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8 Attorneys for Defendant  
 SAKS FIFTH AVENUE LLC

9 UNITED STATES DISTRICT COURT  
 10 CENTRAL DISTRICT OF CALIFORNIA

11 TOVA MALIK, on behalf of herself and  
 12 all others similarly situated,

13 Plaintiffs,

14 vs.

15 SAKS FIFTH AVENUE LLC, a  
 Massachusetts Limited Liability  
 16 Company, and DOES 1-50; inclusive,

17 Defendants.

) Case No. 2:14-cv-07600-SVW-VBK

) Assigned to: Hon. Stephen V. Wilson

) **DISCOVERY MATTER**

) **JOINT STIPULATION FOR  
 PROTECTIVE ORDER AND  
 [PROPOSED] ORDER**

) Before Magistrate Judge Victor B.  
 18 Kenton

1 **STIPULATION**

2 WHEREAS, Saks Fifth Avenue LLC (“Defendant”) and Tova Malik  
3 (“Plaintiff”) are parties (“Parties”) in the above-captioned case which has been  
4 assigned to the Honorable Stephen V. Wilson (the “Litigation”); and

5 WHEREAS, the Parties desire to enter into a joint protective order,

6 The Parties hereby STIPULATE as follows:

7 1. Any Party exchanging information in the Litigation, whether in the  
8 course of discovery or otherwise, who deems the information to be confidential,  
9 protected by the right of privacy, confidential, proprietary, or trade secret information  
10 (hereinafter referred to “Protected Information”) may designate, disclose and protect  
11 such Protected Information pursuant to this Joint Protective Order (“Order”).

12 2. Any person or entity that chooses to designate documents and  
13 information as Protected Information (“Designating Party”) shall designate each such  
14 item as “Confidential Information.” The designation “Confidential Information” shall  
15 be used to designate only those specific documents and information the Designating  
16 Party maintains are confidential, proprietary or that constitute or reveal a trade secret,  
17 and that the Designating Party’s counsel believes in good faith are protected by the  
18 law from disclosure.

19 3. Any documents produced pursuant to this Order shall be stamped on the  
20 first page of the document and on every page of the document that is subject to this  
21 Order with the legend “CONFIDENTIAL INFORMATION FOR USE ONLY IN  
22 MALIK V. SAKS FIFTH AVENUE LLC, ET AL.” or substantially similar language  
23 that at a minimum incorporates the word “confidential,” and with consecutive bates  
24 numbers, so as to identify all documents that pertain to this Order.

25 4. In response to written discovery requests, the Designating Party may  
26 disclose and produce Protected Information as follows:  
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1 a. Interrogatories: Clearly designating Protected Information  
2 contained within the Interrogatory response in the language and manner  
3 provided in Paragraph 3 above.

4 b. Requests for Production of Documents: Producing documents that  
5 contain Protected Information in the manner provided in Paragraph 3 above.

6 c. Requests for Admissions: Clearly designating Protected  
7 Information contained within the Request for Admission response in the  
8 language and manner provided in Paragraph 3 above.

9 5. The disclosure of Protected Information to any Party to this Litigation or  
10 otherwise shall be made only as provided for herein. Except as provided herein or in a  
11 subsequent court order, the Protected Information produced pursuant to this Order  
12 shall be used only by the persons authorized under this Order and solely for the  
13 purpose of preparing for and conducting the Litigation, or any related alternative  
14 dispute resolution proceeding, and is not to be shown to, discussed with, or otherwise  
15 disclosed to any other persons or entities, including parties to actions other than the  
16 Litigation, whether or not such other actions are related to or coordinated with the  
17 Litigation.

