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12
 13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 EXIST INC., a Florida corporation,
 16
 17 **Plaintiff,**
 18 v.
 19
 20 SHORELINE WEAR, INC., a New
 York Corporation and DOES 1 through
 21 50 [sic], inclusive,
 22
 23 **Defendants.**

Case No. 2:14-cv-08358-JAK-(RZx)
 Assigned to: Honorable John A. Kronstadt
 United States District Judge
 Referred to: Honorable Ralph Zarefsky
 United States Magistrate Judge

**STANDING PROTECTIVE ORDER
 FOR CASES ASSIGNED TO JUDGE
 JOHN A. KRONSTADT**

**STANDING PROTECTIVE ORDER
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1 1. **PURPOSE AND LIMITS OF THIS ORDER**

2 Discovery in this action is likely to involve confidential, proprietary, or private
3 information requiring special protection from public disclosure and from use for any
4 purpose other than this litigation. Thus, the Court enters this Protective Order. This
5 Order does not confer blanket protections on all disclosures or responses to
6 discovery, and the protection it gives from public disclosure and use extends only to
7 the specific material entitled to confidential treatment under the applicable legal
8 principles. This Order does not automatically authorize the filing under seal
9 of material designated under this Order. Instead, the parties must comply with Local
10 Rule 79-5.1 and this Court’s Order Re Pilot Program for Under Seal Documents
11 (See Exhibit F) if they seek to file anything under seal. This Order does not govern
12 the use at trial of material designated under this Order.

13 2. **DESIGNATING PROTECTED MATERIAL**

14 2.1 **Over-Designation Prohibited.** Any party or non-party who
15 designates information or items for protection under this Order as
16 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,”
17 or “HIGHLY CONFIDENTIAL – SOURCE CODE” (a “designator”) must only
18 designate specific material that qualifies under the appropriate standards. To the
19 extent practicable, only those parts of documents, items, or oral or written
20 communications that require protection shall be designated. Designations with a
21 higher confidentiality level when a lower level would suffice are prohibited. Mass,
22 indiscriminate, or routinized designations are prohibited. Unjustified designations
23 expose the designator to sanctions, including the Court’s striking all confidentiality
24 designations made by that designator. Designation under this Order is allowed only
25 if the designation is necessary to protect material that, if disclosed to persons not
26 authorized to view it, would cause competitive or other recognized harm. Material
27 may not be designated if it has been made public, or if designation is otherwise
28 unnecessary to protect a secrecy interest. If a designator learns that information or

1 items that it designated for protection do not qualify for protection at all or do not
2 qualify for the level of protection initially asserted, that designator must promptly
3 notify all parties that it is withdrawing the mistaken designation.

4 **2.2 Manner and Timing of Designations.** Designation under this
5 Order requires the designator to affix the applicable legend (“CONFIDENTIAL,”
6 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY,” or “HIGHLY
7 CONFIDENTIAL – SOURCE CODE”) to each page that contains protected
8 material. For testimony given in deposition or other proceeding, the designator shall
9 specify all protected testimony and the level of protection being asserted. It may
10 make that designation during the deposition or proceeding, or may invoke, on the
11 record or by written notice to all parties on or before the next business day, a
12 right to have up to 21 days from the deposition or proceeding to make its
13 designation.

14 **2.2.1** A party or non-party that makes original documents or materials
15 available for inspection need not designate them for protection until after the
16 inspecting party has identified which material it would like copied and produced.
17 During the inspection and before the designation, all material shall be treated as
18 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY. After the inspecting
19 party has identified the documents it wants copied and produced, the producing
20 party must designate the documents, or portions thereof, that qualify for protection
21 under this Order.

22 **2.2.2** Parties shall give advance notice if they expect a deposition or
23 other proceeding to include designated material so that the other parties can ensure
24 that only authorized individuals are present at those proceedings when such material
25 is disclosed or used. The use of a document as an exhibit at a deposition shall not in
26 any way affect its designation. Transcripts containing designated material shall have
27 a legend on the title page noting the presence of designated material, and the title
28 page shall be followed by a list of all pages (including line numbers as appropriate)

1 that have been designated, and the level of protection being asserted. The designator
2 shall inform the court reporter of these requirements. Any transcript that is prepared
3 before the expiration of the 21-day period for designation shall be
4 treated during that period as if it had been designated HIGHLY CONFIDENTIAL –
5 ATTORNEY EYES ONLY unless otherwise agreed. After the expiration of the 21-
6 day period, the transcript shall be treated only as actually designated.

