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17 **UNITED STATES DISTRICT COURT**
 18 **CENTRAL DISTRICT OF CALIFORNIA**
 19 **WESTERN DIVISION**

21 FOREVER 21, INC., a Delaware
 Corporation,
 22 Plaintiff,
 23 v.
 24 IN & OUT FASHION, INC., a California
 Corporation; and DOES 1-10, inclusive,
 25 Defendants.
 26

Case No.: 2:14-cv-07014-CAS-MRW

[DISCOVERY MATTER]

**STIPULATION FOR
 ENTRY OF ~~[PROPOSED]~~
 PROTECTIVE ORDER**

Honorable Michael R. Wilner

27
 28 ///

1 The parties have stipulated to a Protective Order as follows:

2 **A. LIMITED SCOPE OF ORDER**

3 1. In the above-captioned action (the “Action”), Plaintiff Forever 21, Inc.
4 and Defendant In & Out Fashion, Inc. (“Defendant”) anticipate the exchange of
5 confidential and highly confidential information regarding garments that are the
6 subject of this Action. The parties have stipulated to the entry of this protective
7 order (the “Order”) governing the exchange and use of confidential and highly
8 confidential documents and information in discovery. This Order does not govern
9 or restrict the use of any document or information (including information
10 designated as “Confidential” or “Highly Confidential” under this Order) at trial in
11 any manner whatsoever. When and if the case proceeds to trial, all of the
12 documents and information to be used at trial will be presumptively available to all
13 members of the public, including the press, unless good cause is shown to the
14 district judge in advance of the trial.

15 2. Further, this Order does not affect the burden of proof that must be
16 met by a party seeking to protect confidential documents or information that is
17 filed in the court records in this case. A party seeking to protect information to be
18 filed in the public records must prove that the documents or information meets the
19 standards set forth in *Pintos v. Pacific Creditors Association*, 605 F.3d 665 (9th Cir.
20 2009), and other relevant authority. In meeting that burden, a party may not rely on
21 its own designation of material as “Confidential” or “Highly Confidential” under
22 this Order.

23 3. Nothing in this order shall impose any restrictions on the use or
24 disclosure by a party of material obtained by such party independent of discovery
25 in this action, whether or not such material is also obtained through discovery in
26 this action, or from the use or disclosure of information that is publicly known.
27 Further, nothing in this Order restricts the ability of any party to use or disclose its
28 own confidential material as it deems appropriate.

STIPULATION FOR ENTRY OF [PROPOSED] PROTECTIVE ORDER

1 **B. GOOD CAUSE STATEMENT**

2 4. Because this case concerns, among other things, orders for garments,
3 Plaintiff and Defendant may be required to exchange competitively sensitive
4 information about each of their respective business activities to which the parties
5 and third parties would not otherwise have access. Allowing the parties or third
6 parties to use such competitively sensitive information would cause harm to the
7 competitive position of the disclosing party. The parties seek the entry of this
8 order to prevent the unauthorized use or dissemination of confidential information
9 produced in discovery during this Action.

10 5. No document, information or thing shall be designated “Confidential”
11 or “Highly Confidential” unless good cause exists for such designation under the
12 standards set forth in *Pintos v. Pacific Creditors Association*, 605 F.3d 665 (9th Cir.
13 2009) and other relevant authority. Good cause exists for the designation of
14 information as “Highly Confidential” when the information has not been made
15 public and falls into one of the following categories:

16 (a) confidential future business, planning, allocating, marketing or
17 sales plans, including specific business plans, strategies and projections, future
18 marketing plans and strategies, future sales plans and strategies, forward-looking
19 pricing strategies; the development of new brand and product line concepts,
20 extensions of existing product lines, and other similar forward-looking information
21 that is kept confidential by the party.

22 (b) specific financial information at a level of detail beyond that
23 disclosed in sources available to the public.

24 (c) results of research, studies or other analyses that the parties
25 expended money to develop or obtain and that would be useful to current or
26 potential competitors. This category includes, among other things, consumer
27 research studies that the parties commissioned at considerable expense from third
28 parties, complex market analyses provided by third parties under contracts with

1 non-disclosure clauses, and analyses of other competitors in the market.

2 (d) terms of contracts with the parties' vendors, suppliers or
3 customers that could be used by current or potential competitors in their own
4 negotiations with suppliers or customers.

5 (e) specific proprietary purchasing and pricing formulas or
6 proprietary manufacturing, styling, or garment modification specifications.

7 (f) brand and product line concepts in development that have not
8 been launched into the market.

