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NOTE CHANGES MADE BY COURT

6 *Attorneys for Plaintiff*  
 7 *Deckers Outdoor Corporation*

8 UNITED STATES DISTRICT COURT  
 9 CENTRAL DISTRICT OF CALIFORNIA

11 DECKERS OUTDOOR CORPORATION, a Delaware Corporation, 12 13 Plaintiff, v. 14 SKECHERS U.S.A., INC., a Delaware Corporation; and DOES 1-10, inclusive, 15 16 Defendants.	}	CASE NO. 2:14-CV-8988 SJO (FFMx) [PROPOSED] PROTECTIVE ORDER [DISCOVERY MATTER]
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Hon. Frederick F. Mumm

**DEFINITIONS**

- 19 1. As used in this Protective Order,
- 20 a. "Designating Party" means any Person who designates Material as  
 21 Confidential Material.
- 22 b. "Discovering Counsel" means counsel of record for a Discovering  
 23 Party.
- 24 c. "Discovering Party" means the Party to whom Material is being  
 25 Provided by a Producing Party.
- 26 d. "Confidential Material" refers to those materials designated as  
 27 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" as defined in Paragraphs 2  
 28 and 3 below.

1 e. "Material" means any document, testimony or information in any  
2 form or medium whatsoever, including, without limitation, any written or printed  
3 matter, Provided in this action by a Party before or after the date of this Protective  
4 Order.

5 f. "Party" means the Parties to this action, their attorneys of record  
6 and their agents.

7 g. "Person" means any individual, corporation, partnership,  
8 unincorporated association, governmental agency, or other business or governmental  
9 entity whether a Party or not.

10 h. "Producing Party" means any Person who Provides Material during  
11 the course of this action.

12 i. "Provide" means to produce any Material, whether voluntarily or  
13 involuntarily, whether pursuant to request or process.

14 **CONFIDENTIAL DESIGNATION**

15 2. A Producing Party may designate as "CONFIDENTIAL" any material  
16 provided to a Party which contains or discloses any of the following:

17 a. Non-public insider information, personnel files, financial  
18 information, trade secrets, confidential commercial information, proprietary  
19 information, or other confidential or sensitive information which the Producing Party  
20 determines in good faith should be kept confidential; and

21 b. Information that the Party is under a duty to preserve as  
22 confidential under an agreement with or other obligation to another Person.

23 3. The Producing Party may designate as "ATTORNEYS' EYES ONLY,"  
24 documents Parties contend contain or disclose materials which they in good faith  
25 believe to be of an extremely high degree of current commercial sensitivity and/or  
26 would provide a competitive advantage to its competitors if disclosed.

27 4. A Producing Party shall stamp as CONFIDENTIAL or ATTORNEYS'  
28 EYES ONLY Materials which the Producing Party in good faith believes are entitled

1 to protection pursuant to the standards set forth in Paragraphs 2 and 3 of this Order. A  
2 Producing Party may designate Confidential Material for Protection under this order by  
3 either of the following methods:

4 a. By physically marking it with the following inscription prior to  
5 Providing it to a Party:

6 CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

7 or

8 ATTORNEYS' EYES ONLY SUBJECT TO PROTECTIVE ORDER

9 b. By identifying with specificity in writing to the Discovering Party  
10 any previously Provided Material which was not designated as Confidential Material  
11 prior to its having been Provided. For purposes of this method of designation, it will be  
12 a sufficiently specific identification to refer to the bates numbers or deposition page  
13 numbers of previously Provided Material. Where a Producing Party designates  
14 previously Provided Material as Confidential Material pursuant to this subparagraph,  
15 the Producing Party will follow the procedures set forth in the previous subparagraph  
16 for designating Confidential Material, and Provide to the Discovering Party additional  
17 copies of the previously Provided Material marked with the inscription described in the  
18 previous subparagraph. Upon receipt of the additional copies which comply with the  
19 procedures set forth in the previous subparagraph, the Discovering Party will  
20 immediately return to the Producing Party the previously Provided Material, or  
21 alternatively, will destroy all the previously Provided Material, at the option of the  
22 Producing Party. For previously Provided Material which was not designated as  
23 Confidential Material at the time of its being Provided, this Protective Order shall  
24 apply to such materials beginning on the date that the Producing Party makes such  
25 designation.