7 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to
8 designate does not, standing alone, waive protection under this Order. Upon timely
9 assertion or correction of a designation, all recipients must make reasonable efforts
10 to ensure that the material is treated according to this Order.

11 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

12 All challenges to confidentiality designations shall proceed under Local Rule 37-1
13 through Local Rule 37-4.

14 **4. ACCESS TO DESIGNATED MATERIAL**

15 **4.1 Basic Principles.** A receiving party may use designated material
16 only for this litigation. Designated material may be disclosed only to the categories
17 of persons and under the conditions described in this Order.

18 **4.2 Disclosure of CONFIDENTIAL Material Without Further**
19 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the
20 designator, a receiving party may disclose any material designated
21 CONFIDENTIAL only to:

22 **4.2.1** The receiving party’s outside counsel of record in this action and
23 employees of outside counsel of record to whom disclosure is reasonably necessary;

24 **4.2.2** The officers, directors, and employees of the receiving party to
25 whom disclosure is reasonably necessary, and who have signed the Agreement to Be
26 Bound (Exhibit E-1);

1 4.2.3 Experts retained by the receiving party’s outside counsel of
2 record to whom disclosure is reasonably necessary, and who have signed the
3 Agreement to Be Bound (Exhibit E-1);

4 4.2.4 The Court and its personnel;

5 4.2.5 Outside court reporters and their staff, professional jury or trial
6 consultants, and professional vendors to whom disclosure is reasonably necessary,
7 and who have signed the Agreement to Be Bound (Exhibit E-1); 4.2.6 During their
8 depositions, witnesses in the action to whom disclosure is reasonably necessary and
9 who have signed the Agreement to Be Bound (Exhibit E-1); and

10 4.2.7 The author or recipient of a document containing the material, or
11 a custodian or other person who otherwise possessed or knew the information.

12 4.3 **Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY**
13 **EYES ONLY and HIGHLY CONFIDENTIAL – SOURCE CODE Material**
14 **Without Further Approval.** Unless permitted in writing by the designator, a
15 receiving party may disclose material designated HIGHLY CONFIDENTIAL –
16 ATTORNEY EYES ONLY or HIGHLY CONFIDENTIAL – SOURCE
17 CODE without further approval only to:

18 4.3.1 The receiving party’s outside counsel of record in this action and
19 employees of outside counsel of record to whom it is reasonably necessary to
20 disclose the information;

21 4.3.2 The Court and its personnel;

22 4.3.3 Outside court reporters and their staff, professional jury or trial
23 consultants, and professional vendors to whom disclosure is reasonably necessary,
24 and who have signed the Agreement to Be Bound (Exhibit E-1); and

25 4.3.4 The author or recipient of a document containing the material, or
26 a custodian or other person who otherwise possessed or knew the information.

27 4.4 **Procedures for Approving or Objecting to Disclosure of**
28 **HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY**

1 **CONFIDENTIAL – SOURCE CODE Material to In-House Counsel or**
2 **Experts.** Unless agreed to in writing by the designator:

3 4.4.1 A party seeking to disclose to in-house counsel any material
4 designated **HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY** must first
5 make a written request to the designator providing the full name of the in-house
6 counsel, the city and state of such counsel’s residence, and such counsel’s current
7 and reasonably foreseeable future primary job duties and responsibilities in
8 sufficient detail to determine present or potential involvement in any
9 competitive decision-making. In-house counsel are not authorized to receive
10 material designated **HIGHLY CONFIDENTIAL – SOURCE CODE**.