9 6. Good cause exists for the designation of information as "Confidential"
10 when the information has not been revealed to the public and the information falls
11 into one of the following categories:

12 (a) the information is contained in a document or is presented in a
13 form that, when analyzed in conjunction with other information produced in the
14 Action, would reveal information in categories set forth in paragraph 5(a) to (e)
15 above;

16 (b) private information about any party, officer, employee or other
17 individual;

18 (c) commercially sensitive information regarding the development,
19 production, marketing, branding, sales or promotion of the parties' products or
20 finances, the disclosure of which would have the effect of causing harm to the
21 competitive position of the person or entity from which the information is
22 obtained.

23 7. The parties shall use reasonable efforts to minimize the amount of
24 material designated as "Confidential" or "Highly Confidential".

25 8. This Order applies to such "Confidential" and "Highly Confidential"
26 information furnished in this litigation regardless of the form in which it is
27 transmitted and regardless whether the information is furnished by a party or third
28 party. Such information may be contained in documents, written discovery

1 responses, declarations, deposition testimony, exhibits, and other materials or
2 testimony provided by any party or third party during this Action. Such materials
3 are collectively referred to as “Discovery Materials” in this Order.

4 **C. PROCEDURE FOR DESIGNATION**

5 9. “Designating Party” may designate Discovery Materials
6 “Confidential” or “Highly Confidential” meeting the standards set forth in
7 paragraphs 6 and 7 by taking the following actions:

8 (a) With respect to documents, discovery responses or other written
9 materials furnished by the Designating Party in paper, as .pdf images, or in any
10 other form in which it is possible to add a legend to each page, the Designating
11 Party may designate the material “Confidential” by stamping, inscribing or
12 otherwise marking or designating on each page of a document containing
13 Confidential Information the words “**CONFIDENTIAL, SUBJECT TO**
14 **PROTECTIVE ORDER.**” The Designating Party may designate the material
15 “Highly Confidential” by marking each page of the document with the words
16 “**HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY, SUBJECT TO**
17 **PROTECTIVE ORDER.**” Electronic documents produced as .pdf images shall
18 be marked in accordance with this paragraph 9(a).

19 (b) With respect to “Confidential” or “Highly Confidential
20 Information” furnished by the Designating Party in a non-paper medium,
21 including, without limitation, video or audio tape, computer discs, CD-ROMs, and
22 DVDs, etc., the Designating Party may designate all information therein as
23 “Confidential” or “Highly Confidential” by affixing the appropriate legend to the
24 outside of the medium or container.

25 10. With respect to deposition testimony or other oral testimony to be
26 recorded in a written transcript, the Designating Party may designate information
27 as “Confidential” or “Highly Confidential” by making a statement on the record to
28 that effect during the deposition or proceeding at issue. The court reporter shall

1 separately bind the designated portion of the deposition transcript and all
2 designated exhibits. The separately bound deposition material shall be marked in
3 accordance with its designation, as either “CONFIDENTIAL, SUBJECT TO A
4 PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
5 ONLY, SUBJECT TO A PROTECTIVE ORDER.” Alternatively, the Designating
6 Party may, within a reasonable time not to exceed twenty-one (21) days, after the
7 deposition transcript is delivered to the Designating Party, provide to all counsel
8 written notice identifying the specific portion (by page and line numbers) that the
9 Designating Party seeks to protect, and all parties to the litigation will mark the
10 pages with the appropriate legends.

11 **D. USE AND DISCLOSURE OF DESIGNATED MATERIAL**

12 11. Discovery Materials, whether designated “Confidential” or “Highly
13 Confidential” shall be used only for prosecuting or defending this Action, except
14 that a party may use its own “Confidential” or “Highly Confidential Information”
15 for whatever purposes it chooses. A party using, disseminating or distributing
16 “Confidential” or “Highly Confidential Information” for any purpose other than for
17 use in connection with this Action may be subject to sanctions (including, without
18 limitation, monetary, evidentiary or terminating sanctions, in the Court’s
19 discretion), as well as being potentially subject to any disciplinary or other
20 applicable legal proceedings.

