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7
 8 **UNITED STATES DISTRICT COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA**

10 URBAN TEXTILE, INC., a California
11 Corporation;

12 Plaintiff,

13 vs.

14 SPECIALTY RETAILERS, INC., a
 15 Texas Corporation; MARK-
 16 EDWARDS APPAREL INC., a
 17 Canadian Federal Corporation; and
 18 DOES 1-20, inclusive,

19 Defendants.

Case No.: 2:15-cv-3456-ODW(FFMx)

[PROPOSED] PROTECTIVE ORDER

Hon. Frederick F. Mumm

1 On stipulation of the Parties, the Court enters a Protective Order in this
2 matter as follows:

3
4 1. PURPOSES AND LIMITATIONS

5 Disclosure and discovery activity in this action are likely to involve
6 production of confidential, proprietary, or private information for which special
7 protection from public disclosure and from use for any purpose other than
8 prosecuting this matter would be warranted. Accordingly, the parties have
9 stipulated to and petitioned this Court to enter the following Stipulated Protective
10 Order. The parties acknowledge that this Order does not confer blanket protections
11 on all disclosures or responses to discovery and that the protection it affords
12 extends only to the limited information or items that are entitled under the
13 applicable legal principles to treatment as confidential. The parties have agreed
14 that the terms of this Protective Order shall also apply to any future voluntary
15 disclosures of confidential, proprietary, or private information. The parties reserve
16 their rights to object to or withhold any information, including confidential,
17 proprietary, or private information, on any other applicable grounds permitted by
18 law, including third-party rights and relevancy.

19
20 2. DEFINITIONS

21 2.1 Party: any party to this action, including all of its officers,
22 directors, employees, consultants, retained experts, and outside counsel (and their
23 support staff).

24 2.2 Disclosure or Discovery Material: all items or information,
25 regardless of the medium or manner generated, stored, or maintained (including,
26 among other things, testimony, transcripts, or tangible things), that are produced or
27 generated in disclosures or responses to discovery in this matter.

1 2.3 “Confidential” and “Attorneys’ Eyes Only” Information or
2 Items: All information in whatever form, such as oral, written, documentary,
3 tangible, intangible, electronic, or digitized now or hereafter in existence that the
4 designating Party in good faith believes contains, reflects, regards, or discloses any
5 trade secret or any confidential financial, research, development, business, or
6 proprietary information. Confidential information that is particularly sensitive,
7 private, or competitively valuable may be designated “Highly Confidential.”

8 Material from a Producing Party.

9 2.6 Producing Party: a Party or non-party that produces Disclosure
10 or Discovery Material in this action.

11 2.7 Designating Party: a Party or non-party that designates
12 information or items that it produces in disclosures or in responses to discovery as
13 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

14 2.8 Protected Material: any Disclosure or Discovery Material that
15 is designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

16 2.9 Expert: a person with specialized knowledge or experience in a
17 matter pertinent to the litigation who has been retained by a Party or its counsel to
18 serve as an expert witness or as a consultant in this action. This definition includes
19 a professional jury or trial consultant retained in connection with this litigation.
20 The expert witness or consultant may not be a past or a current employee of the
21 Party (including any affiliates or related entities) adverse to the Party engaging the
22 expert witness or consultant, or someone who at the time of retention is anticipated
23 to become an employee of the Party (including any affiliates or related entities)
24 adverse to the Party engaging the expert witness or consultant.

25 2.10 Professional Vendors: persons or entities that provide litigation
26 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or
27 demonstrations; organizing, storing, or retrieving data in any form or medium; etc.)
28 and their employees and subcontractors.

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3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also any information copied or extracted
6 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
7 testimony, conversations, or presentations by parties or counsel to or in litigation or
8 in other settings that might reveal Protected Material.

9
10 4. DURATION

11 Even after the termination of this action, the confidentiality obligations
12 imposed by this Order shall remain in effect until a Designating Party agrees
13 otherwise in writing or a court order otherwise directs.

14
15 5. DESIGNATING PROTECTED MATERIAL

16 5.1 Exercise of Restraint and Care in Designating Material for
17 Protection. Each Party or non-party that designates information or items for
18 protection under this Order must take care to limit any such designation to specific
19 material that qualifies under the appropriate standards. A Designating Party must
20 take care to designate for protection only those parts of material, documents, items,
21 or oral or written communications that qualify – so that other portions of the
22 material, documents, items, or communications for which protection is not
23 warranted are not swept unjustifiably within the ambit of this Order.

24 5.2 Manner and Timing of Designations. Except as otherwise
25 provided in this Order (*see, e.g.*, second paragraph of section 5.2(a), below), or as
26 otherwise stipulated or ordered, material that qualifies for protection under this
27 Order must be clearly so designated before the material is disclosed or produced.

