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ORDER GRANTING STIPULATED MOTION FOR PROTECTIVE
ORDER - 1

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF WASHINGTON (SPOKANE)

3 THE ARIZONA BOARD OF
4 REGENTS ON BEHALF OF THE
5 UNIVERSITY OF ARIZONA AND
6 ARIZONA STATE UNIVERSITY,
7 THE REGENTS OF THE
8 UNIVERSITY OF CALIFORNIA ON
9 BEHALF OF UNIVERSITY OF
10 CALIFORNIA, BERKELEY AND
11 UNIVERSITY OF CALIFORNIA,
12 LOS ANGELES, THE REGENTS OF
13 THE UNIVERSITY OF COLORADO
14 ON BEHALF OF THE UNIVERSITY
15 OF COLORADO BOULDER,
16 UNIVERSITY OF OREGON,
17 OREGON STATE UNIVERSITY,
18 THE UNIVERSITY OF SOUTHERN
19 CALIFORNIA, THE BOARD OF
20 TRUSTEES OF THE LELAND
21 STANFORD JR. UNIVERSITY,
UNIVERSITY OF UTAH,
UNIVERSITY OF WASHINGTON,
AND WASHINGTON STATE
UNIVERSITY,

Plaintiffs,

v.

SPORTSWEAR INC. d/b/a PREP
SPORTSWEAR and VINTAGE
BRAND, LLC,

Defendants.

Case No.: 2:21-cv-00135-TOR
ORDER GRANTING
STIPULATED MOTION FOR
PROTECTIVE ORDER

This matter came before the Court on the Parties' Stipulated Motion for Protective Order, Dkt. #48. This Court having reviewed the file and records herein

1 and being otherwise advised in the premises, NOW THEREFORE,

2 IT IS HEREBY ORDERED as follows:

3 1. PURPOSES AND LIMITATIONS

4 Discovery in this action is likely to involve production of confidential,
5 proprietary, or private information for which special protection may be warranted.
6 Accordingly, the parties hereby stipulate to and petition the court to enter the
7 following Stipulated Protective Order. The parties acknowledge that this agreement
8 does not confer blanket protection on all disclosures or responses to discovery, the
9 protection it affords from public disclosure and use extends only to the limited
10 information or items that are entitled to confidential treatment under the applicable
11 legal principles, and it does not presumptively entitle parties to file information
12 under seal.

13 2. “CONFIDENTIAL” MATERIAL

14 “Confidential” means any document, thing, or information (or any summaries,
15 reports, or descriptions thereof) that is non-public. In designating information as
16 “Confidential,” a party will make such designation only as to the information that it
17 in good faith believes contains the foregoing information.

18 “Highly Confidential,” “Attorneys’ Eyes Only,” and “AEO” mean any
19 document, thing, or information (or any summaries, reports, or descriptions thereof)
20 that comprises or contains information that the producing party claims in good faith
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1 is highly sensitive and constitutes or relates to trade secrets or other confidential
2 research, development, or commercial information within the scope of Federal Rule
3 of Civil Procedure 26(c)(1)(G), including but not limited to technical information,
4 pricing and revenue information, and other competitively sensitive data the
5 disclosure of which to persons other than those set forth in Paragraph 4.b below,
6 would create a substantial risk of serious harm that could not be avoided by less
7 restrictive means.

8 3. SCOPE

9 The protections conferred by this agreement cover not only Confidential and
10 Highly Confidential material (as defined above), but also (1) any information copied
11 or extracted from such material; (2) all copies, excerpts, summaries, or compilations
12 of such material; and (3) any testimony, conversations, or presentations by parties
13 or their counsel that might reveal such material.

14 However, the protections conferred by this agreement do not cover
15 information that is in the public domain or becomes part of the public domain
16 through trial or otherwise.

