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Attorneys for Defendants
FORTUNE DYNAMIC and
CAROL LEE

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DECKERS OUTDOOR
CORPORATION, a Delaware
Corporation,

Plaintiff,

v.

FORTUNE DYNAMIC, a California
Corporation; and CAROL LEE, an
individual, and DOES 1-10, inclusive,

Defendants.

CASE NO. 2:15-cv-00769-PSG (SSx)

~~PROPOSED~~ PROTECTIVE ORDER

NOTE CHANGES MADE BY THE COURT

Hon. Suzanne H. Segal

DEFINITIONS

1
2 1. As used in this Protective Order,

3 a. "Designating Party" means any Person who designates Material as
4 Confidential Material.

5 b. "Discovering Counsel" means counsel of record for a Discovering
6 Party.

7 c. "Discovering Party" means the Party to whom Material is being
8 Provided by a Producing Party.

9 d. "Confidential Material" refers to those materials designated as
10 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" as defined in Paragraph 2
11 below.

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

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

18 g. "Person" means any individual, corporation, partnership,
19 unincorporated association, governmental agency, or other business or governmental
20 entity whether a Party or not.

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

23 i. "Provide" means to produce any Material, whether voluntarily or
24 involuntarily, whether pursuant to request or process, or other wise.

25 **CONFIDENTIAL DESIGNATION**

26 2. A Producing Party may designate as "CONFIDENTIAL" any material
27 provided to a Party which contains or discloses any of the following:
28

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

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

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

11 3. A Producing Party shall stamp as CONFIDENTIAL or ATTORNEYS'
12 EYES ONLY Materials which the Producing Party in good faith believes are entitled
13 to protection pursuant to the standards set forth in Paragraph 2 of this Order. A
14 Producing Party may designate Confidential Material for Protection under this order by
15 either of the following methods:

16 a. By physically marking it with the following inscription prior to
17 Providing it to a Party:

18 CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

19 or

20 ATTORNEYS' EYES ONLY SUBJECT TO PROTECTIVE ORDER

21 b. By identifying with specificity in writing to the Discovering Party
22 any previously Provided Material which was not designated as Confidential Material
23 prior to its having been Provided. For purposes of this method of designation, it will be
24 a sufficiently specific identification to refer to the bates numbers or deposition page
25 numbers of previously Provided Material. Where a Producing Party designates
26 previously Provided Material as Confidential Material pursuant to this subparagraph,
27 the Producing Party will follow the procedures set forth in the previous subparagraph
28 for designating Confidential Material, and Provide to the Discovering Party additional

1 copies of the previously Provided Material marked with the inscription described in the
2 previous subparagraph. Upon receipt of the additional copies which comply with the
3 procedures set forth in the previous subparagraph, the Discovering Party will
4 immediately return to the Producing Party the previously Provided Material, or
5 alternatively, will destroy all the previously Provided Material, at the option of the
6 Producing Party. For previously Provided Material which was not designated as
7 Confidential Material at the time of its being Provided, this Protective Order shall
8 apply to such materials beginning on the date that the Producing Party makes such
9 designation.

10 All costs associated with the designations of materials as “Confidential” or
11 “Attorneys’ Eyes Only” involving, for example, the cost of binding confidential
12 portions of deposition transcripts, shall be initially borne by the Party making the
13 designation with no prejudice regarding the Designating Party’s ability to recover its
14 costs upon completion of the litigation.

15 The designation of documents as “Confidential” or “Attorneys’ Eyes Only” does
16 not entitle the parties to have those documents filed under seal. An application,
17 including a stipulated application to filed documents under seal must comply with
18 Local Rule 79-5.

19 **RESTRICTION ON USE OF CONFIDENTIAL MATERIAL**

20 4. Confidential Material designated as CONFIDENTIAL shall not be
21 disclosed, nor shall its contents be disclosed, to any person other than those described
22 in Paragraph 7 of this Protective Order and other than in accordance with the terms,
23 conditions and restrictions of this Protective Order. Confidential Material designated as
24 ATTORNEYS’ EYES ONLY shall not be disclosed, nor shall its contents be disclosed
25 to any person other than those described in Paragraph 8 of this Protective Order.

26 5. Confidential Material Provided by a Producing Party to a Discovering
27 Party shall not be used by the Discovering Party or anyone other than the Producing
28 Party, specifically including the persons identified in Paragraphs 7 or 8 as appropriate,

1 for any purpose, including, without limitation any personal, business, governmental,
2 commercial, publicity, public-relations, or litigation (administrative or judicial)
3 purpose, other than the prosecution or defense of this action.

4 6. All Confidential Material shall be kept secure by Discovering Counsel
5 and access to Confidential Material shall be limited to persons authorized pursuant to
6 Paragraphs 7 or 8 of this Protective Order.

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

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

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

17 c. Court and deposition reporters and their staff.

