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9 Attorneys for Defendants E&E Co. Ltd (erroneously sued as “JLA Home, Inc.”);
 10 Bed, Bath & Beyond, Inc.; Belk, Inc.; Amazon, Inc.; Overstock.com, Inc.; HSN,
 11 Inc.; Wayfair, LLC; the Bon-Ton Stores, Inc.; Yankee Retail Company, LLC, &
 12 Designer Living, Inc.

13 UNITED STATES DISTRICT COURT
 14 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

15 DERMOND PETERSON DESIGN,
 16 LLC, a Wisconsin Limited Liability
 17 Company,

18 Plaintiff,

19 v.

20 JLA HOME, INC., a California
 21 Corporation, SEARS ROEBUCK &
 22 CO., an Illinois Corporation, BED
 23 BATH & BEYOND, INC., a New
 24 Jersey Corporation, BELK, INC., a
 25 North Carolina Corporation, THE
 26 BON-TON STORES, INC., a
 27 Pennsylvania Corporation, AMAZON,
 28 INC., a Delaware Corporation,
 OVERSTOCK.COM, INC., a Utah
 Corporation, HSN, INC., a Delaware
 Corporation, DESIGNER LIVING,
 INC., a California Corporation, THE
 YANKEE RETAIL COMPANY, LLC,
 a Connecticut Limited Liability
 Company, and DOES 1-5,

Defendants.

Case No. 2:14-CV-06300
Referred to Honorable Victor B.
Kenton

[DISCOVERY MATTER]

**STIPULATED PROTECTIVE
 ORDER**

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 Time:
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GOOD CAUSE STATEMENT

It is the intent of the parties and the Court that information will not be designated as confidential in this case for tactical reasons, and that nothing shall be designated without a good faith belief that there is good cause why it should not be part of the public record. Examples of confidential information that the parties may seek to protect from unrestricted or unprotected disclosure include, without limitation:

- (a) Information that is the subject of a contractual non-disclosure or confidentiality agreement or obligation, and/or Protective Order issued in another case;
- (b) The names, or other information tending to reveal the identity of a party's supplier, distributor, or designer;
- (c) Agreements with third-parties, including license agreements, distributor agreements, manufacturing agreements, design agreements, development agreements, supply agreements, sales agreements, or service agreements;
- (d) Research and development information;
- (e) Proprietary engineering or technical information, including product design, manufacturing techniques, processing information, drawings, memoranda and reports;
- (f) Information related to budgets, sales, profits, costs, margins, licensing of technology or designs, product pricing, or other internal financial/accounting information, including non-public information related to financial condition or performance and income or other non-public tax information;
- (g) Information related to internal operations including personnel information;

- 1 (h) Information related to past, current and future product
2 development;
3 (i) Information related to past, current and future market analyses
4 and business and marketing development, including plans,
5 strategies, forecasts and competition; and
6 (j) Trade secrets (as defined by the jurisdiction in which the
7 information is located).

8 Unrestricted or unprotected disclosure of such confidential technical,
9 commercial or personal information could, in the producing party's opinion, result
10 in prejudice or harm to the producing party by revealing the producing party's
11 competitive confidential information, which has been developed at the expense of
12 the producing party and which represents valuable tangible and intangible assets of
13 that party. Additionally, legitimate privacy interests must be safeguarded.

14 Subject to the approval of this Court, the parties hereby stipulate to the
15 following protective order:

16 1. In connection with discovery proceedings in this action, the parties
17 may designate any document, thing, material, testimony or other information
18 derived therefrom, as "Confidential" under the terms of this Stipulated Protective
19 Order (hereinafter "Order"). Confidential information is information which has not
20 been made public and which concerns or relates to the processes, operations, type or
21 work, or apparatus, or to the production, sales, shipments, purchases, transfers,
22 identification of customers or suppliers, inventories, amount or source of any
23 income, profits, losses, or expenditures of any persons, firm, partnership,
24 corporation, or other organization, the disclosure of which information may have the
25 effect of causing harm to the competitive position of the person, firm, partnership,
26 corporation, or to the organization from which the information was obtained.
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1 By designating a document, thing, material, testimony or other
2 information derived therefrom as “Confidential,” under the terms of this order, the
3 party making the designation is certifying to the court that there is a good faith basis
4 both in law and in fact for the designation within the meaning of Federal Rule of
5 Civil Procedure 26(g).

6 2. Confidential documents shall be so designated by stamping copies of
7 the document produced to a party with the legend “CONFIDENTIAL.” Stamping
8 the legend “CONFIDENTIAL” on the cover of any multipage document shall
9 designate all pages of the document as confidential, unless otherwise indicated by
10 the producing party.

