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 12 and Jaya Apparel Group, LLC

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

15 STAR FABRICS, INC., a California
 16 Corporation,

Case No. CV14-1019 BRO (Ex)

17 Plaintiff,

~~PROPOSED~~ PROTECTIVE ORDER

18 vs.

19 J.C. PENNEY CORPORATION, INC., a
 20 Delaware Corporation; APPAREWAY,
 21 INC., a California corporation; JAYA
 22 APPAREL GROUP, LLC, a California
 23 Limited Liability Corporation;
 24 DUALSTAR ENTERTAINMENT, INC., a
 25 California Corporation; AMERICAN
 26 INT'L COMPANY, INC. a New York
 27 Corporation; ROSS STORES, INC. a
 28 California Corporation; BURLINGTON
 COAT FACTORY DIRECT
 CORPORATION, a New Jersey
 Corporation; REDCATS USA, INC. d/b/a
 ONESTOPPLUS.COM, a New York
 Corporation; ALIGHT COMPANY, INC.
 d/b/a ALIGHT.COM, a New York,
 Corporation; DEB SHOPS SDW, LLC, a
 Pennsylvania Corporation; SMILES
 FASHION CORPORATION, a New Jersey
 Corporation; SUSIE'S DEALS, a
 California business entity of form
 unknown; MILLENIUM CLOTHING,

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1 INC., a New York Corporation; and DOES
2 1 through 10,
3 Defendants.

Complaint Filed: February 10, 2014
Trial Date: June 2, 2015

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6 On stipulation of the Parties, the Court enters a Protective Order in this matter as
7 follows:

8
9 1. PURPOSES AND LIMITATIONS

10 Disclosure and discovery activity in this action are likely to involve production of
11 confidential, proprietary, or private information for which special protection from
12 public disclosure and from use for any purpose other than prosecuting this matter would
13 be warranted. Accordingly, the parties have stipulated to and petitioned this Court to
14 enter the following Stipulated Protective Order. The parties acknowledge that this
15 Order does not confer blanket protections on all disclosures or responses to discovery
16 and that the protection it affords extends only to the limited information or items that
17 are entitled under the applicable legal principles to treatment as confidential. The
18 parties have agreed that the terms of this Protective Order shall also apply to any future
19 voluntary disclosures of confidential, proprietary, or private information. The parties
20 reserve their rights to object to or withhold any information, including confidential,
21 proprietary, or private information, on any other applicable grounds permitted by law,
22 including third-party rights and relevancy.

23
24 2. DEFINITIONS

25 2.1 Party: any party to this action, including all of its officers, directors,
26 employees, consultants, retained experts, and outside counsel (and their support staff).

27 2.2 Disclosure or Discovery Material: all items or information,
28 regardless of the medium or manner generated, stored, or maintained (including, among

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1 other things, testimony, transcripts, or tangible things), that are produced or generated in
2 disclosures or responses to discovery in this matter.

3 2.3 “Confidential” Information or Items: All information in whatever
4 form, such as oral, written, documentary, tangible, intangible, electronic, or digitized
5 now or hereafter in existence that:

6 a) derives independent economic value, actual or potential, from not
7 being generally known to, and not being readily ascertainable by proper means, by other
8 persons who can obtain economic value from its disclosure or use;

9 b) is the subject of efforts that are reasonable under the
10 circumstances to maintain its secrecy; and

11 c) is otherwise regarded by a party as being confidential, private, or
12 proprietary in nature.

13 2.4 “Attorneys’ Eyes Only”: Discovery Material or such portion of such
14 material that the disclosing party has a reasonable belief that the information disclosed,
15 if known to one or more parties in the case would have a reasonable chance of putting
16 the disclosing party to a competitive disadvantage or otherwise result in the disclosure
17 of sensitive proprietary information that could cause future harm.

18 2.5 Receiving Party: a Party that receives Disclosure or Discovery
19 Material from a Producing Party.

20 2.6 Producing Party: a Party or non-party that produces Disclosure or
21 Discovery Material in this action.

22 2.7 Designating Party: a Party or non-party that designates information
23 or items that it produces in disclosures or in responses to discovery as
24 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

25 2.8 Protected Material: any Disclosure or Discovery Material that is
26 designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

27 2.9 Expert: a person with specialized knowledge or experience in a
28 matter pertinent to the litigation who has been retained by a Party or its counsel to serve

1 as an expert witness or as a consultant in this action. This definition includes a
2 professional jury or trial consultant retained in connection with this litigation. The
3 expert witness or consultant may not be a past or a current employee of the Party
4 (including any affiliates or related entities) adverse to the Party engaging the expert
5 witness or consultant, or someone who at the time of retention is anticipated to become
6 an employee of the Party (including any affiliates or related entities) adverse to the
7 Party engaging the expert witness or consultant. Moreover, the expert witness or
8 consultant may not be a current employee or anticipated to become an employee of any
9 entity who is a competitor of the Party adverse to the Party engaging the expert witness
10 or consultant.

