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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

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777 S. FIGUEROA STREET, SUITE 4900
LOS ANGELES, CA 90017
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TIMOTHY MARK ROACH,

Plaintiff,

vs.

GUESS?, INC., a California Corporation

Defendants.

Case No. CV 13-01536 PA (JPRx)

Complaint Filed: March 4, 2013

**STIPULATED PROTECTIVE
ORDER**

STIPULATED PROTECTIVE ORDER

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2 1. PURPOSES AND LIMITATIONS

3 Disclosure and discovery activity in this action are likely to involve
4 production of confidential, proprietary, or private information for which special
5 protection from public disclosure and from use for any purpose other than
6 prosecuting this litigation may be warranted. Accordingly, the parties hereby
7 stipulate to and petition the court to enter the following Stipulated Protective
8 Order. The parties acknowledge that this Order does not confer blanket
9 protections on all disclosures or responses to discovery and that the protection it
10 affords from public disclosure and use extends only to the limited information or
11 items that are entitled to confidential treatment under the applicable legal
12 principles. The parties further acknowledge, as set forth in Section 12.3, below,
13 that this Stipulated Protective Order does not entitle them to file confidential
14 information under seal.

15 2. DEFINITIONS

16 2.1 Challenging Party: a Party or Non-Party that challenges the
17 designation of information or items under this Order.

18 2.2 “CONFIDENTIAL” Information or Items: information (regardless
19 of how it is generated, stored or maintained) or tangible things that qualify for
20 protection under Federal Rule of Civil Procedure 26(c).

21 2.3 Counsel (without qualifier): Outside Counsel of Record and House
22 Counsel (as well as their support staff).

23 2.4 Designating Party: a Party or Non-Party that designates information
24 or items that it produces in disclosures or in responses to discovery as
25 “CONFIDENTIAL.”

26 2.5 Disclosure or Discovery Material: all items or information,
27 regardless of the medium or manner in which it is generated, stored, or maintained
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1 (including, among other things, testimony, transcripts, and tangible things), that
2 are produced or generated in disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a
4 matter pertinent to the litigation who has been retained by a Party or its counsel to
5 serve as an expert witness or as a consultant in this action.

6 2.7 House Counsel: attorneys who are employees of a party to this
7 action. House Counsel does not include Outside Counsel of Record or any other
8 outside counsel.

9 2.8 Non-Party: any natural person, partnership, corporation, association,
10 or other legal entity not named as a Party to this action.

11 2.9 Outside Counsel of Record: attorneys who are not employees of a
12 party to this action but are retained to represent or advise a party to this action and
13 have appeared in this action on behalf of that party or are affiliated with a law
14 firm which has appeared on behalf of that party.

15 2.10 Party: any party to this action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and
17 their support staffs).

18 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this action.

20 2.12 Professional Vendors: persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing exhibits
22 or demonstrations, and organizing, storing, or retrieving data in any form or
23 medium) and their employees and subcontractors.

24 2.13 Protected Material: any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL."

26 2.14 Receiving Party: a Party that receives Disclosure or Discovery
27 Material from a Producing Party.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only
3 Protected Material (as defined above), but also (1) any information copied or
4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
5 compilations of Protected Material; and (3) any testimony, conversations, or
6 presentations by Parties or their Counsel that might reveal Protected Material.

7 However, the protections conferred by this Stipulation and Order do not cover the
8 following information: (a) any information that is in the public domain at the time
9 of disclosure to a Receiving Party or becomes part of the public domain after its
10 disclosure to a Receiving Party as a result of publication not involving a violation
11 of this Order, including becoming part of the public record through trial or
12 otherwise; and (b) any information known to the Receiving Party prior to the
13 disclosure or obtained by the Receiving Party after the disclosure from a source
14 who obtained the information lawfully and under no obligation of confidentiality
15 to the Designating Party. Any use of Protected Material at trial or other hearings
16 shall be governed by a separate agreement or order.

17 4. DURATION

18 Even after final disposition of this litigation, the confidentiality obligations
19 imposed by this Order shall remain in effect until a Designating Party agrees
20 otherwise in writing or a court order otherwise directs. Final disposition shall be
21 deemed to be the later of (1) dismissal of all claims and defenses in this action,
22 with or without prejudice; and (2) final judgment herein after the completion and
23 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
24 including the time limits for filing any motions or applications for extension of
25 time pursuant to applicable law.

26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for
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1 Protection. Each Party or Non-Party that designates information or items for
2 protection under this Order must take care to limit any such designation to
3 specific material that qualifies under the appropriate standards. The Designating
4 Party must designate for protection only those parts of material, documents, items,
5 or oral or written communications that qualify – so that other portions of the
6 material, documents, items, or communications for which protection is not
7 warranted are not swept unjustifiably within the ambit of this Order.