11 3. Testimony taken at a deposition, conference, hearing or trial may be
12 designated as Confidential by making a statement to that effect on the record at the
13 deposition or other proceeding. Arrangements shall be made with the court reporter
14 taking and transcribing such proceeding to separately bind such portions of the
15 transcript containing information designated as Confidential, and to label such
16 portions appropriately. To the extent a party inadvertently or mistakenly fails to
17 identify any testimony as Confidential during the deposition, conference, hearing or
18 trial, it may do so within 30 days after receipt of the transcript of the deposition,
19 conference, hearing or trial, by providing written notice of such designation to the
20 parties and any other affected person.

21 4. Material designated as Confidential under this Order, the information
22 contained therein, and any summaries, copies, abstracts, or other documents derived
23 in whole or in part from material designated as confidential (hereinafter
24 “Confidential Material”) shall be used only for the purpose of the prosecution,
25 defense, or settlement of this action, and for no other purpose.

26 5. Confidential Material produced pursuant to this Order may be
27 disclosed or made available only to the Court, to counsel for a party (including the
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1 paralegal, clerical, and secretarial staff employed by such counsel), and to the
2 “qualified persons” designated below:
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- 4 (a) an officer, director or employee of a party deemed necessary by
5 counsel to aid in the prosecution, defense or settlement of this
6 action –
7 (a) experts or consultants (together with their clerical staff) retained
8 by such counsel to assist in the prosecution, defense, or
9 settlement of this action;
10 (b) court reporters employed in this action;
11 (c) a witness at any deposition or other proceeding in this action;
12 and
13 (d) any other person as to whom the parties in writing agree.

14 Prior to receiving any Confidential Material, each “qualified person” shall
15 be provided with a copy of this Order and shall execute a nondisclosure agreement
16 in the form of Attachment A, a copy of which shall be maintained by the counsel
17 disclosing the Confidential Material and provided to counsel for other parties upon
18 request.

19 6. Depositions involving the use of or seeking Confidential Material
20 shall be taken only in the presence of qualified persons.

21 7. The parties may further designate certain discovery material or
22 testimony of a highly confidential and/or proprietary nature as “CONFIDENTIAL—
23 ATTORNEY’S EYES ONLY” (hereinafter “Attorney’s Eyes Only Material”), by
24 applying that legend in the manner described in paragraphs 2 and 3 above as to the
25 application of the “CONFIDENTIAL” legend. Attorney’s Eyes Only Material, and
26 the information contained therein, shall be disclosed only to the Court, to counsel
27 for the parties (including the paralegal, clerical, and secretarial staff employed by
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1 such counsel), and to the “qualified persons” listed in subparagraphs 5(b) through
2 (e) above, but shall not be disclosed to a party, or to an officer, director or employee
3 of a party, unless otherwise agreed or ordered. If disclosure of Attorney’s Eyes
4 Only Material is made pursuant to this paragraph, all other provisions in this order
5 with respect to confidentiality shall also apply.

6 8. Nothing herein shall impose any restrictions on the use or disclosure
7 by a party of material lawfully obtained by such party independent of discovery in
8 this action, whether or not such material is also obtained through discovery in this
9 action, or from disclosing its own Confidential Material as it deems appropriate.

10 9. A party that wishes to file with the Court Confidential Material that
11 has been produced by another party to this action in support of any motion or for
12 any other purpose shall comply with the requirements of L.R. 79-5.

13 10. In the event that any Confidential Material is used in any court
14 proceeding in this action other than trial, it shall not lose its confidential status
15 through such use, and the party using such shall take all reasonable steps to maintain
16 its confidentiality during such use. The parties will meet-and-confer prior to trial to
17 address the use of Confidential Material at trial.

18 11. If any documents or information as to which a party maintains
19 CONFIDENTIAL or CONFIDENTIAL—ATTORNEY’S EYES ONLY protection
20 should apply are inadvertently produced or disclosed without such
21 “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEY’S EYES ONLY”
22 designation, the designating party may, as soon as practicable after discovering the
23 issue, so advise all parties of the inadvertent disclosure and request that the
24 information and documents be treated as CONFIDENTIAL or CONFIDENTIAL—
25 ATTORNEY’S EYES ONLY to the extent possible after such notification, by
26 producing again copies of the documents or information with the legend required by
27 paragraphs 2 and 7 hereof. In such event, the receiving party shall take reasonable
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1 steps to retrieve the subject information and documents from any person to which it
2 or they were disclosed, them to regard the information as CONFIDENTIAL or
3 CONFIDENTIAL—ATTORNEY’S EYES ONLY, and not disclose it or them to
4 any person to which it or they could not be disclosed if the designation had been
5 correctly applied at the time of production.

6 12. This Order shall be without prejudice to the right of the parties (i) to
7 bring before the Court at any time the question of whether any particular document
8 or information is confidential or whether its use should be restricted or (ii) to present
9 a motion to the Court under FRCP 26(c) for a separate protective order as to any
10 particular document or information including restrictions differing from those as
11 specified herein. This Order shall not be deemed to prejudice the parties in any way
12 in any future application for modification of this Order.

