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

UNICOLORS, INC., a California
Corporation,

Plaintiff,

v.

JUMP APPAREL CO., INC., individually
and doing business as "TIANA B," a New
York Corporation; BHFO, INC., an Iowa
Corporation; LG TEXTILE, a California
Corporation; MYLETIX
INTERNATIONAL, INC., a New Jersey
Corporation; and DOES 3 through 10.

Defendants.

Case No.: CV 13-05436-DDP (MANx)

**PROTECTIVE ORDER ENTERED
PURSUANT TO THE PARTIES'
STIPULATION**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the parties' [Proposed] Stipulated Protective Order ("Stipulation") filed on June 13, 2014, the terms of the protective order to which the parties have agreed are adopted as a protective order of this Court (which generally shall govern the pretrial phase of this action) except to the extent, as set forth below, that those terms have been

1 substantively modified by the Court's amendments of paragraphs 1 (stricken and
2 subsequent paragraphs renumbered), 4.2(a) and (b), and 5.3 of the Stipulation.

3 The parties are expressly cautioned that the designation of any information,
4 document, or thing as Confidential, Attorney's Eye Only, or any other designation(s)
5 used by the parties does not, in and of itself, create any entitlement to file such
6 information, document, or thing, in whole or in part, under seal. Accordingly,
7 reference to this Protective Order or to the parties' designation of any information,
8 document, or thing as Confidential, Attorney's Eyes Only, or other designation(s)
9 used by the parties is wholly insufficient to warrant a filing under seal.

10 There is a strong presumption that the public has a right of access to judicial
11 proceedings and records in civil cases. In connection with non-dispositive motions,
12 good cause must be shown to support a filing under seal. The parties' mere
13 designation of any information, document, or thing as Confidential, Attorney's Eyes
14 Only, or other designation(s) used by the parties does not -- **without the submission**
15 **of competent evidence in the form of a declaration or declarations, establishing**
16 **that the material sought to be filed under seal qualifies as confidential, privileges,**
17 **or otherwise protectable** -- constitute good cause.

18 Further, if sealing is requested in connection with a dispositive motion or trial,
19 then compelling reasons, as opposed to good cause, for the sealing must be shown,
20 and the relief sought shall be narrowly tailored to serve the specific interest to be
21 protected. *See* Pinto v. Pacific Creditors Ass'n, 605 F.3d 665, 677-79 (9th Cir. 2010).
22 For each item or type of information, document, or thing sought to be filed or
23 introduced under seal in connection with a dispositive motion or trial, the party
24 seeking protection must articulate compelling reasons, supported by specific facts and
25 legal justification, for the requested sealing order. **Again, competent evidence**
26 **supporting the application to file documents under seal must be provided by**
27 **declaration.**

28 Any document that is not confidential, privileged, or otherwise protectable in its

1 entirety will not be filed under seal if the confidential portions can be redacted. If
2 documents can be redacted, then a redacted version for public viewing, omitting only
3 the confidential, privileged, or otherwise protectable portions of the document, shall
4 be filed. Any application that seeks to file documents under seal in their entirety
5 should include an explanation of why redaction is not feasible.

6 Notwithstanding any other provision of this Protective Order, in the event that
7 this case proceeds to trial, all information, documents, and things discussed or
8 introduced into evidence at trial will become public and available to all members of
9 the public, including the press, unless sufficient cause is shown in advance of trial to
10 proceed otherwise.

11
12 AGREED TERMS OF THE PROTECTIVE ORDER AS ADOPTED
13 AND MODIFIED BY THE COURT¹
14

15 1. DEFINITIONS

16 1.1 Party: any party to this action, including all of its officers,
17 directors, employees, consultants, retained experts, and outside counsel (and their
18 support staff).
19

20 1.2 Disclosure or Discovery Material: all items or information,
21 regardless of the medium or manner generated, stored, or maintained (including,
22 among other things, testimony, transcripts, or tangible things), that are produced or
23 generated in disclosures or responses to discovery in this matter.

24 1.3 “Confidential” Information or Items: information (regardless of
25 how generated, stored, or maintained) or tangible things that qualify for protection
26 under standards developed under F.R.Civ.P. 26(c).
27

28 ¹ The Court’s substantive modifications of the agreed terms of the Protective Order are generally indicated in bold typeface.