17 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

18 4.1 Basic Principles. A receiving party may use Confidential and Highly
19 Confidential material that is disclosed or produced by another party or by a non-
20 party in connection with this case only for prosecuting, defending, or attempting to
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1 settle this litigation. Confidential and Highly Confidential material may be disclosed
2 only to the categories of persons and under the conditions described in this
3 agreement. Confidential and Highly Confidential material must be stored and
4 maintained by a receiving party at a location and in a secure manner that ensures that
5 access is limited to the persons authorized under this agreement.

6 4.2 Disclosure of Confidential and Highly Confidential–Attorneys’ Eyes Only
7 Information or Items.

8 (a) Unless otherwise ordered by the court or permitted in writing by the
9 designating party, a receiving party may disclose Confidential material only to:

10 (i) the officers, directors, and employees (including in house counsel)
11 of the receiving party to whom disclosure is reasonably necessary for this litigation;

12 (ii) persons identified as actual or potential witnesses who may testify
13 at any deposition or hearing in this action and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
15 agreed by the designating party or ordered by the court;

16 (iii) the author or recipient of a document containing the information or
17 a custodian or other person who otherwise possessed or knew the information; and

18 (iv) any person identified in Paragraph 4.2(b) below.
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1 (b) Unless otherwise ordered by the court or permitted in writing by the
2 designating party, a receiving party may disclose Highly Confidential–Attorneys’
3 Eyes Only material only to:

4 (i) the receiving party’s counsel of record in this action, as well as
5 employees of counsel to whom it is reasonably necessary to disclose the information
6 for this litigation;

7 (ii) the court, court personnel, and court reporters and their staff;

8 (iii) experts and consultants to whom disclosure is reasonably necessary
9 for this litigation and who have signed the “Acknowledgment and Agreement to Be
10 Bound” (Exhibit A);

11 (iv) any person who authored and/or received the Highly Confidential
12 information sought to be disclosed to that person, or any witness testifying in a
13 deposition or hearing when the examining attorney has a good faith basis to believe
14 the witness is the author and/or received the Highly Confidential information sought
15 to be disclosed to that witness; and any witness testifying in a deposition or hearing
16 may be shown Highly Confidential information of a producing party provided that
17 the witness is: (a) a current employee, attorney, director, officer, or agent of the
18 producing party, or a corporate designee of the producing party under Rule 30(b)(6)
19 of the Federal Rules of Civil Procedure; or (b) a former employee, attorney, director,
20 officer, or agent of the producing party if, at the time of the witness’s employment,
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1 the Highly Confidential information was in existence and the witness had access to
2 such Highly Confidential information;

3 (v) litigation support vendors retained by counsel for such functions as
4 document collection, processing, management, coding, hosting or storage and
5 photocopying, scanning, stenography, videography, imaging, or preparation of
6 graphics, demonstratives, and audio and/or video productions or other exhibits for
7 deposition, trial, or other court proceedings in this action, but only to the extent
8 necessary for the particular litigation support services being rendered and in
9 accordance with the vendor's ordinary operating procedure;

10 (vi) mock jurors and/or their trial or jury consultants engaged by the
11 parties in preparation for trial, provided that (i) no party will use any mock juror who
12 is employed or affiliated with or who is related to or has a close personal relationship
13 with any person employed by or affiliated with either party to this action; (ii) mock
14 jurors will not be allowed to retain any tangible materials that contain or disclose
15 any designated material; and (iii) and all such mock jurors have signed the
16 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

17 (vii) mediators or similar outside parties and their staffs enlisted by the
18 Court or the parties to assist in the resolution of the claims and defenses of the parties
19 in the action;

1 (viii) insurers, accountants, auditors, independent consultants or
2 regulators to whom a party may be required to respond or report in its ordinary
3 course of business regarding the action or proceedings arising out of or related to the
4 action; and

5 (ix) any other person for whom the receiving party can show good
6 cause, but only upon order of the Court or with advance written permission of the
7 producing party.

