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9
 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 DESIRE, LLC, d/b/a RUNWAY
 13 TEXTILE, a California Limited Liability
 Company,
 14
 15 Plaintiff,
 16
 v.
 17
 18 CHARLOTTE RUSSE, INC., *et al.*,
 19
 20 Defendants.

Case No.: 2:14-CV-07124-DSF-E
Referred to Hon. Charles F. Eick
[DISCOVERY MATTER]

~~(PROPOSED)~~ **PROTECTIVE
 ORDER**

21 1. PURPOSES AND LIMITATIONS

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

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

8
9 2. DEFINITIONS

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

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

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

20 2.4 "Attorneys' Eyes Only": Discovery Material or such portion of
21 such material as consists of:

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

1 b) any business or financial information that is confidential,
2 proprietary, or commercially sensitive to third parties who have had business dealings
3 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 a
6 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
17 matter pertinent to the litigation who has been retained by a Party or its counsel to
18 serve as 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) adverse
24 to the Party engaging the expert witness or consultant. Moreover, the expert witness
25 or consultant may not be a current employee or anticipated to become an employee of
26 any entity who is a competitor of the Party adverse to the Party engaging the expert
27 witness or consultant.

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 in
11 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
20 Protection. Each Party or non-party that designates information or items for
21 protection under this Order must take care to limit any such designation to specific
22 material that qualifies under the appropriate standards. A Designating Party must take
23 care to designate for protection only those parts of material, documents, items, or oral
24 or 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.

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

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

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

14 Designation in conformity with this Order requires:

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

19 A Party or non-party that makes originals or copies of documents
20 or materials available for inspection need not designate them for protection until after
21 the inspecting Party has indicated which material it intends to copy. During the
22 inspection and before the designation, all of the material made available for
23 inspection shall be deemed "ATTORNEYS' EYES ONLY." After the inspecting
24 Party has identified the documents it wants copied and produced, the Producing Party
25 must designate, either in writing or on the record (at a deposition), which documents,
26 or portions thereof, qualify for protection under this Order. Then the Receiving Party
27 must affix the "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" legend at the

1 top of each copied page that contains Protected Material. If only a portion or portions
2 of the material on a page qualifies for protection, the Producing Party also must
3 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
4 margins) and must specify, for each portion, the level of protection being asserted
5 (either "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY").

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

20 Transcript pages containing Protected Material must be separately
21 bound by the court reporter, who must affix to the top of each such page the legend
22 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY," as instructed by the Party or
23 non-party offering or sponsoring the witness or presenting the testimony.

24 (c) for information produced in some form other than
25 documentary, and for any other tangible items, that the Producing Party affix in a
26 prominent place on the exterior of the container or containers in which the
27 information or item is stored the legend "CONFIDENTIAL" or "ATTORNEYS'

1 EYES ONLY.” If only portions of the information or item warrant protection, the
2 Producing Party, to the extent practicable, shall identify the protected portions,
3 specifying whether they qualify as “CONFIDENTIAL” or as “ATTORNEYS’ EYES
4 ONLY.”

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

13

14 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

21 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
22 Designating Party’s confidentiality designation must do so in good faith and must
23 begin the process by conferring with counsel for the Designating Party in writing. In
24 conferring, the challenging Party must explain the basis for its belief that the
25 confidentiality designation was not proper and must give the Designating Party an
26 opportunity to review the designated material, to reconsider the circumstances, and, if
27 no change in designation is offered, to explain the basis for the chosen designation. A

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1 challenging Party may proceed to the next stage of the challenge process only if it has
2 engaged in this meet-and-confer process first.

3 6.3 Court Intervention. A Party that elects to press a challenge to a
4 confidentiality designation after considering the justification offered by the
5 Designating Party may file and serve a motion that identifies the challenged material
6 and sets forth in detail the basis for the challenge. Each such motion must be
7 accompanied by a competent declaration that affirms that the movant has complied
8 with the meet-and-confer requirements imposed in the preceding paragraph and that
9 sets forth with specificity the justification for the confidentiality designation that was
10 given by the Designating Party in the meet-and-confer dialogue. The parties agree
11 that a confidentiality designation shall not create a presumption in favor of such
12 confidentiality designation, and that the Court shall decide the issue as such.

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

16
17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material
19 that is disclosed or produced by another Party or by a non-party in connection with
20 this case only for prosecuting, defending, or attempting to settle this litigation. Such
21 Protected Material may be disclosed only to the categories of persons and under the
22 conditions described in this Order. When the litigation has been terminated, a
23 Receiving Party must comply with the provisions of section 11, below (FINAL
24 DISPOSITION).