18 6. Unless otherwise agreed upon in writing by the Parties or pursuant to  
19 court order, Protected Information designated as “CONFIDENTIAL INFORMATION  
20 FOR USE ONLY IN MALIK V. SAKS FIFTH AVENUE LLC, ET AL.” or  
21 substantially similar language that at a minimum incorporates the word “confidential,”  
22 shall not be disclosed to any person or entity other than the following:

23 a. a Party to the Litigation, including without limitation in-house  
24 counsel for a Party, whose counsel of record in this action has executed this  
25 Order;

1           b.     outside counsel for the respective Parties whose firm is counsel of  
2 record in this Litigation or are otherwise assisting in the prosecution or defense  
3 thereof;

4           c.     consultants, consulting experts and testifying experts and their  
5 employees who have been engaged by counsel for a Party for the purpose of  
6 assisting in this Litigation, but only if (1) it is reasonable to disclose the  
7 document or information to them for purposes of this Litigation; (2) they are not  
8 Parties; (3) they are not officers, directors or employees of Parties, of affiliates  
9 of Parties or of competitors of Parties; and (4) they have signed a declaration in  
10 the form of Exhibit 1;

11          d.     secretaries, paralegals and other clerical or support personnel  
12 employed by or retained by counsel for a Party, but only if (1) it is reasonable to  
13 disclose the document or information to them for purposes of this Litigation; (2)  
14 they are not Parties; and (3) they are not officers, directors or employees of  
15 Parties, of affiliates of Parties or of competitors of Parties;

16          e.     the Court, including judicial employees and all other necessary  
17 personnel, including court reporters employed by or retained by the Court;

18          f.     a court reporter or videographer retained by one or more of the  
19 Parties for purposes of this Litigation; and

20          g.     the author, addressee or any other person or entity identified as a  
21 recipient of specified Confidential Information who would otherwise be entitled  
22 to receive it.

23         7.     No Party shall disclose or disseminate any Protected Information  
24 produced by another Party pursuant to this Order to its experts or consultants until the  
25 experts or consultants have executed a declaration in the form attached as Exhibit 1.  
26 If any such expert or consultant is later designated pursuant to Rule 26(a) of the  
27 Federal Rules of Civil Procedure, that expert's declaration shall be placed in the  
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1 expert's file, and provided upon request by the Party whose Protected Information was  
2 reviewed by the expert. Original declarations signed by experts not designated  
3 pursuant to Rule 26(a) of the Federal Rules of Civil Procedure shall be maintained by  
4 the Party that retained the expert and shall be submitted to the Court for in camera  
5 review on request by the Court or by court order after the motion of any Party for such  
6 a review, based on a showing of good cause, for an alleged breach of the Order.

7 8. If a Party wishes to divulge Protected Information during a deposition at  
8 which one or more persons are present to whom disclosure is not permitted under  
9 Paragraph 6, then the following procedures shall be followed:

10 a. If a Party anticipates that Protected Information will be divulged in  
11 deposition, it shall provide notice to the Designating Party prior to questioning  
12 at the deposition. The Party may not divulge Protected Information during the  
13 deposition in the absence of an agreement with the Designating Party or a court  
14 order permitting the disclosure, unless the deponent is shown on the document  
15 as an author or recipient or a person who otherwise has been privy to the  
16 Protected Information or where the deponent has been produced as a corporate  
17 representative and/or person most knowledgeable by the Designating Party.

18 b. Any questioning of the deponent that relates to any Protected  
19 Information shall be conducted with only the following persons entitled to be  
20 present: (1) the deponent, who is permitted access to the information under this  
21 Order and, if applicable, who has executed a declaration in the form of Exhibit  
22 1; (2) counsel representing the deponent and who has executed a declaration in  
23 the form of Exhibit 1 or from whose firm an attorney has executed this Order;  
24 (3) any designated representative of the Designating Party producing the  
25 Protected Information; (4) counsel for the Party that noticed the deposition; (5)  
26 the court reporter and videographer, who have executed a declaration in the  
27 form of Exhibit 1; (6) any other person authorized to be present by prior order  
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1 of the Court; (7) any other person authorized to be present by counsel to the  
2 Designating Party; and (8) any counsel (or their staff) for other Parties,  
3 assuming they, or an attorney from their firm, have executed this Order.

