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 13 ROLEX WATCH U.S.A., INC.

14 (continued on next page)

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

18 \_\_\_\_\_  
 19 ROLEX WATCH U.S.A., INC.,  
 20 Plaintiff,  
 21 v.  
 22 KRISHAN AGARWAL, individually  
 and d/b/a MELROSE JEWELERS, a  
 23 fictitious business in Los Angeles  
 County; MELROSE.COM, LLC, a  
 Nevada limited liability company; and  
 24 each d/b/a  
 MELROSEJEWELERS.COM,  
 25 Defendants.  
 26 \_\_\_\_\_

Case No. CV12-6400 MMM (MRWx)

**STIPULATED [PROPOSED]  
CONFIDENTIALITY ORDER**

Honorable Michael R. Wilner

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15 Attorneys for Defendants  
16 KRISHAN AGARWAL & MELROSE.COM, LLC  
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1 **[PROPOSED] CONFIDENTIALITY ORDER**

2 The parties expect that this case will require the parties to produce or  
3 disclose confidential information during the course of discovery which may  
4 include, for example, documents and information such as described in  
5 Paragraphs 3 and 4 below. To expedite the flow of discovery material, to  
6 facilitate the prompt resolution of disputes over confidentiality of discovery  
7 materials, to adequately protect information the parties are entitled to keep  
8 confidential, to ensure that only materials the parties are entitled to keep  
9 confidential are subject to such treatment, and to ensure that the parties are  
10 permitted reasonably necessary uses of such materials in preparation for and in  
11 the conduct of trial in the above-captioned case, it is hereby ORDERED THAT:

12 Scope of the Order

13 1. This Order shall apply to all materials and information produced or  
14 provided in this litigation by, and all testimony given in any deposition on  
15 behalf of, plaintiff Rolex Watch U.S.A., Inc. or defendants Krishan Agarwal and  
16 Melrose.com, LLC (each of which is individually referred to herein as a “Party”  
17 or collectively as the “Parties”), or by or on behalf of any person or entity that is  
18 not a party hereto (a “Non-Party”). All such materials, information, and  
19 testimony is hereinafter referred to as “Litigation Materials.”

20 2. Litigation Materials and the information therefrom shall be used  
21 solely for the purpose of preparing for and conducting this litigation and shall  
22 not be disclosed except as under such restrictions as provided for in this Order.

23 Designation of Litigation Materials by Parties and Non-Parties

24 3. Litigation Materials may be classified and maintained as  
25 CONFIDENTIAL if they contain or constitute information that: (i) has not been  
26 made public by the producing or originating person or entity; and (ii) cannot be  
27 obtained from public sources.

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1           4.    Litigation Materials may be classified and maintained as  
2 ATTORNEYS' EYES ONLY if they contain or constitute information that: (i)  
3 has not been made public by the producing or originating person or entity, (ii)  
4 cannot be obtained from public sources, and (iii) disclosure of the Litigation  
5 Materials poses a significant risk of competitive or other harm to the producing,  
6 supplying, or originating person or entity; and (iv) the Litigation Materials relate  
7 to:

8                   (a)    contacts and communications relating to prospective or  
9 actual agreements or contractual arrangements, and the financial terms thereof,  
10 with distributors, customers, or similar entities;

11                   (b)    financial information, including pricing information,  
12 financial data, cost information, sales information, units and values of sales,  
13 sales analyses by region or customer, and performance metrics and reports;

14                   (c)    technical, operational, and development information about a  
15 party's products;

16                   (d)    business plans, marketing strategies, new product plans and  
17 competitive analysis or strategies;

18                   (e)    information that is protected as a trade secret by the  
19 producing person or entity;

20                   (f)    documents or information as to which the producing Party  
21 has a pre-existing and continuing duty of confidentiality to a Non-Party,  
22 provided that the Non-Party in good faith required the producing Party to  
23 designate the documents or information ATTORNEYS' EYES ONLY as a  
24 condition of production or disclosure;

25                   (g)    documents or information as to which the producing person  
26 or entity has a pre-existing and continuing duty of confidentiality to another  
27 person or entity; or

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1 (h) other highly sensitive documents or information that are  
2 similar in nature to the categories listed above in sections (a) through (g).

