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 14

15 IN THE UNITED STATES DISTRICT COURT
 16 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 17 WESTERN DIVISION

<p>18 ANDREW ZUCKERMAN, an individual,</p>	}	<p>Civil Action No.</p>
<p>19 Plaintiff,</p>	}	<p>CV12-3249-PSG (CWx)</p>
<p>20 v.</p>	}	<p>STIPULATED PROTECTIVE ORDER</p>
<p>21 LENNY USA, LLC, a New York limited</p>	}	<p>Magistrate Judge Carla Woehrle</p>
<p>22 liability company ; LENNY</p>	}	
<p>23 SWIMWEAR, a business entity of form</p>	}	
<p>24 unknown; LENNY NIEMEYER, an</p>	}	
<p>25 individual; and DOES 1-10 inclusive,</p>	}	
<p>26 Defendant.</p>	}	

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1 Plaintiff Andrew Zuckerman (“Zuckerman”) and Defendant Lenny USA,
2 LLC (“Lenny USA”), recognizing that each may have materials containing trade
3 secret or other confidential research, technical, cost, price, marketing or other
4 commercial information, as is contemplated by Federal Rule of Civil Procedure
5 26(c), have agreed to the terms of the Protective Order (“Order”) as set forth
6 below. The purpose of this Order is to protect the confidentiality of such
7 materials as much as practical during the litigation. THEREFORE IT IS
8 HEREBY ORDERED:

9 1. This Order shall apply to all information produced during
10 discovery in this action that shall be designated by the party or person producing
11 it as “Confidential” or “Confidential-Attorneys Eyes Only” (collectively
12 “Confidential Information”). This Order shall not apply to information that,
13 before disclosure, is properly in the possession or knowledge of the party to
14 whom such disclosure is made, or is public knowledge. The restrictions
15 contained in this Order shall not apply to information that is, or after disclosure
16 becomes, public knowledge other than by an act or omission of the party to
17 whom such disclosure is made, or that is legitimately acquired from a source not
18 subject to this Order.

19 2. If a document or thing produced in response to a document request
20 or in connection with a deposition, interrogatory answer, or admission
21 (collectively “discovery response”), or a deposition transcript, contains
22 information considered confidential by a party, such discovery response, or
23 deposition transcript shall be designated “Confidential” or “Confidential-
24 Attorneys Eyes Only” by the party contending there is confidential information
25 therein.

26 3. In connection with a discovery response or deposition transcript,
27 the legend “Confidential” or “Confidential-Attorneys Eyes Only” (in such a
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1 manner as will not interfere with the legibility thereof) shall be affixed before
2 the production or service upon a party.

3 4. As a general guideline, a document should be designated
4 “Confidential” when it contains confidential business, technical or other
5 information that may be reviewed by the receiving party, the parties’ experts,
6 and other representatives, but must be protected against disclosure to third
7 parties. A document may be designated “Confidential-Attorneys Eyes Only”
8 only when it contains the following highly sensitive information: financial
9 information; cost information; pricing information; sales information; customer,
10 license, supplier, and vendor information; software and firmware for a party’s
11 products; technical and development information about a party’s products;
12 comparative product test results; business plans; marketing strategies; new
13 product plans and competitive strategies; or any other information that would
14 put the producing party at a competitive disadvantage if the information became
15 known to employees of the receiving party or third parties.

16 5. All Confidential Information (*i.e.*, “Confidential” or “Confidential-
17 Attorneys Eyes Only” information) that has been obtained from a party during
18 the course of this proceeding shall be used only for the purpose of this litigation
19 and not for any other business, proceeding, litigation, or other purpose
20 whatsoever. Further, such information may not be disclosed to anyone except
21 as provided in this Order. Counsel for a party may give advice and opinions to
22 their client based on evaluation of information designated as Confidential
23 Information produced by the other party. For information designated
24 “Confidential-Attorneys Eyes Only,” such rendering of advice and opinions
25 shall not reveal the content of such information except by prior agreement with
26 opposing counsel.