4 c. Any portion of the deposition designated as Protected Information  
5 shall be separately transcribed and shall be sealed and marked  
6 “CONFIDENTIAL” by the court reporter in accordance with the designation  
7 made by the Designating Party, and shall not be made part of the public  
8 transcript. The sealed portions of the transcript may be provided only to the  
9 persons identified in Paragraph 6.

10 d. If documents containing Protected Information are used in a  
11 deposition, they shall be marked pursuant to Paragraph 3 and shall be attached  
12 only to portions of the transcript bearing the same “CONFIDENTIAL”  
13 designation.

14 e. Depositions, or portions of depositions, shall be deemed  
15 conditionally confidential if so designated at the time of the deposition until  
16 thirty (30) court days following receipt of the certified deposition transcript.

17 f. Within thirty (30) court days of receipt of the certified deposition  
18 transcript, any Party may mark as “CONFIDENTIAL” any portion of the  
19 deposition transcript that Party believes contains such information. The Party  
20 seeking to mark a deposition transcript, or portions of a deposition transcript, as  
21 “CONFIDENTIAL” after the certified transcript has been prepared shall  
22 promptly notify all Parties of its intent to do so, shall identify with specificity  
23 the portion or portions to be designated, shall instruct the court reporter to  
24 conform the deposition transcript to Paragraph 3, and shall bear all reasonable  
25 charges billed by the court reporter in connection therewith.  
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1           g.     After thirty (30) court days of receipt of the certified deposition  
2 transcript, the transcript shall be deemed non-confidential unless designated as  
3 “CONFIDENTIAL” by a Party.

4           h.     A Designating Party may de-designate or re-designate any portion  
5 of the deposition transcript that the Party previously designated as Protected  
6 Information by promptly notifying in writing all other Parties and all persons  
7 who were present at the deposition of its intent to do so. The notice shall  
8 identify with specificity the portion or portions of the transcript that no longer  
9 shall be designated “CONFIDENTIAL” or vice-versa. The Party seeking to re-  
10 designate a deposition transcript, or portions of a deposition transcript, after the  
11 certified transcript has been prepared shall promptly notify all Parties of its  
12 intent to do so, shall identify with specificity the portion or portions to be re-  
13 designated, shall instruct the court reporter to conform the deposition transcript  
14 to Paragraph 3, and shall bear all reasonable charges billed by the court reporter  
15 in connection therewith.

16           9.     Any motions or pleadings or any other court filings that may reveal  
17 Protected Information subject to this Order shall be submitted in accordance with  
18 Local Rule 79-5 and shall be labeled as follows: “This Document Is Subject to a  
19 Protective Order Issued by the Court and May Not Be Examined or Copied Except in  
20 Compliance with that Order.” Nothing in this Order shall require a Party to move for  
21 an order to seal Protected Information provided that the Party has given timely written  
22 notice to the Designating Party at least five (5) court days before the filing to afford  
23 the Designating Party the opportunity to make the showing required by Local Rule 79-  
24 5.1.

25           10.    Intentional disclosure of Protected Information in violation of this Order  
26 may subject the violating Party and/or its attorney to sanctions for contempt of court,  
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1 as well as any other statutory or common law remedies that may be available to the  
2 Designating Party.

3 11. Nothing in this Order shall (a) limit a person or entity's right to seek or  
4 object to discovery of and/or the disclosure of information or documents on any basis,  
5 including but not limited to being Protected Information; (b) alter the burdens for  
6 objecting to or obtaining discovery of Protected Information; or (c) affect the  
7 admissibility or inadmissibility of any Protected Information that is not publicly  
8 available.

9 12. Nothing in this Order shall prevent a Designating Party from disclosing  
10 its own Protected Information to any person or using that information for purposes of  
11 this Litigation or otherwise. Whether such disclosure waives the protection of this  
12 Order or results in the disclosed material becoming discoverable by other Parties, shall  
13 be determined by the Court upon motion by any Party.