1 1.4 “Attorneys’ Eyes Only”: Discovery Material or such portion of
2 such material as consists of:

3 a) any commercially sensitive and/or confidential business or
4 financial information (including, without limitation, confidential nonpublic contracts,
5 profitability reports or estimates, sales reports, and sales margins);

6 b) any business or financial information that is confidential,
7 proprietary, or commercially sensitive to third parties who have had business dealings
8 with parties to this action; or

9 c) any other category of material or information hereinafter given
10 Confidential status by the Court.
11

12 1.5 Receiving Party: a Party that receives Disclosure or Discovery
13 Material from a Producing Party.

14 1.6 Producing Party: a Party or non-party that produces Disclosure or
15 Discovery Material in this action.

16 1.7 Designating Party: a Party or non-party that designates
17 information or items that it produces in disclosures or in responses to discovery as
18 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”
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20 1.8 Protected Material: any Disclosure or Discovery Material that is
21 designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

22 1.9 Expert: a person with specialized knowledge or experience in a
23 matter pertinent to the litigation who has been retained by a Party or its counsel to
24 serve as an expert witness or as a consultant in this action. This definition includes a
25 professional jury or trial consultant retained in connection with this litigation. The
26 expert witness or consultant may not be a past or a current employee of the Party
27 (including any affiliates or related entities) adverse to the Party engaging the expert
28 witness or consultant, or someone who at the time of retention is anticipated to

1 become an employee of the Party (including any affiliates or related entities) adverse
2 to the Party engaging the expert witness or consultant. Moreover, the expert witness
3 or consultant may not be a current employee or anticipated to become an employee of
4 any entity who is a competitor of the Party adverse to the Party engaging the expert
5 witness or consultant.

6 1.10 Professional Vendors: persons or entities that provide litigation
7 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or
8 demonstrations; and organizing, storing, or retrieving data in any form or medium;
9 etc.) and their employees and subcontractors.

10 2. SCOPE

11 The protections conferred by this Protective Order cover not only Protected
12 Material (as defined above), but also any information copied or extracted therefrom,
13 as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,
14 conversations, or presentations by parties or counsel to or in litigation or in other
15 settings that might reveal Protected Material.

16 3. DURATION

17 Even after the termination of this action, the confidentiality obligations imposed
18 by this Protective Order shall remain in effect until a Designating Party agrees
19 otherwise in writing or a court order otherwise directs.

20 4. DESIGNATING PROTECTED MATERIAL

21 4.1 Exercise of Restraint and Care in Designating Material for
22 Protection. Each Party or non-party that designates information or items for
23 protection under this Protective Order must take care to limit any such designation to
24 specific material that qualifies under the appropriate standards. A Designating Party
25 must take care to designate for protection only those parts of material, documents,
26 items, or oral or written communications that qualify -- so that other portions of the
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1 material, documents, items, or communications for which protection is not warranted
2 are not swept unjustifiably within the ambit of this Protective Order.

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

8 If it comes to a Party's or a non-party's attention that information or
9 items that it designated for protection do not qualify for protection at all, or do not
10 qualify for the level of protection initially asserted, that Party or non-party must
11 promptly notify all other parties that it is withdrawing the mistaken designation.
12

13 4.2 Manner and Timing of Designations. Except as otherwise
14 provided in this Protective Order (*see, e.g.*, second paragraph of section 4.2(a),
15 below), or as otherwise stipulated or ordered, material that qualifies for protection
16 under this Protective Order must be clearly so designated before the material is
17 disclosed or produced.

18 Designation in conformity with this Protective Order requires:

19 (a) for information in documentary form (apart from transcripts
20 of depositions), that the Producing Party affix the legend "CONFIDENTIAL" or
21 "ATTORNEYS' EYES ONLY" at the top or bottom of each page that contains
22 protected material.

