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

15 URBAN TEXTILE, INC., a California
 16 corporation,

17 Plaintiff,

18 v.

19 LOVE CULTURE INC.; et al.,

20 Defendants.

Case No.: **2:13-CV-07777-DSF-AJW**

PROTECTIVE ORDER

[DISCOVERY MATTER]

Honorable Andrew J. Wistrich

21 **I. PURPOSES AND LIMITATIONS**

22 Disclosure and discovery activity in this action are likely to involve
 23 production of confidential, proprietary, or private information for which special
 24 protection from public disclosure and from use for any purpose other than
 25 prosecuting this matter would be warranted. Accordingly, the parties hereby
 26 stipulate to and petition this Court to enter the following Stipulated Protective
 27 Order. The parties acknowledge that this Order does not confer blanket protections
 28 on all disclosures or responses to discovery and that the protection it affords
 extends only to the limited information or items that are entitled under the

1 applicable legal principles to treatment as confidential. The parties have agreed that
2 the terms of this Protective Order shall also apply to any future voluntary
3 disclosures of confidential, proprietary, or private information. The parties reserve
4 their rights to object to or withhold any information, including confidential,
5 proprietary, or private information, on any other applicable grounds permitted by
6 law, including third-party rights and relevancy.

7 8 II. DEFINITIONS

9 2.1 Party: any party to this action, including all of its officers, directors,
10 employees, consultants, retained experts, and outside counsel (and their support
11 staff).

12 2.2 Disclosure or Discovery Material: all items or information, regardless
13 of the medium or manner generated, stored, or maintained (including, among other
14 things, testimony, transcripts, or tangible things), that are produced or
15 generated in disclosures or responses to discovery in this matter.

16 2.3 “Confidential” Information or Items: information (regardless of how
17 generated, stored, or maintained) or tangible things that qualify for protection
18 under standards developed under Fed. R. Civ. P. 26(c).

19 2.4 “Attorneys’ Eyes Only”: Discovery Material or such portion of
20 such material as consists of:

21 a) any commercially sensitive and/or confidential business or financial
22 information (including without limitation confidential nonpublic contracts,
23 profitability reports or estimates, sales reports, and sales margins) which could
24 reasonably create a competitive disadvantage if disclosed to the parties in this
25 action;

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

4 c) any other category of material or information hereinafter given
5 Confidential status by the Court, to the extent said material could reasonably create
6 a competitive disadvantage if disclosed to the parties in this action.

7 2.5 Receiving Party: a Party that receives Disclosure or Discovery
8 Material from a Producing Party.

9 2.6 Producing Party: a Party or non-party that produces Disclosure or
10 Discovery Material in this action.

11 2.7 Designating Party: a Party or non-party that designates
12 information or items that it produces in disclosures or in responses to discovery as
13 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

14 2.8 Protected Material: any Disclosure or Discovery Material that is
15 designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

16 2.9 Expert: a person with specialized knowledge or experience in a matter
17 pertinent to the litigation who has been retained by a Party or its counsel to serve as
18 an expert witness or as a consultant in this action. This definition includes a
19 professional jury or trial consultant retained in connection with this litigation. The
20 expert witness or consultant may not be a past or a current employee of the Party
21 (including any affiliates or related entities) adverse to the Party engaging the expert
22 witness or consultant, or someone who at the time of retention is anticipated to
23 become an employee of the Party (including any affiliates or related entities)
24 adverse to the Party engaging the expert witness or consultant. Moreover, the expert
25 witness or consultant may not be a current employee or anticipated to become an
26 employee of any entity who is a competitor of the Party adverse to the Party
27 engaging the expert witness or consultant.

28

1 2.10 Professional Vendors: persons or entities that provide litigation
2 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or
3 demonstrations; organizing, storing, or retrieving data in any form or medium; etc.)
4 and their employees and subcontractors.

5 6 3. SCOPE

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

12 13 4. DURATION

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

17 18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection.
20 Each Party or non-party that designates information or items for protection under
21 this Order must take care to limit any such designation to specific material that
22 qualifies under the appropriate standards. A Designating Party must take care to
23 designate for protection only those parts of material, documents, items, or oral or
24 written communications that qualify – so that other portions of the material,
25 documents, items, or communications for which protection is not warranted are not
26 swept unjustifiably within the ambit of this Order. Mass, indiscriminate, or
27 routinized designations are prohibited. Designations that are shown to be clearly
28 unjustified, or that have been made for an improper purpose (*e.g.*, to unnecessarily

1 encumber or retard the case development process, or to impose unnecessary
2 expenses and burdens on other parties), expose the Designating Party to sanctions.
3 If it comes to a Party's or a non-party's attention that information or items that it
4 designated for protection do not qualify for protection at all, or do not qualify for
5 the level of protection initially asserted, that Party or non-party must promptly
6 notify all other parties that it is withdrawing the mistaken designation.

