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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

BRANDO ENTERPRISES, L.P., a
Delaware limited partnership,

Plaintiff,

vs.

ASHLEY FURNITURE INDUSTRIES,
INC., a Wisconsin corporation;
ASHLEY HOMESTORES LTD., a
Wisconsin corporation d/b/a Ashley
Furniture Homestore; and DOES 1-20,
inclusive,

Defendants.

Case No.: CV 11-5997 DMG (FFMx)

**[PROPOSED]
PROTECTIVE ORDER
RE THE TREATMENT OF
CONFIDENTIAL INFORMATION
PRODUCED IN DISCOVERY**

NOTE CHANGES MADE BY COURT

PROTECTIVE ORDER

1. The parties each possess, control, or have in their custody certain nonpublic information that constitutes trade secret or other confidential, proprietary, or private information for which special protection from public disclosure is warranted. This Protective Order does not confer blanket protections on all disclosures or responses to discovery; the protection that this Protective Order affords extends only to the limited information or items that are entitled under the applicable legal principles to confidential treatment. This Protective Order creates no entitlement

1 to file any material under seal; Local Rule 79-5 reflects the standards that will be
2 applied when any party seeks permission to file material under seal and must be
3 followed.

4 2. The restrictions set forth in this Protective Order shall apply to all
5 information produced during discovery or submitted in proceedings in this action that
6 shall be designated by the party or person producing it as “Confidential” or
7 “Confidential – Attorneys’ Eyes Only” (collectively, “Confidential Information”).
8 The restrictions set forth in this Protective Order shall not apply to information that,
9 before disclosure, is properly in the possession or knowledge of the party to whom
10 such disclosure is made, is public knowledge, has been disclosed to the public or
11 otherwise is publicly available, or which has not been kept confidential by the
12 disclosing party prior to this litigation. The restrictions set forth in this Protective
13 Order shall not apply to information that is, or after disclosure becomes, public
14 knowledge other than by an act or omission of the party to whom such disclosure is
15 made, or that is legitimately acquired from a source not subject to this Protective
16 Order or other obligation of confidentiality.

17 3. If any exhibit, pleading, response to disclosures and/or discovery,
18 deposition transcript, hearing transcript, or other transcript of testimony, declaration or
19 affidavit (collectively “testimony”), or any document, electronically stored
20 information, or thing produced in discovery in this action contains information
21 considered confidential by a party or third party witness, deponent, or subpoena
22 recipient, such discovery response, testimony, or document, electronically stored
23 information, or thing shall be designated “Confidential” or “Confidential – Attorneys’
24 Eyes Only” by the party contending there is confidential information therein (the
25 “Designating Party”). Designation shall be made by affixing the legend
26 “Confidential” or “Confidential – Attorneys’ Eyes Only” to the confidential material
27 in a conspicuous manner (without interfering with the legibility of the material) before
28 the production or service of such material.

1 4. As a general guideline, a document should be designated “Confidential”
2 only when it contains trade secrets; competitively sensitive technical, marketing,
3 financial, sales, or other proprietary or confidential business information; private or
4 confidential personal information; or information received in confidence from a third
5 party that may be reviewed by the party receiving it (the “Receiving Party”), and the
6 Receiving Parties’ experts and other representatives, but should be protected against
7 disclosure to third parties.

8 5. As a general guideline, a document should be designated “Confidential –
9 Attorneys’ Eyes Only” only when it contains the Designating Party’s most highly
10 sensitive financial information; cost information; pricing information; sales
11 information; customer, license, supplier, and vendor information; software and
12 firmware for a party’s products; technical and development information about a
13 party’s products; comparative product test results; business plans; marketing
14 strategies; new product plans and competitive strategies; or any other information that
15 would put the producing party at a competitive disadvantage if the information
16 became known to employees of the receiving party or third parties.