21 12. Information and materials designated “**CONFIDENTIAL,**
22 **SUBJECT TO A PROTECTIVE ORDER**” may only be disclosed to the
23 following individuals:

24 (a) The recipient party and officers, directors and/or employees of
25 the recipient party who have direct responsibility for assisting such counsel in the
26 preparation and trial of the action;

27 (b) Counsel representing the parties in the Action, and paralegal
28 and clerical staff (whether employees or independent contractors) who are assisting

1 in this litigation;

2 (c) Court staff, court reporters and videographers involved in this
3 litigation;

4 (d) Independent consultants or experts retained by any party in this
5 case who are expected to testify at trial or employed by counsel in order to assist in
6 preparation for trial or for deposition, so long as they sign a statement agreeing to
7 abide by the terms of this Order, in the form set forth in **Exhibit A**;

8 (e) Third-party witnesses during the course of their depositions and
9 at trial provided that the third party or witness previously created, generated or
10 received the Discovery Material. Unless the third party or witness previously
11 created, generated or received the Discovery Material, a third-party witness shall
12 not be shown the Discovery Material unless or until the witness signs a statement
13 agreeing to abide by the terms of this order, in the form set forth in **Exhibit A**.

14 13. Information and materials designated “**HIGHLY CONFIDENTIAL-**
15 **ATTORNEYS’ EYES ONLY, SUBJECT TO A PROTECTIVE ORDER**” may
16 only be disclosed to:

17 (a) Counsel representing the parties in the Action, and paralegal
18 and clerical staff (whether employees or independent contractors) who are assisting
19 in this litigation;

20 (b) Paralegal or clerical staff employed directly by the parties who
21 provide support to the litigation counsel described in subparagraph (a), so long as
22 the staff member has not, does not, and does not anticipate having any role
23 whatsoever in supporting or assisting any person with any involvement whatsoever
24 in the parties’ business decision making, including but not limited to decisions
25 regarding contracts, marketing, employment, pricing, product development,
26 competition or other business decisions;

27 (c) Court staff, court reporters and videographers involved in this
28 litigation;

1 (d) Independent consultants or experts retained by any party in this
2 case who are expected to testify at trial or employed by counsel in order to assist in
3 preparation for trial or for deposition, so long as they sign a statement agreeing to
4 abide by the terms of this order, in the form set forth in **Exhibit A**. “Highly
5 Confidential” information shall not be shared with an expert or consultant retained
6 by the non-designating party who has provided, is providing, or is expected to
7 provide any services to any business unit of the retaining party other than for
8 purposes of the litigation, unless one of the three conditions set forth in
9 subparagraph (e) is met.

10 (e) Party or third-party witnesses during the course of their
11 depositions and otherwise provided that the third party or witness previously
12 created, generated or received the Discovery Material before the Action
13 commenced. Unless the third party or witness previously created, generated or
14 received the Discovery Material, a third-party witness shall not be shown the
15 Discovery Material unless or until the witness signs a statement agreeing to abide
16 by the terms of this order, in the form set forth in **Exhibit A**.

17 14. No person or entity receiving “Confidential” information shall
18 discuss, disseminate, or disclose the “Confidential” information to any person or
19 entity not listed above in paragraph 12. No person or entity receiving “Highly
20 Confidential” information shall discuss, disseminate, or disclose the “Highly
21 Confidential” information to any person or entity not listed above in paragraph 13.
22 Any person or entity receiving “Confidential” or “Highly Confidential”
23 information shall take measures available to him or her to ensure that no
24 unauthorized person or entity is able to obtain access to the “Confidential” or
25 “Highly Confidential” information. The provisions of this paragraph, however, do
26 not apply to the Court or to Court personnel.

27 15. Nothing in this Order affects or limits the Designating Party’s use of
28 its own “Confidential” or “Highly Confidential” information or “Confidential” or

1 “Highly Confidential” information it has created, lawfully possessed or
2 independently generated or discovered, regardless of whether the information is
3 thereafter designated as “**CONFIDENTIAL, SUBJECT TO A PROTECTIVE**
4 **ORDER**” or “**HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY,**
5 **SUBJECT TO A PROTECTIVE ORDER.**”

6 **E. FILING OF DESIGNATED MATERIAL IN PRE-TRIAL**
7 **PROCEEDINGS**

8 16. The parties must comply with Local Rule 79-5 for filing
9 “Confidential” or “Highly Confidential” information with the Court in any pre-trial
10 proceeding in this action. Such filings must be in accordance with the standards
11 set forth in *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178-81
12 (9th Cir. 2006). If a party files or seeks to file with the Court material that another
13 party has designated “Confidential” or “Highly Confidential” under this Order, the
14 filing party shall simultaneously file an application to seal the records pursuant to
15 Local Rule 79-5, Local Rule 37, and any other applicable rules and orders, that
16 references this Order and that specifically sets forth the terms of this paragraph. In
17 doing so, the filing party shall only seek to file under seal the portion of such
18 material that is “Confidential” or “Highly Confidential.” An application which
19 seeks to file materials under seal in proceedings before the district judge will be
20 made to the district judge.

