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24 UNDER ARMOUR, INC. and
25 DICK'S SPORTING GOODS, INC.

26 **UNITED STATES DISTRICT COURT**
27 **CENTRAL DISTRICT OF CALIFORNIA**
28 **WESTERN DIVISION**

29 COHEN INTERNATIONAL, INC. DBA
30 HYDRO CLOTHING,

31 Plaintiff,

32 v.

33 UNDER ARMOUR, INC. and DICK'S
34 SPORTING GOODS, INC.,

35 Defendants.

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Attorneys for Plaintiff
COHEN INTERNATIONAL, INC. DBA
HYDRO CLOTHING

CASE NO. 2:15-cv-01625-PSG (JEM)

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

DISCOVERY MATTER

District Judge: Honorable Philip S.
Gutierrez
Magistrate: Honorable John E. McDermott

1 Plaintiff Cohen International, Inc. DBA Hydro Clothing (“Cohen”) and
2 Defendants Under Armour, Inc. (“Under Armour”) and Dick’s Sporting Goods, Inc.
3 (“Dick’s) (together, “Defendants”), stipulate and agree between and among
4 themselves, by and through their attorneys, to the entry of this Protective Order to
5 govern the use, dissemination, and disclosure of certain documents and materials
6 described below and obtained by the parties through discovery or otherwise in this
7 action. The parties agree as follows:

8 **A. Scope of Order**

9 This Protective Order shall apply to all information, premises, documents, and
10 things owned or controlled by the parties, or of any parents, subsidiaries, divisions,
11 branches, affiliates, related companies, agents, or licensees of any party, or of any
12 other parties added or substituted in this case, that are subject to discovery in this
13 action, including without limitation, testimony adduced at depositions upon oral
14 examination or upon written questions, answers to interrogatories, documents and
15 things produced or otherwise provided, information obtained from inspection of
16 premises or things, and answers to requests for admission (hereafter “Information and
17 Materials”).

18 **B. Definitions**

19 1. As used in this Order, “Confidential” Information and Materials shall
20 include all Information and Materials that have not been made public, the disclosure
21 of which the disclosing party contends could cause harm to its business operations or
22 provide improper advantage to others. “Confidential” Information and Materials shall
23 include, but shall not be limited to information that concerns or relates to (1) sales,
24 marketing, manufacturing, or research and development; (2) financial performance;
25 (3) manufacturing or other costs of doing business; (4) licenses or other confidential
26 agreements; and/or (5) technical product details or methods of doing business.

27 2. As used in this Order, “Highly Confidential—Attorneys’ Eyes Only”
28 Information and Materials shall include trade secrets within the meaning of the

1 Uniform Trade Secrets Act and all Information and Materials that the disclosing party
2 has reasonable grounds to believe would, if known to any officer, director, employee,
3 or agent of a receiving party, another third party, or to the public, lead to a significant
4 harm or injury to the reputation and/or business of the disclosing party or provide
5 improper advantage to others.

6 **C. Marking Requirements**

7 1. All Information and Materials deemed *Confidential* or *Highly*
8 *Confidential—Attorneys’ Eyes Only* will be so identified and labeled by the producing
9 party.

10 2. If qualified Information and Materials cannot be labeled, they shall be
11 designated as *Confidential* or *Highly Confidential—Attorneys’ Eyes Only* in a manner
12 to be agreed upon by the parties.

13 3. In lieu of marking the original of a document or thing, if the original is
14 not produced, the designating party may mark the copies that are produced or
15 exchanged, but the other party, by its counsel, shall have the right to examine the
16 original, to be provided with a full and complete copy, and to call for production of
17 the original at the trial in this action. However, nothing in this Stipulated Protective
18 Order requires the production of privileged or work-product Information and
19 Materials, or any Information and Materials that are otherwise not subject to
20 discovery. If a producing party inadvertently discloses to a receiving party
21 information that is privileged, said producing party shall promptly upon discovery of
22 such disclosure so advise the receiving party in writing and request that the item(s) of
23 information be returned, and no party to this action shall thereafter assert that such
24 disclosure waived any privilege. It is further agreed that the receiving party will
25 return such inadvertently produced item(s) of information and all copies thereof
26 within three (3) business days of receiving a written request for the return of such
27 item(s) of information.
28

1 4. The identification and labeling specified in Paragraphs C.1, C.2, and C.3
2 of this Order shall be made at the time when the answer to the interrogatory or the
3 answer to the request for admission is served, and when a copy of the document or
4 thing is provided to Under Armour, Dick’s, or Cohen. In the case of hearing and
5 deposition transcript pages, the designating party shall advise opposing counsel of the
6 specific pages to be maintained in confidence within forty-five (45) days after the
7 receipt of the transcript or as otherwise agreed by counsel. During this period, the
8 entire transcript shall be deemed to be *Highly Confidential—Attorneys’ Eyes Only*.