17 6. A Designating Party shall in good faith take care to designate as
18 “Confidential” or “Confidential – Attorneys’ Eyes Only” only those portions of
19 disclosures that qualify so that other portions of the disclosures for which protection is
20 not warranted are not swept unjustifiably within the ambit of this Protective Order. If
21 after designating a disclosure as “Confidential” or “Confidential – Attorneys’ Eyes
22 Only” the Designating Party believes that such disclosure does not qualify for the
23 level of protection asserted, the Designating Party shall promptly notify all other
24 parties and correct the mistaken designation.

25 7. Confidential Information that has been obtained during the course of this
26 action may not be disclosed by any Receiving Party except as provided in this
27 Protective Order. Counsel for a party may give advice and opinions to their client
28 based on evaluation of Confidential Information. For information designated

1 “Confidential – Attorneys’ Eyes Only,” such rendering of advice and opinions shall
2 not reveal the content of such information except by prior agreement with opposing
3 counsel documented in writing (email confirmation shall suffice).

4 8. **Deposition** Testimony may be designated as “Confidential” or
5 “Confidential – Attorneys’ Eyes Only” at the time of the testimony, or within thirty
6 (30) days following receipt of the transcript of the testimony, and shall be subject to
7 the provisions of this Order. Additional information disclosed during a deposition ~~or~~
8 ~~hearing~~ may be designated as “Confidential” or “Confidential – Attorneys’ Eyes
9 Only” by notifying the other party, in writing, within thirty (30) days after receipt of
10 the transcript, of the specific pages of the transcript that should also be so designated.
11 Unless otherwise agreed on the record, all **deposition** transcripts shall be treated as
12 “Confidential – Attorneys’ Eyes Only” for a period of thirty-one (31) days after their
13 receipt, and the transcript shall not be disclosed by a non-Designating Party to persons
14 other than those persons permitted by this Protective Order to review documents or
15 materials designated “Confidential – Attorneys’ Eyes Only” on behalf of that non-
16 Designating Party, provided, however, that it is expected that the parties shall seek to
17 agree on the record during and/or at the end of a deposition when the testimony
18 clearly was not Confidential Information. **(FFM)**

19 9. Without written permission from the Designating Party or Court order
20 secured after appropriate notice to all interested persons, a party may not file in the
21 public record in this action any material designated “Confidential” or “Confidential –
22 Attorneys’ Eyes Only.” A party that seeks to file such material under seal must
23 comply with Local Rule 79-5. The application must demonstrate good cause for the
24 under seal filing.

25 10. As used in this Protective Order, “Trial Counsel” refers exclusively to the
26 following:

27 a. For Plaintiffs/Counter-defendants: The attorneys, paralegals,
28 agents, and support staff of Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP.

1 b. For Defendants/ Counterclaimants: The attorneys, paralegals,
2 agents, and support staff of Mitchell, Silberberg & Knupp, LLP.

3 c. Others: Such additional attorneys (and their paralegals, agents and
4 support staff) as enter an appearance in this matter for any existing or additional party,
5 as may be ordered by the Court or subsequently as may be agreed upon by the parties.

6 11. Material designated as “Confidential” that has been obtained during the
7 course of this proceeding may be disclosed or made available only to the Court, to
8 Trial Counsel, and to the persons designated below and only in accordance with the
9 terms of this Protective Order:

10 a. A party, or an officer, director, or designated employee of a party
11 deemed necessary by Trial Counsel to aid in the prosecution, defense, or settlement of
12 this action;

13 b. Independent experts or consultants (together with their clerical
14 staff) retained by such Trial Counsel to assist in the prosecution, defense, or
15 settlement of this action. For the purpose of this Protective Order, an independent
16 expert or consultant shall be defined as a person, who has not been and is not an
17 employee of a party or scheduled to become an employee in the near future, and who
18 is retained or employed as a consultant or expert for purposes of this litigation, either
19 full or part-time, by or at the direction of counsel of a party;

20 c. Court reporter(s) employed in this action;