21 17. Within five business days after service of the application to seal (or
22 within such other time as may be ordered by the Court), the Designating Party
23 must either: (a) inform the recipient party that it does not object to the filing of the
24 information in the public record, at which point the filing party must withdraw the
25 application; or (b) file papers in support of the application setting forth the factual
26 and legal basis for the request to seal the records. The Designating Party bears the
27 burden of proving that the materials meet the standards for sealing the records as
28 set forth in *Pintos v. Pacific Creditors Association*, 605 F.3d 665 (9th Cir. 2009)

1 and other relevant authority. In meeting that burden, a party may not rely on its
2 own designation of material as “Confidential” or “Highly Confidential” under this
3 Order.

4 **F. CHALLENGES TO DESIGNATION**

5 18. A party may challenge the designation of any material as
6 “Confidential” or “Highly Confidential” under this Order under the procedures set
7 forth in Local Rules 37-1 through 37-4. If the parties are unable to resolve the
8 issue informally pursuant to 37-1, the challenging party may move for an order
9 granting access to the information under less burdensome conditions pursuant to
10 the procedures set forth in Local Rule 37-2 through 37-4. In making or opposing
11 any motion relating to the designation of confidential information, the party
12 seeking to maintain a document as confidential shall bear the burden of showing
13 specific prejudice or harm will result if a protective order is not granted.

14 19. This Order is without waiver of or prejudice to, and specifically
15 reserves the rights and remedies of any party to apply in writing to the Court for a
16 determination, for good cause shown, that: (a) persons not provided for in this
17 Order may or may not receive “Confidential” or “Highly Confidential”
18 information; or (b) this Order be modified or vacated. Any application for relief
19 pursuant to this section shall be made only after reasonable efforts to meet and
20 confer in good faith have been unsuccessful, and must comply with Local Rules
21 37-1 to 37-4 or other applicable rule.

22 **G. SUBPOENA IN ANOTHER ACTION**

23 20. In the event any person, party or entity having possession, custody or
24 control of any “Confidential” or “Highly Confidential” information receives a
25 subpoena or other process or order to produce the “Confidential” or “Highly
26 Confidential” information, that person or party shall promptly, within ten (10)
27 business days:

28 (a) notify, in writing, the attorneys of record of the Designating

1 Party;

2 (b) notify, in writing, the attorneys of record, or other
3 representatives if there is no attorney of record, of all parties to the litigation,

4 (c) furnish all persons notified pursuant to subsections a and b,
5 above, a copy of the subpoena or other process or order; and

6 (d) provide reasonable cooperation with respect to all procedures
7 set forth in the Order for the protection of the “Confidential” or “Highly
8 Confidential” information.

9 21. If after receiving the notification set forth in paragraph 20 the
10 Designating Party desires to prevent or limit the requested production of
11 “Confidential” or “Highly Confidential” information, it will be the responsibility of
12 the Designating Party to move to quash or modify the subpoena, or otherwise
13 resolve the issue with the subpoenaing party.

14 22. A third party who has an interest in maintaining the confidentiality of
15 “Confidential” or “Highly Confidential” information, upon learning that a person,
16 party or entity having custody or control of “Confidential” or “Highly
17 Confidential” information has received a subpoena or other process or order to
18 produce the information, will have the right to object, move to quash, modify the
19 subpoena, or otherwise resolve the issue with the subpoenaing party.

20 **H. TERM OF ORDER**

21 23. This Order does not govern or restrict the use of any document or
22 information (including information designated as “Confidential” or “Highly
23 Confidential” under this order) at trial in any manner whatsoever. When and if the
24 Action proceeds to trial, all of the documents and information to be used at trial
25 will be presumptively available to all members of the public, including the press,
26 unless good cause is shown to the district judge in advance of the trial.

27 24. If the action is concluded before trial is commenced, the Order shall
28 remain in full force and effect after such conclusion and the Court shall retain

1 jurisdiction to enforce its terms. In such a case, all materials, including copies,
2 containing information designated as Confidential or Highly Confidential
3 Information shall be returned to the Designating Party, or shall be disposed of in a
4 manner assuring its confidential destruction, within the following time period:
5 Within thirty (30) days or fourteen (14) days following written demand by the
6 Designating Party, whichever is later, after final termination of this Action either
7 by consensual dismissal with prejudice, after final appellate review has been
8 obtained, or after the time for appeal has lapsed without the filing of an appeal by
9 any of the parties. Each party shall provide to the Designating Party a declaration
10 certifying compliance with this paragraph.