26 5. All costs associated with the designations of materials as "Confidential"  
27 or "Attorneys' Eyes Only" involving, for example, the cost of binding confidential  
28 portions of deposition transcripts, shall be initially borne by the Party making the

1 designation with no prejudice regarding the Designating Party's ability to recover its  
2 costs upon completion of the litigation.

3 The designation of documents as "Confidential" or "Attorneys' Eyes Only" does  
4 not entitle the parties to have those documents filed under seal. An application,  
5 including a stipulated application to filed documents under seal must comply with  
6 Local Rule 79-5.

7 **RESTRICTION ON USE OF CONFIDENTIAL MATERIAL**

8 6. Confidential Material designated as CONFIDENTIAL shall not be  
9 disclosed, nor shall its contents be disclosed, to any person other than those described  
10 in Paragraph 9 of this Protective Order and other than in accordance with the terms,  
11 conditions and restrictions of this Protective Order. Confidential Material designated as  
12 ATTORNEYS' EYES ONLY shall not be disclosed, nor shall its contents be disclosed  
13 to any person other than those described in Paragraph 10 of this Protective Order.

14 7. Confidential Material Provided by a Producing Party to a Discovering  
15 Party shall not be used by the Discovering Party or anyone other than the Producing  
16 Party, specifically including the persons identified in Paragraphs 9 or 10 as  
17 appropriate, for any purpose, including, without limitation any personal, business,  
18 governmental, commercial, publicity, public-relations, or litigation (administrative or  
19 judicial) purpose, other than the prosecution or defense of this action.

20 8. All Confidential Material shall be kept secure by Discovering Counsel  
21 and access to Confidential Material shall be limited to persons authorized pursuant to  
22 Paragraphs 9 or 10 of this Protective Order.

23 9. For purposes of the preparation of this action, and subject to the terms,  
24 conditions, and restrictions of this Protective Order, Discovering Counsel may disclose  
25 Material designated as CONFIDENTIAL and the contents of Material designated as  
26 CONFIDENTIAL only to the following persons:

1 a. Counsel of record working on this action on behalf of any party and  
2 counsel's employees who are directly participating in this action, including counsel's  
3 partners, associates, paralegals, assistants, secretaries, and clerical staff.

4 b. In-house counsel and such in-house counsel's employees who are  
5 directly participating in this action, including counsel's paralegals, assistants,  
6 secretaries, and clerical staff.

7 c. Court and deposition reporters and their staff.

8 d. The Court and any Person employed by the Court whose duties  
9 require access to Material designated as CONFIDENTIAL.

10 e. Witnesses at depositions or pre-trial proceedings, in accordance  
11 with procedures set forth in Paragraphs 13-15.

12 f. Non-party experts and consultants assisting counsel with respect to  
13 this action and their secretarial, technical and clerical employees who are actively  
14 assisting in the preparation of this action, in accordance with the procedures set forth in  
15 Paragraph 11.

16 g. Officers, directors and employees of the Parties hereto who have a  
17 need to review Material designated as CONFIDENTIAL to assist in connection with  
18 this litigation, subject to the limitations set forth herein;

19 h. Photocopy service personnel who photocopied or assisted in the  
20 photocopying or delivering of documents in this litigation;

21 i. Any Person identified on the face of any such Material designated  
22 as CONFIDENTIAL as an author or recipient thereof;

23 j. Any Person who is determined to have been an author and/or  
24 previous recipient of the Material designated as CONFIDENTIAL, but is not identified  
25 on the face thereof, provided there is prior testimony of actual authorship or receipt of  
26 the Material designated as CONFIDENTIAL by such Person; and

27 k. Any Person who the Parties agree in writing may receive Material  
28 designated as CONFIDENTIAL.

1           The Parties shall make a good faith effort to limit dissemination of Material  
2 designated as CONFIDENTIAL within these categories to Persons who have a  
3 reasonable need for access thereto.

4           10. For purposes of the preparation of this action, and subject to the terms,  
5 conditions, and restrictions of this Protective Order, the Discovering Counsel may  
6 disclose confidential Material designated as ATTORNEYS' EYES ONLY, and the  
7 contents of Material so designated, only to the following persons:

8           a. Counsel of record for the Parties to this action and counsel's  
9 employees who are directly participating in this action, including counsel's partners,  
10 associates, paralegals, assistants, secretarial, and clerical staff.