21 d. Agents of Trial Counsel needed to perform various services such
22 as copying, creating demonstrative exhibits, and litigation support and management
23 services, including vendors retained by the parties, or by counsel for parties, for the
24 purpose of copying, encoding, loading into a computer and/or storing and maintaining
25 documents, electronically stored information and things, transcripts, pleadings, or
26 attorney work product;

27 e. Witnesses at trial and any other in-Court proceeding of this action;

28 f. Authors of the material bearing a “Confidential” or “Confidential –

1 Attorneys' Eyes Only" legend;

2 g. Persons who were recipients of the material bearing a
3 "Confidential" or "Confidential – Attorneys' Eyes Only" legend, provided that such
4 person did not receive such material in breach of this Protective Order;

5 h. Witnesses in any deposition or other proceeding, provided that
6 counsel questioning the witness has a good faith and reasonable basis to believe that
7 the witness either has seen the document before or has knowledge of the contents
8 contained within the document. If the witness testifies that he or she has never seen
9 the document before and does not have knowledge of its contents, then counsel
10 questioning the witness shall promptly withdraw the document from the witness.

11 i. The Mediator or Settlement Officer in this action.

12 j. Any other persons as to whom the parties in writing agree.

13 12. Material designated as "Confidential – Attorneys' Eyes Only" that has
14 been obtained from a party during the course of this proceeding may be disclosed or
15 made available only to the Court, to Trial Counsel, to the persons designated in
16 sections 11 (b) through (j) above, and to the following designated representatives of
17 the parties (and the assistants and paralegals of these persons):

18 For Plaintiffs: Larry J. Dressler, Mike Medavoy, and Avra Douglas, each of
19 whom is an officer of Plaintiff's general partner and a trustee of Plaintiff's limited
20 partners; and David J. Seeley, Esq. of Livengood, Fitzgerald & Alskog in Kirkland,
21 Washington.

22 For Defendants: Daniel Aiman, William Koslo, and Bryan Tillman, each of
23 whom is an attorney of Defendant, as well as Todd Wanek, President & CEO and
24 Ronald Wanek, Chairman of the Board.

25 13. Individuals to whom disclosure is made under paragraphs 11(a) and 11(b)
26 shall be given a copy of this order before being shown any Confidential Information,
27 and its provisions shall be explained to such persons by an attorney. Each such
28 person, before having access to the Confidential Information, shall agree not to

1 disclose or make use of any such material other than solely for purpose of this
2 litigation, and shall acknowledge those obligations and that he/she understands the
3 terms of this Protective Order and agrees to comply with it and be bound by it in
4 writing by signing a document in the form of Exhibit “A” attached hereto. Witnesses
5 shown Confidential Information at a deposition or hearing shall not be allowed to
6 retain copies of the material. However, a witness who was shown such material
7 during a deposition may review the material while reviewing his transcript, provided
8 that any such material is not retained by the witness after he/she has completed his/her
9 review of the transcript for accuracy.

10 14. If any party desires at a hearing to offer into evidence material designated
11 “Confidential” or “Confidential – Attorneys’ Eyes Only,” or to use such material in
12 such a way as to reveal its nature or contents, such offers or use shall be made only
13 upon the taking of all steps reasonably available to preserve the confidentiality of such
14 material and in accordance with the instructions of the Court, which may include the
15 offering of material outside the presence of persons other than court personnel and
16 counsel.

17 15. Any Confidential Information may be used in any deposition taken of the
18 party producing such material or its employees without consent, and in any other
19 deposition subject to the provisions in Sections 11 and 12, above. Whenever any
20 Confidential Information is to be discussed or disclosed in a deposition, any party
21 claiming such confidentiality may exclude from the room any person not entitled to
22 receive such material pursuant to the terms of this Protective Order.