11 25. If the action is concluded prior to the commencement of trial,
12 regardless of any other provision of this Order, one copy of all pleadings filed in
13 the Action containing “Confidential” and/or “Highly Confidential” material or
14 information may be retained by counsel of record for each party, and shall be
15 sealed, designated and stored as **“Confidential or Highly Confidential**
16 **Information Pursuant to Court Order”** and shall remain subject to the terms of
17 this Order.

18 26. The designation of any information, documents, or things as
19 “Confidential” or “Highly Confidential” information pursuant to this Order shall
20 not, in and of itself, raise any inference as to the confidentiality of any information,
21 documents, exhibits, or things marked for identification purposes or introduced
22 into evidence at the trial of this litigation. Nothing in this Order shall preclude any
23 party from seeking confidential treatment from the Court with respect to such
24 information, documents, exhibits, or things or from raising any available
25 objections, including without limitation objections concerning admissibility,
26 materiality, and privilege. The parties to this Order expressly reserve their rights to
27 object to the manner in which “Confidential” or “Highly Confidential” information
28 may be used in an evidentiary hearing or at trial. Special procedures or in camera

1 treatment, if any, shall be determined in the future, in compliance with any
2 applicable rules and orders.

3 **I. NO WAIVER**

4 27. The disclosure of “Confidential” or “Highly Confidential”
5 information pursuant to discovery or the procedures set forth in this Order shall not
6 constitute a waiver of any trade secret or any intellectual property, proprietary,
7 privacy or other rights to or in such information.

8 28. The inadvertent disclosure of information protected by the attorney-
9 client, work product, or other applicable privilege or protection in this Action shall
10 not constitute a waiver of any valid claim of privilege. Further, failure to assert a
11 privilege in this Action as to one document or communication shall not be deemed
12 to constitute a waiver of the privilege as to any other document or communication
13 allegedly so protected, even involving the same subject matter, unless the
14 Designating Party seeks to use or rely upon the privileged material in this Action.

15 29. A party that discovers that it has inadvertently produced privileged
16 information shall promptly request its return. A party that knows it has
17 inadvertently received privileged materials from a Designating Party must
18 immediately notify opposing counsel by telephone and email. Regardless of
19 whether the disclosure of privileged information is discovered by the Designating
20 Party or the receiving party, it is agreed that the person who discovers the
21 potentially privileged information will not share the document or its contents with
22 other persons, and that the party that has in its possession any inadvertently
23 produced privileged information shall comply with the requirements identified in
24 Federal Rule of Civil Procedure 26(b)(5)(B).

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Dated: June 25, 2015

JOHNSON & PHAM, LLP

By: /s/ Marcus F. Chaney

Marcus F. Chaney
Attorneys for Plaintiff
FOREVER 21, INC.

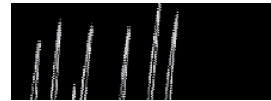
Dated: June 25, 2015

TINGLEY LAW GROUP, PC

By: /s/ Stephen D. Collins

Stephen D. Collins
Attorneys for Defendant
IN & OUT FASHION, INC.

FOR GOOD CAUSE SHOWN,
IT IS SO ORDERED.



Dated: June 30, 2015

Michael R. Wilner
UNITED STATES MAGISTRATE JUDGE

1 **PROTECTIVE ORDER EXHIBIT A**

2 My name is _____

3 I work for _____

4 My business contact information is: _____

5 _____.

6 I have read the attached Stipulated Protective Order (“Order”) entered by the
7 Court in the matter of *Forever 21, Inc. v. In & Out Fashion, Inc.*, United States
8 District Court, Central District of California, Case No. 2:14-cv-07014-CAS-MRW.

9 I understand the responsibilities and obligations the Order imposes on me
10 regarding “**Confidential**” or “**Highly Confidential**” information I obtain in this
11 action.

12 I agree to be bound by all of the provisions of the Order.

13 I certify that (strike the inaccurate sections of this clause, if any):

14 I did not receive any “Confidential” or “Highly Confidential” information
15 before signing this **Exhibit A**;

16 I meet all requirements for receipt of information and other material
17 designated as “Confidential” or “Highly Confidential” information, pursuant to the
18 Order;

19 I am not directly employed by any party to this action;

20 I am not under contract with any party to this action for any purpose other
21 than this action.

22 I have received a copy of the Order, including an executed copy of this
23 **Exhibit A**, for my personal use and reference.

24 I understand that the Court in this matter has the power to enforce the Order,
25 including but not limited to imposing penalties and/or sanctions on anyone who
26 violates the Order.

27 I agree to submit to the jurisdiction of the United States District Court,
28 Central District of California in matters relating to this Order.

Signature: _____

Date: _____

Print Name: _____