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

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the Court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated
4 “CONFIDENTIAL” only to:

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

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

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

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

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

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

21 (g) during their depositions, witnesses in the action to whom
22 disclosure is reasonably necessary and who have signed the “Acknowledgment and
23 Agreement to Be Bound” (Exhibit A). Pages of transcribed deposition testimony or
24 exhibits to depositions that reveal Protected Material must be separately bound by the
25 court reporter and may not be disclosed to anyone except as permitted under this
26 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
4 Items. Unless otherwise ordered by the Court or permitted in writing by the
5 Designating Party, a Receiving Party may disclose any information or item
6 designated "ATTORNEYS' EYES ONLY" only to:

7 (a) the Receiving Party's outside counsel, as well as employees
8 of said outside counsel to whom it is reasonably necessary to disclose the information
9 for 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
15 whom 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 7.4 Nothing in this Order shall be read to prohibit the use of otherwise
20 Protected Material to prosecute claims against additional potential defendants
21 identified in said materials.

22
23 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
24 PRODUCED IN OTHER LITIGATION

25 If a Receiving Party is served with a subpoena or an order issued in other
26 litigation that would compel disclosure of any Discovery Material, the Receiving
27 Party must so notify the Designating Party, in writing immediately and in no event

1 more than five business days after receiving the subpoena or order. Such notification
2 must include a copy of the subpoena or court order. The Receiving Party also must
3 immediately inform in writing the Party who caused the subpoena or order to issue in
4 the other litigation that some or all of the material covered by the subpoena or order is
5 the subject of this Protective Order. In addition, the Receiving Party must deliver a
6 copy of this Stipulated Protective Order promptly to the Party in the other action that
7 caused the subpoena or order to issue.

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

15
16 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

25
26 10. FILING PROTECTED MATERIAL

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

5
6 11. FINAL DISPOSITION

7 Unless otherwise ordered or agreed to in writing by the Producing Party, within
8 60 days after the final termination of this action, each Receiving Party must either
9 return all Protected Material to the Producing Party or certify the destruction of said
10 material. As used in this subdivision, "all Protected Material" includes all copies,
11 abstracts, compilations, summaries or any other form of reproducing or capturing any
12 of the Protected Material. Whether the Protected Material is returned or destroyed, the
13 Receiving Party must submit a written certification to the Producing Party (and, if not
14 the same person or entity, to the Designating Party) by the 60-day deadline that
15 identifies (by category, where appropriate) all the Protected Material that was
16 returned or destroyed and that affirms that the Receiving Party has not retained any
17 copies, abstracts, compilations, summaries or other forms of reproducing or capturing
18 any of the Protected Material.

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

24
25 12. MISCELLANEOUS

26 12.1 Right to Further Relief. Nothing in this Order abridges the right
27 of any person to seek its modification in the future.

1 12.2 Right to Assert Other Objections. By stipulating to the entry of
2 this Protective Order no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in this
4 Stipulated Protective Order. Similarly, no Party waives any right to object on any
5 ground to use in evidence of any of the material covered by this Protective Order.

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

18
19 IT IS SO ORDERED.

20
21 Date: April 7, 2015



HON. CHARLES F. EICK
MAGISTRATE JUDGE
U.S. DISTRICT COURT

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1 I, _____ [print full
 2 name], of _____ [print full
 3 address], declare under penalty of perjury that I have read in its entirety and
 4 understand the Stipulated Protective Order that was issued by the United States
 5 District Court for the Central District of California in the case of *Desire LLC v.*
 6 *Charlotte Russe, Inc., et al.*, Case No. CV14-07124-DSF-E. I agree to comply with
 7 and to be bound by all of the terms of this Stipulated Protective Order and I
 8 understand and acknowledge that failure to so comply could expose me to sanctions
 9 and punishment in the nature of contempt. I solemnly promise that I will not disclose
 10 in any manner any information or item that is subject to this Stipulated Protective
 11 Order to any person or entity except in strict compliance with the provisions of this
 12 Order.
 13
 14

15 I further agree to submit to the jurisdiction of the United States District Court
 16 for 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
 20 name] of _____ [print full
 21 address and telephone number] as my California agent for service of process in
 22 connection with this action or any proceedings related to enforcement of this
 23 Stipulated Protective Order.

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____