

1 proprietary, and personal information of COSTCO. The discovery requests and/or mandatory
2 disclosure requirements have or may seek information and production of confidential business and
3 trade secrets, including but not limited to, disclosure of contractual relationships, security and
4 surveillance practices, policies, procedures, video tapes, photographs, training information, and other
5 non-public information of COSTCO. Prior to production, no party can effectively and fully evaluate
6 the claims of the other as to the need for protection. Thus, this Confidentiality Agreement enables the
7 production of documents, at least to the point of evaluating the claims of need for protection, and
8 specifying how such documents need to be treated when produced. Moreover, pursuant to the terms
9 of this Confidentiality Agreement, any document designated as "Confidential Information," where
10 that designation is disputed can be identified as such and the matter then submitted to the Court for
11 resolution. Without this Confidentiality Agreement, the Court may have to evaluate innumerable
12 documents individually, and this task would likely burden the court and slow the discovery process.
13 Regarding documents that are entitled to protection, disclosure of such confidential information is
14 likely to prejudice the legitimate business, competitive, and/or privacy interests of the parties or of
15 third parties. This Confidentiality Agreement is therefore required in this action to enable the
16 documents to be evaluated and to protect against unauthorized disclosure of confidential information
17 and to ensure that such information will be used only for purposes of this action. This Confidentiality
18 Agreement will expedite the flow of discovery materials, protect the integrity of truly confidential
19 information, promote the prompt resolution of disputes over confidentiality, and facilitate the
20 preservation of material worthy of protection.

21
22
23
24 **1.2** This Confidentiality Agreement shall govern any document, materials or information
25 designated as "Confidential Information," or "Attorney's Eyes Only Information" as defined herein,
26 and is produced in connection with this litigation by any person or entity (the "Producing Party" or
27

1 “Disclosing Party”), whether in response to a discovery request, subpoena or otherwise, to any other
2 person or entity (the “Receiving Party”) regardless of whether the person or entity producing or
3 receiving such information is a party to this litigation.

4 **2. Definitions.**

5 **2.1 Confidential Information.** “Confidential Information” shall mean and include,
6 without limitation, any non-public information that concerns or relates to the following areas:
7 confidential proprietary information, trade secrets, security and surveillance policies, practices and
8 procedures, commercial, financial, pricing, budgeting, and/or accounting information, information
9 about existing and potential customers, marketing studies, performance projections, business
10 strategies, decisions and/or negotiations, personnel compensation, evaluations and other employment
11 information, and confidential proprietary information about affiliates, parents, subsidiaries and third-
12 parties with whom the parties to this action have or have had business relationships. “Confidential
13 Information” may be contained in the following documents: manuals, contracts, correspondence
14 (electronic or otherwise), blueprints, specifications, drawings, security records, security reports,
15 security shift information and staffing levels, security patrols, security policies and procedures,
16 locations of surveillance and security cameras, documents regarding surveillance and security camera
17 capabilities, production documents, analytical reports, certification-related documents, and other
18 documents relating to COSTCO.

19 **2.2 Attorney’s Eyes Only Information.** “Attorney’s Eyes Only Information” is a subset
20 of Confidential Information that includes any document or testimony that contains highly sensitive
21 proprietary, security, surveillance, private, financial or trade secret information where the disclosing
22 party reasonably believes that disclosure of such information to other parties in the litigation would
23 cause severe competitive damage.
24
25
26
27
28

1 disclosure is authorized pursuant to subparagraph 7.1 make a copy of any data storage device
2 designated by the producing party as containing Confidential Information, the receiving party or other
3 authorized person shall mark each such copy as containing Confidential Information in the same form
4 as the confidentiality notice on the original data storage device produced. If the receiving party or
5 other authorized person prints out or otherwise makes copies of the documents or information stored
6 on such data storage device, the receiving party or other authorized person shall mark each page so
7 copied with the label or stamp specified in subparagraph 3.2.
8

