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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

VOLUME COCOMO APPAREL, INC.,)
a California corporation,)

Plaintiff,)

v.

GUESS?, INC., a Delaware)
Corporation; DILLARD'S, INC., an)
Arkansas Corporation;)
BLOOMINGDALE'S, INC., a New)
York Corporation; MACY'S, INC., an)
Ohio Corporation; and DOES 1-10,)
inclusive,)

Defendants.

Case No.: CV11-06694 RGK (RZx)

*Assigned for all discovery matters to the
Honorable Ralph Zarefsky*

**[PROPOSED] ORDER GRANTING
PARTIES' STIPULATION FOR
PROTECTIVE ORDER**

Date Action Filed: August 15, 2011

Trial Date: September 25, 2012

MILORD & ASSOCIATES, P.C.
2049 Century Park East, Suite 3850
Los Angeles, California 90067
Tel: (310) 226-7878

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2 Upon stipulation of the parties for a protection order pursuant to Fed. R. Civ. P.
3 26(c) governing the disclosure during pretrial discovery and the subsequent handling of
4 trade secret information, proprietary information, other confidential commercial,
5 financial or personal information, and documents containing any such information
6 (hereinafter collectively referred to as “CONFIDENTIAL INFORMATION”),

7 **IT IS HEREBY ORDERED THAT:**

8 **1. INITIAL DESIGNATION.**

9 **1.1 Confidential Information.** In connection with discovery in this action, the
10 parties may designate materials, including electronic files, documents, things, testimony,
11 as “CONFIDENTIAL” and/or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”
12 (collectively hereinafter, “CONFIDENTIAL INFORMATION”) under the terms of this
13 Protective Order (“Order”). Confidential information is information that has not been
14 made public and which concerns or relates to the processes, operations, type or work, or
15 apparatus, or to the production, sales, shipments, purchases, transfers, identification of
16 customers and suppliers, inventories, blueprints, amount or source of any income, profits,
17 losses, or expenditures of any persons, firm, partnership, corporation or other
18 organization, the disclosure of which information may have the effect of causing harm to
19 the competitive position of the person, firm, partnership, corporation or to the
20 organization from which the information was obtained, and, to the extent not already
21 encompassed in the preceding definition, trade secrets as defined in California Civil
22 Code § 3426.1. By designating a document, thing, material, testimony or other
23 information derived therefrom as CONFIDENTIAL or CONFIDENTIAL-
24 ATTORNEYS’ EYES ONLY under the terms of this Order, the party making the
25 designation is certifying to the court that there is a good faith basis both in law and in fact
26 for the designation within the meaning of Federal Rules of Civil Procedure 26(g).
27 Material designated as CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS’ EYES
28 ONLY under the Order, the information contained therein, and any documents derived in

1 whole or in part from material designated as CONFIDENTIAL INFORMATION
2 (“CONFIDENTIAL MATERIAL”) shall only be used for the prosecution, defense or
3 settlement of this action, and for no other purpose.

4 **1.2 Produced Documents.** A party producing documents that it believes
5 constitute or contain CONFIDENTIAL INFORMATION shall produce copies bearing a
6 label designating such material CONFIDENTIAL or CONFIDENTIAL-ATTORNEYS’
7 EYES ONLY. As used herein, the term “documents” includes all writings or other media
8 on which information is recorded and other electronic files and tangible things subject to
9 production under the *Federal Rules of Civil Procedure*.

10 **1.3 Interrogatory Answers.** If a party answering an interrogatory believes in
11 good faith under the criteria set forth in Paragraph 1.1 above that its answer contains
12 CONFIDENTIAL INFORMATION, it shall set forth its answer in a separate document
13 that is produced and designated as CONFIDENTIAL or CONFIDENTIAL-
14 ATTORNEYS’ EYES ONLY in the same manner as a produced document under
15 subparagraph 1.2. The answers to interrogatories should make reference to the separately
16 produced document containing the answer, but such document should not be attached to
17 the interrogatories.

18 **1.4 Inspections of Documents.** In the event a party elects to produce files and
19 records for inspection and the requesting party elects to inspect them, no designation of
20 CONFIDENTIAL INFORMATION need be made in advance of the inspection. For
21 purposes of such inspection, all materials produced shall be considered as
22 CONFIDENTIAL INFORMATION unless the Parties agree otherwise. If the inspecting
23 party selects specified documents to be copied, the producing party shall designate
24 CONFIDENTIAL INFORMATION in accordance with subparagraph 1.2 at the time the
25 copies are produced or within ten (10) days after the producing party is provided with
26 copies of said documents.

