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DENIED WITHOUT PREJUDICE

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

HIS & HER CORP. d/b/a HIS & HER
HAIR GOODS CO.,

Plaintiff,

v.

SHAKE-N-GO FASHION, INC.;
MODEL MODEL HAIR FASHION,
INC.; C&J BEAUTY SUPPLY, an
unknown entity; TIGI BEAUTY
SUPPLY, an unknown entity; PINK
BEAUTY SUPPLY & SALON, INC., a
California corporation; SAM'S
BEAUTY, an unknown entity; EBONY
WIG & BEAUTY SUPPLY, an
unknown entity; WOW BEAUTY
SUPPLY, an unknown entity; and
BASKET BEAUTY SUPPLY, a
California corporation,

Defendants.

AND RELATED COUNTERCLAIMS.

Civil Action No. 11-05323
(GAF)(VBK)

**[PROPOSED] PROTECTIVE
ORDER**

NOTE: CHANGES MADE BY THIS
COURT

1 **GOOD CAUSE HAVING BEEN FOUND** to issue a protective order to protect
2 any confidential, trade secret and/or proprietary information that is exchanged during
3 discovery, the Parties’ “Stipulated Confidentiality Agreement and Protective Order” is
4 approved and becomes the Order of the Court. It is **ORDERED**:

5
6 1. The Parties represent that certain discovery and initial disclosure materials
7 to be exchanged in this case, including documents, interrogatory answers, deposition
8 testimony and other discovery, are expected to contain information claimed by one or
9 more of the parties to be confidential non-public information of a personal, financial,
10 and/or commercial nature which may constitute a trade secret or proprietary information,
11 including: price lists, sales information, customer information (including but not limited
12 to lists), and supplier and/or manufacturer information, costs information, profit
13 information (including but not limited to invoices and reports (e.g., sales reports) and
14 other documents reflecting such information), and personal or private information (e.g.,
15 home addresses, credit card information). The Parties do not wish unreasonably to
16 impede or burden the discovery process but, at the same time, recognize an obligation to
17 take reasonable steps to safeguard legitimate confidentiality and privacy concerns. The
18 parties wish to avoid the expense and delay of motions to compel discovery or for a
19 protective order to obtain a determination of whether the matter is protected by
20 confidentiality, privacy or other privilege. Thus, a stipulation and order thereon will
21 conserve the resources of the Court and the parties. Further, the parties assert that
22 materials designated as “Confidential Information” (defined below) pursuant to the
23 procedures below should be protected by a Court order rather than by a private agreement
24 because the entry of a protective order would carry the weight of the Court’s imprimatur
25 and authorize the exercise of its contempt power over any potential violations of this
26 protective order. A private agreement between the parties would not serve to fully
27 protect the confidential nature of the materials containing Confidential Information from
28 unwarranted disclosure or use, as it would not provide sufficient remedies in the event of

1 misappropriation and would therefore not be as strong of a deterrent against such
2 misappropriation. The parties intend this Stipulation and Order to address these
3 concerns.

4 2. This Protective Order shall govern the disclosure and use by receiving
5 parties of any documents, testimony or other information the producing party (including
6 third party witnesses) considers in good faith to be, or to reflect or reveal a trade secret,
7 as that term is defined by California Civil Code § 3426.1, or other proprietary
8 information that is not publicly available designated as “CONFIDENTIAL” or
9 “CONFIDENTIAL - ATTORNEYS EYES ONLY” (collectively, “Confidential
10 Information”) pursuant to paragraph 7.

11 3. In the event this case proceeds to trial, all information designated as
12 Confidential Information becomes public unless sufficient cause is shown. The parties
13 will address in connection with the final pre-trial conference, procedures for such
14 showing to be made to the Court. The parties will cooperate in establishing procedures
15 acceptable to the Court to protect Confidential Information pursuant to this Protective
16 Order both at trial and upon any appeal of this case.

17 4. For purposes of this Protective Order, “Discovery Materials” shall include
18 documents produced pursuant to the voluntary disclosure requirements of Rule 26 of the
19 Federal Rules of Civil Procedure, documents produced pursuant to Rule 34 of the Federal
20 Rules of Civil Procedure, interrogatory answers, deposition testimony, and all other
21 information that may be disclosed in the course of discovery in this action, as well as
22 compilations or excerpts of such materials.

