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15 L'Occitane, Inc.

16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

19 TESSA OWEN, individually and on
20 behalf of all others similarly situated,

21 Plaintiff,

22 v.

23 L'OCCITANE, INC., and DOES 1
through 10,

24 Defendants.

Case No. CV 12-09841 MMM (JCGx)

[PROPOSED] PROTECTIVE ORDER

1 The parties, by and through their respective counsel of record, have
2 submitted a joint stipulation governing the disclosure of “Confidential Information”
3 to facilitate discovery in this action of documents and information that may
4 potentially involve the production of confidential, proprietary, and/or private
5 information for which special protection from public disclosure and from use for
6 any purpose other than prosecuting this litigation would be warranted. Good cause
7 having been shown, **IT IS HEREBY ORDERED** as follows:

8 **DEFINITIONS AND RULES**

9 1. As used in this Protective Order, these terms have the following
10 meanings:

11 a. “Attorneys” means counsel of record and in-house counsel to
12 the undersigned Parties;

13 b. “Confidential Materials” are Materials designated pursuant to
14 paragraph 2;

15 c. “Document(s)” are all materials within the scope of
16 Fed. R. Civ. P. 34; and

17 d. “Written Assurance” means an executed document in the form
18 attached as Exhibit A;

19 e. “Designating Party” means the Party that designates Materials
20 as “Confidential;”

21 f. “Receiving Party” means the Party that receives Materials
22 designated as “Confidential;”

23 g. “Information” means the content of Documents or Testimony,
24 any interrogatory responses, or other discovery responses;

25 h. “Testimony” means all depositions, declarations or other
26 testimony taken or used in this Proceeding;

27 i. “Material(s)” means any Document, Information or Testimony.
28

1 2. By identifying Materials as “Confidential,” a party may designate any
2 Materials, that it in good faith believes to constitute or contain non-public
3 information that is entitled to confidential treatment under applicable law,
4 including, but not limited to, Materials which (i) contain trade secrets or other
5 commercially sensitive information, (ii) contain sensitive or personal information of
6 employees or customers, or (iii) otherwise adversely affect the Designating Party’s
7 business, commercial financial, or personal interests, or are reasonably likely to
8 pose a risk of significant harm to the Designating Party’s competitive or financial
9 position or the competitive or financial position of a non-party that is owed a duty
10 of confidentiality by the Designating Party, or other confidential information
11 entitled to protection under 26(c)(1)(G) of the Federal Rules of Civil Procedure.

12 A party may not designate as “Confidential” any Materials that:

13 a. at the time of the production or disclosure, is publicly available
14 as evidenced by: 1) a citation permitting unrestricted access, or 2) is in the
15 public domain, as evidenced by a written document, drawing or photograph
16 not having a proprietary, confidential or restricted notice;

17 b. through no wrongful act or fault of the Receiving Party, is or has
18 become part of the public domain; or

19 c. the Receiving Party can show it already lawfully possessed at
20 the time of the production or disclosure without being subjected to any
21 obligation to maintain the confidentiality of the information.

22 3. All Confidential documents, along with the information contained in
23 the documents, shall be used solely for the purpose of this action and no person
24 receiving such documents, or information contained in such documents shall,
25 directly or indirectly, transfer, disclose, or communicate in any way the contents of
26 the documents or information therein to any person other than those specified in
27 paragraph 4.
28

- 1 4. Access to any Confidential document shall be limited to:
- 2 a. the Court and its officers;
- 3 b. Attorneys and their office associates, legal assistants, and
- 4 stenographic and clerical employees;
- 5 c. persons shown on the face of the document to have authored or
- 6 received it;
- 7 d. court reporters retained to transcribe testimony;
- 8 e. officers, directors, principals, representatives and employees of
- 9 the parties, only to the extent reasonably necessary to assist in the litigation;
- 10 f. outside independent persons (i.e., persons not currently or
- 11 formerly employed by, consulting with, or otherwise associated with any
- 12 party) who are retained by a party or its attorneys to furnish expert services,
- 13 or to provide assistance as mock jurors or focus group members or the like,
- 14 and/or to give testimony in this action.