11 2.10 Professional Vendors: persons or entities that provide litigation
12 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
13 demonstrations; organizing, storing, or retrieving data in any form or medium; etc.) and
14 their employees and subcontractors.

15
16 3. SCOPE

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

22
23 4. DURATION

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

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1 5. DESIGNATING PROTECTED MATERIAL

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

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

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

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

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (apart from transcripts
25 of depositions or other pretrial or trial proceedings), that the Producing Party affix the
26 legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" at the top or bottom of
27 each page that contains protected material.
28

1 A Party or non-party that makes originals or copies of documents or
2 materials available for inspection need not designate them for protection until after the
3 inspecting Party has indicated which material it intends to copy. During the inspection
4 and before the designation, all of the material made available for inspection shall be
5 deemed "ATTORNEYS' EYES ONLY." After the inspecting Party has identified the
6 documents it wants copied and produced, the Producing Party must designate, either in
7 writing or on the record (at a deposition), which documents, or portions thereof, qualify
8 for protection under this Order. Then the Receiving Party must affix the
9 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" legend at the top of each
10 copied page that contains Protected Material. If only a portion or portions of the
11 material on a page qualifies for protection, the Producing Party also must clearly
12 identify the protected portion(s) (e.g., by making appropriate markings in the margins)
13 and must specify, for each portion, the level of protection being asserted (either
14 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY").

15 (b) for testimony given in deposition or in other pretrial or trial
16 proceedings, that the Party or non-party offering or sponsoring the testimony identify on
17 the record, before the close of the deposition, hearing, or other proceeding, all protected
18 testimony, and further specify any portions of the testimony that qualify as
19 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY." When it is impractical to
20 identify separately each portion of testimony that is entitled to protection, and when it
21 appears that substantial portions of the testimony may qualify for protection, the Party
22 or non-party that sponsors, offers, or gives the testimony may invoke on the record
23 (before the deposition or proceeding is concluded) a right to have up to 20 days to
24 identify the specific portions of the testimony as to which protection is sought and to
25 specify the level of protection being asserted ("CONFIDENTIAL" or "ATTORNEYS'
26 EYES ONLY"). Only those portions of the testimony that are appropriately designated
27 for protection within the 20 days shall be covered by the provisions of this Stipulated
28 Protective Order.

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

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

12 5.3 Inadvertent Failures to Designate. If timely corrected, an
13 inadvertent failure to designate qualified information or items as “CONFIDENTIAL” or
14 “ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating
15 Party’s right to secure protection under this Order for such material. If material is
16 appropriately designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”
17 after the material was initially produced, the Receiving Party, on timely notification of
18 the designation, must make reasonable efforts to assure that the material is treated in
19 accordance with the provisions of this Order.

20
21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Unless a prompt challenge to a Designating
23 Party’s confidentiality designation is necessary to avoid foreseeable substantial
24 unfairness, unnecessary economic burdens, or a later significant disruption or delay of
25 the litigation, a Party does not waive its right to challenge a confidentiality designation
26 by electing not to mount a challenge promptly after the original designation is disclosed.

27 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
28 Designating Party’s confidentiality designation must do so in good faith and must begin

1 the process by conferring with counsel for the Designating Party in writing. In
2 conferring, the challenging Party must explain the basis for its belief that the
3 confidentiality designation was not proper and must give the Designating Party an
4 opportunity to review the designated material, to reconsider the circumstances, and, if
5 no change in designation is offered, to explain the basis for the chosen designation. A
6 challenging Party may proceed to the next stage of the challenge process only if it has
7 engaged in this meet-and-confer process first.

8 6.3 Court Intervention. A Party that elects to press a challenge to a
9 confidentiality designation after considering the justification offered by the Designating
10 Party may file and serve a motion that identifies the challenged material and sets forth
11 in detail the basis for the challenge. Each such motion must be accompanied by a
12 competent declaration that affirms that the movant has complied with the meet-and-
13 confer requirements imposed in the preceding paragraph and that sets forth with
14 specificity the justification for the confidentiality designation that was given by the
15 Designating Party in the meet-and-confer dialogue. The parties agree that a
16 confidentiality designation shall not create a presumption in favor of such
17 confidentiality designation, and that the Court shall decide the issue as such.