11 4.4.2 A party seeking to disclose to an expert retained by outside
12 counsel of record any information or item that has been designated **HIGHLY**
13 **CONFIDENTIAL – ATTORNEY EYES ONLY** or **HIGHLY CONFIDENTIAL –**
14 **SOURCE CODE** must first make a written request to the designator that (1)
15 identifies the general categories of **HIGHLY CONFIDENTIAL – ATTORNEY**
16 **EYES ONLY** or **HIGHLY CONFIDENTIAL – SOURCE CODE** information that
17 the receiving party seeks permission to disclose to the expert, (2) sets forth the
18 full name of the expert and the city and state of his or her primary residence, (3)
19 attaches a copy of the expert’s current resume, (4) identifies the expert’s current
20 employer(s), (5) identifies each person or entity from whom the expert has received
21 compensation or funding for work in his or her areas of expertise (including in
22 connection with litigation) in the past five years, and (6) identifies (by name and
23 number of the case, filing date, and location of court) any litigation where the expert
24 has offered expert testimony, including by declaration, report, or testimony at
25 deposition or trial, in the past five years. If the expert believes any of this
26 information at (4) - (6) is subject to a confidentiality obligation to a third party, then
27 the expert should provide whatever information the expert believes can be disclosed
28 without violating any confidentiality agreements, and the party seeking to disclose

1 the information to the expert shall be available to meet and confer with the
2 designator regarding any such confidentiality obligations.

3 4.4.3 A party that makes a request and provides the information
4 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to the
5 identified in-house counsel or expert unless, within seven days of delivering the
6 request, the party receives a written objection from the designator providing detailed
7 grounds for the objection.

8 4.4.4 All challenges to objections from the designator shall proceed
9 under Local Rule 37-1 through Local Rule 37-4.

10 5. **SOURCE CODE**

11 5.1 **Designation of Source Code.** If production of source code is
12 necessary, a party may designate it as HIGHLY CONFIDENTIAL – SOURCE
13 CODE if it is, or includes, confidential, proprietary, or trade secret source code.

14 5.2 **Location and Supervision of Inspection.** Any HIGHLY
15 CONFIDENTIAL – SOURCE CODE produced in discovery shall be made available
16 for inspection, in a format allowing it to be reasonably reviewed and searched,
17 during normal business hours or at other mutually agreeable times, at an office of the
18 designating party’s counsel or another mutually agreeable location. The source code
19 shall be made available for inspection on a secured computer in a secured room, and
20 the inspecting party shall not copy, remove, or otherwise transfer any portion of the
21 source code onto any recordable media or recordable device. The designator may
22 visually monitor the activities of the inspecting party’s representatives during
23 any source code review, but only to ensure that there is no unauthorized recording,
24 copying, or transmission of the source code.

25 5.3 **Paper Copies of Source Code Excerpts.** The inspecting party
26 may request paper copies of limited portions of source code that are reasonably
27 necessary for the preparation of court filings, pleadings, expert reports, other papers,
28 or for deposition or trial. The designator shall provide all such source code in paper

1 form, including Bates numbers and the label “HIGHLY CONFIDENTIAL –
2 SOURCE CODE.”

3 5.4 **Access Record.** The inspecting party shall maintain a record of
4 any individual who has inspected any portion of the source code in electronic or
5 paper form, and shall maintain all paper copies of any printed portions of the source
6 code in a secured, locked area. The inspecting party shall not convert any of the
7 information contained in the paper copies into any electronic format other than for
8 the preparation of a pleading, exhibit, expert report, discovery document, deposition
9 transcript, or other Court document. Any paper copies used during a deposition shall
10 be retrieved at the end of each day and must not be left with a court
11 reporter or any other unauthorized individual.

12 6. **PROTECTED MATERIAL SUBPOENAED OR ORDERED**
13 **PRODUCED IN OTHER LITIGATION**

14 6.1 **Subpoenas and Court Orders.** This Order in no way excuses
15 noncompliance with a lawful subpoena or court order. The purpose of the duties
16 described in this section is to alert the interested parties to the existence of this Order
17 and to give the designator an opportunity to protect its confidentiality interests in the
18 court where the subpoena or order issued.

19 6.2 **Notification Requirement.** If a party is served with a subpoena
20 or a court order issued in other litigation that compels disclosure of any information
21 or items received by that party in this action and designated in this action as
22 CONFIDENTIAL, HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY, or
23 HIGHLY CONFIDENTIAL – SOURCE CODE, that party must do the following.