8 4.3 Filing Confidential and Highly Confidential Material. Before filing
9 Confidential or Highly Confidential material or discussing or referencing such
10 material in court filings, the filing party shall confer with the designating party, to
11 determine whether the designating party will remove the Confidential or Highly
12 Confidential designation, whether the document can be redacted, or whether a
13 motion to seal or stipulation and proposed order is warranted.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
16 party or non-party that designates information or items for protection under this
17 agreement must take care to limit any such designation to specific material that
18 qualifies under the appropriate standards. The designating party must designate for
19 protection only those parts of material, documents, items, or oral or written
20 communications that qualify, so that other portions of the material, documents,
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1 items, or communications for which protection is not warranted are not swept
2 unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations
4 that are shown to be clearly unjustified or that have been made for an improper
5 purpose (e.g., to unnecessarily encumber or delay the case development process or
6 to impose unnecessary expenses and burdens on other parties) expose the
7 designating party to sanctions.

8 If it comes to a designating party's attention that information or items that it
9 designated for protection do not qualify for protection, the designating party must
10 promptly notify all other parties that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this
12 agreement (see, e.g., second paragraph of section 5.2(b) below), or as otherwise
13 stipulated or ordered, disclosure or discovery material that qualifies for protection
14 under this agreement must be clearly so designated before or when the material is
15 disclosed or produced.

16 (a) Information in documentary form: (e.g., paper or electronic
17 documents and deposition exhibits, but excluding transcripts of depositions or other
18 pretrial or trial proceedings), the designating party must affix the word
19 "Confidential" or "Highly Confidential"/ "Attorneys' Eyes Only"/ "AEO" to each
20 page that contains such material. If only a portion or portions of the material on a
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1 page qualifies for protection, the producing party also must clearly identify the
2 protected portion(s) (e.g., by making appropriate markings in the margins).

3 (b) Testimony given in deposition or in other pretrial proceedings: the
4 parties and any participating non-parties may identify on the record, during the
5 deposition or other pretrial proceeding, all protected testimony, without prejudice to
6 their right to so designate other testimony after reviewing the transcript. Any party
7 or non-party may, within 30 days after receiving the transcript of the deposition or
8 other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as
9 protected material. All deposition transcripts shall be treated as Attorneys' Eyes
10 Only for a period of 30 days after initial receipt of the transcript. If a party or non-
11 party desires to protect information at trial, the issue should be addressed during the
12 pre-trial conference.

13 (c) Other tangible items: the producing party must affix in a prominent
14 place on the exterior of the container or containers in which the information or item
15 is stored the word "Confidential" or "Highly Confidential"/ "Attorneys' Eyes Only"/
16 "AEO". If only a portion or portions of the information or item warrant protection,
17 the producing party, to the extent practicable, shall identify the protected portion(s).

18 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
19 failure to designate qualified information or items does not, standing alone, waive
20 the designating party's right to secure protection under this agreement for such
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1 material. Upon timely correction of a designation, the receiving party must make
2 reasonable efforts to ensure that the material is treated in accordance with the
3 provisions of this agreement.

4 6. CHALLENGING DESIGNATIONS

5 6.1 Timing of Challenges. Any party or non-party may challenge a
6 designation at any time. Unless a prompt challenge to a designating party's
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
8 economic burdens, or a significant disruption or delay of the litigation, a party does
9 not waive its right to challenge a designation by electing not to mount a challenge
10 promptly after the original designation is disclosed.

11 6.2 Meet and Confer. The parties must make every attempt to resolve any
12 dispute regarding designations without court involvement. Any motion regarding
13 designations or for a protective order must include a certification, in the motion or
14 in a declaration or affidavit, that the movant has engaged in a good faith meet and
15 confer conference with other affected parties in an effort to resolve the dispute
16 without court action. The certification must list the date, manner, and participants to
17 the conference.