3 The provisions of this paragraph do not preclude a person or entity from  
4 asserting that such designated Litigation Materials are not discoverable at all.

5 5. Litigation Materials (including portions of deposition transcripts)  
6 designated as CONFIDENTIAL, or information derived therefrom, may be  
7 disclosed or made available only to the following persons:

8 (a) to the Court and its officers and staff, including court  
9 reporters (through filing under seal, or at any trial or hearing);

10 (b) to outside counsel of record for the Parties (including legal  
11 and clerical staff employed or engaged by such counsel);

12 (c) no more than two (2) other persons such as officers,  
13 directors, or employees of the Parties to this action when such disclosure is  
14 deemed necessary to aid trial counsel in the prosecution, defense, or settlement  
15 of this action;

16 (d) to outside experts, consultants, advisors and/or translators  
17 retained to furnish technical or expert services and/or to give testimony with  
18 respect to the subject matter thereof for trial of this action; and

19 (e) to individuals and organizations that provide photocopying,  
20 document processing, imaging, translation, graphics, jury consulting,  
21 stenographic, and court reporting services.

22 6. Litigation Materials (including portions of deposition transcripts)  
23 designated as ATTORNEYS' EYES ONLY, or information derived therefrom,  
24 may be disclosed or made available only to the following persons:

25 (a) to the Court and its officers, including court reporters  
26 (through filing under seal, or at any trial or hearing);

27 (b) to outside counsel of record for the Parties (including legal  
28 and clerical staff employed or engaged by such counsel);

1 (c) to outside experts, consultants, advisors and/or translators  
2 retained to furnish technical or expert services and/or to give testimony with  
3 respect to the subject matter thereof for trial of this action; and

4 (d) to individuals and organizations that provide photocopying,  
5 document processing, imaging, translation, graphics, jury consulting,  
6 stenographic, and court reporting services.

7 7. Any classification of Litigation Materials (or parts thereof) as  
8 CONFIDENTIAL or ATTORNEYS' EYES ONLY will be done by the  
9 producing person or entity applying in good faith the criteria outlined in  
10 Paragraphs 3 and 4 above. Litigation Materials may be produced for inspection  
11 by counsel prior to such designation without waiving any right to so designate  
12 materials before providing copies to the requesting Party.

13 (a) The inadvertent delivery of Litigation Materials that could  
14 properly be designated as CONFIDENTIAL pursuant to Paragraph 3 above, or  
15 ATTORNEYS' EYES ONLY pursuant to Paragraph 4 above, shall be without  
16 prejudice to the producing person or entity. If, after producing Litigation  
17 Materials, the producing person or entity determines that the produced  
18 Litigation Materials should have been designated as CONFIDENTIAL or  
19 ATTORNEYS' EYES ONLY, the producing person or entity shall promptly  
20 provide written notice to the receiving Party and shall provide the receiving  
21 Party with a replacement copy of the Litigation Materials bearing a  
22 CONFIDENTIAL or ATTORNEYS' EYES ONLY designation within five (5)  
23 court days after giving such written notice. The receiving Party shall either  
24 promptly return the undesignated Litigation Materials to the producing person  
25 or entity, or promptly provide the producing person or entity with notice that all  
26 such undesignated Litigation Materials have been destroyed. During the five (5)  
27 court day period following written notification that Litigation Materials should  
28 have been designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY,

1 the receiving Party shall treat the undesignated Litigation Materials as though  
2 they have been so designated and shall retrieve all copies of the undesignated  
3 Litigation Materials for either return to the producing person or entity or to be  
4 destroyed.