27 6. All documents, or any portion thereof, produced for inspection only
28 (*i.e.*, copies have not yet been provided to the receiving party) shall be deemed

1 “Confidential-Attorneys Eyes Only.” If a copy of any such document is
2 requested after inspection, the document shall be deemed “Confidential” or
3 “Confidential-Attorneys Eyes Only” only if labeled or marked in conformity
4 with paragraph 2, with access and dissemination limited as set forth in
5 paragraphs 10-13.

6 7. Information disclosed at a deposition may be designated as
7 “Confidential” or “Confidential-Attorneys Eyes Only” at the time of the
8 deposition, or within ten (10) days following receipt of the transcript, and shall
9 be subject to the provisions of this Order. Additional information disclosed
10 during a deposition may be designated as “Confidential” or “Confidential-
11 Attorneys Eyes Only” by notifying the other party, in writing, within ten (10)
12 days after receipt of the transcript, of the specific pages of the transcript that
13 should also be so designated. Unless otherwise agreed on the record of the
14 deposition, all transcripts shall be treated as “Confidential-Attorneys Eyes
15 Only” for a period of ten (10) days after their receipt, and the transcript shall not
16 be disclosed by a non-designating party to persons other than those persons
17 named or approved according to paragraphs 11-13 to review documents or
18 materials designated “Confidential-Attorneys Eyes Only” on behalf of that non-
19 designating party.

20 8. In accordance with Local Rule 79-5.1, if any papers to be filed with
21 the Court contain information and/or documents that have been designated as
22 “Confidential” or “Confidential – Attorneys’ Eyes Only,” the proposed filing
23 shall be accompanied by an application to file the papers or the portion thereof
24 containing the designated information or documents (if such portion is
25 segregable) under seal; and the application shall be directed to the judge to
26 whom the papers are directed. For motions, the parties shall file a redacted
27 version of the motion and supporting papers.

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1 9. As used in this Order, “Trial Counsel” refers exclusively to the
2 following:

3 (a) For Lenny USA: The attorneys, paralegals, agents, and
4 support staff of Knobbe, Martens, Olson & Bear, LLP, but shall not under any
5 circumstances include any current or former officer, director, or employee of
6 Lenny USA.

7 (b) For Zuckerman: The attorneys, paralegals, agents, and
8 support staff of the Law Offices of David Alden Erikson, but shall not under
9 any circumstances include any current or former officer, director, or employee
10 of Zuckerman.

11 (c) Others: Such additional attorneys as may be ordered by the
12 Court, or subsequently may be agreed upon by the parties, such agreement not
13 to be unreasonably withheld.

14 10. Material designated as “Confidential” that has been obtained from
15 a party during the course of this proceeding may be disclosed or made available
16 only to the Court, to Trial Counsel for either party, and to the persons
17 designated below and only subject to paragraphs 12-13:

18 (a) an officer, director, or designated employee of a party
19 deemed necessary by Trial Counsel to aid in the prosecution, defense, or
20 settlement of this action;

21 (b) independent experts or consultants (together with their
22 clerical staff) retained by such Trial Counsel to assist in the prosecution,
23 defense, or settlement of this action;

24 (c) court reporter(s) employed in this action;

25 (d) agents of Trial Counsel needed to perform various services
26 such as, for example, copying, drafting of exhibits, and support and
27 management services, including vendors retained by the parties, or by counsel
28 for parties, for the purpose of encoding, loading into a computer and storing and

1 maintaining for information control and retrieval purposes, transcripts of
2 depositions, hearings, trials, pleadings, exhibits marked by a party, or attorneys'
3 work product, all of which may contain material designated Confidential;

4 (e) witnesses in any deposition or other proceeding of this
5 action;

6 (f) any other persons as to whom the parties in writing agree.