15 The parties may agree in writing or on the record to permit access to

16 Confidential Materials to individuals not otherwise granted access by the terms of

17 this Protective Order. The writing or statement on the record must identify the

18 particular individual to whom the Confidential Materials will be disclosed and

19 specify, by Bates number if possible, the Confidential Materials to be disclosed,

20 and shall obtain a Written Assurance from each individual prior to disclosing the

21 Confidential Materials.

22 5. Third parties producing documents in the course of this action may

23 also designate documents as “Confidential” subject to the same protections and

24 constraints as the parties to the action. A copy of this Protective Order shall be

25 served along with any subpoena served in connection with this action. All

26 documents produced by such third parties shall be treated as “Confidential” for a

27 period of fifteen (15) days from the date of their production, and during that period

28 any party may designate such documents as “Confidential” pursuant to the terms of

1 this Protective Order.

2 6. Each person appropriately designated pursuant to paragraphs 4(e) and
3 4(f) (herein “Such Person”), in advance, and as a condition of receiving any
4 Confidential Materials, shall execute a “Written Assurance” in the form attached as
5 Exhibit A. Opposing counsel shall be notified at least fourteen (14) days prior to
6 disclosure to any Such Person and identify as to each the Confidential Materials, by
7 Bates number if possible, that are sought to be disclosed to each Such Person. Such
8 notice shall provide a reasonable description of Such Person to whom disclosure is
9 sought sufficient to permit objection to be made. If a party objects in writing to
10 such disclosure within fourteen (14) days after receipt of notice, no disclosure shall
11 be made until the objecting party obtains the prior approval of the Court. Notices
12 and objections made pursuant to this paragraph 6 may be made electronically in
13 writing by e-mail or fax, followed by a confirmation copy by US Mail.

14 7. All depositions or portions of depositions taken in this action that
15 contain confidential information may be designated “Confidential” and thereby
16 obtain the protections accorded other “Confidential” documents. Confidentiality
17 designations for depositions shall be made either on the record or by written notice
18 to the other party within fourteen (14) days after receipt of the transcript.
19 Transcripts not designated as “Confidential” at the time of the deposition will be
20 treated as Confidential Materials until 15 days after its receipt by all parties. The
21 deposition of any witness (or any portion of such deposition) that encompasses
22 Confidential Materials shall be taken only in the presence of persons who are
23 qualified to have access to such information and permitted to attend such
24 depositions. A party may request that anyone not authorized to receive
25 Confidential Materials, or not permitted to attend depositions or court sessions
26 pursuant to the Federal Rules of Evidence, exit the deposition during the
27 discussions of any such information, but the failure of any party to request the
28 removal of anyone not authorized to receive such information or attend shall not

1 constitute a waiver of the right to subsequently designate any or all portions of the
2 deposition as “Confidential” in accordance with this paragraph. The term
3 “deposition” as used herein also applies to any notes, extracts, data or information
4 from each deposition made or communicated by attorneys for the parties relating to
5 the deposition.

6 8. The inadvertent production by any of the undersigned Parties or non-
7 Parties to the action of any Materials during discovery without a “Confidential”
8 designation, shall be without prejudice to any claim that such item is “Confidential”
9 and such Party shall not be held to have waived any rights by such inadvertent
10 production. Any party who inadvertently fails to identify documents as
11 “Confidential” shall have fourteen (14) days from the discovery of its inadvertent
12 production to provide written notice of the error and substituted copies of the
13 inadvertently produced documents. Any party receiving such inadvertently
14 unmarked documents shall use its best efforts to retrieve documents distributed to
15 persons not entitled to receive documents with the corrected designation, and to
16 advise the other party of the recipients of the documents prior to retrieval. The
17 Party that received the inadvertently produced Materials shall promptly destroy the
18 inadvertently produced materials and all copies thereof.

19 9. Any party who inadvertently discloses documents that are privileged
20 or otherwise immune from discovery shall, promptly upon discovery of such
21 inadvertent disclosure, so advise the Receiving Party and request that the
22 documents be returned or destroyed. The Receiving Party shall return or destroy
23 such inadvertently produced documents, including all copies, within fourteen (14)
24 days of receiving such a written request.