9 5. In the event that a disclosing party discovers a failure to mark qualified
10 Information or Materials as *Confidential* or *Highly Confidential—Attorneys’ Eyes*
11 *Only*, the other party shall be notified immediately and the following corrective action
12 shall be taken:

13 (a) The receiving party shall notify all persons who have received the
14 Information and Materials that the Information and Materials are designated
15 *Confidential* or *Highly Confidential—Attorneys Eyes’ Only* and must be treated as
16 designated in this Order;

17 (b) The receiving party shall take all reasonable steps to place the
18 applicable *Confidential* or *Highly Confidential—Attorneys’ Eyes Only* label on the
19 designated Information and Materials; and

20 (c) The receiving party shall treat the newly marked Information and
21 Materials as set out in Paragraphs F and G of this Order.

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D. Designating Information and Documents

1. In designating Information and Materials as *Confidential* or *Highly Confidential—Attorneys Eyes’ Only*, a party will make such designation only as to that information that it in good faith believes to be *Confidential* or *Highly Confidential—Attorneys Eyes Only* as defined in Paragraph B of this Order.

2. If counsel for a party believes that questions put to a witness being examined during a deposition will disclose *Confidential* or *Highly Confidential—Attorneys’ Eyes Only* Information and Materials of his or her client, or that the answer to any question or questions requires such disclosure, or if documents to be used as exhibits during the examination contain such information, counsel shall so notify opposing counsel and the deposition of such witness, or portions thereof, shall be taken only in the presence of appropriate persons as defined in Paragraph F, counsel for the witness, if any, the stenographic reporter, and the officers or employees of the party whose *Confidential* or *Highly Confidential—Attorneys’ Eyes Only* information is being disclosed.

E. Redaction

Redacted versions of *Confidential* or *Highly Confidential—Attorneys’ Eyes Only* materials that no longer contain *Confidential* or *Highly Confidential—Attorneys’ Eyes Only* information, and that are not subject to this Order, may be used for any proper purpose for this case.

F. Access to Confidential or Highly Confidential—Attorneys’ Eyes Only Information and Materials

1. It is the general intent of the parties to limit disclosure to the smallest number of persons, consistent with the needs of litigation.

2. All access, possession, use, testing, inspection, study, or copying of any Information or Materials designated as *Confidential* under this Order is governed by this Order and is limited to the following persons:

- 1 a. The law firms Finnegan, Henderson, Farabow, Garrett & Dunner,
2 L.L.P.; Witkowlaw APLC; litigation insurance/claims personnel at
3 the Chubb Group of Insurance Companies and Zurich North
4 America; and in-house counsel for Under Armour and Dick's,
5 including attorneys, law clerks, stenographic, clerical, and
6 paralegal employees whose functions require access to such
7 *Confidential* Information and Materials.
- 8 b. Two employee representatives of Under Armour, Dick's, and
9 Cohen, not to include in-house counsel or members of the legal
10 department. Disclosures to such persons, however, will be allowed
11 only after the conditions set forth in Paragraph F.4 of this Order
12 are satisfied.
- 13 c. Independent experts, consultants, or translators for each party and
14 their clerical personnel, who are not employees of the parties or
15 employees of Defendants' Competitors (defined below) (or their
16 parents, subsidiaries, divisions, branches, affiliates, or agents), and
17 whose advice and consultation will be used by such party in
18 connection with preparation of this case for trial. Disclosures to
19 such persons, however, will be allowed only after the conditions
20 set forth in Paragraph F.4 of this Order are satisfied. In no event
21 may Cohen or its counsel disclose any materials designated as
22 *Confidential* or *Highly Confidential—Attorneys Eyes Only* to any
23 Under Armour competitor, e.g., manufacturers of apparel and/or
24 athletic products, or Dick's competitor, e.g. retailer or wholesaler
25 of athletic apparel and/or sporting goods (together, "Defendants'
26 Competitor") whether or not the Defendants' Competitor has
27 executed Exhibit A and B to this Order.
- 28

1 3. All access, possession, use, testing, inspection, study, or copying of any
2 Information or Materials designated as *Highly Confidential—Attorneys’ Eyes Only*
3 under this Order is governed by this Order and is limited to in-house and outside
4 counsel and their staff, as identified above in Paragraph F.2.a, and experts and their
5 staff, as identified above in Paragraph F.2.c.