7 5.2 Manner and Timing of Designations. Except as otherwise provided in
8 this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as otherwise
9 stipulated or ordered, material that qualifies for protection under this Order must be
10 clearly so designated before the material is disclosed or produced. Designation in
11 conformity with this Order requires:

12 (a) for information in documentary form (apart from transcripts of
13 depositions or other pretrial or trial proceedings), that the Producing Party affix the
14 legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" at the top or bottom
15 of each page that contains protected material.

16 A Party or non-party that makes originals or copies of documents or
17 materials available for inspection need not designate them for protection until after
18 the inspecting Party has indicated which material it intends to copy. During the
19 inspection and before the designation, all of the material made available for
20 inspection shall be deemed "ATTORNEYS' EYES ONLY." After the inspecting
21 Party has identified the documents it wants copied and produced, the Producing
22 Party must designate, either in writing or on the record (at a deposition), which
23 documents, or portions thereof, qualify for protection under this Order. Then the
24 Receiving Party must affix the "CONFIDENTIAL" or "ATTORNEYS' EYES
25 ONLY" legend at the top of each copied page that contains Protected Material. If
26 only a portion or portions of the material on a page qualifies for protection, the
27 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making
28 appropriate markings in the margins) and must specify, for each portion, the level

1 of protection being asserted (either “CONFIDENTIAL” or “ATTORNEYS’ EYES
2 ONLY”).

3 (b) for testimony given in deposition or in other pretrial or trial
4 proceedings, that the Party or non-party offering or sponsoring the testimony
5 identify on the record, before the close of the deposition, hearing, or other
6 proceeding, all protected testimony, and further specify any portions of the
7 testimony that qualify as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”
8 When it is impractical to identify separately each portion of testimony that is
9 entitled to protection, and when it appears that substantial portions of the testimony
10 may qualify for protection, the Party or non-party that sponsors, offers, or gives the
11 testimony may invoke on the record (before the deposition or proceeding is
12 concluded) a right to have up to 20 days to identify the specific portions of the
13 testimony as to which protection is sought and to specify the level of protection
14 being asserted (“CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”). Only
15 those portions of the testimony that are appropriately designated for protection
16 within the 20 days shall be covered by the provisions of this Stipulated Protective
17 Order. Transcript pages containing Protected Material must be separately bound by
18 the court reporter, who must affix to the top of each such page the legend
19 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” as instructed by the Party
20 or non-party offering or sponsoring the witness or presenting the testimony.

21 (c) for information produced in some form other than documentary,
22 and for any other tangible items, that the Producing Party affix in a prominent place
23 on the exterior of the container or containers in which the information or item is
24 stored the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If only
25 portions of the information or item warrant protection, the Producing Party, to the
26 extent practicable, shall identify the protected portions, specifying whether they
27 qualify as “CONFIDENTIAL” or as “ATTORNEYS’ EYES ONLY”
28

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items as “CONFIDENTIAL” or
3 “ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating
4 Party’s right to secure protection under this Order for such material. If material is
5 appropriately designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES
6 ONLY” after the material was initially produced, the Receiving Party, on timely
7 notification of the designation, must make reasonable efforts to assure that the
8 material is treated in accordance with the provisions of this Order.

9 10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
12 Party’s confidentiality designation is necessary to avoid foreseeable substantial
13 unfairness, unnecessary economic burdens, or a later significant disruption or delay
14 of the litigation, a Party does not waive its right to challenge a confidentiality
15 designation by electing not to mount a challenge promptly after the original
16 designation is disclosed.

17 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
18 Designating Party’s confidentiality designation must do so in good faith and must
19 begin the process by conferring with counsel for the Designating Party in writing.
20 In conferring, the challenging Party must explain the basis for its belief that the
21 confidentiality designation was not proper and must give the Designating Party an
22 opportunity to review the designated material, to reconsider the circumstances, and,
23 if no change in designation is offered, to explain the basis for the chosen
24 designation. A challenging Party may proceed to the next stage of the challenge
25 process only if it has engaged in this meet-and-confer process first.

26 6.3 Court Intervention. A Party that elects to press a challenge to a
27 confidentiality designation after considering the justification offered by the
28 Designating Party may file and serve a motion that identifies the challenged

1 material and sets forth in detail the basis for the challenge. Each such motion must
2 be accompanied by a competent declaration that affirms that the movant has
3 complied with the meet-and-confer requirements imposed in the preceding
4 paragraph and that sets forth with specificity the justification for the confidentiality
5 designation that was given by the Designating Party in the meet-and-confer
6 dialogue. The parties agree that a confidentiality designation shall not create a
7 presumption in favor of such confidentiality designation, and that the Court shall
8 decide the issue as such. Until the Court rules on the challenge, all parties shall
9 continue to afford the material in question the level of protection to which it is
10 entitled under the Producing Party's designation.

11 12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is
14 disclosed or produced by another Party or by a non-party in connection with this
15 case only for prosecuting, defending, or attempting to settle this litigation. Such
16 Protected Material may be disclosed only to the categories of persons and under the
17 conditions described in this Order. When the litigation has been terminated, a
18 Receiving Party must comply with the provisions of section 11, below (FINAL
19 DISPOSITION). Protected Material must be stored and maintained by a Receiving
20 Party at a location and in a secure manner that ensures that access is limited to the
21 persons authorized under this Order.