11           b. Court and deposition reporters and their staff.

12           c. The Court and any person employed by the Court whose duties  
13 require access to Material designated as ATTORNEYS' EYES ONLY.

14           d. Witnesses at depositions or pre-trial proceedings, in accordance  
15 with procedures set forth in Paragraphs 13-15.

16           e. Non-party experts and consultants assisting counsel with respect to  
17 this action and their secretarial, technical and clerical employees who are actively  
18 assisting in the preparation of this action, in accordance with the procedures set forth in  
19 Paragraph 11.

20           f. Any Person identified on the face of any such Material designated  
21 as ATTORNEYS' EYES ONLY as an author or recipient thereof; and

22           g. Any Person who is determined to have been an author and/or  
23 previous recipient of the Material designated as ATTORNEYS' EYES ONLY, but is  
24 not identified on the face thereof, provided there is prior testimony of actual authorship  
25 or receipt of the Material designated as ATTORNEYS' EYES ONLY by such Person;  
26 and

27           h. Any Person who the Parties agree in writing may receive Material  
28 designated as ATTORNEYS' EYES ONLY.

1                    **UNDERTAKING TO BE BOUND BY PROTECTIVE ORDER**

2            11. Before Discovering Counsel may disclose Confidential Material to any  
3 Person described in subparagraphs 9(f) or 10(e) above, the Person to whom disclosure  
4 is to be made shall receive and read a copy of this Protective Order, shall evidence his  
5 or her agreement to be bound by the terms, conditions, and restrictions of the  
6 Protective Order by signing an undertaking in the form attached hereto as **Exhibit A**  
7 (the “Undertaking”), and shall retain the copy of this Protective Order, with a copy of  
8 his or her signed Undertaking attached. Discovering Counsel shall keep a copy of the  
9 signed Undertaking for each person described in subparagraphs 9(f) or 10(e) to whom  
10 Discovering Counsel discloses Confidential Material.

11            12. The individuals designated in subparagraph 10(a) above, are specifically  
12 prohibited from publishing, releasing, or otherwise disclosing Material designated as  
13 **ATTORNEYS’ EYES ONLY**, or the contents thereof, to any directors, officers, or  
14 employees of the company for which the individual is employed, or to any other  
15 persons not authorized under this Protective Order to receive such information. The  
16 designated individuals in subparagraph 10(a) shall retain all **ATTORNEYS’ EYES**  
17 **ONLY** material in a secure manner under separate and confidential file, so as to avoid  
18 inadvertent access by, or disclosure to, unauthorized persons.

19                    **DEPOSITIONS**

20            13. Those portions of depositions taken by any Party at which any Material  
21 designated as **CONFIDENTIAL** is used or inquired into, may not be conducted in the  
22 presence of any Person(s) other than (a) the deposition witness, (b) his or her counsel,  
23 and (c) Persons authorized under Paragraph 9 of this Protective Order to view such  
24 Confidential Material. During those portions of depositions in which Material  
25 designated **ATTORNEYS’ EYES ONLY** is used or inquired into, only those persons  
26 authorized under Paragraph 10 to view such Materials may be present.

27            14. Counsel for any deponent may designate testimony or exhibits as  
28 Confidential Material by indicating on the record at the deposition that the testimony

1 of the deponent or any exhibits to his or her testimony are to be treated as Confidential  
2 Material. Counsel for any Party may designate exhibits in which that Party has a  
3 cognizable interest as Confidential Material by indicating on the record at the  
4 deposition that such exhibit(s) are to be treated as Confidential Material. Failure of  
5 counsel to designate testimony or exhibits as confidential at deposition, however, shall  
6 not constitute a waiver of the protected status of the testimony or exhibits. Within  
7 thirty calendar days of receipt of the transcript of the deposition, or thirty days of the  
8 date on which this Protective Order becomes effective, whichever occurs last, counsel  
9 shall be entitled to designate specific testimony or exhibits as Confidential Material. If  
10 counsel for the deponent or Party fails to designate the transcript or exhibits as  
11 Confidential within the above-described thirty day period, any other Party shall be  
12 entitled to treat the transcript or exhibits as non-confidential material. For purposes of  
13 this Paragraph 14, this Protective Order shall be deemed “effective” on the date on  
14 which it has been executed by all counsel for the Parties.