8 Mass, indiscriminate, or routinized designations are prohibited.
9 Designations that are shown to be clearly unjustified or that have been made for
10 an improper purpose (e.g., to unnecessarily encumber or retard the case
11 development process or to impose unnecessary expenses and burdens on other
12 parties) expose the Designating Party to sanctions.

13 If it comes to a Designating Party’s attention that information or items that
14 it designated for protection do not qualify for protection, that Designating Party
15 must promptly notify all other Parties that it is withdrawing the mistaken
16 designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided
18 in this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
19 stipulated or ordered, Disclosure or Discovery Material that qualifies for
20 protection under this Order must be clearly so designated before the material is
21 disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic
24 documents, but excluding transcripts of depositions or other pretrial or trial
25 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to
26 each page that contains protected material. If only a portion or portions of the
27 material on a page qualifies for protection, the Producing Party also must clearly
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1 identify the protected portion(s) (e.g., by making appropriate markings in the
2 margins).

3 A Party or Non-Party that makes original documents or materials available
4 for inspection need not designate them for protection until after the inspecting
5 Party has indicated which material it would like copied and produced. During the
6 inspection and before the designation, all of the material made available for
7 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
8 identified the documents it wants copied and produced, the Producing Party must
9 determine which documents, or portions thereof, qualify for protection under this
10 Order. Then, before producing the specified documents, the Producing Party must
11 affix the “CONFIDENTIAL” legend to each page that contains Protected
12 Material. If only a portion or portions of the material on a page qualifies for
13 protection, the Producing Party also must clearly identify the protected portion(s)
14 (e.g., by making appropriate markings in the margins).

15 (b) for testimony given in deposition that the Designating Party
16 identify on the record, before the close of the deposition, all protected testimony.

17 (c) for information produced in some form other than documentary
18 and for any other tangible items, that the Producing Party affix in a prominent
19 place on the exterior of the container or containers in which the information or
20 item is stored the legend “CONFIDENTIAL.” If only a portion or portions of the
21 information or item warrant protection, the Producing Party, to the extent
22 practicable, shall identify the protected portion(s).

23 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
24 failure to designate qualified information or items does not, standing alone, waive
25 the Designating Party’s right to secure protection under this Order for such
26 material. Upon timely correction of a designation, the Receiving Party must make
27 reasonable efforts to assure that the material is treated in accordance with the
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1 provisions of this Order.

2 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

3 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
4 designation of confidentiality at any time. Unless a prompt challenge to a
5 Designating Party's confidentiality designation is necessary to avoid foreseeable,
6 substantial unfairness, unnecessary economic burdens, or a significant disruption
7 or delay of the litigation, a Party does not waive its right to challenge a
8 confidentiality designation by electing not to mount a challenge promptly after the
9 original designation is disclosed.

10 6.2 Meet and Confer. Pursuant to Local Rule 37-1, the Challenging
11 Party shall initiate the dispute resolution process by providing written notice of
12 each designation it is challenging and describing the basis for each challenge. To
13 avoid ambiguity as to whether a challenge has been made, the written notice must
14 recite that the challenge to confidentiality is being made in accordance with this
15 specific paragraph of the Protective Order. The parties shall attempt to resolve
16 each challenge in good faith and must begin the process by conferring directly (in
17 voice to voice dialogue; other forms of communication are not sufficient) within
18 10 days of the date of service of notice. In conferring, the Challenging Party must
19 explain the basis for its belief that the confidentiality designation was not proper
20 and must give the Designating Party an opportunity to review the designated
21 material, to reconsider the circumstances, and, if no change in designation is
22 offered, to explain the basis for the chosen designation. A Challenging Party may
23 proceed to the next stage of the challenge process only if it has engaged in this
24 meet and confer process first or establishes that the Designating Party is unwilling
25 to participate in the meet and confer process in a timely manner.

26 6.3 Judicial Intervention. If the Parties cannot resolve a challenge
27 without court intervention, the Designating Party shall file and serve a motion to
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1 retain confidentiality pursuant to Local Rule 37-2, including the joint stipulation
2 requirement, within 21 days of the initial notice of challenge or within 14 days of
3 the parties agreeing that the meet and confer process will not resolve their dispute,
4 whichever is earlier. Each such motion must be accompanied by a competent
5 declaration affirming that the movant has complied with the meet and confer
6 requirements imposed in the preceding paragraph. Failure by the Designating
7 Party to make such a motion including the required declaration within 21 days (or
8 14 days, if applicable) shall automatically waive the confidentiality designation
9 for each challenged designation. In addition, the Challenging Party may file a
10 motion challenging a confidentiality designation at any time if there is good cause
11 for doing so, including a challenge to the designation of a deposition transcript or
12 any portions thereof. Any motion brought pursuant to this provision must be
13 accompanied by a competent declaration affirming that the movant has complied
14 with the meet and confer requirements imposed by the preceding paragraph.