24 6.2.1 Promptly notify the designator in writing. Such notification shall
25 include a copy of the subpoena or court order.

26 6.2.2 Promptly notify in writing the party who caused the subpoena or
27 order to issue in the other litigation that some or all of the material covered by the
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1 subpoena or order is subject to this Order. Such notification shall include a copy of
2 this Order.

3 6.2.3 Cooperate with all reasonable procedures sought by the
4 designator whose material may be affected.

5 6.3 **Wait For Resolution of Protective Order.** If the designator
6 promptly seeks a protective order, the party served with the subpoena or court order
7 shall not produce any information designated in this action as CONFIDENTIAL,
8 HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY or HIGHLY
9 CONFIDENTIAL – SOURCE CODE before a determination by the court where the
10 subpoena or order issued, unless the party has obtained the designator’s permission.
11 The designator shall bear the burden and expense of seeking protection of its
12 confidential material in that court.

13 7. **UNAUTHORIZED DISCLOSURE OF DESIGNATED**
14 **MATERIAL**

15 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
16 designated material to any person or in any circumstance not authorized under this
17 Order, it must immediately (1) notify in writing the designator of the unauthorized
18 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
19 designated material, (3) inform the person or persons to whom unauthorized
20 disclosures were made of all the terms of this Order, and (4) use reasonable efforts to
21 have such person or persons execute the Agreement to Be Bound (Exhibit E-1).

22 8. **INADVERTENT PRODUCTION OF PRIVILEGED OR**
23 **OTHERWISE PROTECTED MATERIAL**

24 When a producing party gives notice that certain inadvertently produced material is
25 subject to a claim of privilege or other protection, the obligations of the receiving
26 parties are those set forth in Fed. R. Civ. P. 26(b)(5)(B). This provision is not
27 intended to modify whatever procedure may be established in an e-discovery order
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1 that provides for production without prior privilege review pursuant to Fed. R. Evid.
2 502(d) and (e).

3 9. **FILING UNDER SEAL**

4 Without written permission from the designator or a Court order, a party may not
5 file in the public record in this action any designated material. A party seeking to file
6 under seal any designated material must comply with Local Rule 79-1. Filings may
7 be made under seal only pursuant to a court order authorizing the sealing of the
8 specific material at issue. The fact that a document has been designated under this
9 Order is insufficient to justify filing under seal. Instead, parties must explain the
10 basis for confidentiality of each document sought to be filed under seal. Because a
11 party other than the designator will often be seeking to file designated material,
12 cooperation between the parties in preparing, and in reducing the number and extent
13 of, requests for under seal filing is essential. If a receiving party's request to file
14 designated material under seal pursuant to Local Rule 79-5.1 is denied by the Court,
15 then the receiving party may file the material in the public record unless (1) the
16 designator seeks reconsideration within four days of the denial, or (2) as otherwise
17 instructed by the Court.

18 10. **FINAL DISPOSITION**

19 Within 60 days after the final disposition of this action, each party shall return all
20 designated material to the designator or destroy such material, including all copies,
21 abstracts, compilations, summaries, and any other format reproducing or capturing
22 any designated material. The receiving party must submit a written certification to
23 the designator by the 60-day deadline that (1) identifies (by category, where
24 appropriate) all the designated material that was returned or destroyed, and (2)
25 affirms that the receiving party has not retained any copies, abstracts, compilations,
26 summaries, or any other format reproducing or capturing any of the designated
27 material. This provision shall not prevent counsel from retaining an archival copy of
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1 all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
2 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
3 work product, and consultant and expert work product, even if such materials
4 contain designated material. Any such archival copies remain subject to this Order.

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6 **IT IS SO ORDERED.**



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8 DATED: 4/28/15

BY: _____

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10 Honorable Ralph Zarefsky
11 United States Magistrate Judge
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EXHIBIT E-1
AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Central District of California on _____ [date] in the case of Exist, Inc. v. Shoreline Wear, Inc., C.D. Cal. No. 2:14-cv-08358-JAK-(RZx).

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 for 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 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 this Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of

[print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____