9 A party producing documents that it believes constitute or contain Attorney's Eyes Only
10 Information shall follow the procedures set forth above with respect to Confidential Information,
11 except that the copies shall be produced bearing a label that contains or includes language
12 substantially identical to the following:
13

14 **ATTORNEY'S EYES ONLY**

15 **3.3 Interrogatory Answers.** If a party answering an interrogatory or other discovery
16 demand believes that its answer contains Confidential Information or Attorney's Eyes Only
17 Information, it shall set forth that answer in a separate document that is produced and designated in
18 the same manner as a produced document under subparagraph 3.2. Such answers should make
19 reference to the separately-produced document containing the answer, but such document should not
20 be attached to the response.
21

22 **3.4 Inspection of Documents.** In the event a party elects to produce files and records for
23 inspection and the requesting party elects to inspect them, no designation of Confidential Information
24 or Attorney's Eyes Only Information needs to be made in advance of the inspection. For purposes of
25 such inspection, all material produced shall be considered as Confidential Information. If the
26 inspecting party selects specified documents to be copied, the producing party shall designate
27
28

1 Confidential Information or Attorney's Eyes Only Information in accordance with subparagraph 3.2
2 at the time the copies are produced.

3 **3.5 Deposition Transcripts.** Within twenty-one (21) days after the receipt of a deposition
4 transcript, a party may inform the other parties to the action of the portions of the transcript that it
5 wishes to designate as Confidential Information or Attorney's Eyes Only Information. Until such
6 time has elapsed, deposition transcripts in their entirety are to be considered as Confidential
7 Information. All parties in possession of a copy of a designated deposition transcript shall mark it
8 appropriately.
9

10 **3.6 Multipage Documents.** A party may designate all pages of an integrated, multipage
11 document, including a deposition transcript and interrogatory answers, as Confidential Information or
12 Attorney's Eyes Only Information by placing the label specified in subparagraph 3.2 on the first page
13 of the document or on *each* page of the document. If a party wishes to designate only certain portions
14 of an integrated, multipage document as Confidential Information or Attorney's Eyes Only
15 Information, it should designate such portions immediately below the label on the first page of the
16 document and place the label specified in subparagraph 3.2 on each page of the document containing
17 Confidential Information or Attorney's Eyes Only Information.
18

19 **4. Designations by Another Party.**

20 **4.1 Notification of Designation.** If a party other than the producing party believes that a
21 producing party has produced a document that contains or constitutes Confidential Information or
22 Attorney's Eyes Only Information of the non-producing party, the non-producing party may
23 designate the document as Confidential Information or Attorney's Eyes Only Information by so
24 notifying all parties in writing within one hundred twenty (120) days of service of the document.
25
26
27
28

1 If a document is first produced less than sixty (60) days before the then-pending trial date,
2 such notification shall occur within half of the time remaining before trial. This notice must
3 specifically identify each document that the objecting party in good faith believes should not be
4 designated as Confidential Information or Attorney's Eyes Only Information and provide a brief
5 statement of the grounds for such belief. In accordance with the Federal Rules of Civil Procedure
6 governing discovery disputes, the objecting and the designating parties thereafter shall confer within
7 ten (10) days after the date of such objection in an attempt to resolve their differences.
8

9 If the parties are unable to resolve their differences, the objecting party shall have twenty-one
10 (21) days after the conference concludes to file with the Court a motion to remove the Confidential
11 Information or Attorney's Eyes Only Information designation.
12

13 If an objection is served within forty-two (42) days of trial, the objecting party must file its
14 motion to remove the Confidential Information designation within half of the remaining time before
15 trial, and the meet-and-confer period shall be shortened accordingly.
16

17 Where a party authored, created, owns, or controls a document, information or other material
18 that another party designates as Confidential Information or Attorney's Eyes Only Information, the
19 party that authored, created, owns, or controls the Confidential Information or Attorney's Eyes Only
20 Information may so inform the objecting party and thereafter shall also be considered a designating
21 party for purposes of this paragraph.
22