7 11. Material designated as “Confidential-Attorneys Eyes Only” that
8 has been obtained from Lenny USA or Zuckerman during the course of this
9 proceeding may be disclosed or made available only to the Court, to Trial
10 Counsel for either party, and to the persons designated below and subject to
11 paragraphs 12-13:

12 (a) independent experts or consultants (together with their
13 clerical staff) retained by such Trial Counsel to assist in the prosecution,
14 defense, or settlement of this action;

15 (b) authors and recipients of any material bearing a
16 “Confidential-Attorneys Eyes Only” legend;

17 (c) court reporter(s) employed in this action;

18 (d) agents of Trial Counsel needed to perform various services
19 such as, for example, copying, drafting of exhibits, and support and
20 management services, including vendors retained by the parties, or by counsel
21 for parties, for the purpose of encoding, loading into a computer and storing and
22 maintaining for information control and retrieval purposes, transcripts of
23 depositions, hearings, trials, pleadings, exhibits marked by a party, or attorneys'
24 work product, all of which may contain material designated Confidential-
25 Attorneys Eyes Only;

26 (e) witnesses in any deposition or other proceeding in this action
27 who are the author or recipient of the “Confidential-Attorneys Eyes Only”
28 material, or who, based on evidence, have seen the material in the past; and

1 (f) any other persons as to whom the parties in writing agree.

2 12. Any officer, director, or designated employee of a party under
3 paragraph 10(a) or individuals identified under paragraphs 10(b)-10(f) and
4 11(a)-11(f) having access to Confidential Information shall be given a copy of
5 this Order before being shown such Confidential Information, and its provisions
6 shall be explained to them by an attorney. Each person identified under
7 paragraphs 10(a)-10(f) and 11(a)-11(f), before having access to the Confidential
8 Information, shall agree not to disclose to anyone not exempted by this Order
9 any Confidential Information and not to make use of any such Confidential
10 Information other than solely for purpose of this litigation, and shall
11 acknowledge in writing by signing a document in the form of Exhibit A
12 attached hereto, that he or she is fully conversant with the terms of this Order
13 and agrees to comply with it and be bound by it.

14 13. For the purpose of this Order, an independent expert or consultant
15 shall be defined as a person, who has not been and is not an employee of a party
16 or scheduled to become an employee in the near future, and who is retained or
17 employed as a consultant or expert for purposes of this litigation, either full or
18 part-time, by or at the direction of counsel of a party.

19 14. Any Confidential Information may be used in the course of any
20 deposition taken of the party producing such Confidential Information or its
21 employees without consent, or otherwise used in any deposition with the
22 consent of the party producing such Confidential Information, subject to the
23 condition that when such Confidential Information is so used, the party who
24 made the designation may notify the reporter that the portion of the deposition
25 in any way pertaining to such Confidential Information or any portion of the
26 deposition relevant thereto is being taken pursuant to this Order. Further,
27 whenever any Confidential Information is to be discussed or disclosed in a
28 deposition, any party claiming such confidentiality may exclude from the room

1 any person not entitled to receive such confidential information pursuant to the
2 terms of this Order.

3 15. A Receiving Party who objects to the designation of any discovery
4 response, or deposition testimony as “Confidential” or “Confidential-Attorneys
5 Eyes Only” shall state the objection by letter which complies with the
6 requirements of Local Rule 37-1 to counsel for the Producing Party. Pursuant to
7 Local Rule 37-1, counsel for the parties shall confer within ten (10) days
8 following receipt of the letter stating the objection. If the objection is not
9 resolved through the parties’ meeting pursuant to Local Rule 37-1, the
10 Receiving Party may move the Court to determine whether the discovery
11 response or deposition testimony at issue qualifies for treatment as
12 “Confidential” or “Confidential-Attorneys Eyes Only.” The Receiving Party’s
13 motion must be accompanied by a written stipulation of the parties as required
14 by Local Rule 37-2. If the Receiving Party files such a motion, the discovery
15 response, or deposition testimony at issue will continue to be entitled to the
16 protections accorded by this Order until and unless the Court rules otherwise. If
17 the Receiving Party files such a motion, the Producing Party shall bear the
18 burden of establishing that the discovery response or deposition testimony at
19 issue qualifies for treatment as “Confidential” or “Confidential-Attorneys Eyes
20 Only.” Nothing herein shall operate as an admission by any Party that any
21 particular discovery response, or deposition testimony contains “Confidential”
22 or “Confidential-Attorneys Eyes Only.” Information for purposes of
23 determining the merits of the claims in this litigation. A party shall not be
24 obligated to challenge the propriety of the designation of any discovery response
25 or deposition testimony at the time such designation is made; failure to do so
26 shall not preclude a subsequent challenge within a reasonable time. Further, a
27 Party’s failure to challenge a designation during pretrial discovery shall not
28 preclude a subsequent challenge of such designation at trial or in connection

1 with the submission of any discovery response or deposition testimony to the
2 Court for any purpose.