5 (b) If, after producing Litigation Materials, a producing person  
6 or entity discovers that the Litigation Materials were properly subject to  
7 protection under the attorney-client privilege or the attorney work product  
8 doctrine, the producing person or entity shall promptly provide written notice to  
9 the receiving Party that such Litigation Materials were inadvertently produced  
10 and properly subject to protection under the attorney-client privilege or the  
11 attorney work product doctrine. Upon receiving such written notice from the  
12 producing person or entity that privileged information or attorney work product  
13 material has been inadvertently produced, all such information, and all copies  
14 thereof, either shall be promptly returned to the producing person or entity, or  
15 shall be destroyed and the receiving Party shall promptly provide the producing  
16 person or entity with notice that all such documents have been destroyed. If the  
17 receiving Party disagrees with the designation of any such Litigation Materials  
18 as privileged or otherwise protected after conferring with the producing person  
19 or entity in good faith, the receiving Party shall nonetheless return such  
20 Litigation Materials to the producing person or entity as specified above, but  
21 may move the Court for production of the returned Litigation Materials. The  
22 producing person or entity shall retain all returned Litigation Materials for  
23 further disposition.

24 8. A producing person or entity may designate Litigation Materials as  
25 confidential pursuant to Paragraphs 3 and 5 above by marking each page of such  
26 materials with a stamp identifying this civil action and using the word  
27 CONFIDENTIAL, or by one of the following ways:

28 ///

1 (a) If the Litigation Materials are not in paper form, the  
2 producing person or entity shall use other such reasonable means as necessary to  
3 identify clearly the Litigation Materials as CONFIDENTIAL.

4 (b) If information disclosed during the course of a deposition is  
5 deemed CONFIDENTIAL by a person or entity, the designation thereof as  
6 CONFIDENTIAL shall be made either (i) by a statement on the record at the  
7 deposition identifying the testimony to be designated as CONFIDENTIAL or  
8 (ii) by providing written notice to the other Parties of the specific pages of the  
9 transcript that should also be so designated within thirty (30) days after receipt  
10 by counsel of an official copy of the deposition transcript. Such designation as  
11 CONFIDENTIAL will be applied to only those portions of the deposition  
12 transcript that include a specific question and response or series of questions and  
13 responses containing CONFIDENTIAL information.

14 9. A producing person or entity may designate its most confidential  
15 Litigation Materials pursuant to Paragraphs 4 and 6 above by marking each page  
16 of such materials with a stamp identifying this civil action and using the words  
17 ATTORNEYS' EYES ONLY, or by one of the following ways:

18 (a) If the Litigation Materials are not in paper form, the  
19 producing person or entity shall use other such reasonable means as necessary to  
20 identify clearly the Litigation Materials as ATTORNEYS' EYES ONLY.

21 (b) If information disclosed during the course of a deposition is  
22 deemed ATTORNEYS' EYES ONLY by a person or entity, the designation  
23 thereof as ATTORNEYS' EYES ONLY shall be made either (i) by a statement  
24 on the record at the deposition identifying the testimony to be designated as  
25 ATTORNEYS' EYES ONLY or (ii) by providing written notice to the other  
26 Parties of the specific pages of the transcript that should also be so designated  
27 within thirty (30) days after receipt by counsel of an official copy of the  
28 deposition transcript. Such designation as ATTORNEYS' EYES ONLY will be



1 applied to only those portions of the deposition transcript that include a specific  
2 question and response or series of questions and responses containing  
3 ATTORNEYS' EYES ONLY information. Unless otherwise previously  
4 designated, all depositions transcripts shall be treated as ATTORNEYS' EYES  
5 ONLY in their entirety prior to the end of such thirty (30) day period.