27 **1.5 Deposition Transcripts.** Portions of testimony taken at a deposition or
28 conference and any corresponding exhibits may be designated as CONFIDENTIAL or

1 CONFIDENTIAL-ATTORNEYS' EYES ONLY by making a statement to that effect on
2 the record at the deposition or other proceeding. Arrangements shall be made with the
3 court reporter transcribing such proceeding to separately bind such portions of the
4 transcript containing information designated as CONFIDENTIAL or CONFIDENTIAL-
5 ATTORNEYS' EYES ONLY and label such portions appropriately.

6 **1.6 Multi-page Documents.** A party may designate all pages of an integrated,
7 multi-page document, including a deposition transcript, interrogatory answers and
8 responses to document requests, as CONFIDENTIAL INFORMATION by placing the
9 label specified in subparagraph 1.1 on the first page of the document. If a party wishes to
10 designate only certain portions of an integrated, multi-page document as
11 CONFIDENTIAL INFORMATION, it should designate such portions immediately
12 below the label on the first page of the document and place the label specified in
13 subparagraph 1.1 on each page of the document containing CONFIDENTIAL
14 INFORMATION.

15 **1.7 Attorneys' Eyes Only Material.** As stated above, the parties may designate
16 discovery material or testimony of a highly confidential and/or proprietary nature as
17 ATTORNEYS' EYES ONLY or CONFIDENTIAL-ATTORNEYS' EYES ONLY
18 ("Attorneys' Eyes Only Material"), in the manner described in paragraph 1 above.
19 Attorneys' Eyes Only Material, and the information contained therein, may be disclosed
20 only to the following: (i) the Court, pursuant to paragraph 3.5 hereof; (ii) mediators or
21 arbitrators agreed upon by the parties; (iii) outside counsel for any party (and their staff);
22 or (iv) other "qualified persons" listed in subparagraphs 3.1 herein. Individuals within
23 categories (iii) to (iv) shall pre-agree to be bound by the terms of the Protective Order.
24 Attorneys' Eyes Only Material shall not be disclosed to any party or to any officer, in-
25 house counsel, director or employee of any party unless agreed in writing by the parties
26 or ordered by the Court. ATTORNEYS' EYES ONLY and CONFIDENTIAL
27 information shall collectively be referred to as Designated Material.

28 **1.8 Later Designations.** A party may also designate information disclosed at a

1 deposition as CONFIDENTIAL and/or ATTORNEYS' EYES ONLY by notifying all
2 parties in writing, within twenty-one (21) days of receipt of the transcript, of the specific
3 pages and lines designated as such. Each party shall attach a copy of such written
4 statement to the face of each transcript in its possession, custody or control. For twenty-
5 one (21) days after receipt of the transcript, depositions shall be treated as
6 ATTORNEYS' EYES ONLY, but after that period any portions not designated as
7 CONFIDENTIAL and/or ATTORNEYS' EYES ONLY may be disclosed.

8 **2. DESIGNATIONS BY ANOTHER PARTY.** For fourteen (14) days after
9 receipt of documents from a third party, the documents shall be treated as ATTORNEYS'
10 EYES ONLY, but after that period any portions not designated as CONFIDENTIAL
11 and/or ATTORNEYS' EYES ONLY may be disclosed. If a third party produces
12 documents that any party reasonably believes should be protected under this Order,
13 within fourteen (14) days of the production said party to this action shall advise all
14 counsel of its designation of such documents as CONFIDENTIAL and/or ATTORNEYS'
15 EYES ONLY and shall affix the corresponding stamp on such documents. The third
16 party shall be served with a copy of this Order with the Subpoena and such third party
17 itself may designate documents or testimony as Confidential or Attorneys' Eyes Only as
18 provided herein. All parties shall cooperate to effectuate affixing the necessary stamp.