14 13. If a Party inadvertently produces Protected Information without  
15 designating it as such in accordance with Paragraph 3, that Party shall notify all  
16 Parties to whom it provided the Protected Information of the proper designation of the  
17 Protected Information as soon as practical after discovery of the error by the  
18 Designating Party. The Designating Party shall provide all Parties to whom it  
19 provided the undesignated Protected Information with a replacement copy of the  
20 Protected Information marked in accordance with this Order. Upon receipt of the  
21 designated copy: (a) the document or information shall be treated by the Parties who  
22 received the document or information as if it had been timely designated as Protected  
23 Information under this Order; (b) the erroneously designated Protected Information  
24 shall be returned to the Designating Party or destroyed; and (c) the Parties who  
25 received the Protected Information shall use reasonable efforts to identify any other  
26 persons or entities to whom the information in question was given. It shall then be  
27 the burden of all Parties to collect in good faith and return to the Designating Party or  
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1 destroy all such Protected Information that they have provided to persons and entities  
2 who would not have been entitled access thereto if the document or information had  
3 been so designated at the outset. The inadvertent disclosure or inadvertent mis-  
4 marking by a Designating Party of documents or information that the Party believes to  
5 be confidential shall not automatically be deemed a waiver in whole or in part of any  
6 Party's claim of confidentiality, either as to the specific document or information  
7 disclosed or as to any other document or information relating thereto or concerning  
8 the same or related subject matter. However, any Party may seek a court order  
9 establishing that the intentional disclosure of Protected Information by the  
10 Designating Party to anyone other than the Designating Party and its counsel, without  
11 being designated "CONFIDENTIAL," constitutes a waiver of any claimed protection.

12 14. Nothing in this Order shall be deemed to preclude a Party that has  
13 designated a document or information as Protected Information from removing that  
14 designation at any time. The Designating Party shall notify all parties in writing of its  
15 intent to de-designate, upon which the document or information shall no longer be  
16 treated as Protected Information under this Order.

17 15. If a dispute arises regarding the designation of documents or information  
18 as Protected Information, the following procedures shall be followed:

19 a. In the event that a Party's counsel believes, in good faith, that a  
20 document or information produced or disclosed that has been designated as  
21 Protected Information under the Order is not Confidential Information, such  
22 counsel shall send counsel for the Designating Party a written request  
23 specifically identifying the information or document (by bates-number) sought  
24 to be disclosed and the reasons why said information or document should not be  
25 so designated and/or subject to this Order. As soon as practicable and in any  
26 case within ten (10) court days after receipt of such a written request, counsel  
27 for the Designating Party shall meet and confer.  
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1           b.     If the challenging Party and Designating Party are unable to agree  
2 within the ten (10)-day period under Paragraph 15.a upon a satisfactory  
3 resolution, the challenging Party shall send written notice to the Designating  
4 Party identifying the information or documents still in dispute. The  
5 Designating Party may file a motion seeking a protective order concerning such  
6 information or documents that has previously been produced or disclosed under  
7 the Order within ten (10) court days after receiving such notice (or any  
8 additional period agreed to, in writing, by the requesting Party). If the  
9 Designating Party fails to file a motion seeking a protective order within such  
10 time period, the Designating Party shall be deemed to have consented to the  
11 change in designation sought by the challenging Party.

12           c.     If the Designating Party seeks a protective order pursuant to  
13 Paragraph 15.b, no Party may disclose Protected Information in a manner  
14 contrary to its designation until the Court has issued an order or ruling allowing  
15 such disclosure, unless the Designating Party consents to disclosure prior to that  
16 time, or as otherwise ordered by the Court.

