

United States District Court
Northern District of California

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NOTE: CHANGES MADE BY THE COURT

*Counsel for Plaintiff and all
others similarly situated*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LINDA RUBENSTEIN, on behalf of
herself and all others similarly situated,

Case No. 2:14-CV-07155-SJO-JPR

Plaintiffs,

PROTECTIVE ORDER

v.

THE NEIMAN MARCUS GROUP
LLC, a Delaware Limited Liability
Company, and DOES 1-50, inclusive,

Defendants.

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file

1 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
2 that must be followed and the standards that will be applied when a party seeks
3 permission from the court to file material under seal.

4 2. DEFINITIONS

5 2.1 Challenging Party: a Party or Non-Party that challenges the designation
6 of information or items under this Order.

7 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
8 how it is generated, stored or maintained) or tangible things that qualify for protection
9 under Federal Rule of Civil Procedure 26(c).

10 2.3 Counsel (without qualifier): Outside Counsel of Record and House
11 Counsel (as well as their support staff).

12 2.4 Designating Party: a Party or Non-Party that designates information or
13 items that it produces in disclosures or in responses to discovery as
14 “CONFIDENTIAL.”

15 2.5 Disclosure or Discovery Material: all items or information, regardless of
16 the medium or manner in which it is generated, stored, or maintained (including,
17 among other things, testimony, transcripts, and tangible things), that are produced or
18 generated in disclosures or responses to discovery in this matter.

19 2.6 Expert: a person with specialized knowledge or experience in a matter
20 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
21 expert witness or as a consultant in this action.

22 2.7 House Counsel: attorneys who are employees of a party to this action.
23 House Counsel does not include Outside Counsel of Record or any other outside
24 counsel.

25 2.8 Non-Party: any natural person, partnership, corporation, association, or
26 other legal entity not named as a Party to this action.

27 2.9 Outside Counsel of Record: attorneys who are not employees of a party
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1 to this action but are retained to represent or advise a party to this action and have
2 appeared in this action on behalf of that party or are affiliated with a law firm which
3 has appeared on behalf of that party.

4 2.10 Party: any party to this action, including all of its officers, directors,
5 employees, consultants, retained experts, and Outside Counsel of Record (and their
6 support staffs).

7 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
8 Discovery Material in this action.

9 2.12 Professional Vendors: persons or entities that provide litigation support
10 services (e.g., photocopying, videotaping, translating, preparing exhibits or
11 demonstrations, and organizing, storing, or retrieving data in any form or medium)
12 and their employees and subcontractors.

13 2.13 Protected Material: any Disclosure or Discovery Material that is
14 designated as “CONFIDENTIAL.”

15 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
16 from a Producing Party.

17 3. SCOPE

18 The protections conferred by this Stipulation and Order cover not only
19 Protected Material (as defined above), but also (1) any information copied or extracted
20 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
21 Protected Material; and (3) any testimony, conversations, or presentations by Parties
22 or their Counsel that might reveal Protected Material. However, the protections
23 conferred by this Stipulation and Order do not cover the following information: (a)
24 any information that is in the public domain at the time of disclosure to a Receiving
25 Party or becomes part of the public domain after its disclosure to a Receiving Party as
26 a result of publication not involving a violation of this Order, including becoming part
27 of the public record through trial or otherwise; and (b) any information known to the
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1 Receiving Party prior to the disclosure or obtained by the Receiving Party after the
2 disclosure from a source who obtained the information lawfully and under no
3 obligation of confidentiality to the Designating Party. Any use of Protected Material at
4 trial shall be governed by a separate agreement or order.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations
7 imposed by this Order shall remain in effect until a Designating Party agrees
8 otherwise in writing or a court order otherwise directs. Final disposition shall be
9 deemed to be the later of (1) dismissal of all claims and defenses in this action, with or
10 without prejudice; and (2) final judgment herein after the completion and exhaustion
11 of all appeals, rehearings, remands, trials, or reviews of this action, including the time
12 limits for filing any motions or applications for extension of time pursuant to
13 applicable law.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for Protection.