6 4. Prior to any disclosure of *Confidential* Information and Materials to those
7 persons named in Paragraph F.2.b of this Order, disclosing counsel shall obtain from
8 each such person a copy of a signed undertaking as set forth in Exhibit A, including
9 any information requested by Exhibit A. Prior to any disclosure of *Confidential* or
10 *Highly Confidential—Attorneys’ Eyes Only* Information and Materials to those
11 persons named in Paragraph F.2.c. of this Order, disclosing counsel shall obtain from
12 each such person a copy of a signed undertaking as set forth in Exhibit B, including
13 any information requested by Exhibit B.

14 5. The parties will attempt to resolve any disagreements about the
15 designation of Information and Materials designated as *Confidential* or *Highly*
16 *Confidential—Attorneys’ Eyes Only* on an informal basis before presenting the dispute
17 to the Court by motion or otherwise. Acceptance by a party of Information and
18 Materials as *Confidential* or *Highly Confidential—Attorneys’ Eyes Only* will not, of
19 itself, constitute an admission that the designated Information and Materials is entitled
20 to protection. If unable to resolve any such disagreements, the objecting party shall
21 file an appropriate motion with the Court. Information and Materials designated as
22 *Confidential* or *Highly Confidential—Attorneys’ Eyes Only* shall remain under the
23 protection of this Stipulated Protective Order until there is an order of the Court to the
24 contrary or until there is an express written agreement between the parties. No party
25 shall be obliged to challenge the proprietary of a *Confidential* or *Highly*
26 *Confidential—Attorneys Eyes’ Only* designation at the time of production, and failure
27 to do so shall not preclude a subsequent attack on the propriety of such designation.
28

1 *Eyes Only* shall be furnished by the reporter to any person other than to counsel for the
2 parties. Neither the original nor any copy of any transcript of any deposition taken in
3 this proceeding shall be filed with the Court or used during the trial in this action until
4 the parties' outside counsel have had the opportunity to designate those portions, if
5 any, of the transcript that are to be regarded as *Confidential* or *Highly Confidential*—
6 *Attorneys' Eyes Only* as provided in Paragraph C.4. Upon such a designation, the
7 designated portions of the transcript to be filed with the Court or used during the trial
8 shall be filed under seal in accordance with Paragraph G of this Order, unless
9 otherwise agreed by the parties or ordered by the Court.

10 4. Each person having access to *Confidential* or *Highly Confidential*—
11 *Attorneys' Eyes Only* Information and Materials under this Order shall take all
12 reasonable steps to comply with this Order.

13 5. Nothing in this Order shall bar or otherwise restrict any attorney from
14 rendering advice to his or her client with respect to this proceeding and, in the course
15 of the proceeding, referring to or relying upon his or her examination of *Confidential*
16 or *Highly Confidential*—*Attorneys' Eyes Only* Information and Materials; provided,
17 that in rendering such advice and in otherwise communicating with clients, the
18 attorney shall not make specific disclosure to any person of any *Confidential* or
19 *Highly Confidential*—*Attorneys' Eyes Only* Information and Materials.

20 6. Any person bound by this Order may rely on a waiver or consent that is
21 made by an attorney for a party as if that waiver or consent was made by that party or
22 person, provided that such waiver or consent shall be either in writing or on record in
23 a hearing, trial, or deposition transcript.

24 7. A person or an entity that is not a party to this litigation may take
25 advantage of the protection of *Confidential* or *Highly Confidential*—*Attorneys' Eyes*
26 *Only* Information and Materials provided by this Order, and such person or entity shall
27 be entitled to all rights and protections afforded the disclosing party under this Order.
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1 8. This Order shall not be construed: (a) to prevent any party or its
2 attorneys from making use of information that is lawfully in its possession prior to its
3 disclosure by the Producing Party; (b) to apply to information that appears in public
4 records, printed publications, or otherwise becomes publicly known; or (c) to apply to
5 information that any party or its attorneys have, after disclosure by the Producing
6 Party, lawfully obtained from a third party having the right to disclose such
7 information.