23 All documents, materials, or information initially designated as Confidential Information or
24 Attorney's Eyes Only Information shall be treated as such in accordance with this Confidentiality
25 Agreement unless and until the court rules otherwise, except for deposition transcripts and exhibits
26 initially considered as containing Confidential Information under subparagraph 3.5, which will lose
27 their confidential status after twenty-one (21) days unless so designated as Confidential Information
28

1 or Attorney's Eyes Only Information. If the court rules that a designation should not be maintained as
2 to a particular document, the producing party shall, upon written request by a party, provide that party
3 a copy of that document without the designation described in subparagraph 3.2.

4 If an objecting party elects not to make such a motion with respect to documents, information
5 or other materials to which an objection has been made, the objection shall be deemed withdrawn. If
6 such a motion is made, the moving party shall bear the burden of proving that the document,
7 information, or other material is not entitled to protection under the applicable law.

8
9 **6. Custody.** All Confidential Information or Attorney's Eyes Only Information and any and all
10 copies, extracts and summaries thereof, including memoranda relating thereto, shall be retained by the
11 receiving party in the custody of counsel of record, or by persons to whom disclosure is authorized
12 under subparagraph 7.1.

13
14 **7. Handling Prior to Trial.**

15 **7.1 Authorized Disclosures.** Confidential Information shall be disclosed by the receiving
16 party only to the following persons:

- 17 a. Counsel for the parties in this litigation, including their associates, clerks,
18 paralegals, and secretarial personnel;
- 19 b. Qualified persons taking testimony in this litigation involving such Confidential
20 Information, and necessary stenographic, videotape and clerical personnel;
- 21 c. Experts and their staff who are consulted by counsel for a party in this litigation;
- 22 d. Parties to this litigation, limited to the named party and, if that party is a corporate
23 entity, a limited number of employees of the corporate entity and its insurers;
- 24 e. Designated in-house counsel and a limited number of assistants, administrative or
25 otherwise;
- 26 f. Outside vendors employed by counsel for copying, scanning and general handling
27 of documents;

1 g. Any person of whom testimony is taken regarding the Confidential Information,
2 except that such person may only be shown Confidential Information during his/her
3 testimony, and may not retain a copy of such Confidential Information; and

4 h. The Court hearing this litigation and the Court's staff, subject to the Court's
5 processes for filing materials under seal.

6 Such disclosures are authorized only to the extent necessary to investigate, prosecute, or
7 defend the litigation.

8 Confidential Information may not be disclosed to persons under subparagraph (c) until the
9 receiving party has obtained a written acknowledgment from the person receiving Confidential
10 Information, in the form of the Declaration attached hereto, that he or she has received a copy of this
11 Confidentiality Agreement and has agreed to be bound by it.

12 A party who discloses Confidential Information in accordance with subparagraph 7.1 shall
13 retain the written acknowledgment from each person receiving Confidential Information, shall
14 maintain a list of all persons to whom a receiving party has disclosed Confidential Information and
15 identify what documents have been disclosed, and shall furnish the written acknowledgements and
16 disclosure list to the court for in camera review upon its request or order. Furnishing the written
17 acknowledgements and disclosure list to the court shall not constitute a waiver of the attorney work
18 product or attorney-client privilege. Disclosure of Confidential Information to the court supervising
19 this litigation, including judicial staff, shall be made in accordance with subparagraph 7.4 of this
20 Confidentiality Agreement.

21 The disclosure of Attorney's Eyes Only Information is limited in the same ways as set forth
22 above for Confidential Information except that, in addition, Attorney's Eyes Only Information may
23 not be disclosed to persons described above in subparagraphs (d) and (e) without prior written
24 consent by the designating party nor to persons within the categories described above in
25 subparagraphs (c) and (g) without prior notice to the designating party under circumstances allowing
26

1 the designating party to obtain adequate protection with respect to the Attorney's Eyes Only
2 Information either by agreement or by application to the court.