23 16. A Receiving Party who objects to the designation of any material as
24 “Confidential” or “Confidential – Attorneys’ Eyes Only” shall state the objection in a
25 letter to counsel for the Designating Party. Parties shall make a good faith effort to
26 avoid the Court’s involvement to resolve disputes. If the objection cannot be resolved
27 within ten (10) days following receipt of the objection, the Receiving Party may move
28 the Court to determine whether the material qualifies for treatment as “Confidential”

1 or “Confidential – Attorneys’ Eyes Only.” If the Receiving Party files such a motion,
2 the material will continue to be treated in accordance with its designation and this
3 Protective Order until and unless the Court rules. The Designating Party shall bear the
4 burden of establishing that the material qualifies for treatment as “Confidential” or
5 “Confidential – Attorneys’ Eyes Only.” **Any such motion must comply with Local**
6 **Rule 37. (FFM)**

7 17. A Receiving Party shall not be obligated to challenge the propriety of the
8 designation of any material at the time such designation is made; and failure to do so
9 shall not preclude a subsequent challenge for any purpose.

10 18. If a party, through inadvertence or mistake, produces Confidential
11 Information without marking it with the legend “Confidential” or “Confidential –
12 Attorneys’ Eyes Only,” or by designating it with an incorrect level of confidentiality,
13 the party may give written notice to the Receiving Party that the material contains
14 “Confidential” or “Confidential – Attorneys’ Eyes Only” material and should be
15 treated as such in accordance with the provisions of this Protective Order. Upon
16 receipt of such notice, and upon receipt of properly marked materials, the Receiving
17 Party shall return all unmarked materials (and not retain any copies thereof) and must
18 treat such material in accordance with its designation and cooperate in restoring the
19 confidentiality of such material. The inadvertent or unintentional disclosure by a
20 party of Confidential Information, regardless of whether the information was so
21 designated at the time of disclosure, shall not be deemed a waiver in whole or in part
22 of a party’s claim of confidentiality either as to the specific information disclosed or
23 as to any other information relating thereto or on the same or related subject matter,
24 provided that the Receiving Party is notified and properly marked documents are
25 supplied as provided herein. The Receiving Party shall not be responsible for the
26 disclosure or other distribution of belatedly designated material before the receipt of
27 such notification of a claim of confidentiality and such disclosure or distribution shall
28 not be deemed to be a violation of this Protective Order.

1 19. If a Receiving Party discloses Confidential Information through
2 inadvertence or otherwise to any person or party not authorized under this Protective
3 Order, the Receiving Party shall immediately notify the Disclosing Party of the
4 disclosure, and the Receiving Party shall use its best efforts to promptly retrieve all
5 copies of any such Confidential Information and to bind such person to the terms of
6 this Protective Order, including cooperating in obtaining an order of the Court to
7 remedy the inadvertent disclosure, if necessary. The Receiving Party also shall: (a)
8 promptly inform such unauthorized person of all the provisions of this Protective
9 Order, including providing such person with a copy of this Order; (b) identify such
10 person immediately to the Disclosing Party and inform the Disclosing Party of all
11 pertinent facts relating to the inadvertent disclosure; and (c) request that such
12 unauthorized person sign the “Agreement to Be Bound by Protective Order” (Exhibit
13 “A”).

14 20. Neither the taking of, or the failure to take any action to enforce the
15 provisions of this Protective Order, nor the failure to object to any designation or any
16 such action or omission, shall constitute a waiver of any party’s right to seek and
17 obtain protection or relief with respect to any claim or defense in this action or any
18 other action including, but not limited to, the claim or defense that any information is
19 or is not proprietary to any party, is or is not entitled to particular protection or that
20 such information does or does not embody trade secret or other confidential
21 information of any party. The procedures set forth herein shall not affect the rights of
22 the parties to object to discovery on grounds other than confidentiality, nor shall it
23 relieve a party of the necessity of proper responses to discovery requests.

