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MADONNA LOUISE VERONICA CICCONE;

MATERIAL GIRL BRAND, LLC; MG ICON LLC;

and MACY'S RETAIL HOLDINGS, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA,

WESTERN DIVISION

L.A. TRIUMPH, INC., a California
corporation,

Plaintiff,

vs.

MADONNA LOUISE VERONICA
CICCONE, an individual; MATERIAL
GIRL BRAND, LLC, a Delaware limited
liability company; MG ICON, a
Delaware limited liability company;
MACY'S RETAIL HOLDINGS, INC., a
Delaware corporation; and DOES 1
through 10,

Defendants.

CASE NO. CV 10-6195 SJO (JCx)

**STIPULATED PROTECTIVE
ORDER GOVERNING THE USE
AND MAINTENANCE OF
CONFIDENTIAL MATERIAL**

**[CHANGES MADE TO
PARAGRAPH 5]**

1 The Court recognizes that, to protect the confidentiality of documents and other
2 materials produced during discovery, Plaintiff L.A. Triumph, Inc. and Defendants
3 Madonna Louise Veronica Ciccone, Material Girl Brand, LLC, MG Icon LLC, and
4 Macy's Retail Holdings, Inc. (collectively, the "Parties") have agreed to be bound by the
5 terms this Stipulated Protective Order Governing the Use of Confidential Material
6 ("Order").

7 **GOOD CAUSE STATEMENT:** The Court agrees that good cause exists for the
8 entry of this Order because some documents that are relevant to the claims and/or
9 defenses involved in this action contain confidential financial information, sensitive
10 business information, and, potentially trade secrets, the disclosure of which could harm
11 the businesses involved. This overriding interest overcomes any right the public may
12 have to access this type of information, and, given the nature of the dispute and the high-
13 profile parties involved, there is a substantial probability that the Parties' interest will be
14 prejudiced if they are not permitted to file certain documents under seal. The Parties
15 have agreed to only designate the most sensitive and potentially harmful documents as
16 confidential and to work in good faith to ensure that this Order remains narrowly tailored
17 and limited in scope.

18 The provisions of this Order are set forth below:

19 **1. *Designated Materials:*** Any party in this action or any third-party witness
20 shall have the right to designate any material produced during discovery (including
21 exhibits, documents and things produced by any party or witness, electronic files, disks
22 or DVDs, answers to interrogatories, responses to requests for admissions, responses to
23 requests for production, subpoenas, declarations, affidavits, and deposition testimony or
24 transcripts) which comprises or contains information which such party or witness claims
25 in good faith to constitute trade secrets, confidential research (including market research,
26 surveys, and demographic information), product development, the development and
27 creation of advertising, commercial information (including business plans and license
28 agreements), financial information (including sales and profit figures and advertising

1 expenditures) or personnel information as “CONFIDENTIAL”. Such materials are
2 referred to throughout this Order as “Designated Materials.”

3 Information shall not be designated as Designated Materials, and shall not be
4 subject to any form of protection if it is, or becomes, public knowledge, as shown by
5 publicly available writings, other than through violation of the terms of this Order or as a
6 result of misappropriation from the disclosing party. If a party disagrees with the other
7 party’s designation, the party requesting the change in designation shall make such
8 request in writing to counsel for the other party. The requested change shall occur and/or
9 the requested permission shall be granted, unless within ten (10) business days after such
10 notice is received by the other party, an objection is sent to the requesting party. The
11 Parties shall attempt in good faith to resolve any such further dispute by agreement. Any
12 dispute as to the propriety of a party’s designation shall be governed by the provisions of
13 paragraph 15.

14 The failure to immediately challenge a designation shall not constitute
15 acquiescence to such designation and a challenge to such can be made at any time.

16 **2. Marking and Deposition Procedures:** Documents and other discovery
17 materials shall be designated by labeling such documents and materials in a visible
18 manner with an appropriate legend stamped or affixed thereto, or by a manner mutually
19 agreeable to the Parties if the materials cannot be readily so labeled. Deposition
20 transcripts or portions thereof may be designated as confidential by a party or third-party
21 witness either: (a) before the testimony is taken, in which case the portion of the
22 transcript of the designated testimony shall be bound in a separate volume and marked
23 “CONFIDENTIAL” by the reporter, as the designating party may direct; or (b) by written
24 notice to the reporter and all counsel of record, given within twenty (20) business days
25 after the reporter sends written notice to the deponent or the deponent’s counsel that the
26 transcript is available for review, in which case all counsel receiving such notice shall be
27 responsible for marking the copies of the designated transcript or portion thereof in their
28 possession or control as directed by the designating party or witness. Pending expiration

1 of the twenty business days, all Parties and, if applicable, any third-party witnesses or
2 attorneys, shall treat the deposition transcript as if it had been designated
3 “CONFIDENTIAL”. No person shall attend the designated portions of such depositions
4 unless such person is an authorized recipient of Designated Materials under the terms of
5 this Order.