18 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
19 court intervention, the designating party may file and serve a motion to retain the
20 designation. The burden of persuasion in any such motion shall be on the designating
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1 party. Frivolous challenges, and those made for an improper purpose (e.g., to harass
2 or impose unnecessary expenses and burdens on other parties) may expose the
3 challenging party to sanctions. All parties shall continue to maintain the material in
4 question as designated until the court rules on the challenge.

5 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN

6 OTHER LITIGATION

7 If a party is served with a subpoena or a court order issued in other litigation
8 that compels disclosure of any information or items designated pursuant to this
9 agreement in this action, that party must:

10 (a) promptly notify the designating party in writing and include a copy
11 of the subpoena or court order;

12 (b) promptly notify in writing the party who caused the subpoena or
13 order to issue in the other litigation that some or all of the material covered by the
14 subpoena or order is subject to this agreement. Such notification shall include a copy
15 of this agreement; and

16 (c) cooperate with respect to all reasonable procedures sought to be
17 pursued by the designating party whose protected material may be affected.

18 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

19 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
20 protected material to any person or in any circumstance not authorized under this
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1 agreement, the receiving party must immediately (a) notify in writing the designating
2 party of the unauthorized disclosures, (b) use its best efforts to retrieve all
3 unauthorized copies of the protected material, (c) inform the person or persons to
4 whom unauthorized disclosures were made of all the terms of this agreement, and
5 (d) request that such person or persons execute the “Acknowledgment and
6 Agreement to Be Bound” that is attached hereto as Exhibit A.

7 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE

8 PROTECTED MATERIAL

9 When a producing party gives notice to receiving parties that certain
10 inadvertently produced material is subject to a claim of privilege or other protection,
11 the obligations of the receiving parties are those set forth in Federal Rule of Civil
12 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
13 may be established in an e-discovery order or agreement that provides for production
14 without prior privilege review. The parties agree to the entry of a non-waiver order
15 under Fed. R. Evid. 502(d) as set forth herein.

16 10. TERMINATION AND RETURN OF DOCUMENTS

17 Within 60 days after the termination of this action, including all appeals, each
18 receiving party must return all protected material to the producing party, including
19 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
20 appropriate methods of destruction.

1 Notwithstanding this provision, counsel are entitled to retain one archival
2 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
3 correspondence, deposition and trial exhibits, expert reports, attorney work product,
4 and consultant and expert work product, even if such materials contain protected
5 material.

6 The obligations imposed by this agreement shall remain in effect until a
7 designating party agrees otherwise in writing or a court orders otherwise.

8 11. CLAW BACK AGREEMENT

9 Pursuant to Federal Rule of Evidence 502(d), the production of any
10 documents in this proceeding shall not, for the purposes of this proceeding or any
11 other federal or state proceeding, constitute a waiver by the producing party of any
12 privilege applicable to those documents, including the attorney-client privilege,
13 attorney work-product protection, or any other privilege or protection recognized by
14 law.

15 PURSUANT TO STIPULATION, IT IS SO ORDERED.

16 Dated this 16th day of May 2023.



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Thomas O. Rice

THOMAS O. RICE
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2 I, _____ [print or type full name], of _____ [print or type full address], declare
3 under penalty of perjury that I have read in its entirety and understand the Stipulated
4 Protective Order that was issued by the United States District Court for the Eastern
5 District of Washington on [date] in the case of *Arizona Board of Regents et al. v.*
6 *Sportswear Inc. et al*, 2:21-cv-00135-TOR. I agree to comply with and to be bound
7 by all the terms of this Stipulated Protective Order and I understand and
8 acknowledge that failure to so comply could expose me to sanctions and punishment
9 in the nature of contempt. I solemnly promise that I will not disclose in any manner
10 any information or item that is subject to this Stipulated Protective Order to any
11 person or entity except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court
13 for the Eastern District of Washington for the purpose of enforcing the terms of this
14 Stipulated Protective Order, even if such enforcement proceedings occur after
15 termination of this action.

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____

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Presented by:

PERKINS COIE LLP

By: /s/ Javier F. Garcia (per e-mail authority 5/12/23)

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