23 A Party or non-party that makes originals or copies of documents
24 or materials available for inspection need not designate them for protection until after
25 the inspecting Party has indicated which material it intends to copy. During the
26 inspection and before the designation, all of the material made available for inspection
27 shall be deemed "ATTORNEYS' EYES ONLY." After the inspecting Party has
28 identified the documents it wants copied and produced, the Producing Party must

1 designate, either in writing or on the record (at a deposition), which documents, or
2 portions thereof, qualify for protection under this Protective Order. Then the
3 Receiving Party must affix the “CONFIDENTIAL” or “ATTORNEYS’ EYES
4 ONLY” legend at the top of each copied page that contains Protected Material. If only
5 a portion or portions of the material on a page qualifies for protection, the Producing
6 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
7 markings in the margins) and must specify, for each portion, the level of protection
8 being asserted (either “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”).

9 (b) for testimony given in deposition, that the Party or non-party
10 offering or sponsoring the **deposition** testimony identify on the record, before the
11 close of the deposition, all protected testimony, and further specify any portions of the
12 testimony that qualify as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”
13 When it is impractical to identify separately each portion of **deposition** testimony that
14 is entitled to protection, and when it appears that substantial portions of the
15 **deposition** testimony may qualify for protection, the Party or non-party that sponsors,
16 offers, or gives the **deposition** testimony may invoke on the record (before the
17 deposition is concluded) a right to have up to twenty (20) days to identify the specific
18 portions of the **deposition** testimony as to which protection is sought and to specify
19 the level of protection being asserted (“CONFIDENTIAL” or “ATTORNEYS’ EYES
20 ONLY”). Only those portions of the **deposition** testimony that are appropriately
21 designated for protection within the twenty (20) days shall be covered by the
22 provisions of this Protective Order.

23 Transcript pages containing Protected Material must be separately
24 bound by the court reporter, who must affix to the top of each such page the legend
25 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” as instructed by the Party or
26 non-party offering or sponsoring the witness or presenting the **deposition** testimony.

27
28 (c) for information produced in some form other than

1 documentary, and for any other tangible items, that the Producing Party affix in a
2 prominent place on the exterior of the container or containers in which the information
3 or item is stored the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”
4 If only portions of the information or item warrant protection, the Producing Party, to
5 the extent practicable, shall identify the protected portions, specifying whether they
6 qualify as “CONFIDENTIAL” or as “ATTORNEYS’ EYES ONLY.”

7 4.3 Inadvertent Failures to Designate. If timely corrected, an
8 inadvertent failure to designate qualified information or items as “CONFIDENTIAL”
9 or “ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating
10 Party’s right to secure protection under this Protective Order for such material. If
11 material is appropriately designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES
12 ONLY” after the material was initially produced, the Receiving Party, on timely
13 notification of the designation, must make reasonable efforts to assure that the
14 material is treated in accordance with the provisions of this Protective Order.

15 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 5.1 Timing of Challenges. Unless a prompt challenge to a Designating
17 Party’s confidentiality designation is necessary to avoid foreseeable substantial
18 unfairness, unnecessary economic burdens, or a later significant disruption or delay of
19 the litigation, a Party does not waive its right to challenge a confidentiality designation
20 by electing not to mount a challenge promptly after the original designation is
21 disclosed.

22 5.2 Meet and Confer. A Party that elects to initiate a challenge to a
23 Designating Party’s confidentiality designation must do so in good faith and must
24 begin the process by conferring with counsel for the Designating Party in writing. In
25 conferring, the challenging Party must explain the basis for its belief that the
26 confidentiality designation was not proper and must give the Designating Party an
27 opportunity to review the designated material, to reconsider the circumstances, and, if
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1 no change in designation is offered, to explain the basis for the chosen designation. A
2 challenging Party may proceed to the next stage of the challenge process only if it has
3 engaged in this meet-and-confer process first.

4 5.3 Court Intervention. A Party that elects to press a challenge to a
5 confidentiality designation after considering the justification offered by the
6 Designating Party may file and serve a motion that identifies the challenged material
7 and sets forth in detail the basis for the challenge. Each such motion must be
8 accompanied by a competent declaration that affirms that the movant has complied
9 with the meet-and-confer requirements imposed in the preceding paragraph and that
10 sets forth with specificity the justification for the confidentiality designation that was
11 given by the Designating Party in the meet-and-confer dialogue. The parties agree
12 that a confidentiality designation shall not create a presumption in favor of such
13 confidentiality designation, and that the Court shall decide the issue as such.