15 The burden of persuasion in any such challenge proceeding shall be on the
16 Designating Party. Frivolous challenges, and those made for an improper purpose
17 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
18 expose the Challenging Party to sanctions. Unless the Designating Party has
19 waived the confidentiality designation by failing to file a motion to retain
20 confidentiality as described above, all parties shall continue to afford the material
21 in question the level of protection to which it is entitled under the Producing
22 Party's designation until the court rules on the challenge.

23 7. ACCESS TO AND USE OF PROTECTED MATERIAL

24 7.1 Basic Principles. A Receiving Party may use Protected Material that
25 is disclosed or produced by another Party or by a Non-Party in connection with
26 this case only for prosecuting, defending, or attempting to settle this litigation.
27 Such Protected Material may be disclosed only to the categories of persons and
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1 under the conditions described in this Order. When the litigation has been
2 terminated, a Receiving Party must comply with the provisions of section 13
3 below (FINAL DISPOSITION).

4 Protected Material must be stored and maintained by a Receiving Party at a
5 location and in a secure manner that ensures that access is limited to the persons
6 authorized under this Order.

7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
8 otherwise ordered by the court or permitted in writing by the Designating Party, a
9 Receiving Party may disclose any information or item designated
10 “CONFIDENTIAL” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this action,
12 as well as employees of said Outside Counsel of Record to whom it is reasonably
13 necessary to disclose the information for this litigation and who have signed the
14 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
15 A;

16 (b) the officers, directors, and employees (including House Counsel)
17 of the Receiving Party to whom disclosure is reasonably necessary for this
18 litigation and who have signed the “Acknowledgment and Agreement to Be
19 Bound” (Exhibit A);

20 (c) Experts (as defined in this Order) of the Receiving Party to
21 whom disclosure is reasonably necessary for this litigation and who have signed
22 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (d) the court and its personnel;

24 (e) court reporters and their staff, professional jury or trial
25 consultants, mock jurors, and Professional Vendors to whom disclosure is
26 reasonably necessary for this litigation and who have signed the
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

1 (f) during their depositions, witnesses in the action to whom
2 disclosure is reasonably necessary and who have signed the “Acknowledgment
3 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
4 Designating Party or ordered by the court. Pages of transcribed deposition
5 testimony or exhibits to depositions that reveal Protected Material must be
6 separately bound by the court reporter and may not be disclosed to anyone except
7 as permitted under this Stipulated Protective Order.

8 (g) the author or recipient of a document containing the information
9 or a custodian or other person who otherwise possessed or knew the information.

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
11 IN OTHER LITIGATION

12 If a Party is served with a subpoena or a court order issued in other
13 litigation that compels disclosure of any information or items designated in this
14 action as “CONFIDENTIAL,” that Party must:

15 (a) promptly notify in writing the Designating Party. Such
16 notification shall include a copy of the subpoena or court order;

17 (b) promptly notify in writing the party who caused the subpoena or
18 order to issue in the other litigation that some or all of the material covered by the
19 subpoena or order is subject to this Protective Order. Such notification shall
20 include a copy of this Stipulated Protective Order; and

21 (c) cooperate with respect to all reasonable procedures sought to be
22 pursued by the Designating Party whose Protected Material may be affected.

23 If the Designating Party timely seeks a protective order, the Party served with the
24 subpoena or court order shall not produce any information designated in this
25 action as “CONFIDENTIAL” before a determination by the court from which the
26 subpoena or order issued, unless the Party has obtained the Designating Party’s
27 permission. The Designating Party shall bear the burden and expense of seeking
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1 protection in that court of its confidential material – and nothing in these
2 provisions should be construed as authorizing or encouraging a Receiving Party in
3 this action to disobey a lawful directive from another court.

4 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
5 PRODUCED IN THIS LITIGATION

6 (a) The terms of this Order are applicable to information produced by a
7 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
8 produced by Non-Parties in connection with this litigation is protected by the
9 remedies and relief provided by this Order. Nothing in these provisions should be
10 construed as prohibiting a Non-Party from seeking additional protections.

11 (b) In the event that a Party is required, by a valid discovery request, to
12 produce a Non-Party’s confidential information in its possession, and the Party is
13 subject to an agreement with the Non-Party not to produce the Non-Party’s
14 confidential information, then the Party shall:

15 (1) promptly notify in writing the Requesting Party and the Non-
16 Party that some or all of the information requested is subject to a confidentiality
17 agreement with a Non-Party;

18 (2) promptly provide the Non-Party with a copy of the Stipulated
19 Protective Order in this litigation, the relevant discovery request(s), and a
20 reasonably specific description of the information requested; and

21 (3) make the information requested available for inspection by the
22 Non-Party.