24 21. This Order shall not abrogate or diminish any contractual, statutory, or
25 other legal obligation or right of any party to this Protective Order, as to any third
26 party, with respect to any Confidential Information. The fact that information is
27 designated “Confidential” or “Confidential – Attorneys’ Eyes Only” under this
28 Protective Order shall not be deemed to be determinative of what a trier of fact may

1 determine to be confidential or proprietary. This Order shall be without prejudice to
2 the right of any party to seek adjudication of, or the Court to determine *sua sponte*:

3 a. Whether any particular information is or is not “Confidential” or
4 “Confidential – Attorneys’ Eyes Only” material;

5 b. Whether any particular information is or is not entitled to a greater
6 or lesser degree of protection than provided hereunder; or

7 c. Whether any particular information is or is not relevant to any
8 issue in this case; provided that in doing so the party complies with the foregoing
9 procedures.

10 22. The terms of this Protective Order apply to material produced in this
11 litigation by non-parties, and confidential information produced by a non-party in
12 connection with this litigation shall be treated in accordance with this Protective
13 Order. To protect its own confidential information, a party may ask a non-party to
14 execute a document in the form of Exhibit “A” attached hereto.

15 23. If Confidential Information is requested from any Receiving Party by any
16 court, government entity, or third party pursuant to a valid subpoena or other court
17 order, the Receiving Party shall immediately notify the other parties to this action in
18 writing and make a good faith effort to provide the Disclosing Party a reasonable time
19 in which to object or take steps to protect its interests before any confidential
20 information is produced.

21 24. In the event that any person or party violates or threatens to violate the
22 terms of this Protective Order, the aggrieved Disclosing Party may immediately seek
23 injunctive relief against such person or party.

24 25. Nothing contained in this Protective Order shall affect or waive any
25 party’s right to object to the admissibility, discoverability, or privileged or exempted
26 nature of any disclosure, all such objections and exemptions being specifically
27 preserved.

28 26. The parties may agree in writing to reasonable modifications of or

1 exceptions to this Protective Order; however, no modification or exception by the
2 parties shall have the force or effect of a Court Order unless the Court endorses such
3 modification or exception.

4 27. This Protective Order shall survive the final termination of this action
5 and the Court shall retain jurisdiction to resolve any dispute concerning the use of
6 Confidential Information disclosed hereunder. Within sixty (60) days following the
7 conclusion of this litigation, including all appeals or settlement, all Confidential
8 Information, except such documents or information which incorporate or are
9 incorporated into attorney work product (a single copy of which may be retained in
10 counsel's file), shall, upon request, be returned to the producing party, destroyed or
11 disposed of pursuant to the instructions of the producing party.

12 28. Nothing contained herein shall limit any party in the presentation of
13 evidence at trial, however, all parties reserve the right to request that the Court enter
14 an appropriate order to protect from public disclosure information that such party
15 contends is confidential and would be detrimental to that party if disclosed in a public
16 trial.

17 29. This Protective Order is without prejudice to the right of a party hereto to
18 seek relief from the Court from any of the provisions or restrictions provided herein,
19 including seeking modifications to the Protective Order that may broaden or restrict
20 the rights of access to and use of protected materials.

21 30. Nothing in this Order shall prevent any Designating Party from
22 disclosing or using, in any manner or for any purpose, information or documents that
23 the designating party itself has designated as "Confidential" or "Confidential –
24 Attorneys' Eyes Only."

25 **IT IS SO ORDERED.**

26 Dated: August 24, 2011

27 /S/ FREDERICK F. MUMM
28 The Honorable Frederick F. Mumm
United States Magistrate Judge

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EXHIBIT "A"

ACKNOWLEDGMENT AND NONDISCLOSURE AGREEMENT

I, _____, affirm that I have read and am familiar with the terms of the Protective Order entered in the matter of *Brando Enterprises, L.P. v. Ashley Furniture Industries, Inc., et al.*, Case No. CV 11-5997 DMG (FFMx). I agree that I will not disclose any information received by me pursuant to the Protective Order, and I will comply with and be bound by the terms and conditions of said Order unless and until modified by further order of the Court.

Dated: _____ By: _____

Print Name: _____

Address: _____

Tel. _____