3 **7.2 Disclosure to Competitors.** Confidential Information and Attorney Eyes Only
4 Information may not be disclosed to competitors of a designating party. However, if at any time such
5 disclosure is necessary to advance the interest of a party, then before disclosing Confidential
6 Information or Attorney's Eyes Only Information to any authorized person who is a competitor (or an
7 employee of a competitor) of the designating party, the party wishing to make such disclosure shall
8 give at least fourteen (14) days notice in writing to the designating party, stating the names and
9 addresses of the person(s) to whom the disclosure will be made, and identifying with particularity the
10 documents to be disclosed. If, within the fourteen (14) day period, a motion is filed objecting to the
11 proposed disclosure, disclosure is not authorized unless and until the court orders otherwise. For
12 purposes of this Confidentiality Agreement, "competitor" is defined as any person or entity that
13 designs, manufactures, assembles or supplies products to or for the market(s) served by the
14 designating party ("competitive products") or components of competitive products.
15
16

17 **7.3 Unauthorized Disclosures.** All persons receiving Confidential Information or
18 Attorney's Eyes Only Information under the terms of this Confidentiality Agreement agree to the
19 jurisdiction of the state and federal courts located in Nevada for all matters arising from the improper
20 disclosure or use of such information. If Confidential Information or Attorney's Eyes Only
21 Information is disclosed to any person other than in the manner authorized by this Confidentiality
22 Agreement, the party or person responsible for the disclosure, and any other party or person who is
23 subject to this Confidentiality Agreement and learns of such disclosure, shall immediately bring such
24 disclosure to the attention of the designating party. Without prejudice to other rights and remedies of
25 the designating party, the responsible party or person shall make every effort to obtain and return the
26
27
28

1 Confidential Information or Attorney's Eyes Only Information and to prevent further disclosure on its
2 own part or on the part of the person who was the unauthorized recipient of such information.

3 **7.4 Court Filings.** In the event any Confidential Information or Attorney's Eyes Only
4 Information must be filed with the court prior to trial, the proposed filing shall comply with the
5 Federal Rules of Civil Procedure. In accordance with these rules, the proposed filing shall be
6 accompanied by a motion to file the Confidential Information under seal and a proposed order, and
7 the application and proposed order shall be directed to the judge to whom the Confidential
8 Information is directed. This provision is applicable to briefs, memoranda, and other filings which
9 quote, summarize, or describe Confidential Information.
10

11 **8. Care in Storage.** Any person in possession of Confidential Information or Attorney's Eyes
12 Only Information produced by another party shall exercise reasonable and appropriate care with
13 regard to the storage, custody, copying, and use of such information to ensure that the confidential
14 and sensitive nature of same is maintained.
15

16 **9. Handling During Trial.** Confidential Information and Attorney's Eyes Only Information that
17 is subject to this order may be marked and used as trial exhibits by either party, subject to terms and
18 conditions as imposed by the court upon application by any party.
19

20 **10. No Implied Waivers.** Execution of this Confidentiality Agreement shall not be interpreted as
21 a waiver of the right to object, under applicable law, to the furnishing of information in response to
22 discovery requests or to object to a requested inspection of documents or facilities. Parties producing
23 Confidential Information and Attorney's Eyes Only Information in this litigation are doing so only
24 pursuant to the terms of this Confidentiality Agreement. Neither the agreement to, or the taking of
25 any action in accordance with the provisions of this Confidentiality Agreement, nor the failure to
26
27
28

1 object thereto, shall be interpreted as a waiver of any claim or position or defense in this action, or
2 any other actions.

3 **11. No Admission.** Neither this Confidentiality Agreement nor the designation of any item as
4 Confidential Information or Attorney's Eyes Only Information shall be construed as an admission
5 that such material, or any testimony concerning such material, would be admissible in evidence in
6 this litigation or in any other proceeding.

