, or its agents in
3 violation of this Order; or

4 d. has come or will come into the receiving party's legitimate knowledge
5 independently of the production by the designating party. Prior knowledge must be
6 established by pre-production documentation.

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

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

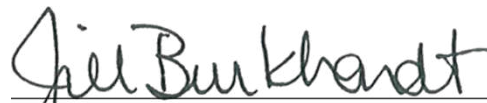
12 26. This Order may be modified by agreement of the parties, subject to approval
13 by the Court.

14 27. The Court may modify the terms and conditions of this Order for good cause,
15 or in the interest of justice, or on its own order at any time in these proceedings.

16 28. Without separate court order, this Order and the parties' stipulation do not
17 change, amend, or circumvent any court rule or local rule.

18 **IT IS SO ORDERED.**

19 Dated: February 7, 2024

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21 Hon. Jill L. Burkhardt
22 United States Magistrate Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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4 I, _____ [print or type full name], of _____
5 [print or type full address], declare under penalty of perjury that I have read in its entirety
6 and understand the Stipulated Protective Order that was issued by the United States District
7 Court for the Southern District of California on February 6, 2024, in the case of *Belangue*
8 *v. Costco Wholesale Corporation et al.*, 23-cv-01850-W-JLB (S.D. Cal.). I agree to
9 comply with and to be bound by all the terms of this Stipulated Protective Order, and I
10 understand and acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in any
12 manner any information or item that is subject to this Stipulated Protective Order to any
13 person or entity except in strict compliance with the provisions of this Order. I further
14 agree to submit to the jurisdiction of the United States District Court for the Southern
15 District of California for enforcing the terms of this Stipulated Protective Order, even if
16 such enforcement proceedings occur after termination of this action. I hereby appoint
17 _____ [print or type full name] of
18 _____ [print or type full address and telephone number] as my
19 California agent for service of process in connection with this action or any proceedings
20 related to enforcement of this Stipulated Protective Order.
21

22 Name: _____

23 Signature: _____ Date: _____

24 City and State Where Sworn and Signed: _____
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