16 Each Party or Non-Party that designates information or items for protection under this
17 Order must take care to limit any such designation to specific material that qualifies
18 under the appropriate standards. The Designating Party must designate for protection
19 only those parts of material, documents, items, or oral or written communications that
20 qualify – so that other portions of the material, documents, items, or communications
21 for which protection is not warranted are not swept unjustifiably within the ambit of
22 this Order.

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

1 If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection, that Designating Party must
3 promptly notify all other Parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in
5 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
6 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
7 under this Order must be clearly so designated before the material is disclosed or
8 produced.

9 Designation in conformity with this Order requires:

10 (a) for information in documentary form (e.g., paper or electronic
11 documents, but excluding transcripts of depositions or other pretrial or trial
12 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each
13 page that contains protected material. If only a portion or portions of the material on a
14 page qualifies for protection, the Producing Party also must clearly identify the
15 protected portion(s) (e.g., by making appropriate markings in the margins).

16 A Party or Non-Party that makes original documents or materials available for
17 inspection need not designate them for protection until after the inspecting Party has
18 indicated which material it would like copied and produced. During the inspection and
19 before the designation, all of the material made available for inspection shall be
20 deemed "CONFIDENTIAL." After the inspecting Party has identified the documents
21 it wants copied and produced, the Producing Party must determine which documents,
22 or portions thereof, qualify for protection under this Order. Then, before producing the
23 specified documents, the Producing Party must affix the "CONFIDENTIAL" legend
24 to each page that contains Protected Material. If only a portion or portions of the
25 material on a page qualifies for protection, the Producing Party also must clearly
26 identify the protected portion(s) (e.g., by making appropriate markings in the
27 margins).

1 (b) for testimony given in deposition or in other discovery-related
2 proceedings, that the Designating Party identify on the record, before the close of the
3 deposition, hearing, or other proceeding, all protected testimony.

4 (c) for information produced in some form other than documentary and for
5 any other tangible items, that the Producing Party affix in a prominent place on the
6 exterior of the container or containers in which the information or item is stored the
7 legend "CONFIDENTIAL." If only a portion or portions of the information or item
8 warrant protection, the Producing Party, to the extent practicable, shall identify the
9 protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive the
12 Designating Party's right to secure protection under this Order for such material.
13 Upon timely correction of a designation, the Receiving Party must make reasonable
14 efforts to assure that the material is treated in accordance with the provisions of this
15 Order.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
18 designation of confidentiality at any time consistent with the Court's scheduling order.
19 Unless a prompt challenge to a Designating Party's confidentiality designation is
20 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
21 or a significant disruption or delay of the litigation, a Party does not waive its right to
22 challenge a confidentiality designation by electing not to mount a challenge promptly
23 after the original designation is disclosed.

24 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
25 resolution process by providing written notice of each designation it is challenging
26 and describing the basis for each challenge. To avoid ambiguity as to whether a
27 challenge has been made, the written notice must recite that the challenge to
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1 confidentiality is being made in accordance with this specific paragraph of the
2 Protective Order as well as Local Rule 37. The parties shall attempt to resolve each
3 challenge in good faith and must begin the process by conferring directly (in voice to
4 voice dialogue; other forms of communication are not sufficient) within 10 days of the
5 date of service of notice. In conferring, the Challenging Party must explain the basis
6 for its belief that the confidentiality designation was not proper and must give the
7 Designating Party an opportunity to review the designated material, to reconsider the
8 circumstances, and, if no change in designation is offered, to explain the basis for the
9 chosen designation. A Challenging Party may proceed to the next stage of the
10 challenge process only if it has engaged in this meet and confer process first or
11 establishes that the Designating Party is unwilling to participate in the meet and confer
12 process in a timely manner.