6 **3. *Restriction on Disclosure and Use:*** No person may use or disclose
7 Designated Materials or information derived from such materials (excluding information
8 which is derived lawfully from an independent source) except for purposes of this action
9 and as set forth in this or any further order of the court; but nothing contained in this
10 Order shall affect the right of a party or other witness to use its own Designated Materials
11 as it sees fit. In addition, and without limiting the foregoing, except as provided in
12 paragraphs 4 and 9, no receiving party, including any consultants or employees of a
13 receiving party, shall be given access to Designated Materials of any producing party, nor
14 shall the contents or substance of any Designated Materials be disclosed to any such
15 person.

16 **4. *Access – “CONFIDENTIAL”:*** Designated Materials marked
17 “CONFIDENTIAL” shall be available only to (1) counsel of record for the named
18 Parties, their partners, associates and employees, (2) in-house counsel of the named
19 Parties in this action, and (3) the named Parties to this action (including current officers
20 and employees). Materials marked “CONFIDENTIAL” may also be disclosed to outside
21 consultants if the consultant is not already otherwise retained by the party outside the
22 context of this litigation, but only after the outside consultant signs a copy of the
23 Acknowledgement of Confidentiality Order in the form of Exhibit “A” attached hereto,
24 including all the information to be completed therein, and agrees to be bound by all terms
25 and conditions of this Order. Counsel to whom Designated Materials are produced shall
26 keep in his or her files an original of each such signed Acknowledgement of
27 Confidentiality Order.
28

1 **5. *Procedures for Filing Designated Material:*** Designated Materials marked
2 as “CONFIDENTIAL” may be included with, or referred to in, papers filed with the
3 Court where this case is now pending or in any subsequent appellate courts only in
4 accordance with the following procedures:

5 (a) If confidential material is included in any papers to be filed in Court, such
6 papers shall be accompanied by an application to file the papers -- or the confidential
7 portion thereof -- under seal; the application must show good cause or compelling
8 reasons (depending upon the procedural context) for the under seal filing. The application
9 shall be directed to the Judge to whom the papers are directed. Pending the ruling on the
10 application, the papers or portions thereof subject to the sealing application shall be
11 lodged under seal.

12 (b) The documents marked as “CONFIDENTIAL” must be submitted for filing
13 under seal or lodged with the court in sealed envelopes endorsed with the title of this
14 action, an indication of the contents of the envelope, the identity of the filing party and
15 the notation “CONFIDENTIAL--SUBJECT TO PROTECTIVE ORDER--NOT TO BE
16 DISCLOSED EXCEPT BY COURT ORDER OR WRITTEN STIPULATION OF THE
17 PARTIES.”

18 (c) All papers filed with the court, including but not limited to pleadings and
19 memoranda of law, which quote, incorporate, refer to, or cite information set forth in
20 Designated Materials marked as “CONFIDENTIAL” must be submitted for filing under
21 seal or lodged with the court in accordance with the terms and procedures set forth in this
22 Order, including the procedures for filing materials set forth above in paragraphs 5(a)-(b).
23 Counsel for the Parties shall be responsible for designating all papers filed with the court
24 as “CONFIDENTIAL” depending on the contents of the papers being filed. Such papers
25 shall be subject to the terms of this Order to the same extent as the Designated Materials
26 described in paragraphs 1 through 4.

27 (d) All materials and papers submitted for filing under seal or lodged with the
28 court much clearly be marked “filed under seal” or “lodged with the court.”

1 (e) In addition to the copy lodged with the court, a copy of all sealed materials and
2 papers must be served on opposing counsel. Counsel for all Parties shall be obligated to
3 retain a copy of all sealed materials in the event of an appeal.

4 (f) At the conclusion of scheduled hearings, the party filing documents under seal
5 shall request permission to retrieve them from the court and retain them intact. In the
6 event of an appeal, the party preparing the record extract shall separately bind all
7 materials or papers filed under seal which are designated for inclusion in the record
8 extract. By joint motion, the Parties shall request that the sealed contents of the record
9 extract be sealed, lodged with the court or otherwise segregated from public inspection in
10 accordance with the local rules of court. The procedures set forth in this paragraph shall
11 be repeated for all documents and papers filed under seal in each court where a hearing,
12 proceeding, or appeal is docketed.