3 16. Notwithstanding anything contrary herein, if a party through
4 inadvertence or mistake produces discovery of any Confidential Information
5 without marking it with the legend “Confidential” or “Confidential-Attorneys
6 Eyes Only,” or by designating it with an incorrect level of confidentiality, the
7 producing party may give written notice to the receiving party that the discovery
8 response, or deposition testimony contains Confidential Information and should
9 be treated as such in accordance with the provisions of this Order. Upon receipt
10 of such notice, and upon receipt of properly marked materials, the receiving
11 party shall return said unmarked materials and not retain copies thereof, and
12 must treat such discovery responses, or deposition testimony as Confidential
13 Information and shall cooperate in restoring the confidentiality of such
14 Confidential Information. The inadvertent or unintentional disclosure by a party
15 of Confidential Information, regardless of whether the information was so
16 designated at the time of disclosure, shall not be deemed a waiver in whole or in
17 part of a party's claim of confidentiality either as to the specific information
18 disclosed or as to any other information relating thereto or on the same or
19 related subject matter, provided that the non-producing party is notified and
20 properly marked documents are supplied as provided herein. The receiving
21 party shall not be responsible for the disclosure or other distribution of belatedly
22 designated Confidential Information as to such disclosure or distribution that
23 may occur before the receipt of such notification of a claim of confidentiality
24 and such disclosure or distribution shall not be deemed to be a violation of this
25 Order.

26 17. Documents and things produced or made available for inspection
27 may be subject to redaction, in good faith by the producing party, of sensitive
28 material that is subject to the attorney-client privilege or to work-product

1 immunity. Each such redaction, regardless of size, will be clearly labeled. This
2 paragraph shall not be construed as a waiver of any party's right to seek
3 disclosure of redacted information.

4 18. Neither the taking or the failure to take any action to enforce the
5 provisions of this Order, nor the failure to object to any designation or any such
6 action or omission, shall constitute a waiver of any signatory's right to seek and
7 obtain protection or relief, with respect to any claim or defense in this action or
8 any other action including, but not limited to, the claim or defense that any
9 information is or is not proprietary to any party, is or is not entitled to particular
10 protection or that such information embodies trade secret or other confidential
11 information of any party. The procedures set forth herein shall not affect the
12 rights of the parties to object to discovery on grounds other than those related to
13 trade secrets or other confidential information claims, nor shall it relieve a party
14 of the necessity of proper responses to discovery requests.

15 19. This Order shall not abrogate or diminish any contractual,
16 statutory, or other legal obligation or right of any party to this Order, as to any
17 third party, with respect to any Confidential Information. The fact that
18 Information is designated "Confidential" or "Confidential-Attorneys Eyes
19 Only" under this Order shall not be deemed to be determinative of what a trier
20 of fact may determine to be confidential or proprietary. This Order shall be
21 without prejudice to the right of any party to bring before the Court the question
22 of:

23 (a) whether any particular information is or is not Confidential
24 Information;

25 (b) whether any particular information is or is not entitled to a
26 greater or lesser degree of protection than provided hereunder; or
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1 (c) whether any particular information is or is not relevant to
2 any issue in this case; provided that in doing so the party complies with the
3 foregoing procedures.

4 20. The terms of the Order are applicable to Confidential Information
5 produced by a non-party, and Confidential Information produced by a non-party
6 in connection with this litigation is protected by the remedies and relief
7 provided by the Order. To protect its own Confidential Information, a party
8 may ask a non-party to execute a document in the form of Exhibit A.