23 5. This Protective Order shall not abrogate or diminish any privilege or any
24 contractual, statutory or other legal obligation or right of any party with respect to
25 Discovery Materials. Each party shall retain the right to oppose disclosure or production
26 of any information sought in discovery on any additional grounds outside the provisions
27 of this stipulated Order. This Order is entered solely for the purpose of facilitating the
28 exchange of documents and information between the parties to this action without

1 involving the Court unnecessarily in the process. Nothing in this Order shall affect or
2 prejudice or enhance the rights any party has to seek discovery from another party, a
3 party's right to object to requests for discovery (including on the ground that the request
4 seeks information that is confidential) or a party's right to seek to compel the production
5 of information by way of a court order under the Federal Rules of Civil Procedure.
6 Nothing in this Order, or the production of any information or document under the terms
7 of this Order, or any proceedings pursuant to this Order shall be deemed to have the
8 effect of an admission or waiver by any party or of altering the confidential nature or
9 non-confidential nature of any such document or information.

10 6. Each party shall keep confidential and not use or disclose any Confidential
11 Information of another party (or third party witness) except as provided in paragraph 8
12 below.

13 7. Any party (including third parties) may designate any Discovery Materials it
14 deems to be confidential by designating such Discovery Materials as Confidential
15 Information.

16 8. Except as provided in paragraph 12, access to Discovery Materials
17 designated Confidential Information shall be restricted in accordance with the following
18 provisions:

19 (a) Discovery Materials, and any information extracted from them,
20 which have been designated Confidential Information shall be used solely
21 for the purposes of prosecuting or defending this action, and for no other
22 purposes;

23 (b) "CONFIDENTIAL" designated Discovery Materials shall only
24 be disseminated to or shown to: (1) attorneys who are members or associates
25 of the law firms listed on the pleadings in this action, and who have
26 appeared or filed a motion or application to appear pro hac vice ("Counsel of
27 Record"), and to supporting personnel employed by Counsel of Record,
28 such as other attorneys at the firm, paralegals, legal secretaries, data entry

1 clerks, legal clerks and/or private data entry, document management and
2 photocopying services; (2) named parties, which includes employees of any
3 company, assisting in the defense of the action; (3) consultants and experts
4 who have signed an undertaking in the form attached as Exhibit 1; (4) any
5 professional vendors or other persons or entities that provide litigation
6 support services (e.g., photocopying; videotaping; translating; preparing
7 exhibits or demonstrations; organizing, storing, retrieving data in any form
8 or medium and their employees and subcontractors); (5) any private
9 mediator or other ADR professional retained or selected by the parties to
10 assist in the resolution of the matter; (6) the court and court personnel, in
11 accordance with the terms specified below in paragraphs (d)-(e), and (7) as
12 agreed to by the producing party in writing. There shall be no other
13 permissible dissemination of CONFIDENTIAL Discovery Materials.

14 (c) “CONFIDENTIAL - ATTORNEYS EYES ONLY” designated
15 Discovery Materials shall only be disseminated to or shown to: (1) attorneys
16 who are members or associates of the law firms listed on the pleadings in
17 this action, and who have appeared or filed a motion or application to appear
18 pro hac vice (“Counsel of Record”), and to supporting personnel employed
19 by Counsel of Record, such as other attorneys at the firm, paralegals, legal
20 secretaries, data entry clerks, legal clerks and/or private data entry,
21 document management and photocopying services; (2) the court and court
22 personnel, in accordance with the terms specified below in paragraphs (d)-
23 (e), (3) any professional vendors or other persons or entities that provide
24 litigation support services (e.g., photocopying; videotaping; translating;
25 preparing exhibits or demonstrations; organizing, storing, retrieving data in
26 any form or medium and their employees and subcontractors); (4) outside
27 experts and consultants, who are not officers, directors, employees, or
28 shareholders of a party or competitors, who have been retained in

1 connection with this action, and who have signed an undertaking in the form
2 attached as Exhibit 1, and (5) as agreed to by the producing party in writing.

3 (d) No copies, extracts or summaries of any document designated
4 Confidential Information shall be made except by or on behalf of Counsel of
5 Record; and such copies, extracts or summaries shall also be designated and
6 given the same confidentiality designation as the original and shall not be
7 delivered or exhibited to any persons except as provided in this Protective
8 Order.

9 (e) Counsel of Record may allow access to Discovery Material
10 designated Confidential Information to their retained outside consultants,
11 provided that any such outside consultant who is to receive such material
12 shall be provided with a copy of this Protective Order and shall execute an
13 undertaking in the form annexed hereto as Exhibit 1. Consultants shall be
14 specifically advised that the portion of their written work product, which
15 contains or discloses the substance of Discovery Material designated as
16 Confidential Information is subject to all the provisions of this Protective
17 Order. Counsel of Record disclosing such material to consultants shall be
18 responsible for obtaining the executed undertakings in advance of such
19 disclosure and also shall retain the original executed copy of said
20 undertakings. No Discovery Material designated as Confidential
21 Information may be disclosed to an outside consultant prior to execution of
22 the form attached as Exhibit 1.