13 (g) Prior to including or referring to any Designated Materials in a court filing, the
14 Parties agree to meet and confer to discuss appropriate procedures for the filing and
15 whether any stipulations can be reached that would either obviate the need for inclusion
16 of or reference to Designated Materials in the filing or support a request to file
17 Designated Materials under seal.

18 **6. Redacted Filings:** The Parties shall request that redacted versions of
19 materials or papers may be filed under seal or lodged with the court in accordance with
20 normal procedures and made publicly available provided that:

21 (a) All references to Designated Materials are deleted or obscured and all
22 Designated Materials are removed as exhibits; and

23 (b) Redacted versions are clearly marked “Public Version Confidential Material
24 Omitted.” Redacted versions must also clearly identify each place where information or
25 exhibits have been deleted.

26 **7. Agreement:** In no event shall any Designated Materials, papers, or
27 information derived directly from either source be disclosed to any person other than
28 those who have agreed to be bound by the terms of this Order (or court personnel) except

1 by order of the Court or by written stipulation of the Parties. All persons entitled under
2 this Order to receive Designated Materials, except counsel for the Parties, their regularly
3 employed staffs, and Court personnel, shall represent their willingness to be bound by
4 this Order on behalf of themselves and the named party for whom they are employed.

5 **8. Disclosure to Authors and Previous Recipients:** The designation of any
6 document as “CONFIDENTIAL” shall not preclude any party from showing such
7 document to any person who appears as the author or as a recipient on the face of the
8 document. This paragraph applies only to Designated Materials, and does not permit
9 disclosure of confidential court papers except as set forth elsewhere in this Order.

10 **9. Procedure for Seeking Additional Disclosures:** Prior to disclosure of any
11 Designated Material other than as provided in paragraphs 3, 4 and 8 above, counsel
12 desiring to make such disclosure shall first provide ten (10) business days prior written
13 notice of his or her intent to make such disclosure to counsel for the designating party or
14 third-party witness, stating therein the specific material to be disclosed and the name,
15 address, and position of the person to whom such disclosure is to be made. If within this
16 ten (10) business day period the designating party or third-party witness gives written
17 notification of an objection to the disclosure to counsel desiring to make the disclosure,
18 no disclosure shall be made except by order of the Court. In the event of such a dispute
19 regarding the designation or disclosure of confidential information, the procedure for
20 obtaining a decision from the Court shall be that set forth in Local Rule 37. If the Parties
21 wish to file the Joint Stipulation required by Local Rule 37 under seal, the Parties may
22 file a stipulation to that effect or the moving party may file an *ex parte* application
23 making the appropriate request. The Parties must set forth good cause in the stipulation
24 or *ex parte* application as to why the Joint Stipulation or portions thereof should be filed
25 under seal. *Prior* to any disclosure, other than as provided in paragraphs 3, 4, and 8
26 above, the person to whom the proposed disclosure shall be made must sign a copy of the
27 Acknowledgement of Confidentiality Order set forth as Exhibit A to this Order, and
28 agree to be bound by all terms and conditions of this Order. The acknowledgement shall

1 be retained by counsel for the party obtaining it, and distributed upon final disposition of
2 this action as set forth in paragraph 14 below.

3 **10. Subpoena of Designated Material:** If a party in possession of Designated
4 Materials receives a subpoena from a non-party to this Order seeking production or other
5 disclosure of Designated Materials, that party shall, unless legally prohibited, give
6 immediate notice to counsel for the party that designated the materials
7 “CONFIDENTIAL” so that the designating party can intervene on its own behalf. In
8 addition, unless legally prohibited under no circumstances may any production or
9 disclosure of Designated Materials take place without giving written notice to counsel for
10 the designating party at least seven (7) business days prior to production or disclosure.
11 Such notice should state the Designated Materials sought and enclose a copy of the
12 subpoena.

13 **11. Responsibility of Attorneys:** Counsel of record shall be responsible for
14 providing a copy of this Order to all persons entitled to review Designated Materials
15 pursuant to paragraphs 3, 4, and 8 above, and to employ reasonable measures to control
16 duplication of, access to, and distribution of copies of materials and papers so designated.
17 No person shall duplicate any Designated Materials except as contemplated by this
18 Order, for use as exhibits at depositions, in connection with court filings or, as necessary,
19 by counsel or Court personnel for use as working copies.