7
8 **12. Inadvertent Disclosure.** Nothing in this Confidentiality Agreement abridges applicable law
9 concerning inadvertent disclosure of a document that the disclosing party believes contains attorney-
10 client communications, attorney work product, or otherwise privileged information.

11 If a party inadvertently discloses documents or information subject to a claim of privilege or
12 work product protection, such disclosure will not waive otherwise applicable claims of privilege or
13 work product protection under applicable law.

14
15 Upon discovery by the receiving party, or receipt of written notice from the disclosing party
16 identifying privileged or protected documents that were inadvertently produced, the receiving party
17 shall within seven (7) business days either: (a) return or certify the destruction of all such documents,
18 all copies, and any work product or portions of any work product containing or reflecting the contents
19 of the subject materials; or (b) after attempting to resolve any dispute with opposing counsel
20 informally, file a motion to challenge the assertion of privilege and tender the subject documents for
21 *in camera* review with the motion. The moving party shall do nothing to compromise the privilege
22 claim until the court rules on said motion and the opportunity for appellate review is exhausted or the
23 issue is otherwise resolved.

24
25 ///

26 ///

1 **13. Parties' Own Documents.** This Confidentiality Agreement shall in no way restrict the parties
2 in their use of their own documents and information, and nothing in this Confidentiality Agreement
3 shall preclude any party from voluntarily disclosing its own documents or information to any party or
4 nonparty.

5
6 **14. Motion to Compel Production of Confidential Information.** If any third party subpoenas
7 Confidential Information and/or Attorney's Eyes Only Information from a party to this action or
8 moves to compel a party to this action to produce any such information, such party shall immediately
9 notify the parties who originally produced and/or designated such information that a subpoena has
10 been served or a motion has been made in order to allow the parties who originally produced and/or
11 designated such information the opportunity to seek a protective order or oppose the motion or
12 application. If, within thirty (30) days after receiving notice of a subpoena seeking Confidential
13 Information and/or Attorney's Eyes Only Information from a receiving party, the party who
14 originally produced and/or designated such information fails to move for a protective order, the party
15 subject to the subpoena may produce said information. In addition, if a party is ordered to produce
16 Confidential Information or Attorney's Eyes Only Information covered by this Confidentiality
17 Agreement, then notice and, if available, a copy of the order compelling disclosure shall immediately
18 be given the parties who originally produced and/or designated such information. Nothing in this
19 Confidentiality Agreement shall be construed as requiring the party who is ordered to produce such
20 Confidential Information or Attorney's Eyes Only Information to challenge or appeal any order
21 requiring the production of such information or to subject himself / herself to any penalty for non-
22 compliance with any legal process or seek any relief from the court.
23
24

25 ///

26 ///

1 **15. No Effect on Other Rights.** This Confidentiality Agreement shall in no way abrogate or
2 diminish any pre-existing contractual, statutory, or other legal obligations or rights of any party with
3 respect to Confidential Information.

4 **16. Modification.** In the event any party hereto seeks a court order to modify the terms of this
5 Confidentiality Agreement, or seeks a protective order that incorporates the terms and conditions of
6 this Confidentiality Agreement said party shall make such request by written stipulation or noticed
7 motion to all parties that must be served and filed in accordance with local court rules.

8
9 **17. Handling upon Conclusion of Litigation.** All parties, counsel, and persons to whom
10 disclosure was made agree to return all Confidential Information and Attorney's Eyes Only
11 Information to the producing party within ninety (90) days of the conclusion of litigation between the
12 parties, including final appellate action or the expiration of time to appeal or seek further review. In
13 addition, counsel shall certify in writing that all such Confidential Information and Attorney's Eyes
14 Only Information have been returned. Counsel for each party also shall contact each person to whom
15 that party has provided a copy of any Confidential Information or Attorney's Eyes Only Information
16 and request the documents be returned. In lieu of returning Confidential Information and Attorney's
17 Eyes Only Information, the person or party in possession of such information may elect to destroy it.
18 If the person or party in possession of Confidential Information or Attorney's Eyes Only Information
19 elects to destroy it rather than return it, that person or party must notify the Producing Party in writing
20 of the destruction of the information within ninety (90) days of the conclusion of litigation between
21 the parties, including final appellate action or the expiration of time to appeal or seek further review.
22
23

24 ///

26 ///

1 **18. Motion for Protective Order.** Nothing in this Confidentiality Agreement shall preclude any
2 party to this Agreement from filing a Motion for Protective Order as deemed necessary to protect
3 Confidential Information.