25 10. With respect to Court filing or use at trial or on appeal of Confidential
26 Materials produced hereunder:

27 a. If a party files a document containing Confidential Materials
28 with the Court, it shall do so in compliance with the Electronic Case Filing

1 Procedures for the Central District of California.

2 b. Before any Confidential Materials are filed with the Court for
3 any purpose, the party seeking to file the Confidential Material shall seek
4 permission of the Court by appropriate motion to file the material under seal,
5 providing notice to any third party whose designation of produced Materials
6 as “Confidential” in the action may be affected. The Court permitting, until
7 permission is granted, the party seeking permission shall file the material
8 provisionally under seal, so marked, unless the producing party agrees
9 otherwise. The parties agree to and will follow and abide by applicable law,
10 including Local Civil Rule 79-5, with respect to filing documents under seal
11 in this Court.

12 c. Any documents approved by the Court for filing under seal shall
13 be so designated in a cover sheet, captioned “Filed” or “Provisionally Filed”
14 as the case may be followed by “Under Seal Pursuant to Protective Order by
15 Order of Court,” and each page shall carry a stamp with the same
16 designation. The Order of Permission to File Under Seal may request or
17 direct the Clerk of Court to maintain such documents under seal, unavailable
18 to anyone but Outside Counsel of record for the parties. Prior to disclosure at
19 trial or a hearing of Confidential Materials the parties may seek from the
20 Court further protections against public disclosure as the parties may deem
21 necessary.

22 11. In the event that counsel for a Party receiving Materials designated as
23 “Confidential” objects to such designation with respect to any or all of such items,
24 said counsel shall advise counsel for the Designating Party, in writing, of such
25 objections, the specific Materials to which each objection pertains, and the specific
26 reasons and support for such objections (the “Designation Objections”). The
27 Designation Objections shall be set forth in a writing devoted exclusively to the
28 issues of the Designation Objections and labeled or captioned as “Designation

1 Objections.” Counsel for the Designating Party shall have ten (10) calendar days
2 from receipt of the written Designation Objections to either (a) agree in writing to
3 de-designate Materials pursuant to all or any of the Designation Objections; or (b)
4 send the objecting party a meet-and-confer letter pursuant to Local Civil Rule 37
5 disputing all or any of the Designation Objections. If the Designating Party does
6 not agree to de-designate the Materials in the Designation Objections and instead
7 pursues the meet-and-confer process, the parties shall conduct the in-person meet
8 and confer required by Local Rule 37 within ten (10) calendar days of the
9 Designating Party’s meet-and-confer letter. The Designating Party shall thereafter
10 serve the objecting party with a joint stipulation pursuant to Local Rule 37 within
11 seven (7) calendar days of the parties’ in-person meet and confer session. The
12 Designating Party shall thereafter file the joint stipulation and related motion papers
13 with the Court within 2 (two) court days of receipt of the objecting party’s portion
14 of the joint stipulation, to seek relief from the Court to uphold any or all
15 designations on documents, testimony or information addressed by the Designation
16 Objections (the “Designation Motion”). Pending a resolution of the Designation
17 Motion by the Court, any and all existing designations on the documents, testimony
18 or information at issue in the Designation Motion shall remain in place. The
19 Designating Party shall have the burden of proving that the information in question
20 is within the scope of protection afforded by Fed. R. Civ. P. 26(c). In the event that
21 the Designating Party fails to meet any of the deadlines set forth in this paragraph to
22 either agree to de-designate Materials, to issue a meet-and-confer letter, to serve its
23 portion of a joint stipulation, or to file the joint stipulation and related motion
24 papers, then the Materials shall be de-designated in accordance with the
25 Designation Objections applicable to such Materials.