22 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
23 otherwise ordered by the Court or permitted in writing by the Designating Party, a
24 Receiving Party may disclose any information or item designated
25 "CONFIDENTIAL" only to:

26 (a) the Receiving Party's outside counsel, as well as employees of said
27 outside counsel to whom it is reasonably necessary to disclose the information for
28 this litigation;

- 1 (b) Board members, officers and directors of the Receiving Party;
- 2 (c) Other employees of the Receiving Party to whom disclosure is
- 3 reasonably necessary for this litigation and who are bound by internal
- 4 confidentiality obligations as part of their employment or who have signed the
- 5 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 6 (d) Experts (as defined in this Order) of the Receiving Party to whom
- 7 disclosure is reasonably necessary for this litigation and who have signed the
- 8 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 9 (e) the Court personnel assigned to this litigation;
- 10 (f) court reporters, their staffs, and professional vendors to whom
- 11 disclosure is reasonably necessary for this litigation and who have signed the
- 12 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 13 (g) during their depositions, witnesses in the action to whom disclosure
- 14 is reasonably necessary and who have signed the “Acknowledgment and
- 15 Agreement to Be Bound” (Exhibit A). Pages of transcribed deposition testimony or
- 16 exhibits to depositions that reveal Protected Material must be separately bound by
- 17 the court reporter and may not be disclosed to anyone except as permitted under
- 18 this Stipulated Protective Order; and
- 19 (h) the author and recipients of the document or the original source of
- 20 the information.

21 7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items.

22 Unless otherwise ordered by the Court or permitted in writing by the Designating

23 Party, a Receiving Party may disclose any information or item designated

24 “ATTORNEYS’ EYES ONLY” only to:

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

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

4 (c) the Court personnel assigned to this litigation;

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

8 (e) the author and recipients of the document or the original source of
9 the information.

10 7.4 Nothing in this Order shall be read to prohibit the use of otherwise
11 Protected Material to prosecute claims against additional potential defendants
12 identified in said materials.

13
14 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
15 PRODUCED IN OTHER LITIGATION**

16 If a Receiving Party is served with a subpoena or an order issued in other
17 litigation that would compel disclosure of any Discovery Material, the Receiving
18 Party must so notify the Designating Party, in writing immediately and in no event
19 more than five business days after receiving the subpoena or order. Such
20 notification must include a copy of the subpoena or court order. The Receiving
21 Party also must immediately inform in writing the Party who caused the subpoena
22 or order to issue in the other litigation that some or all of the material covered by
23 the subpoena or order is the subject of this Protective Order. In addition, the
24 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to
25 the Party in the other action that caused the subpoena or order to issue. The purpose
26 of imposing these duties is to alert the interested parties to the existence of this
27 Protective Order and to afford the Designating Party in this case an opportunity to
28 try to protect its confidentiality interests in the court from which the subpoena or

1 order issued. The Designating Party shall bear the burdens and the expenses of
2 seeking protection in that court of its confidential material – and nothing in these
3 provisions should be construed as authorizing or encouraging a Receiving Party in
4 this action to disobey a lawful directive from another court.

5 6 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

15 16 10. FILING PROTECTED MATERIAL

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

21 22 11. FINAL DISPOSITION

23 Unless otherwise ordered or agreed to in writing by the Producing Party,
24 within 60 days after the final termination of this action, each Receiving Party must
25 either return all Protected Material to the Producing Party or certify the destruction
26 of said material. As used in this subdivision, “all Protected Material” includes all
27 copies, abstracts, compilations, summaries or any other form of reproducing or
28 capturing any of the Protected Material. Whether the Protected Material is returned

1 or destroyed, the Receiving Party must submit a written certification to the
2 Producing Party (and, if not the same person or entity, to the Designating Party) by
3 the 60-day deadline that identifies (by category, where appropriate) all the
4 Protected Material that was returned or destroyed and that affirms that the
5 Receiving Party has not retained any copies, abstracts, compilations, summaries or
6 other forms of reproducing or capturing any of the Protected Material.
7 Notwithstanding this provision, counsel are entitled to retain an archival copy of all
8 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
9 work product, even if such materials contain Protected Material. Any such archival
10 copies that contain or constitute Protected Material remain subject to this Protective
11 Order as set forth in Section 4 (DURATION), above.

12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right
14 of any person to seek its modification in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of
16 this Protective Order no Party waives any right it otherwise would have to object to
17 disclosing or producing any information or item on any ground not addressed in
18 this Stipulated Protective Order. Similarly, no Party waives any right to object on
19 any ground to use in evidence of any of the material covered by this Protective
20 Order.
21

22 12.3 Inadvertent Production of Privileged Documents. If a Party, through
23 inadvertence, produces any document or information that it believes is immune
24 from discovery pursuant to an attorney-client privilege, the work product privilege,
25 or any other privilege, such production shall not be deemed a waiver of any
26 privilege, and the Producing Party may give written notice to the Receiving Party
27 that the document or information produced is deemed privileged and that return of
28 the document or information is requested. Upon receipt of such notice, the