13 13. This Order is entered solely for the purpose of facilitating the
14 exchange of documents and information between the parties to this action without
15 involving the Court unnecessarily in the process. Nothing in this Order nor the
16 production of any information or document under the terms of this Order nor any
17 proceedings pursuant to this Order shall be deemed to have the effect of an
18 admission or waiver by any party or of altering the confidentiality or
19 nonconfidentiality of any such document or information or altering any existing
20 obligation of any party or the absence thereof.

21 14. This Order shall survive the final termination of this action, to the
22 extent that the information contained in Confidential Material is not or does not
23 become known to the public, and the Court shall retain jurisdiction to resolve any
24 dispute concerning the use of information disclosed hereunder. Upon termination of
25 this case, counsel for the parties shall assemble and return to each other all
26 documents, material and deposition transcripts designated as Confidential and all
27 copies of same, or shall certify the destruction thereof.

1 15. The parties agree that the plaintiff may be provided by its counsel
2 a summary document, or oral summary, setting forth: (1) the full identities of the
3 entities that sold the allegedly infringing products in the United States and (2)
4 revenues, gross profits numbers, units produced, fabric yields, and fabrication
5 compositions of the allegedly infringing products notwithstanding any party’s
6 designation of documents showing such information as CONFIDENTIAL—
7 ATTORNEY’S EYES ONLY. The parties agree that the defendants may be
8 provided by their counsel a summary document, or oral summary, setting forth: (1)
9 the full identities of the entities that sold plaintiff’s products in the United States,
10 and (2) revenues, gross profits numbers, units produced, fabric yields, and
11 fabrication compositions of plaintiff’s products notwithstanding any party’s
12 designation of documents showing such information as CONFIDENTIAL—
13 ATTORNEY’S EYES ONLY. The foregoing is not intended to be an
14 acknowledgment or admission by any party that any specific such information will
15 be produced or is discoverable

16 16. Manner of Designating Deposition Testimony.

17 16.1 Deposition transcripts and portions thereof taken in this action
18 may be designated as “CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’
19 EYES ONLY” during the deposition or after, in which case the portion of the
20 transcript containing Designated Material shall be identified in the transcript by the
21 Court Reporter as “CONFIDENTIAL,” or “CONFIDENTIAL – ATTORNEYS’
22 EYES ONLY.” The designated testimony shall be bound in a separate volume and
23 marked by the reporter accordingly.

24 16.2 Where testimony is designated during the deposition, the
25 designating party shall have the right to exclude, at those portions of the deposition,
26 all persons not authorized by the terms of this Protective Order to receive such
27 Confidential Material.
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1 17. Objections.

2 17.1 A party may challenge any designation under this Protective
3 Order at any time, on the grounds that the information or material does not meet the
4 standards of Sections 1 and 2, by following the procedure of Local Rule 37 of this
5 Court.

6 17.2 The parties shall meet and confer in good faith prior to the
7 filing of any motion under this section.

8 18. The parties understand that this Protective Order does not extend to
9 material presented at the trial of this Action. Once the case proceeds to trial, any
10 information that is presented on the record during trial, whether or not designated as
11 confidential and/or kept and maintained pursuant to the terms of this Protective
12 Order, will be presumptively available to all members of the public, including the
13 press, unless good cause is shown to the district judge in advance of the presentation
14 of that material at trial to proceed otherwise. However, any documents or things
15 that have been designated as confidential do not lose their protected character
16 simply by virtue of having been presented as an exhibit at trial. The parties will
17 meet-and-confer prior to trial regarding the protection of Confidential Material a
18 party proposes to use at trial.

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20 SO STIPULATED.

21
22 DATED: May 26, 2015

Douglas Lipstone
Robert Tauler
WEINBERG GONSER LLP

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24
25
26 By /s/ Robert Tauler
Douglas Lipstone
Attorneys for Defendants E & E CO.,
27 LTD. (individually and as erroneously
28 sued as "JLA HOME, INC."), BED
BATH & BEYOND, INC., BELK,

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INC., THE BON-TON STORES, INC.,
AMAZON, INC.,
OVERSTOCK.COM, INC., HSN,
INC., DESIGNER LIVING, INC.,
THE YANKEE RETAIL COMPANY,
LLC

DATED: May 26, 2015

Stephen M. Doniger
Scott A. Burroughs
Trevor W. Barrett
DONIGER/BURROUGHS

By /s/ Trevor W. Barrett

Attorneys for Plaintiff

APPROVED AND SO ORDERED

DATED: June 1, 2015

/s/
United States Magistrate Judge

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Attachment A
NONDISCLOSURE AGREEMENT

I, _____ do solemnly swear that I am fully familiar with the terms of the Stipulated Protective Order entered on _____, in the United States District Court for the Central District of California, Civil Action No. _____, and hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further Order of this Court. I hereby consent to the jurisdiction of said Court for purposes of enforcing that Order and this agreement.

DATED: __, 2015