26 12. Within sixty (60) days of the termination of this action, including any
27 appeals, each party shall, at the election of the producing party, either destroy or
28 return to the producing party all documents designated by the producing party as

1 “Confidential” and all copies of such documents, and shall destroy all copies,
2 abstracts, compilations, or summaries of the Confidential Materials. Each party
3 shall provide a certification as to such return or destruction as having been
4 completed within the 60-day period. Notwithstanding this provision, attorneys are
5 entitled to retain under seal appropriately designated in the caption as “Retained
6 Under Seal Pursuant to Protective Order” an archival copy of all pleadings, motion
7 papers, transcripts, legal memoranda, correspondence or attorney work product,
8 even if such materials contain Confidential Materials. Such retained documents
9 may be unsealed only by appropriate order of Court, or by permission in writing of
10 the producing party.

11 13. Any party may apply to the Court for a modification of this Protective
12 Order, and nothing in this Protective Order shall be construed to prevent a party
13 from seeking such further provisions enhancing or limiting confidentiality as may
14 be appropriate. This Protective Order does not alter, waive, modify, or abridge any
15 right, privilege or protection otherwise available to any Party with respect to the
16 discovery of matters, including but not limited to any Party’s right to assert the
17 attorney-client privilege, the attorney work product doctrine, or other privileges, or
18 any Party’s right to contest any such assertion.

19 14. No action taken in accordance with this Protective Order shall be
20 construed as a waiver of any claim or defense in the action or of any position as to
21 discoverability or admissibility of evidence. Nor by its agreement or stipulation to
22 entry of the attached Protective Order does any party make any admission that
23 Materials that may be designated by any party as “Confidential” are, in fact,
24 confidential. All parties reserve their right to challenge another party’s designation
25 of Materials as confidential pursuant to paragraph 11 of this Stipulation.

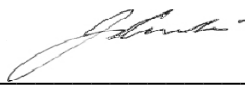
26 15. The obligations imposed by this Protective Order shall survive the
27 termination of this action. Within sixty (60) days following the expiration of the
28 last period for appeal from any order issued in connection with this action, the

1 parties may remove any Confidential Materials from the office of the Clerk of
2 Court.

3 16. This Order may be modified by agreement of the parties, subject to
4 approval by the Court.

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Dated: February 19, 2013



JAY C. GANDHI
United States Magistrate Judge

EXHIBIT A

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

TESSA OWEN, individually and on) Case No. CV12-09841 MMM (JCGx)
 behalf of all others similarly situated,)
 Plaintiff,) **WRITTEN ASSURANCE**
 v.) **REGARDING PROTECTIVE**
 OCCITANE, INC., and DOES 1) **ORDER**
 through 10,)
 Defendants.) Hon. Margaret M. Morrow
)

I, _____, declare that:

1. I reside at _____ in the city
of _____, county _____, state of
_____.

2. I am currently employed by _____ located
at _____ and my current job title is
_____.

3. I have read and believe I understand the terms of the Protective Order
dated _____, filed in Civil Action No. CV12-09841 MMM(JCGx), pending
in the United States District Court for the Central District of California. I agree to
comply with and be bound by the provisions of the Protective Order. I understand
that any violation of the Protective Order may subject me to sanctions by the Court.

4. I shall not divulge any documents, or copies of documents, designated
“Confidential” obtained pursuant to such Protective Order, or the contents of such

1 documents, to any person other than those specifically authorized by the Protective
2 Order. I shall not copy or use such documents except for the purposes of this action
3 and pursuant to the terms of the Protective Order.

4 5. As soon as practical, but no later than thirty (30) days after final
5 termination of this action, I shall return to the attorney from whom I have received
6 them any documents in my possession designated "Confidential" and all copies,
7 excerpts, summaries, notes, digests, abstracts, and indices relating to such
8 documents.

9 6. I submit myself to the jurisdiction of the United States District Court
10 for the Central District of California for the purpose of enforcing or otherwise
11 providing relief relating to the Protective Order, but not for the purpose of
12 conferring jurisdiction over the party engaging me, or for whom I am employed, in
13 any jurisdiction other than the Central District of California.

14
15 I declare under penalty of perjury that the foregoing is true and correct.

16
17 Executed on _____
18 (Date) (Signature)