6 10. If counsel for a Party receiving Litigation Materials designated as  
7 CONFIDENTIAL or ATTORNEYS' EYES ONLY hereunder objects to such  
8 designation of any or all of such Litigation Materials, the following procedure  
9 shall apply:

10 (a) Counsel for the objecting Party shall serve on the designating  
11 person or entity a written objection to such designation, which shall describe  
12 with particularity the Litigation Materials in question and shall state the grounds  
13 for objection. Counsel for the designating person or entity shall respond in  
14 writing to such objection within five (5) court days, and shall state with  
15 particularity the grounds for asserting that the Litigation Materials are  
16 CONFIDENTIAL or ATTORNEYS' EYES ONLY. If no written response is  
17 made to the objection, the challenged Litigation Materials shall no longer be  
18 considered as designated under this Confidentiality Order, and the objecting  
19 Party shall treat such challenged Litigation Materials as if they had originally  
20 been produced without any designation of confidentiality. If the designating  
21 person or entity makes a timely response to such objection asserting the  
22 propriety of the designation, counsel shall then confer in good faith in an effort  
23 to resolve the dispute.

24 (b) If a dispute as to a CONFIDENTIAL or ATTORNEYS'  
25 EYES ONLY designation of Litigation Materials cannot be resolved by  
26 agreement, the Party objecting to the designation may move the Court for an  
27 order removing the challenged designation. The Litigation Materials that are  
28 the subject of the filing shall be treated as originally designated pending

1 resolution of the dispute. Any motion regarding confidential treatment of  
2 documents will comply with the joint filing procedure for discovery disputes  
3 pursuant to Local Rule 37.

4 11. This Order shall not limit a Party's use of designated Litigation  
5 Materials in examining a witness at a deposition, hearing, or trial, even though  
6 such witness may not otherwise be entitled to view designated Litigation  
7 Materials under the terms of this Order, so long as the examination concerns  
8 designated Litigation Materials that the witness authored or previously had  
9 access to or knowledge of, as demonstrated by the designated Litigation  
10 Materials themselves or by foundation testimony during a deposition, hearing,  
11 or trial. This Order shall not prevent counsel from examining a witness in a  
12 good faith effort to determine whether the witness authored or previously had  
13 access to or knowledge of designated Litigation Materials.

14 12. Prior to disclosing any Litigation Materials designated by a Party  
15 as CONFIDENTIAL or ATTORNEYS' EYES ONLY to outside experts,  
16 consultants and/or advisors referred to in Paragraphs 5(d) and/or 6(c) above,  
17 counsel for the receiving Party making such disclosure shall:

18 (a) provide a copy of this Confidentiality Order to each such  
19 outside expert, consultant or advisor;

20 (b) obtain from the outside expert, consultant or advisor a fully  
21 executed undertaking in the form attached hereto as Exhibit A; and

22 (c) identify each such outside expert, consultant or advisor to  
23 whom disclosure is proposed to be made by providing to counsel for the  
24 producing Party, via overnight courier or same day hand delivery, same day  
25 facsimile or same day e-mail, a copy of each such expert's, consultant's or  
26 advisor's executed undertaking along with a current resume for each such  
27 expert, consultant or advisor. The expert's, consultant's or advisor's resume  
28 must identify all employers and clients for whom the consultant or expert has

1 worked in the last four (4) years, as well as any litigation matters in which the  
2 expert, consultant or advisor has testified, either by way of expert report,  
3 deposition, or testimony at a hearing or trial, over the last four (4) years.