23 (f) During depositions, Counsel of Record may question any
24 witness about any Discovery Material designated Confidential Information
25 to the extent the witness has already had access to such Confidential
26 Information. However, where the witness or deponent testifies about such
27 designated Discovery Material (i.e., Discovery Material designated as
28 Confidential Information), the party who marked the material as

1 Confidential Information may instruct the Court Reporter to mark and seal
2 such testimony as separate from the public record transcript and then shall
3 be treated as Confidential Information of the designating party. Portions of
4 deposition transcripts designated “CONFIDENTIAL” or “CONFIDENTIAL
5 - ATTORNEYS EYES ONLY” shall be so marked and the designated
6 portions, including exhibits consisting of Confidential Information
7 Discovery Material, shall be bound separately by the Court Reporter, kept
8 under seal, and maintained separately by the Court Reporter and the parties
9 from the non- confidential portions of the transcript, including exhibits,
10 except as otherwise stipulated by the Parties or ordered by the Court.

11 (g) **Filings Under Seal.** In the event that any Confidential
12 Information Discovery Materials are attached to, or quoted or summarized
13 in, any pleadings, motion papers or other papers are filed with this Court, the
14 portions of pleadings or papers that contain the Confidential Information
15 Discovery Materials shall be filed under seal pursuant to this Order.
16 Pursuant to Local Rule 79-5: (i) the original and judge’s copy of the
17 document shall be sealed in separate envelopes with a copy of the title page
18 attached to the front of each envelope; (ii) conformed copies need not be
19 placed in sealed envelopes; and (iii) the materials to be sealed, shall not be
20 electronically filed but shall be filed manually and a Notice of Manual Filing
21 shall first be electronically filed identifying the materials being manually
22 filed. All papers filed under seal that refer to or rely upon such Confidential
23 Information shall designate the particular aspects that are confidential so that
24 the Court, in drafting orders, can determine whether there is material which
25 the Court should attempt not to disclose. Absent such advance notification,
26 the Court will be free to incorporate all such evidence in its written and oral
27 rulings. Copies of such documents containing information subject to this
28 Protective Order that are served on counsel for the parties shall be identified

1 as containing Confidential Information and shall be maintained as
2 Confidential Information as described herein.

3 9. Nothing herein shall impose any restrictions on the use or disclosure by a
4 party of its own Confidential Information or information it received outside of discovery
5 from another party in this litigation.

6 10. The disclosure of any Discovery Materials pursuant to the terms of this
7 Protective Order is not intended to be and shall not be construed as a waiver of any right
8 or a relinquishment of any confidentiality claim as to said Discovery Materials or as a
9 waiver of any claim that the information disclosed is a trade secret or is proprietary. In
10 the event that any Confidential Information is used in any Court proceeding in this
11 action, it shall not lose its confidential status through such use, and the party using such
12 shall take reasonable steps to maintain its confidentiality during such use.

13 11. This Order shall be without prejudice to the right of a party (i) to bring
14 before the Court at any time the question of whether any particular document or
15 information is private or whether its use should be restricted or (ii) to present a motion to
16 the Court under FRCP 26(c) for a separate protective order as to any particular document
17 or information, including restrictions differing from those as specified herein.

18 12. If any dispute arises concerning whether information designated as
19 Confidential Information should in fact be considered as Confidential Information or
20 whether it should be considered as a lower level of Confidential Information for purposes
21 of this Protective Order, the party who objects to the designation of the information as
22 Confidential Information shall give written notice of the objection. The parties shall then
23 attempt to resolve the dispute informally and in good faith within five (five) business
24 days. If the parties do not resolve the dispute informally, the party who designated the
25 information as Confidential Information shall have fifteen (15) business days from the
26 date the written notice of objection is given to file a motion seeking resolution of the
27 objection (unless the parties to the dispute agree in writing to a different period or the
28 Court orders a different period). If the motion is not filed within this time, then the

1 Confidential Information designation shall be deemed waived. If such a motion is timely
2 filed, the party asserting confidentiality shall have the burden of proving that the
3 Confidential Information is protected by (a) a right to privacy or (b) trade secret or other
4 confidential research, development, or commercial information within the meaning of
5 Rule 26(c) of the Federal Rules of Civil Procedure. Prior to the determination of such
6 motion, the disputed information shall be treated by the parties as Confidential
7 Information and shall be treated thereafter according to the Court’s ruling subject to
8 rights of appeal (e.g., a party has 10 days to appeal the magistrate judge’s ruling to the
9 Court).

10 13. Upon final resolution of this litigation, including any appellate proceedings
11 or expiration of the time allowed therefore, and within 60 days thereof.