14 Until the Court rules on the challenge, all parties shall continue to afford
15 the material in question the level of protection to which it is entitled under the
16 **Designating Party's designation. The Designating Party shall bear the burden of**
17 **establishing the propriety of the challenged designation.**

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19 6. ACCESS TO AND USE OF PROTECTED MATERIAL

20 6.1 Basic Principles. A Receiving Party may use Protected Material
21 that is disclosed or produced by another Party or by a non-party in connection with
22 this case only for prosecuting, defending, or attempting to settle this litigation. Such
23 Protected Material may be disclosed only to the categories of persons and under the
24 conditions described in this Protective Order. When the litigation has been
25 terminated, a Receiving Party must comply with the provisions of section 10, below
26 (FINAL DISPOSITION).

27 Protected Material must be stored and maintained by a Receiving Party at
28 a location and in a secure manner that ensures that access is limited to the persons

1 authorized under this Protective Order.

2 6.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
3 otherwise ordered by the Court or permitted in writing by the Designating Party, a
4 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
5 only to:

6 (a) the Receiving Party’s outside counsel, as well as employees
7 of said outside counsel to whom it is reasonably necessary to disclose the information
8 for this litigation;

9 (b) Board members, officers and directors of the Receiving
10 Party;

11 (c) Other employees of the Receiving Party to whom disclosure
12 is reasonably necessary for this litigation and who are bound by internal
13 confidentiality obligations as part of their employment or who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) Experts (as defined in this Protective Order) of the
16 Receiving Party to whom disclosure is reasonably necessary for this litigation and
17 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (e) the Court and its personnel;

19 (f) court reporters, their staffs, and professional vendors to
20 whom disclosure is reasonably necessary for this litigation and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (g) during their depositions, witnesses in the action to whom
23 disclosure is reasonably necessary and who have signed the “Acknowledgment and
24 Agreement to Be Bound” (Exhibit A). Pages of transcribed deposition testimony or
25 exhibits to depositions that reveal Protected Material must be separately bound by the
26 court reporter and may not be disclosed to anyone except as permitted under this
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1 Protective Order; and

2 (h) the author and recipients of the document or the original
3 source of the information.

4 6.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or
5 Items. Unless otherwise ordered by the Court or permitted in writing by the
6 Designating Party, a Receiving Party may disclose any information or item designated
7 “ATTORNEYS’ EYES ONLY” only to:

8 (a) the Receiving Party’s outside counsel, as well as employees
9 of said outside counsel to whom it is reasonably necessary to disclose the information
10 for this litigation;

11 (b) Experts (as defined in this Protective Order) of the
12 Receiving Party to whom disclosure is reasonably necessary for this litigation and
13 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

14 (c) the Court and its personnel;

15 (d) court reporters, their staffs, and professional vendors to
16 whom disclosure is reasonably necessary for this litigation and who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A); and
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19 (e) the author and recipients of the document or the original
20 source of the information.
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22 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
23 PRODUCED IN OTHER LITIGATION

24 If a Receiving Party is served with a subpoena or an order issued in other
25 litigation that would compel disclosure of any Discovery Material, the Receiving
26 Party must so notify the Designating Party, in writing immediately and in no event
27 more than five (5) business days after receiving the subpoena or order. Such
28 notification must include a copy of the subpoena or court order. The Receiving Party

1 also must immediately inform in writing the Party who caused the subpoena or order
2 to issue in the other litigation that some or all of the material covered by the subpoena
3 or order is the subject of this Protective Order. In addition, the Receiving Party must
4 deliver a copy of this Protective Order promptly to the Party in the other action that
5 caused the subpoena or order to issue.

6 The purpose of imposing these duties is to alert the interested parties to the
7 existence of this Protective Order and to afford the Designating Party in this case an
8 opportunity to try to protect its confidentiality interests in the court from which the
9 subpoena or order issued. The Designating Party shall bear the burdens and the
10 expenses of seeking protection in that court of its confidential material -- and nothing
11 in these provisions should be construed as authorizing or encouraging a Receiving
12 Party in this action to disobey a lawful directive from another court.