18 Until the Court rules on the challenge, all parties shall continue to afford
19 the material in question the level of protection to which it is entitled under the
20 Producing Party's designation.

21 22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 Basic Principles. A Receiving Party may use Protected Material that
24 is disclosed or produced by another Party or by a non-party in connection with this case
25 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
26 Material may be disclosed only to the categories of persons and under the conditions
27 described in this Order. When the litigation has been terminated, a Receiving Party
28 must comply with the provisions of section 11, below (FINAL DISPOSITION).

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

4 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
5 otherwise ordered by the Court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated "CONFIDENTIAL"
7 only to:

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

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

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

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

19 (e) the Court personnel assigned to this litigation;

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

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

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

3 7.3 Disclosure of "ATTORNEYS' EYES ONLY" Information or Items.

4 Unless otherwise ordered by the Court or permitted in writing by the Designating Party,
5 a Receiving Party may disclose any information or item designated "ATTORNEYS'
6 EYES ONLY" only to:

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

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

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

14 (d) court reporters, their staffs, and professional vendors to whom
15 disclosure is reasonably necessary for this litigation and who have signed the
16 "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

17 (e) the author and recipients of the document or the original
18 source of the information.

19
20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
21 PRODUCED IN OTHER LITIGATION

22 If a Receiving Party is served with a subpoena or an order issued in other
23 litigation that would compel disclosure of any Discovery Material, the Receiving Party
24 must so notify the Designating Party, in writing immediately and in no event more than
25 five business days after receiving the subpoena or order. Such notification must include
26 a copy of the subpoena or court order. The Receiving Party also must immediately
27 inform in writing the Party who caused the subpoena or order to issue in the other
28 litigation that some or all of the material covered by the subpoena or order is the subject

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1 of this Protective Order. In addition, the Receiving Party must deliver a copy of this
2 Stipulated Protective Order promptly to the Party in the other action that caused the
3 subpoena or order to issue.

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

11
12 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

21
22 10. FILING PROTECTED MATERIAL

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

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1 11. FINAL DISPOSITION

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

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

20
21 12. MISCELLANEOUS


22 12.1 Right to Further Relief. Nothing in this Order abridges the right of
23 any person to seek its modification in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order no Party waives any right it otherwise would have to object to
26 disclosing or producing any information or item on any ground not addressed in this
27 Stipulated Protective Order. Similarly, no Party waives any right to object on any
28 ground to use in evidence of any of the material covered by this Protective Order.

1 12.3 Inadvertent Production of Privileged Documents. If a Party, through
2 inadvertence, produces any document or information that it believes is immune from
3 discovery pursuant to an attorney-client privilege, the work product privilege, or any
4 other privilege, such production shall not be deemed a waiver of any privilege, and the
5 Producing Party may give written notice to the Receiving Party that the document or
6 information produced is deemed privileged and that return of the document or
7 information is requested. Upon receipt of such notice, the Receiving Party shall
8 immediately gather the original and all copies of the document or information of which
9 the Receiving Party is aware, in addition to any abstracts, summaries, or descriptions
10 thereof, and shall immediately return the original and all such copies to the Producing
11 Party. Nothing stated herein shall preclude a Party from challenging an assertion by the
12 other Party of privilege or confidentiality.

13
14 PURSUANT TO STIPULATION, IT IS SO ORDERED.

15
16 Dated: 12/2/14

17 By: 
18 Honorable Charles F. Eick
19 U.S. Magistrate Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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3
4 I, _____ [print full name],
5 of _____ [print full address],
6 declare under penalty of perjury that I have read in its entirety and understand the
7 Stipulated Protective Order that was issued by the United States District Court for the
8 Central District of California in the case of *Star Fabrics v. J.C. Penney Corporation,*
9 *Inc.*, Case No. CV14-1019 BRO (Ex). I agree to comply with and to be bound by all of
10 the terms of this Stipulated Protective Order and I understand and acknowledge that
11 failure to so comply could expose me to sanctions and punishment in the nature of
12 contempt. I solemnly promise that I will not disclose in any manner any information or
13 item that is subject to this Stipulated Protective Order to any person or entity except in
14 strict compliance with the provisions of this Order.

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

19 I hereby appoint _____ [print full name]
20 of _____ [print full address and
21 telephone number] as my California agent for service of process in connection with this
22 action or any proceedings related to enforcement of this Stipulated Protective Order.
23

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____

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