15       15. When Material disclosed during a deposition is designated Confidential  
16 Material at the time testimony is given, the reporter shall separately transcribe those  
17 portions of the testimony so designated, shall mark the face of the transcript in  
18 accordance with Paragraph 5 above, and shall maintain that portion of the transcript or  
19 exhibits in separate files marked to designate the confidentiality of their contents. The  
20 reporter shall not file or lodge with the Court any Confidential Material without  
21 obtaining written consent from the Party who designated the Material as Confidential  
22 Material. For convenience, if a deposition transcript or exhibit contains repeated  
23 references to Confidential Material which cannot conveniently be segregated from  
24 non-confidential material, any Party may request that the entire transcript or exhibit be  
25 maintained by the reporter as Confidential Material.



1 **USE OF CONFIDENTIAL MATERIAL IN PLEADINGS AND OTHER COURT**  
2 **PAPERS**

3 16. If any Party or non-party seeks to file or lodge with the Court any  
4 Confidential Material, such materials shall be submitted to the Court in accordance  
5 with the procedures set forth in Local Rule 79-5.1. No documents may be filed or  
6 lodged under seal absent a court order pertinent to the specific document(s). If a Party  
7 wishes to file or lodge documents under seal, the other Party shall not unreasonably  
8 withhold agreement to such procedure. If an agreement is reached, the Parties shall  
9 submit to the Court a Stipulation and Proposed Order for such filing or lodging under  
10 seal. If no such agreement is reached, then the proponent of lodging or filing under seal  
11 shall submit an Application and Proposed Order pursuant to Local Rule 79-5.1.

12 **OBJECTIONS TO DESIGNATION**

13 17. Any Party may at any time notify the Designating Party in writing of its  
14 contention that specified Material designated as Confidential Material is not properly  
15 so designated because such Material does not warrant protection under applicable law.  
16 The Designating Party shall within five court days, meet and confer in good faith with  
17 the Party challenging the designation in an attempt to resolve such dispute. The  
18 Designating Party shall have ten (10) calendar days from the initial meet and confer to  
19 file a motion to uphold the designation of the material in question. Any such motion  
20 shall be set for hearing on the first available calendar date. If no motion is filed within  
21 10 days, or any mutually agreed to extension of time, all Parties may treat the Material  
22 as non-confidential. To maintain the designation as Confidential Material and to  
23 prevail on such a motion, the Designating Party must show by a preponderance of the  
24 evidence that there is good cause for the designation as Confidential Material. Pending  
25 resolution of any motion filed pursuant to this Paragraph, all Persons bound by this  
26 Protective Order shall continue to treat the Material which is the subject of the motion  
27 as Confidential Material.

1 18. Any discovery disputes concerning the designation of materials or  
2 disclosure of documents or information under this Protective Order shall be brought in  
3 compliance with Local Rule 37 and a proposed stipulated protective order should so  
4 provide.

5 **RETURN OF MATERIAL**

6 19. Within ninety (90) calendar days after the final settlement or termination  
7 of this action, Discovering Counsel shall return or destroy (at the option and expense  
8 of Discovering Counsel) all Materials provided by a Producing Party and all copies  
9 thereof except to the extent that any of the foregoing includes or reflects Discovering  
10 Counsel's work product, and except to the extent that such Material has been filed with  
11 a court in which proceedings related to this action are being conducted. In addition,  
12 with respect to any such retained work product and unless otherwise agreed to, at the  
13 conclusion of this action, counsel for each Party shall store in a secure area all work  
14 product which embodies Confidential Material together with all of the signed  
15 undertakings they are required to preserve pursuant to Paragraph 11 above, and shall  
16 not make use of such Material except in connection with any action arising directly out  
17 of these actions, or pursuant to a court order for good cause shown. The obligation of  
18 this Protective Order shall survive the termination of this action. To the extent that  
19 Confidential Materials are or become known to the public through no fault of the  
20 Discovering Party, such Confidential Materials shall no longer be subject to the terms  
21 of this Protective Order. Upon request, counsel for each Party shall verify in writing  
22 that they have complied with the provisions of this paragraph.

23 **SCOPE OF THIS ORDER**

24 20. Except for the provisions regarding post-trial or post-settlement return and  
25 destruction of Material, or segregation of work product which embodies Confidential  
26 Material, this order is strictly a pretrial order; it does not govern the trial in this action.