17     16.     This Order in no way alters the law regarding the type of information that  
18 may be deemed Protected Information nor the burdens for demonstrating  
19 confidentiality or the right to discovery of Protected Information. Nothing in this  
20 Order shall be deemed to preclude the Parties from requesting the Court, by noticed  
21 motion, to modify the terms of the Order regarding the treatment of Protected  
22 Information. This provision shall not be construed as an agreement by any Party to  
23 such a modification, and, in the event that such modification is sought, the Parties  
24 reserve the right to raise any and all arguments and to invoke any and all laws in  
25 opposition to such modification. Any modification sought shall not apply unless and  
26 until ordered by the Court.  
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1           17. Any Party who receives a subpoena or other process from a non-Party, or  
2 an order to produce or disclose Protected Information, shall provide the Designating  
3 Party with written notice thereof (which notice shall include a copy of the subpoena or  
4 other process or order or other information necessary to reasonably inform the  
5 Designating Party of the nature and scope of the subpoena, process or order) within  
6 five (5) court days after receipt of said subpoena, process or order to enable that Party  
7 to take whatever action it deems appropriate. The Designating Party may then seek a  
8 court order that prohibits and/or limits the scope of any disclosure, and shall provide  
9 notice of such application to the Party receiving the subpoena or other process or  
10 order. After having provided written notice to the Designating Party as provided for  
11 herein, the Party receiving the subpoena, process, or order may comply with the  
12 subpoena, process, or order on the last day specified for compliance therewith, unless  
13 the Designating Party has sought an order prohibiting and/or modifying the disclosure  
14 sought, and shall comply with any subsequent order of court prohibiting and/or  
15 limiting the scope of any disclosure. Any disputes arising under this Paragraph shall  
16 be governed by the procedures specified in Paragraph 15 of this Protective Order.

17           18. Within ninety (90) days after any written request, made after the  
18 termination of this Litigation, including appeals, any Party to whom the Protected  
19 Information was produced shall either: (a) return all such Protected Information and  
20 all copies, portions, excerpts and extracts (excluding excerpts or extracts incorporated  
21 into any privileged memoranda or attorney work product) to the Designating Party; or  
22 (b) provide the Designating Party with a written certification that all Protected  
23 Information provided to it, as well as all Protected Information it provided to others,  
24 has, to the best of their knowledge, been destroyed.

25           19. This Stipulation may be executed in counterparts, which taken together  
26 shall be deemed to constitute one and the same document.  
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1           20. The Court shall retain jurisdiction following termination of this Litigation  
2 for the purpose of enforcing any provisions of this Order.

3           21. This Order may be amended or superseded by written agreement of the  
4 Parties and order of the Court, or by order of the Court.

5           **SO STIPULATED.**

6 Dated: January \_\_, 2015

SIDLEY AUSTIN LLP

7  
8 By: \_\_\_\_\_  
9 Amy P. Lally  
10 Attorneys for Saks Fifth Avenue LLC

11 Dated: January \_\_, 2015

KIRTLAND & PACKARD LLP

12  
13 By: \_\_\_\_\_  
14 Behram V. Parekh  
15 Attorneys for Tova Malik

16  
17           **ORDER**

18           Good cause appearing, the terms of this Protective Order are hereby adopted by  
19 the Court. IT IS SO ORDERED.

20  
21  
22 Dated: January 28, 2015

By: \_\_\_\_\_/s/\_\_\_\_\_  
23 Victor B. Kenton  
24 United States Magistrate Judge

**EXHIBIT 1**  
**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I \_\_\_\_\_ [print or type full name], declare under penalty of perjury that I have read in its entirety and understand the Protective Order, attached hereto as Exhibit A, entered by the United States District Court for the Central District of California in the action entitled *Malik v. Saks Fifth Avenue LLC, et al.*, Case No. 2:14-cv-07600-SVW-VBK. On behalf of myself, and those in my organization, \_\_\_\_\_, I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

Date: \_\_\_\_\_, 2015

City and State where sworn and signed: \_\_\_\_\_

Signed: \_\_\_\_\_

[Print Name]

[Signature]