4 13. Counsel for the receiving Party making the disclosure shall not  
5 disclose materials designated CONFIDENTIAL or ATTORNEYS' EYES  
6 ONLY to any outside expert, consultant or advisor for a period of ten (10) court  
7 days from the date on which it provides to counsel for the producing Party the  
8 items specified in Paragraph 12(c) above. If within this ten (10) court day  
9 period counsel for the producing Party does not object, in writing, to the  
10 proposed disclosure to the expert, consultant or advisor identified pursuant to  
11 Paragraph 12(c) above, then counsel for the receiving Party shall be permitted to  
12 disclose the CONFIDENTIAL or ATTORNEYS' EYES ONLY materials to  
13 such identified expert, consultant or advisor. If, within this ten (10) court day  
14 period, counsel for the producing Party objects in writing to the proposed  
15 disclosure to the expert, consultant or advisor identified pursuant to Paragraph  
16 12(c) above, then counsel for the receiving Party shall not be permitted to  
17 disclose CONFIDENTIAL or ATTORNEYS' EYES ONLY materials to that  
18 expert, consultant or advisor, absent further order from the Court. The  
19 producing Party shall have the burden of filing a motion for protective order  
20 with the Court within five (5) court days of objecting to the outside expert,  
21 consultant or advisor prohibiting the disclosure of CONFIDENTIAL or  
22 ATTORNEYS' EYES ONLY materials to the independent expert, consultant or  
23 advisor to whom counsel for the producing Party has objected. If the five (5)  
24 court days elapse without the counsel for the producing Party seeking relief  
25 from the Court, the requested information may be shared with the identified  
26 outside expert, consultant or advisor in accordance with the terms of this  
27 Confidentiality Order.

28 14. If disclosure of CONFIDENTIAL documents or information is

1 made to any person under Paragraph 5(c) above, counsel for the Party making  
2 the disclosure shall deliver a copy of this Order as entered to such person,  
3 explain its terms to such person, and secure the signature of such person on a  
4 written undertaking in the form attached hereto as Exhibit A. Each Party shall  
5 maintain a file of all such signed copies of Exhibit A. Further, it shall be the  
6 obligation of counsel for the disclosing Party, upon learning of any breach or  
7 threatened breach of this Order, promptly to take all reasonable action to prevent  
8 the threatened breach or remedy an actual breach.

9 15. Litigation Materials designated as CONFIDENTIAL or  
10 ATTORNEYS' EYES ONLY shall be used by the persons receiving them  
11 solely for the purposes of preparing for and conducting this action and for no  
12 other action or proceeding. Persons receiving such Litigation Materials shall  
13 not use them for any business or other purpose, and shall not disclose them to  
14 any person not expressly permitted by the terms of this Confidentiality Order to  
15 have such access. All Litigation Materials designated as CONFIDENTIAL or  
16 ATTORNEYS' EYES ONLY shall be maintained by the receiving Party so as  
17 to preclude access by unauthorized persons. CONFIDENTIAL or  
18 ATTORNEYS' EYES ONLY Litigation Materials provided to an outside  
19 expert, consultant or advisor shall be kept at such person's offices in a manner  
20 designed to ensure against disclosures not authorized by this Confidentiality  
21 Order.

22 16. Counsel for the receiving Party may give advice and opinions to  
23 their client based on an evaluation of information designated as  
24 CONFIDENTIAL or ATTORNEYS' EYES ONLY by the producing Party. For  
25 information designated as ATTORNEYS' EYES ONLY, such rendering of  
26 advice and opinions shall not reveal the content of such information except by  
27 prior agreement with counsel for the producing Party.

28 17. Nothing herein shall impose any restrictions on the use or

1 disclosure by a Party or witness of its own Litigation Materials, or of documents  
2 or information obtained by such Party or witness independent of the discovery  
3 proceedings, inclusive of any discovery received from a Non-Party in this  
4 action, whether or not such documents or information are also obtained through  
5 discovery proceedings in this action.