4 **19. Effect of Breach.** The parties to this Confidentiality Agreement recognize that a breach of
5 this Agreement would cause substantial harm to the operations, business and goodwill of the
6 producing party.
7

8 **20. Remedies.** The parties acknowledge that they have been informed that if they breach this
9 agreement, the producing party(ies) may obtain preliminary and permanent court injunctions to stop
10 the breach, and may also initiate an action to recover from the breaching party an amount equal to the
11 damages caused by the breach and the loss of revenues derived from the breach, together with all
12 costs and expenses, including the attorney's fees, incurred by producing party(ies) in taking such
13 actions.
14

15 **21. Governing Law.** This Agreement shall be governed and construed in accordance with the
16 laws of the United States and the State of Nevada and all parties consent to the non-exclusive
17 jurisdiction of the state courts and U.S. federal courts located in Nevada for any dispute concerning
18 the breach of this Confidentiality Agreement.

19 **22. Survival of the Terms of this Confidentiality Agreement.** Even after the termination of this
20 litigation, the confidentiality obligations imposed by this Confidentiality Agreement shall remain in
21 effect until a producing party otherwise in writing or a court order otherwise directs.
22

23 ///

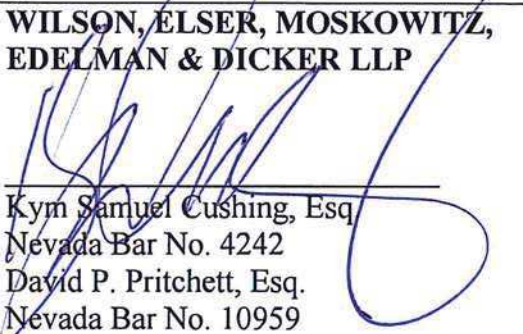

24 ///

25 ///

26 ///

1 **23. Final Agreement.** This agreement terminates and supersedes all prior understandings or
2 agreements on the subject matter hereof. This agreement may be modified only by a further writing
3 that is duly executed by all parties.

4 **THIS CONFIDENTIALITY AGREEMENT AND STIPULATED PROTECTIVE ORDER IS**
5 **HERBY AGREED TO BY:**

<p>6 WILSON, ELSER, MOSKOWITZ, 7 EDELMAN & DICKER LLP</p> <p>8 </p> <p>9 Kym Samuel Cushing, Esq. 10 Nevada Bar No. 4242 11 David P. Pritchett, Esq. 12 Nevada Bar No. 10959 13 300 South Fourth Street, 11th Floor 14 Las Vegas, Nevada 89101 15 <i>Attorneys for Defendant, Costco Wholesale Corporation</i></p>	<p>6 FASSETT & CARDOZA</p> <p>8 </p> <p>9 David W. Fassett, Esq. 10 Nevada Bar No. 6968 11 Victor M. Cardoza, Jr., Esq. 12 Nevada Bar No. 5599 13 1137 South Rancho Drive, Suite 150-B 14 Las Vegas, Nevada 89101 15 <i>Attorney for Plaintiff</i></p> <p>8/12/15</p>
---	--

16 **ORDER**

17 UPON STIPULATION OF THE PARTIES and for good cause shown, IT IS HEREBY
18 ORDERED that the parties shall comply with the terms of the joint Confidentiality Agreement and
19 Stipulated Protective Order set forth above.

20 **IT IS SO ORDERED.**

21 DATED: August 24, 2015.

22 
23 MAGISTRATE JUDGE