19 **3. HANDLING PRIOR TO TRIAL.**

20 **3.1 Authorized Disclosures.** Discovery Material designated as
21 CONFIDENTIAL or information derived therefrom may be disclosed, shown, or made
22 available, or communicated in any way only to the following persons:

- 23 a. The parties and employees of the parties, but only to the extent necessary to
24 participate in, assist in and monitor the progress of this action and for no other purpose;
- 25 b. Qualified persons taking testimony involving Designated Material, and
26 necessary stenographic, videographic, and clerical personnel thereof;
- 27 c. Consultants or experts and their staff who are employed for the purposes of
28 this litigation, provided that the provisions of Paragraph 3.3 of this Order are complied

1 with prior to any disclosure of any Designated Material to such an expert or consultant;

2 d. The Court and the Court's staff pursuant to Paragraph 3.5 of this Order;

3 e. Attorneys for the parties to this litigation and/or the insurance carriers for the
4 parties to the litigation, including persons working solely in secretarial, clerical, and
5 paralegal capacities, and who are providing assistance to counsel in this action, and/or
6 claims representatives and/or claims adjustors, upon the condition that such Designated
7 Documents not be used in policy issuance determinations and be immediately destroyed
8 by the insurance carriers upon completion of the instant litigation;

9 f. Third-parties specifically retained to assist outside counsel in copying,
10 imaging, and/or coding of documents but for that purpose only, provided that all such
11 confidential documents are kept and maintained in a separate and secure place and that
12 the third party retained to copy, image, or code confidential documents is not currently
13 performing any services, either as an employee, consultant, or otherwise for any
14 competitor of either party to this action or for one having any interest adverse to either
15 party to this action;

16 g. The author, addressees and recipients of the documents or any person who
17 would have had access to such information by virtue of his /her employment; and,

18 h. Any other person as to whom the parties previously agree in writing.

19 Such disclosures are authorized only to the extent necessary to prosecute or defend
20 this litigation. There will be no disclosure of CONFIDENTIAL INFORMATION to any
21 person who is a manufacturer competitor (or an employee of a manufacturer competitor)
22 of a party. There will be no disclosure of CONFIDENTIAL INFORMATION to any
23 distributor or supplier (or an employees of a distributor or supplier) of a party unless
24 within 14 days of written notice by the party wishing disclosure, either the parties agree
25 to the terms of disclosure or the party objecting to a proposed disclosure files a motion
26 objecting to disclosure and the court orders otherwise.

27 3.2 **AEO Disclosure.** Material or documents designated as ATTORNEYS'
28 EYES ONLY may be shown to a "qualified person" listed in subparagraphs 3.1(b)

1 through (g).

2 **3.3 Procedure.** Except for persons described in Paragraph 3.1.d, 3.1.e or 3.1.f
3 of this Order, all persons to whom Designated Material is disclosed or by whom
4 Designated Material is used, including parties, non-parties, and their representatives, shall
5 be informed of and agree to be bound by the terms of this Protective Order and shall take
6 all necessary precautions to prevent any disclosure or use of Designated Material other
7 than as authorized by this Order.

8 a. Prior to disclosing Designated Material to any person, other than persons
9 described in Paragraph 3.1.d, 3.1.e or 3.1.f of this Order, the disclosing party shall obtain
10 from such person a “Written Assurance” acknowledgement (Attachment “A”), that such
11 person has reviewed a copy of this Order and any subsequent Protective Order issued by
12 the Court, will comply with their terms in all respects, and will submit to the jurisdiction
13 of this Court for adjudication of any dispute about whether such person has complied
14 with the terms of this Order and any subsequent Protective Order issued by the Court. In
15 addition, prior to dissemination by a receiving party, or its counsel of record, of any
16 Designated Material to any person, other than persons described in Paragraph 3.1d, 3.1.e
17 or 3.1.f of this Order, the disseminating party shall obtain and maintain a copy of this
18 acknowledgement evidencing that such person has executed the undertaking.

19 b. Individuals who are authorized to review Designated Material pursuant to
20 this Stipulation shall hold the Designated Material and its contents in confidence and
21 shall not divulge the Designated Material or its contents, either verbally or in writing,
22 except as expressly permitted by this Stipulation, unless authorized to do so by a further
23 Order of this Court or as specifically required by law.

24 **3.4 Unauthorized Disclosures.** In the event of disclosure of material
25 designated as CONFIDENTIAL and/or ATTORNEYS’ EYES ONLY Material, other
26 than as authorized in this Order, counsel for the party responsible for the disclosure shall
27 notify all parties of all pertinent facts, and shall make every effort to prevent further
28 disclosure, including retrieving disclosed materials and copies of such materials and

1 having unauthorized persons to whom disclosure was made sign a “Written Assurance”
2 acknowledgement (Attachment “A”). Upon written stipulation, in accordance with
3 Local Rule 37, the Court may order such further and additional relief as it deems
4 necessary and just.