13 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
15 Protected Material to any person or in any circumstance not authorized under this
16 Protective Order, the Receiving Party must immediately: (a) notify in writing the
17 Designating Party of the unauthorized disclosures; (b) use its best efforts to retrieve all
18 copies of the Protected Material; (c) inform the person or persons to whom
19 unauthorized disclosures were made of all the terms of this Protective Order; and (d)
20 request such person or persons to execute the “Acknowledgment and Agreement to Be
21 Bound” that is attached hereto as Exhibit A.
22

23 9. FILING PROTECTED MATERIAL

24 Without written permission from the Designating Party, or a court order secured
25 after appropriate notice to all interested persons and after following the procedures
26 provided for in Local Rule 79-5.1, a Party may not file in the public record in this
27 action any Protected Material.
28

10. FINAL DISPOSITION

1 Unless otherwise ordered or agreed to in writing by the Producing Party, within
2 sixty (60) days after the final termination of this action, each Receiving Party must
3 return all Protected Material to the Producing Party. As used in this subdivision, “all
4 Protected Material” includes all copies, abstracts, compilations, summaries, or any
5 other form of reproducing or capturing any of the Protected Material. With
6 permission in writing from the Designating Party, the Receiving Party may destroy
7 some or all of the Protected Material instead of returning it. Whether the Protected
8 Material is returned or destroyed, the Receiving Party must submit a written
9 certification to the Producing Party (and, if not the same person or entity, to the
10 Designating Party) by the 60-day deadline that identifies (by category, where
11 appropriate) all the Protected Material that was returned or destroyed and that affirms
12 that the Receiving Party has not retained any copies, abstracts, compilations,
13 summaries, or other forms of reproducing or capturing any of the Protected Material.

14 Notwithstanding this provision, counsel are entitled to retain an archival copy
15 of all pleadings, motion papers, transcripts, legal memoranda, correspondence, or
16 attorney work product, even if such materials contain Protected Material. Any such
17 archival copies that contain or constitute Protected Material remain subject to this
18 Protective Order as set forth in Section 4 (DURATION), above.

19 11. MISCELLANEOUS

20 11.1 Right to Further Relief. Nothing in this Protective Order abridges
21 the right of any person or party to seek its modification in the future.
22

23 11.2 Right to Assert Other Objections. By having stipulated to the entry
24 of this Protective Order, no Party waives any right it otherwise would have to object
25 to disclosing or producing any information or item on any ground not addressed in
26 this Protective Order. Similarly, no Party waives any right to object on any ground to
27 use in evidence of any of the material covered by this Protective Order.

28 11.3 Inadvertent Production of Privileged Documents. If a Party, through

1 inadvertence, produces any document or information that it believes is immune from
2 discovery pursuant to an attorney-client privilege, the work product privilege, or any
3 other privilege, such production shall not be deemed a waiver of any privilege, and the
4 Producing Party may give written notice to the Receiving Party that the document or
5 information produced is deemed privileged and that return of the document or
6 information is requested. Upon receipt of such notice, the Receiving Party shall
7 immediately gather the original and all copies of the document or information of
8 which the Receiving Party is aware, in addition to any abstracts, summaries, or
9 descriptions thereof, and shall immediately return the original and all such copies to
10 the Producing Party. Nothing stated herein shall preclude a Party from challenging an
11 assertion by the other Party of privilege or confidentiality.

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IT IS SO ORDERED.

DATED: July 8, 2014

Margaret A. Nagle

MARGARET A. NAGLE
UNITED STATES MAGISTRATE JUDGE

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print full name], of
4 _____ [print full address],
5 declare under penalty of perjury that I have read in its entirety and understand the
6 Protective Order that was issued by the United States District Court for the Central
7 District of California in the case of *Unicolors, Inc. v. Jump Apparel Co., Inc.*, Case
8 No. CV13-05436 DDP (MANx). I agree to comply with and to be bound by all of the
9 terms of this Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that is
12 subject to this Protective Order to any person or entity except in strict compliance with
13 the provisions of this Protective Order.

14 I further agree to submit to the jurisdiction of the United States District Court
15 for the Central District of California for the purpose of enforcing the terms of this
16 Protective Order, even if such enforcement proceedings occur after termination of this
17 action.

18 I hereby appoint _____ [print full
19 name] of _____ [print full
20 address and telephone number] as my California agent for service of process in
21 connection with this action or any proceedings related to enforcement of this
22 Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____
27
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