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

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

22 f. Non-party experts and consultants assisting counsel with respect to
23 this action and their secretarial, technical and clerical employees who are actively
24 assisting in the preparation of this action, in accordance with the procedures set forth in
25 Paragraphs 11-13.

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

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

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

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

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

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

14 8. For purposes of the preparation of this action, and subject to the terms,
15 conditions, and restrictions of this Protective Order, the Discovering Counsel may
16 disclose confidential financial Material designated as ATTORNEYS' EYES ONLY,
17 and the contents of Material so designated, only to the following persons:

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

21 b. Court and deposition reporters and their staff.

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

24 d. Witnesses at depositions or pre-trial proceedings, in accordance
25 with procedures set forth in paragraphs 11-13.

26 e. Experts and consultants assisting counsel with respect to this action
27 and their secretarial, technical and clerical employees who are actively assisting in the
28

1 preparation of this action, in accordance with the procedures set forth in paragraphs
2 11-13.

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

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

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

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

13 9. Before Discovering Counsel may disclose Confidential Material to any
14 Person described in subparagraphs 7(f), 7(g), or 8(f) above, the Person to whom
15 disclosure is to be made shall receive a copy of this Protective Order, shall read
16 Paragraphs 1, 4, 5, 6, 7, 8, 9 and 10 (including the subparagraphs where applicable) of
17 the Protective Order, shall evidence his or her agreement to be bound by the terms,
18 conditions, and restrictions of the Protective Order by signing an undertaking in the
19 form attached hereto as **Exhibit A** (the "Undertaking"), and shall retain the copy of
20 this Protective Order, with a copy of his or her signed Undertaking attached.

21 Discovering Counsel shall keep a copy of the signed Undertaking for each person
22 described in subparagraphs 7(f), 7(g), or 8(f) to whom Discovering Counsel discloses
23 Confidential Material.

24 10. The individuals designated in subparagraph 8(a) above, are specifically
25 prohibited from publishing, releasing, or otherwise disclosing Material designated as
26 ATTORNEYS' EYES ONLY, or the contents thereof, to any directors, officers, or
27 employees of the company for which the individual is employed, or to any other
28 persons not authorized under this Protective Order to receive such information. The

1 designated individuals in subparagraph 8(a) shall retain all ATTORNEYS' EYES
2 ONLY material in a secure manner under separate and confidential file, so as to avoid
3 inadvertent access by, or disclosure to, unauthorized persons.

4 **DEPOSITIONS**

5 11. Those portions of depositions taken by any Party at which any Material
6 designated as CONFIDENTIAL is used or inquired into, may not be conducted in the
7 presence of any Person(s) other than (a) the deposition witness, (b) his or her counsel,
8 and (c) Persons authorized under Paragraph 7 of this Protective Order to view such
9 Confidential Material. During those portions of depositions in which Material
10 designated ATTORNEYS' EYES ONLY is used or inquired into, only those persons
11 authorized under Paragraph 8 to view such Materials may be present.

12 12. Counsel for any deponent may designate testimony or exhibits as
13 Confidential Material by indicating on the record at the deposition that the testimony
14 of the deponent or any exhibits to his or her testimony are to be treated as Confidential
15 Material. Counsel for any Party may designate exhibits in which that Party has a
16 cognizable interest as Confidential Material by indicating on the record at the
17 deposition that such exhibit(s) are to be treated as Confidential Material. Failure of
18 counsel to designate testimony or exhibits as confidential at deposition, however, shall
19 not constitute a waiver of the protected status of the testimony or exhibits. Within
20 thirty calendar days of receipt of the transcript of the deposition, or thirty days of the
21 date on which this Protective Order becomes effective, whichever occurs last, counsel
22 shall be entitled to designate specific testimony or exhibits as Confidential Material. If
23 counsel for the deponent or Party fails to designate the transcript or exhibits as
24 Confidential within the above-described thirty day period, any other Party shall be
25 entitled to treat the transcript or exhibits as non-confidential material. For purposes of
26 this Paragraph 12, this Protective Order shall be deemed "effective" on the date on
27 which it has been executed by all counsel for the Parties.

28

1 13. When Material disclosed during a deposition is designated Confidential
2 Material at the time testimony is given, the reporter shall separately transcribe those
3 portions of the testimony so designated, shall mark the face of the transcript in
4 accordance with Paragraph 3 above, and shall maintain that portion of the transcript or
5 exhibits in separate files marked to designate the confidentiality of their contents. The
6 reporter shall not file or lodge with the Court any Confidential Material without
7 obtaining written consent from the Party who designated the Material as Confidential
8 Material. For convenience, if a deposition transcript or exhibit contains repeated
9 references to Confidential Material which cannot conveniently be segregated from
10 non-confidential material, any Party may request that the entire transcript or exhibit be
11 maintained by the reporter as Confidential Material.