5 **3.5 Court Filings** The parties acknowledge the procedures for filing under seal
6 outlined by Local Rule 79-5.1. If Confidential Material, including any portion of a
7 deposition transcript designated as CONFIDENTIAL and/or ATTORNEYS’ EYES
8 ONLY is included in any of the papers to be filed with the Court, the Confidential
9 Material or any portions of the pleadings which contain Confidential Material shall be
10 labeled “Confidential – Subject to Court Order,” shall be lodged under seal, and shall be
11 accompanied by a written application and proposed order to file the Confidential Material
12 under seal to the judge to whom the papers are directed, until further order of the Court.
13 Each submission to be lodged under seal is to be filed on a document by document basis,
14 allowing the Court the opportunity to determine whether the standard for filing material
15 under seal has been satisfied. The proposed order shall address both the sealing of the
16 application and the order itself. The original and judge’s copy of the document shall be
17 sealed in separate envelopes with a copy of the title page attached to the front of each
18 envelope, with the authority for the under-seal filings, if authorized by statute or rule,
19 appearing on the title page of the proposed filing Applications and Orders to Seal, along
20 with the material to be placed under seal, shall not be electronically filed but shall be
21 filed manually in the manner prescribed by Local Rule 79-5. A Notice of Manual Filing
22 shall be electronically filed identifying materials being manually filed. The parties agree
23 that exhibits provided to any jury empanelled in this proceeding shall be provided
24 without the CONFIDENTIAL or ATTORNEYS’ EYES ONLY stamp.

25 **4. HANDLING DURING TRIAL.** CONFIDENTIAL INFORMATION
26 and/or ATTORNEYS’ EYES ONLY which is subject to this order may be marked and
27 used as trial exhibits by either party, subject to terms and conditions as imposed by the
28 trial court upon application by the designating party.

1 5. **HANDLING AFTER TRIAL.** This Order shall survive the final
2 termination of this action and shall protect all retained materials that have remained
3 confidential through final termination of the case. Upon final termination of this case,
4 counsel for the parties may each retain one copy of the pleadings, transcripts of any
5 hearings or trials, transcripts of depositions, and exhibits from any hearings, trials or
6 depositions. Counsel shall destroy or assemble and return to each other materials
7 designated as confidential and all copies or summaries thereof.

8 6. **RESTRICTIONS.** Nothing herein shall impose any restriction on the use
9 or disclosure by a party of material: (1) obtained lawfully by a party hereto other than
10 through discovery in this action, from a person who, to the best of such party's
11 knowledge, was not at the time such materials were obtained by such party under a duty
12 (contractual or otherwise) to maintain such materials in confidence; (2) that is public
13 knowledge or became public knowledge after disclosure under this Order (other than
14 through an act or omission or a person receiving material under this Order).

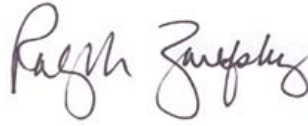
15 7. **OTHER REQUESTS.** The Order shall be without prejudice to the right of
16 any party: (i) to request re-designation of material as Confidential, Attorneys' Eyes Only,
17 or neither, or both; (ii) upon written stipulation, in accordance with Local Rule 37, to
18 request the Court's ruling on whether a document or information is Confidential or
19 Attorneys' Eyes Only Material, or whether its use should be restricted; (iii) to present a
20 motion to the Court under FRCP 26(c) for a separate protective order as to any document
21 or information, including restrictions differing from those specified herein. The Order
22 shall not be deemed to prejudice the parties in any way in any future application for
23 modification of this Order.

24 8. **CUSTODY.** Recipients of material under this Order shall maintain such
25 material secured and shall exercise the same standard of care with respect to storage,
26 custody, use and dissemination of the material as they exercise for their own proprietary
27 information, but in no event shall the standard be less than that of a reasonable person.

28 This order shall be binding on the parties when signed regardless of whether and

1 when this Court endorses this Order.

2 **IT IS SO ORDERED.**

3 

4 Dated: March 2, 2012 By: _____
5 Honorable Ralph Zarefsky
6 United States Magistrate Judge
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EXHIBIT A
WRITTEN ASSURANCE

I, _____ (print name), reside
at _____, in the City of _____,
_____. I am employed by and/or affiliated with _____, with a
business address of _____, in the City of
_____, _____. I have read and understand the Stipulated Protective
Order filed in the case of *Volumecocomo Apparel, Inc. v. Guess?, Inc., et al.*, United
States District Court Case CV11-06694 RGK (RZx). I agree to comply with and be
bound by the provisions of the Stipulated Protective Order.

Executed at _____, _____ (insert city and state),
this ____ day of _____, 201__.

Signature