27 21. Not later than seven days before trial in the action, Counsel agree to meet  
28 and confer concerning the use at trial of Confidential Material.

1           22. Nothing in this Protective Order shall be deemed to limit, prejudice, or  
2 waive any right of any Party or Person (a) to resist or compel discovery with respect to,  
3 or to seek to obtain additional or different protection for, Material claimed to be  
4 protected work product or privileged under California or federal law, Material as to  
5 which the Producing Party claims a legal obligation not to disclose, or Material not  
6 required to be provided pursuant to California law; (b) to seek to modify or obtain  
7 relief from any aspect of this Protective Order; (c) to object to the use, relevance, or  
8 admissibility at trial or otherwise of any Material, whether or not designated in whole  
9 or in part as Confidential Material governed by this Protective Order; or (d) otherwise  
10 to require that discovery be conducted according to governing laws and rules.

11           23. Designation of Material as Confidential Material on the face of such  
12 Material shall have no effect on the authenticity or admissibility of such Material at  
13 trial.

14           24. This Protective Order shall not preclude any Person from waiving the  
15 applicability of this Protective Order with respect to any Confidential Material  
16 Provided by that Person or using any Confidential Material Provided by that Person or  
17 using any Confidential Material owned by that Person in any manner that Person  
18 deems appropriate.

19           25. This Protective Order shall not affect any contractual, statutory or other  
20 legal obligation or the rights of any Party or Person with respect to Confidential  
21 Material designated by that Party.

22           26. The restrictions set out in the Protective Order shall not apply to any  
23 Material which:

- 24           a. At the time it is Provided is available to the public;
- 25           b. After it is Provided, becomes available to the public through no act,  
26 or failure to act, of the Discovering Party; or
- 27           c. The Discovering Party can show

28

1 i. Was already known to the Discovering Party independently  
2 of receipt of the Confidential Material in this or prior litigation; or

3 ii. Was received by the Discovering Party, after the time it was  
4 designated as Confidential Material hereunder, from a third party having the right to  
5 make such disclosure.

6 27. If at any time any Material protected by this Protective Order is  
7 subpoenaed from the Discovering Party by any Court, administrative or legislative  
8 body, or is requested by any other Person or entity purporting to have authority to  
9 require the production of such material, the Party to whom the subpoena or other  
10 request is directed shall immediately give written notice thereof to the Producing Party  
11 with respect to Confidential Material sought and shall afford the Producing Party  
12 reasonable opportunity to pursue formal objections to such disclosures. If the  
13 Producing Party does not **obtain an order preventing the production, prevail on its**  
14 ~~objections to such disclosure,~~ the Discovering Party may produce the Confidential  
15 Material without violating this Protective Order. (FFM)

16 **SUBMISSION TO COURT**

17 28. The Parties agree to submit this Protective Order to the Court for adoption  
18 as an order of the Court. The Parties reserve the right to seek, upon good cause,  
19 modification of this Protective Order by the Court.

20 **IT IS SO ORDERED.**

21  
22 Date: May 20, 2015

/S/ FREDERICK F. MUMM  
Honorable Frederick F. Mumm  
**United States Magistrate Judge**

1 **EXHIBIT A**

2  
3 **UNDERTAKING TO BE BOUND BY THE PRETRIAL PROTECTIVE ORDER**  
4 **REGARDING CONFIDENTIALITY OF DOCUMENTS**

5 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
6 [print or type full address], declare under penalty of perjury that I have read in its  
7 entirety and understand the Protective Order that was issued by the United States  
8 District Court for the Central District of California in the case of *Deckers Outdoor*  
9 *Corporation v. Skechers U.S.A., Inc.*, No. 2:14-CV-08988-SJO-FFM. I agree to  
10 comply with and to be bound by all the terms of this Protective Order and I understand  
11 and acknowledge that failure to so comply could expose me to sanctions and  
12 punishment in the nature of contempt. I solemnly promise that I will not disclose in  
13 any manner any information or item that is subject to this Protective Order to any  
14 person or entity except in strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for  
16 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  
20 Date: \_\_\_\_\_, 2015

21  
22 City and State where sworn and signed: \_\_\_\_\_

23  
24 Signed: \_\_\_\_\_  
25 [Print Name] [Signature]