20 **12. Disclosure of Designated Materials at Trial or Pretrial Hearings:**

21 (a) Pretrial Hearings: If a party anticipates that it may disclose any Designated
22 Materials at a pretrial hearing in this action, it shall give at least forty-eight (48) hours
23 notice to the court and all other Parties of such anticipated disclosure specifying that the
24 information disclosed is designated as “CONFIDENTIAL”. When such notice has been
25 given, counsel shall join in a request for an in camera or similarly confidential
26 proceeding during the disclosure of the Designated Materials. The requirement of
27 advance notice shall not apply to a disclosure of Designated Materials in rebuttal or
28 response to another party’s oral argument at the hearing where the need for such

1 disclosure could not be reasonably anticipated in advance of the hearing, or to Designated
2 Materials previously filed under seal. However, prior to disclosing any information
3 designated as “CONFIDENTIAL” in a reply or rebuttal argument, counsel shall inform
4 the court and opposing counsel of his or her intention to do so and of the designation of
5 the information to be disclosed. He or she shall then request, or give counsel for the
6 designating party the opportunity to request, an in camera or similarly confidential
7 proceeding during the disclosure of the designated information.

8 (b) Trial: Once a case proceeds to trial, all of the information that was designated
9 as confidential and/or kept and maintained pursuant to the terms of a protective order
10 becomes public and will be presumptively available to all members of the public,
11 including the press, unless good cause is shown to the Judge in advance of the trial to
12 proceed otherwise.

13 **13. Reference to this Order at Trial:** The Parties shall jointly move for an order
14 *in limine* prohibiting any reference at the trial of this matter in the presence of a jury to
15 the existence of this Order or to the effect that certain information is subject to this Order.

16 **14. Final Disposition:** Upon the final disposition of this action, the attorneys
17 for the Parties shall return any materials or papers filed with the Court which are
18 designated “CONFIDENTIAL” to the party or witness from whom they were obtained or
19 destroy all such materials, papers, disks and DVDs, and all copies of such materials,
20 papers, disks and DVDs, pursuant to the instructions of the designating party, unless
21 otherwise agreed to by the designating party or ordered by the court. Counsel of record,
22 however, shall be entitled to maintain one set of materials and papers filed with the court
23 which may contain or refer to Designated Materials. If no instructions are received, all
24 Designated Materials and papers may be destroyed 180 days after the conclusion of a
25 final nonappealable judgment or determination. When Designated Material or papers
26 have been destroyed pursuant to this provision, a certificate of destruction shall be
27 prepared and provided to counsel for the opposing party indicating that such material has
28 been destroyed. In addition, upon final disposition of this action, counsel of record shall

furnish copies of all signed acknowledgements obtained in accordance with the provisions of paragraphs 3, 4, and 8 above to all other counsel of record.

15. Procedure for Modification of Order/Objection to Designation: No party to this action shall be obligated to challenge the propriety of any designation by any other party or witness, and a failure to do so shall not constitute a waiver or in any way preclude a subsequent challenge in this or any other action to the propriety of such designation. Any party objecting to the designation of any information as “CONFIDENTIAL” must give counsel for the designating party written notice of its reasons for the objection and within ten (10) business days of such notice meet and confer with counsel for the designating party in a good faith effort to resolve their differences. Failing resolution within this ten (10) business day period, the designation will automatically terminate 21 days after an objection to the designation is first received and the material will be deemed not “CONFIDENTIAL” unless the designating party brings a motion with the Court to have the material deemed “CONFIDENTIAL.” The Court may modify or amend this Order as it deems appropriate.

16. Effective Date: This Order shall be effective on the date of its execution.

17. Termination: The termination of this action shall not automatically terminate the effectiveness of this Order and persons subject to this Order shall be bound by the confidentiality obligations of this Order until the designating party agrees otherwise in writing or this Court (or any other court of competent jurisdiction) orders otherwise.

IT IS SO ORDERED.

DATED: December 28, 2010

By: _____/s/
Honorable Jacqueline Chooljian
United States Magistrate Judge

EXHIBIT A

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

L.A. TRIUMPH, INC., a California
corporation,

Plaintiff,

vs.

MADONNA LOUISE VERONICA
CICCONE, an individual; MATERIAL
GIRL BRAND, LLC, a Delaware limited
liability company; MG ICON, a
Delaware limited liability company;
MACY'S RETAIL HOLDINGS, INC., a
Delaware corporation; and DOES 1
through 10,

Defendants.

CASE NO. CV 10-6195 SJO (JCx)

**STIPULATED PROTECTIVE
ORDER**

Judge: Hon. S. James Otero

I acknowledge that I have been given a copy of, read, and understand the
Stipulated Protective Order Governing the Use of Confidential Material ("Protective
Order") entered in the above-captioned lawsuit.

I further acknowledge and agree to comply with the terms of the Protective Order
and be bound by it. I acknowledge, understand, and agree that by receiving confidential
information hereunder I am subject to penalty for contempt of court for any violation of
the terms of the Protective Order.

Dated: _____

Name of Individual to whom
disclosure will be made

Address, including County and State of
Residence