13 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
14 court intervention, the Designating Party shall file and serve a motion to retain
15 confidentiality under Civil Local Rule 37 (and in compliance with Civil Local Rule
16 79-5, if applicable) within 21 days of the initial notice of challenge or within 14 days
17 of the parties agreeing that the meet and confer process will not resolve their dispute,
18 whichever is earlier. Each such motion must be accompanied by a competent
19 declaration affirming that the movant has complied with the meet and confer
20 requirements imposed in the preceding paragraph and Local Rule 37. Failure by the
21 Designating Party to make such a motion including the required declaration within 21
22 days (or 14 days, if applicable) shall automatically waive the confidentiality
23 designation for each challenged designation. In addition, the Challenging Party may
24 file a motion challenging a confidentiality designation at any time consistent with the
25 Court's scheduling order if there is good cause for doing so, including a challenge to
26 the designation of a deposition transcript or any portions thereof. Any motion brought
27 pursuant to this provision must be accompanied by a competent declaration affirming
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1 that the movant has complied with the meet and confer requirements imposed by the
2 preceding paragraph and Rule 37.

3 The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party. Frivolous challenges, and those made for an improper purpose
5 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
6 expose the Challenging Party to sanctions. Unless the Designating Party has waived
7 the confidentiality designation by failing to file a motion to retain confidentiality as
8 described above, all parties shall continue to afford the material in question the level
9 of protection to which it is entitled under the Producing Party’s designation until the
10 court rules on the challenge.

11 7. ACCESS TO AND USE OF PROTECTED MATERIAL

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is
13 disclosed or produced by another Party or by a Non-Party in connection with this case
14 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
15 Material may be disclosed only to the categories of persons and under the conditions
16 described in this Order. When the litigation has been terminated, a Receiving Party
17 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

21 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
22 otherwise ordered by the court or permitted in writing by the Designating Party, a
23 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
24 only to:

25 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
26 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
27 disclose the information for this litigation and who have signed the “Acknowledgment
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1 and Agreement to Be Bound” that is attached hereto as Exhibit A;

2 (b) the officers, directors, and employees (including House Counsel) of the
3 Receiving Party to whom disclosure is reasonably necessary for this litigation and
4 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

8 (d) the court and its personnel;

9 (e) court reporters and their staff, professional jury or trial consultants,
10 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
11 for this litigation and who have signed the “Acknowledgment and Agreement to Be
12 Bound” (Exhibit A);

13 (f) during their depositions, witnesses in the action to whom disclosure is
14 reasonably necessary and who have signed the “Acknowledgment and Agreement to
15 Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered
16 by the court. Pages of transcribed deposition testimony or exhibits to depositions that
17 reveal Protected Material must be separately bound by the court reporter and may not
18 be disclosed to anyone except as permitted under this Stipulated Protective Order.

19 (g) the author or recipient of a document containing the information or a
20 custodian or other person who otherwise possessed or knew the information.

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

23 If a Party is served with a subpoena or a court order issued in other litigation
24 that compels disclosure of any information or items designated in this action as
25 “CONFIDENTIAL,” that Party must:

26 (a) promptly notify in writing the Designating Party. Such notification shall
27 include a copy of the subpoena or court order unless prohibited by law or court order;

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1 (b) promptly notify in writing the party who caused the subpoena or order to
2 issue in the other litigation that some or all of the material covered by the subpoena or
3 order is subject to this Protective Order. Such notification shall include a copy of this
4 Stipulated Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be pursued
6 by the Designating Party whose Protected Material may be affected.

7 If the Designating Party timely seeks a protective order, the Party served with
8 the subpoena or court order shall not produce any information designated in this
9 action as “CONFIDENTIAL” before a determination by the court from which the
10 subpoena or order issued, unless the Party has obtained the Designating Party’s
11 permission or a court so orders. The Designating Party shall bear the burden and
12 expense of seeking protection in that court of its confidential material – and nothing in
13 these provisions should be construed as authorizing or encouraging a Receiving Party
14 in this action to disobey a lawful directive from another court.

15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
16 IN THIS LITIGATION

17 (a) The terms of this Order are applicable to information produced by a
18 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
19 produced by Non-Parties in connection with this litigation is protected by the
20 remedies and relief provided by this Order. Nothing in these provisions should be
21 construed as prohibiting a Non-Party from seeking additional protections.