6 18. Without written permission from the producing Party or a Court  
7 Order secured after appropriate notice to all interested persons, a Party may not  
8 file in the public record in this action any CONFIDENTIAL or ATTORNEYS'  
9 EYES ONLY material of the opposing Party, but must apply for leave to file  
10 such CONFIDENTIAL or ATTORNEYS' EYES ONLY material under seal in  
11 conformance with the Court's rules and procedures, including Local Rule 79-5.  
12 CONFIDENTIAL or ATTORNEYS' EYES ONLY material filed under seal  
13 shall bear the title of this action, an indication of the contents of such sealed  
14 envelope or container, the words "CONFIDENTIAL INFORMATION AS  
15 DESIGNATED PURSUANT TO STIPULATED CONFIDENTIALITY  
16 ORDER" or "ATTORNEYS' EYES ONLY INFORMATION AS  
17 DESIGNATED PURSUANT TO STIPULATED CONFIDENTIALITY  
18 ORDER," as appropriate, and a statement substantially in the following form:

19 This envelope contains confidential information filed in  
20 this case by [name of party] and is not to be opened nor the  
21 contents thereof to be displayed or revealed except by order of  
22 the Court presiding over this matter.

23 19. On termination of this action, including all appeals, the receiving  
24 Party shall, at the election and instruction of the producing Party, either: (1)  
25 return to counsel for each producing Party or entity all Litigation Materials  
26 designated by the producing person or entity as CONFIDENTIAL or  
27 ATTORNEYS' EYES ONLY and all copies of such Litigation Materials and  
28 shall destroy all abstracts, digests and analyses thereof, however stored or

1 reproduced; or (2) destroy and provide certification to the producing person or  
2 entity disclosing such Litigation Materials that the CONFIDENTIAL or  
3 ATTORNEYS' EYES ONLY Litigation Materials, including all abstracts,  
4 digests and analyses thereof, however stored or reproduced, have been  
5 destroyed. On termination of this action, counsel for each Party may maintain  
6 in its files one copy of CONFIDENTIAL or ATTORNEYS' EYES ONLY  
7 Litigation Materials as filed with or otherwise presented to the Court.

8 20. The Parties' obligations under this Confidentiality Order shall  
9 survive the termination of the above captioned litigation, including subsequent  
10 appeals or later proceedings, for any retained Litigation Materials or  
11 information, extracts, summaries, notes, or compilations derived therefrom, and  
12 the Court shall retain jurisdiction to enforce the performance of said obligations.

13  
14 SO ORDERED AND SIGNED. December 12, 2012.

15 /s/ Judge Wilner

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18 Honorable Michael R. Wilner  
19 United States Magistrate Judge  
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Respectfully submitted,  
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: December 11, 2012 By: /s/ Matthew S. Bellinger  
Craig S. Summers  
Matthew S. Bellinger

GIBNEY ANTHONY & FLAHERTY, LLP  
Brian W. Brokate  
Beth M. Frenchman  
Christina L. Winsor

Attorneys for Plaintiff  
ROLEX WATCH U.S.A., INC.

FREEDMAN WEISZ LLP

Dated: December 11, 2012 By: /s/ Mitchell N. Reinis (with permission)  
Mitchell N. Reinis

FISHER LAW GROUP  
Jason H. Fisher

Attorneys for Defendants  
KRISHAN AGARWAL  
MELROSE.COM, LLC

**UNDERTAKING**

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1. I, \_\_\_\_\_, have read the foregoing Confidentiality Order (the “Order”) and agree to be bound by its terms with respect to any Litigation Materials marked CONFIDENTIAL or ATTORNEYS’ EYES ONLY that are furnished to me as set forth in the Order.

2. I further agree (i) not to disclose to anyone any Litigation Materials marked CONFIDENTIAL or ATTORNEYS’ EYES ONLY other than as set forth in the Order, and (ii) not to make any copies of any Litigation Materials marked CONFIDENTIAL or ATTORNEYS’ EYES ONLY furnished to me except in accordance with the Order.

3. I hereby consent to the jurisdiction of the United States District Court for the Central District of California, Western Division, with regard to any proceedings to enforce the terms of the Order.

4. I hereby agree that any Litigation Materials marked CONFIDENTIAL or ATTORNEYS’ EYES ONLY furnished to me will be used by me only for the purposes of this litigation and for no other purpose, and will not be used by me in any business affairs of my employer or of my own or be imparted by me to any other person.

Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

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