9 21. Within thirty (30) days following the conclusion of this litigation,
10 all information designated as Confidential Information, except such documents
11 or information which incorporate or are incorporated into attorney work product
12 (a single copy of which may be retained in counsel's file), shall, upon request,
13 be returned to the producing party, or disposed of pursuant to the instructions of
14 the producing party.

15 22. The restrictions provided for above shall not terminate upon the
16 conclusion of this lawsuit. This Order is without prejudice to the right of a party
17 hereto to seek relief from the Court, upon good cause shown, from any of the
18 provisions or restrictions provided herein.

19 23. Nothing in this Order is intended or should be construed as
20 authorizing a party to disobey a lawful subpoena issued in another action.

21 **GOOD CAUSE EXISTS TO ENTER INTO THE STIPULATED**
22 **PROTECTIVE ORDER**

23 1. Good cause exists for this Court to enter the Stipulated Protective
24 Order, because disclosure of any Confidential Information would harm the
25 parties financially and allow competitors to gain unfair advantage. Competitors
26 will gain an unfair advantage over the parties if they learn the parties'
27 Confidential Information, such as their financial information, accounting
28 information, customer lists, vendor lists, costs or profit structure, sales

1 information and sources, vendor sources, retail channels, product lines, business
2 and marketing strategy, or information concerning distribution or operations.
3 The Confidential Information should be protected, because it reveals the parties'
4 current financial status, business strategy, business structure, future
5 opportunities and efforts, the quality of the products, the manufacturing times
6 and sources, and retail prices and costs. This information will give others an
7 unfair price and time advantage and allow them to unfairly compete in the
8 market and usurp the parties' business opportunities, to the detriment of the
9 parties.

10 2. Good cause further exists in that this Stipulation would allow for
11 both parties to disclose documents required for the litigation of this matter
12 without suffering from both an economic and business detriment that would
13 result from the disclosure of Confidential Information to their competitors
14 and/or to the public.

15 IT IS SO ORDERED.



16 Dated: December 13, 2012

17 _____
18 Hon. Carla Woehrle
19 United States Magistrate Judge

20 SO STIPULATED BY:

21 KNOBBE, MARTENS, OLSON & BEAR, LLP

22
23
24 Dated: 12/11/2012

25 By: /s/ Lynda J. Zadra-Symes

26 Lynda J. Zadra-Symes
27 Daniel J. Fischer

28 Attorneys for Defendant
LENNY USA, LLC

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LAW OFFICES OF DAVID ALDEN ERIKSON

Dated: 12/11/2012 By: /s/ S. Ryan Patterson
David Alden Erikson
S. Ryan Patterson

Attorneys for Plaintiff
ANDREW ZUCKERMAN

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EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____, declare and say that:

1. I am employed as _____ by _____.

2. I have read the Stipulated Protective Order in *Zuckerman v. Lenny USA, LLC, et al.*, Case No. CV12-3249-PSG (CWx), pending in the United States District Court for the Central District of California, and have received a copy of the Stipulated Protective Order (“Protective Order”). I hereby agree to comply with and be bound by the terms and conditions of that Order unless and until modified by court order.

3. I promise that I will use any and all “Confidential” or “Confidential – Attorneys Eyes Only” information, as defined in the Protective Order, given to me only in a manner authorized by the Protective Order, and only to assist counsel in the litigation of this matter.

4. I promise that I will not disclose or discuss such “Confidential” or “Confidential – Attorneys Eyes Only” information with anyone other than the persons authorized in accordance with Paragraphs 9-11 of the Protective Order.

5. When I have completed my assigned or legal duties relating to this litigation, I will return all confidential documents and things that come into my possession, or that I have prepared relating to such documents and things, to counsel for the party by whom I am employed or retained. I acknowledge that such return or the subsequent destruction of such materials shall not relieve me from any of the continuing obligations imposed on me by the Confidentiality Agreement.

6. I understand that any disclosure or use of “Confidential” or “Confidential – Attorneys Eyes Only” information in any manner contrary to

1 the provisions of the Protective Order may subject me to sanctions for contempt
2 of court.

3 I declare under penalty of perjury that the foregoing is true and correct.

4 Executed this ____ day of _____, 2012 at _____.

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