12 (a) Unless otherwise agreed, counsel for each party shall return or
13 destroy all Discovery Materials marked “CONFIDENTIAL” or
14 “CONFIDENTIAL - ATTORNEYS EYES ONLY” received hereunder,
15 including all copies thereof, to counsel for the party that produced said
16 materials. Counsel for each party shall also destroy all extracts or
17 summaries of Confidential Information Discovery Materials or documents
18 containing such material. Certification of such destruction, under penalty of
19 perjury, is to be made in writing to counsel for the party who produced such
20 Confidential Information Discovery Materials within ten (10) business days
21 of destruction; and

22 (b) The Clerk of the Court shall, upon request of a party that
23 produced any Confidential Information Discovery Materials, return to such
24 party all documents and things containing or referring to such Discovery
25 Materials that were filed under seal pursuant to this Protective Order. As to
26 those documents or things containing such information which cannot be so
27 returned, they shall continue to be kept under seal and shall not be examined
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1 by any person without a prior Court order, after due notice to Counsel of
2 Record, or the written stipulation of each of Counsel of Record.

3 14. Nothing contained in this Protective Order shall result in a waiver of rights,
4 nor shall any of its terms preclude a party from seeking and obtaining, upon an
5 appropriate showing, additional protection with respect to personal, financial,
6 commercial, confidential, trade secret or other proprietary documents, information or any
7 other discovery material or trade secrets, including, but not limited to, restrictions on
8 disclosure. Nothing contained herein relieves any party of its obligation to respond to
9 discovery properly initiated pursuant to the Discovery Order.

10 15. Pursuant to Fed. R. Civ. Proc. Rule 26, the parties hereby stipulate to the
11 following treatment of any privileged or work product materials inadvertently disclosed
12 in this action. The parties agree that disclosure of information protected by any privilege
13 in this litigation shall not constitute a waiver of any otherwise valid claim of privilege,
14 and failure to assert a privilege in this litigation as to one document or communication
15 shall not be deemed to constitute a waiver of the privilege as to any other document or
16 communication allegedly so protected, even involving the same subject matter. The
17 parties agree that any inadvertent inclusion of any privileged or work product material in
18 a production in this action shall not result in the waiver of any associated privilege or
19 protective doctrine nor result in a subject matter waiver of any kind. If any such material
20 is inadvertently produced, the recipient of the document agrees that, upon request from
21 the producing party, it will promptly return all copies of the document in its possession,
22 delete any versions of the documents on any database it maintains, and make no use of
23 the information contained in the document, provided, however, that the party returning
24 such document shall thereafter have the right to apply to the Court for an order that such
25 document was not protected (prior to the inadvertent disclosure) from disclosure by any
26 privilege or doctrine and therefore the party claiming the protection shall maintain the
27 returned documents should the Court order that they are not protected.

1 16. The Court may modify upon a showing of good cause this Protective Order
2 at any time or consider any dispute which may arise hereunder upon motion of any of the
3 parties, but a modification decreasing the protections afforded by this Protective Order
4 will not be made without a showing of good cause since designating parties will be
5 relying on the protections of this Protective Order in producing Confidential Information.

6 17. Nothing in this Protective Order affects in any way, the admissibility of any
7 documents, testimony or other evidence at trial.

8 18. This Protective Order shall remain in effect for the duration of the action
9 unless terminated by stipulation executed by the Counsel of Record or pursuant to Court
10 Order. Insofar as they restrict the communication, treatment and use of information
11 subject to this Protective Order, the provisions of this Protective Order shall continue to
12 be binding after the termination of this action, unless the Court orders otherwise.

13 DENIED WITHOUT PREJUDICE. Parties may resubmit with definitions of
14 “Confidential” and “Confidential – Attorneys’ Eyes Only.”

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19 DATED: August 28, 2012

By: _____/s/_____
Victor B. Kenton
UNITED STATES DISTRICT COURT
MAGISTRATE JUDGE

1 EXHIBIT 1

2
3 AGREEMENT TO BE BOUND BY THE STIPULATION FOR
4 PROTECTIVE ORDER AND PROTECTIVE ORDER REGARDING CONFIDENTIAL
5 INFORMATION
6

7 The undersigned hereby acknowledges that he or she has read the Protective
8 Order entered into on behalf of the Parties in *His & Her Corp. v. Shake-N-Go Fashion,*
9 *Inc. v. Model Model Hair Fashion, Inc.*, Case No. 2:11-cv-05323-GAF-VBK, pending in
10 the United States District Court, Central District of California; that he or she understands
11 the provisions prohibiting the disclosure or use of Confidential Information for any
12 purpose or in any manner not connected with the prosecution or defense of this action;
13 and that he or she agrees to be bound by all provisions of that order, and subject to the
14 Court's jurisdiction so that it may enforce this Order.

15
16 Dated: _____

17 _____
Signature

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19 _____
Printed Name

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