8 The parties, through their undersigned counsel, agree to the terms of this
9 Stipulated Protective Order as of the last dates shown below.

10 Respectfully submitted,

11 Dated: November 4, 2015

witkowlaw, a professional law
corporation

13 By: /s/ Brandon J. Witkow
14 Brandon J. Witkow

15 *Attorneys for Plaintiff*
16 COHEN INTERNATIONAL, INC.
DBA HYDRO CLOTHING

17 Dated: November 4, 2015

FINNEGAN, HENDERSON,
18 FARABOW, GARRETT &
DUNNER, LLP

19 By: /s/ Robert F. McCauley
20 Robert F. McCauley

21 *Attorneys for Defendants*
22 UNDER ARMOUR, INC. &
DICK'S SPORTING GOODS, INC.

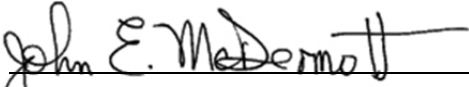
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24 **ATTESTATION**

25 I attest that all other signatories listed, and on whose behalf the filing is
26 submitted, concur in the filing's content and have authorized the filing of this
27 document.

28 /s/ Robert F. McCauley
Robert F. McCauley

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IT IS SO ORDERED on this 5th day of October 2015.



The Honorable John E. McDermott
United States Magistrate Judge

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EXHIBIT A

*Cohen International, Inc. v. Under Armour, Inc.
and Dick’s Sporting Goods, Inc.*

2:15-cv-01625-PSG (JEM)

United States District Court for the Central District of California

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

UNDERTAKING OF _____

STATE OF _____

COUNTY OF _____

I, _____, being duly sworn, state that:

- 1. My address is:
- 2. My employer is:
- 3. My present occupation or job description is:
- 4. I have received a copy of the Stipulated Protective Order in this case.
- 5. I have carefully read and understand the provisions of the Stipulated

Protective Order.

6. I will comply with all of the provisions of the Stipulated Protective Order and understand that a violation of the Stipulated Protective Order or this Agreement could result in sanctions against me.

7. I will hold in confidence and not disclose to anyone not qualified under the Stipulated Protective Order any “Confidential” Information or Materials disclosed to me.

8. I will return all Information and Materials containing or disclosing “Confidential” Information and Materials which come into my possession, and Information and Materials that I have prepared relating thereto, to counsel for the party that provided me with the “Confidential” Information and Materials.

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9. I submit to the jurisdiction of this Court for the purpose of enforcement of the Stipulated Protective Order in this case.

I declare under penalty of perjury that the foregoing is true and correct.

Date: _____ By: _____

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EXHIBIT B

*Cohen International, Inc. v. Under Armour, Inc.
and Dick’s Sporting Goods, Inc.*

2:15-cv-01625-PSG (JEM)

United States District Court for the Central District of California

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

UNDERTAKING OF _____

STATE OF _____

COUNTY OF _____

I, _____, being duly sworn, state that:

- 1. My address is:
- 2. My employer is:
- 3. My present occupation or job description is:
- 4. I have never been employed and am not currently employed by any of the

parties in this case, or by any parents, subsidiaries, divisions, branches, affiliates, or competitors of any of the parties in any capacity other than as an expert, consultant, or translator in this proceeding.

5. I have received a copy of the Stipulated Protective Order in this case.

6. I have carefully read and understand the provisions of the Stipulated Protective Order.

7. I will comply with all of the provisions of the Stipulated Protective Order and understand that a violation of the Stipulated Protective Order or this Agreement could result in sanctions against me.

8. I will hold in confidence and not disclose to anyone not qualified under the Stipulated Protective Order any “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” Information or Materials disclosed to me.

1 9. I will return all Information and Materials containing or disclosing
2 “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” Information and
3 Materials which come into my possession, and Information and Materials that I have
4 prepared relating thereto, to counsel for the party that provided me with the
5 “Confidential” “Highly Confidential—Attorneys Eyes Only” Information and
6 Materials.

7 10. I submit to the jurisdiction of this Court for the purpose of enforcement
8 of the Stipulated Protective Order in this case.

9 I declare under penalty of perjury that the foregoing is true and correct.

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12 Date: _____ By: _____

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