23 (c) If the Non-Party fails to object or seek a protective order from this
24 court within 14 days of receiving the notice and accompanying information, the
25 Receiving Party may produce the Non-Party’s confidential information responsive
26 to the discovery request. If the Non-Party timely seeks a protective order, the
27 Receiving Party shall not produce any information in its possession or control that
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1 is subject to the confidentiality agreement with the Non-Party before a
2 determination by the court. Absent a court order to the contrary, the Non-Party
3 shall bear the burden and expense of seeking protection in this court of its
4 Protected Material.

5 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

6 If a Receiving Party learns that, by inadvertence or otherwise, it has
7 disclosed Protected Material to any person or in any circumstance not authorized
8 under this Stipulated Protective Order, the Receiving Party must immediately (a)
9 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
10 best efforts to retrieve all unauthorized copies of the Protected Material, (c)
11 inform the person or persons to whom unauthorized disclosures were made of all
12 the terms of this Order, and (d) request such person or persons to execute the
13 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
14 Exhibit A.

15 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
16 PROTECTED MATERIAL**

17 When a Producing Party gives notice to Receiving Parties that certain
18 inadvertently produced material is subject to a claim of privilege or other
19 protection, the obligations of the Receiving Parties are those set forth in Federal
20 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
21 whatever procedure may be established in an e-discovery order that provides for
22 production without prior privilege review. Pursuant to Federal Rule of Evidence
23 502(d) and (e), insofar as the parties reach an agreement on the effect of
24 disclosure of a communication or information covered by the attorney-client
25 privilege or work product protection, the parties may incorporate their agreement
26 in the stipulated protective order submitted to the court. No modification of this
27 protective order will have the force or effect of a court order without the court’s
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1 approval.

2 12. MISCELLANEOUS

3 12.1 Right to Further Relief. Nothing in this Order abridges the right of
4 any person to seek its modification by the court in the future.

5 12.2 Right to Assert Other Objections. By stipulating to the entry of this
6 Protective Order no Party waives any right it otherwise would have to object to
7 disclosing or producing any information or item on any ground not addressed in
8 this Stipulated Protective Order. Similarly, no Party waives any right to object on
9 any ground to use in evidence of any of the material covered by this Protective
10 Order.

11 12.3 Filing Protected Material. Without written permission from the
12 Designating Party or a court order secured after appropriate notice to all interested
13 persons, a Party may not file in the public record in this action any Protected
14 Material. Protected Material may only be filed under seal pursuant to a court
15 order authorizing the sealing of the specific Protected Material at issue. If a
16 Receiving Party's request to file Protected Material under seal is denied by the
17 court, then the Receiving Party may file the information in the public record
18 unless otherwise instructed by the court.

19 13. FINAL DISPOSITION

20 Within 60 days after the final disposition of this action, as defined in
21 paragraph 4, each Receiving Party must return all Protected Material to the
22 Producing Party or destroy such material. As used in this subdivision, "all
23 Protected Material" includes all copies, abstracts, compilations, summaries, and
24 any other format reproducing or capturing any of the Protected Material. Whether
25 the Protected Material is returned or destroyed, the Receiving Party must submit a
26 written certification to the Producing Party (and, if not the same person or entity,
27 to the Designating Party) by the 60 day deadline that (1) identifies (by category,
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1 where appropriate) all the Protected Material that was returned or destroyed and
2 (2)affirms that the Receiving Party has not retained any copies, abstracts,
3 compilations, summaries or any other format reproducing or capturing any of the
4 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
5 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
6 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
7 reports, attorney work product, and consultant and expert work product, even if
8 such materials contain Protected Material. Any such archival copies that contain
9 or constitute Protected Material remain subject to this Protective Order as set forth
10 in Section 4 (DURATION).

11 **BAUTE CROCHETIERE & GILFORD LLP**

12 Date: June 3, 2013

13
14 By: s / Mark D. Baute

15 MARK D. BAUTE
16 LAURA E. ROBBINS
17 Attorneys for Defendant
18 MILLENNIUM ENTERTAINMENT, LLC

19 Date: June 3, 2013

20 **LAW OFFICES OF UDALL SHUMWAY**

21 By: s / Bradley Gardney

22 BRADLEY GARDNEY
23 Attorneys for Plaintiff
24 TIMOTHY MARK ROACH

25 **IT IS SO ORDERED.**

26 Date: June 11, 2013



27 Honorable Jean P. Rosenbluth
28 United States Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT CONCERNING MATERIAL
COVERED BY A PROTECTIVE ORDER ENTERED
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

The undersigned hereby acknowledges that he/she has read the attached Protective Order entered in the United States District Court, Central District of California, in the action entitled *Roach v. Guess?, Inc.*, Case CV 13-01536 PA (JPRx), and understands the terms thereof and agrees to be bound by such terms.

Dated: _____

Signature: _____

Type or print name of individual: _____

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