22 (b) In the event that a Party is required, by a valid discovery request, to
23 produce a Non-Party’s confidential information in its possession, and the Party is
24 subject to an agreement with the Non-Party not to produce the Non-Party’s
25 confidential information, then the Party shall:

26 (1) promptly notify in writing the Requesting Party and the Non-Party
27 that some or all of the information requested is subject to a confidentiality agreement
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1 with a Non-Party;

2 (2) promptly provide the Non-Party with a copy of the Stipulated
3 Protective Order in this litigation, the relevant discovery request(s), and a reasonably
4 specific description of the information requested; and

5 (3) make the information requested available for inspection by the Non-
6 Party.

7 (c) If the Non-Party fails to object or seek a protective order from this court
8 within 14 days of receiving the notice and accompanying information, the Receiving
9 Party may produce the Non-Party's confidential information responsive to the
10 discovery request. If the Non-Party timely seeks a protective order, the Receiving
11 Party shall not produce any information in its possession or control that is subject to
12 the confidentiality agreement with the Non-Party before a determination by the court.
13 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
14 of seeking protection in this court of its Protected Material.

15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

24 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
25 PROTECTED MATERIAL

26 When a Producing Party gives notice to Receiving Parties that certain
27 inadvertently produced material is subject to a claim of privilege or other protection,
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1 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
2 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
3 may be established in an e-discovery order that provides for production without prior
4 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
5 parties reach an agreement on the effect of disclosure of a communication or
6 information covered by the attorney-client privilege or work product protection, the
7 parties may incorporate their agreement in the stipulated protective order submitted to
8 the court provided the court so allows.

9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by the court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this
13 Protective Order no Party waives any right it otherwise would have to object to
14 disclosing or producing any information or item on any ground not addressed in this
15 Stipulated Protective Order. Similarly, no Party waives any right to object on any
16 ground to use in evidence of any of the material covered by this Protective Order.

17 12.3 Filing Protected Material. Without written permission from the
18 Designating Party or a court order secured after appropriate notice to all interested
19 persons, a Party may not file in the public record in this action any Protected Material.
20 A Party that seeks to file under seal any Protected Material must comply with Civil
21 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court
22 order authorizing the sealing of the specific Protected Material at issue. Pursuant to
23 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that
24 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise
25 entitled to protection under the law. If a Receiving Party's request to file Protected
26 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then
27 the Receiving Party may file the information in the public record pursuant to Civil
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1 Local Rule 79-5(e) unless otherwise instructed by the court.

2 13. FINAL DISPOSITION

3 Within 60 days after the final disposition of this action, as defined in paragraph
4 4, each Receiving Party must return all Protected Material to the Producing Party or
5 destroy such material. As used in this subdivision, “all Protected Material” includes
6 all copies, abstracts, compilations, summaries, and any other format reproducing or
7 capturing any of the Protected Material. Whether the Protected Material is returned or
8 destroyed, the Receiving Party must submit a written certification to the Producing
9 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
10 deadline that (1) identifies (by category, where appropriate) all the Protected Material
11 that was returned or destroyed and (2) affirms that the Receiving Party has not
12 retained any copies, abstracts, compilations, summaries or any other format
13 reproducing or capturing any of the Protected Material. Notwithstanding this
14 provision, Counsel are entitled to retain an archival copy of all pleadings, motion
15 papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence,
16 deposition and trial exhibits, expert reports, attorney work product, and consultant and
17 expert work product, even if such materials contain Protected Material. Any such
18 archival copies that contain or constitute Protected Material remain subject to this
19 Protective Order as set forth in Section 4 (DURATION).

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21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22
23 DATED: September 1, 2017



24 Jean P. Rosenbluth
25 United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that
5 I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Central District of California on
7 [date] in the case of *Linda Rubenstein v. The Neiman Marcus Group LLC*, et al., Case
8 No. 2:14-CV-07155-SJO-JPR. I agree to comply with and to be bound by all the terms
9 of this Stipulated Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that is
12 subject to this Stipulated Protective Order to any person or entity except in strict
13 compliance with the provisions of this Order.

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

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

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____

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