12 **USE OF CONFIDENTIAL MATERIAL IN PLEADINGS AND OTHER COURT**

13 **PAPERS**

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

23 **OBJECTIONS TO DESIGNATION**

24 ~~15. Any Party may at any time notify the Designating Party in writing of its
25 contention that specified Material designated as Confidential Material is not properly
26 so designated because such Material does not warrant protection under applicable law.
27 The Designating Party shall within five court days, meet and confer in good faith with
28 the Party challenging the designation in an attempt to resolve such dispute. The~~

Any disputes regarding this Order or material covered by this Order are subject to the procedures set forth in Local Rule 37.9

1 Designating Party shall have ten (10) calendar days from the initial meet and confer to
2 file a motion to uphold the designation of the material in question. Any such motion
3 shall be set for hearing on the first available calendar date. If no motion is filed within
4 10 days, or any mutually agreed to extension of time, all Parties may treat the Material
5 as non-confidential. To maintain the designation as Confidential Material and to
6 prevail on such a motion, the Designating Party must show by a preponderance of the
7 evidence that there is good cause for the designation as Confidential Material. Pending
8 resolution of any motion filed pursuant to this Paragraph, all Persons bound by this
9 Protective Order shall continue to treat the Material which is the subject of the motion
10 as Confidential Material.

11 16. Any discovery disputes concerning the designation of materials or
12 disclosure of documents or information under this Protective Order shall be brought in
13 compliance with Local Rule 37 and a proposed stipulated protective order should so
14 provide.

15 **RETURN OF MATERIAL**

16 17. Within ninety (90) calendar days after the final settlement or termination
17 of this action, Discovering Counsel shall return or destroy (at the option and expense
18 of Discovering Counsel) all Materials provided by a Producing Party and all copies
19 thereof except to the extent that any of the foregoing includes or reflects Discovering
20 Counsel's work product, and except to the extent that such Material has been filed with
21 a court in which proceedings related to this action are being conducted. In addition,
22 with respect to any such retained work product and unless otherwise agreed to, at the
23 conclusion of this action, counsel for each Party shall store in a secure area all work
24 product which embodies Confidential Material together with all of the signed
25 undertakings they are required to preserve pursuant to Paragraph 9 above, and shall not
26 make use of such Material except in connection with any action arising directly out of
27 these actions, or pursuant to a court order for good cause shown. The obligation of this
28 Protective Order shall survive the termination of this action. To the extent that

1 Confidential Materials are or become known to the public through no fault of the
2 Discovering Party, such Confidential Materials shall no longer be subject to the terms
3 of this Protective Order. Upon request, counsel for each Party shall verify in writing
4 that they have complied with the provisions of this paragraph.

5 **SCOPE OF THIS ORDER**

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

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

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

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

24 22. This Protective Order shall not preclude any Person from waiving the
25 applicability of this Protective Order with respect to any Confidential Material
26 Provided by that Person or using any Confidential Material Provided by that Person or
27 using any Confidential Material owned by that Person in any manner that Person
28 deems appropriate.

1 23. This Protective Order shall not affect any contractual, statutory or other
2 legal obligation or the rights of any Party or Person with respect to Confidential
3 Material designated by that Party.

4 24. The restrictions set out in the Protective Order shall not apply to any
5 Material which:

- 6 a. At the time it is Provided is available to the public;
- 7 b. After it is Provided, becomes available to the public through no act,
8 or failure to act, of the Discovering Party; or
- 9 c. The Discovering Party can show
 - 10 i. Was already known to the Discovering Party independently
11 of receipt of the Confidential Material in this or prior litigation; or
 - 12 ii. Was received by the Discovering Party, after the time it was
13 designated as Confidential Material hereunder, from a third party having the right to
14 make such disclosure.

15 25. If at any time any Material protected by this Protective Order is
16 subpoenaed from the Discovering Party by any Court, administrative or legislative
17 body, or is requested by any other Person or entity purporting to have authority to
18 require the production of such material, the Party to whom the subpoena or other
19 request is directed shall immediately give written notice thereof to the Producing Party
20 with respect to Confidential Material sought and shall afford the Producing Party
21 reasonable opportunity to pursue formal objections to such disclosures. If the
22 Producing Party does not prevail on its objections to such disclosure, the Discovering
23 Party may produce the Confidential Material without violating this Protective Order.

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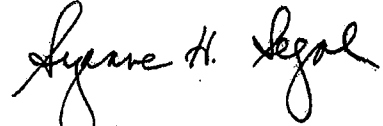
SUBMISSION TO COURT

, as amended,

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

IT IS SO ORDERED.

Date: June 23, 2015



Honorable Suzanne H. Segal
United States Magistrate Judge

EXHIBIT A

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

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 in the case of *Deckers Outdoor
Corporation v Fortune Dynamic, Inc., et al.*, No. 2:15-cv-007694-PSG (SSx). 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]