28 Designation in conformity with this Order requires:

1 (a) for information in documentary form (apart from
2 transcripts of depositions or other pretrial or trial proceedings), that the Producing
3 Party affix the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” at
4 the top or bottom of each page that contains protected material.

5 A Party or non-party that makes originals or copies of
6 documents or materials available for inspection need not designate them for
7 protection until after the inspecting Party has indicated which material it intends to
8 copy. During the inspection and before the designation, all of the material made
9 available for inspection shall be deemed “ATTORNEYS’ EYES ONLY.” After
10 the inspecting Party has identified the documents it wants copied and produced, the
11 Producing Party must designate, either in writing or on the record (at a deposition),
12 which documents, or portions thereof, qualify for protection under this Order.
13 Then the Receiving Party must affix the “CONFIDENTIAL” or “ATTORNEYS’
14 EYES ONLY” legend at the top of each copied page that contains Protected
15 Material. If only a portion or portions of the material on a page qualifies for
16 protection, the Producing Party also must clearly identify the protected portion(s)
17 (e.g., by making appropriate markings in the margins) and must specify, for each
18 portion, the level of protection being asserted (either “CONFIDENTIAL” or
19 “ATTORNEYS’ EYES ONLY”).

20 (b) for testimony given in deposition or in other pretrial or
21 trial proceedings,^{FFM} that the Party or non-party offering or sponsoring the
22 testimony make a statement designating the material on the record during the
23 course of the deposition. In making such a designation, counsel shall attempt to
24 identify and designate in good faith those portions of the transcript and exhibits that
25 contain CONFIDENTIAL or ATTORNEYS’ EYES ONLY information, and those
26 portions of the transcript and exhibits so identified shall be separately marked and
27 bound by the court reporter and labeled as containing CONFIDENTIAL or
28 ATTORNEYS’ EYES ONLY information. In addition, within thirty (30) days after

1 the court reporter notifies all counsel that a completed transcript is available, any
2 counsel may designate all or part of any deposition transcript (and/or exhibits) as
3 containing CONFIDENTIAL or ATTORNEYS' EYES ONLY information by
4 serving a notice designating such material on all other Parties. Such notice shall
5 specify the particular portions of the transcript and any exhibits that counsel wishes
6 to designate as containing CONFIDENTIAL or ATTORNEYS' EYES ONLY
7 information by listing on a separate sheet of paper the numbers of the pages of the
8 transcript and the particular exhibits containing CONFIDENTIAL or
9 ATTORNEYS' EYES ONLY information, so that the sheet may be affixed to the
10 face of the transcript and each copy of the transcript. If no counsel designates any
11 portion of a transcript as CONFIDENTIAL or ATTORNEYS' EYES ONLY on the
12 record during the course of the deposition, or within the thirty (30) day period after
13 counsel receives notice that a completed transcript is available, the transcript shall
14 be considered not to contain any CONFIDENTIAL or ATTORNEYS' EYES
15 ONLY information. Portions of a transcript (including exhibits) designated as
16 CONFIDENTIAL or ATTORNEYS' EYES ONLY information may only be
17 disclosed in accordance with the terms of this Confidentiality Agreement and
18 Stipulated Protective Order [~~Proposed~~]^{FFM}.

19
20 (c) for information produced in some form other than
21 documentary, and for any other tangible items, that the Producing Party affix in a
22 prominent place on the exterior of the container or containers in which the
23 information or item is stored the legend "CONFIDENTIAL" or "ATTORNEYS'
24 EYES ONLY." If only portions of the information or item warrant protection, the
25 Producing Party, to the extent practicable, shall identify the protected portions,
26 specifying whether they qualify as "CONFIDENTIAL" or as "ATTORNEYS'
27 EYES ONLY."
28

1 5.3 Inadvertent Failures to Designate. The inadvertent or
2 unintentional disclosure of CONFIDENTIAL or ATTORNEYS' EYES ONLY
3 information without a CONFIDENTIAL or ATTORNEYS' EYES ONLY
4 designation shall not be deemed a waiver, either in whole or in part, of a Party's
5 claim that the specific information disclosed, any related information, or any
6 information on the same or a related subject matter is CONFIDENTIAL or
7 ATTORNEYS' EYES ONLY. Upon discovery of an inadvertent or unintentional
8 disclosure of CONFIDENTIAL or ATTORNEYS' EYES ONLY information,
9 counsel for the Parties should, to the extent possible, cooperate to restore the
10 confidentiality of any CONFIDENTIAL or ATTORNEYS' EYES ONLY
11 information that was inadvertently or unintentionally disclosed.

12
13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Unless a prompt challenge to a
15 Designating Party's confidentiality designation is necessary to avoid foreseeable
16 substantial unfairness, unnecessary economic burdens, or a later significant
17 disruption or delay of the litigation, a Party does not waive its right to challenge a
18 confidentiality designation by electing not to mount a challenge promptly after the
19 original designation is disclosed.

20 6.2 Meet and Confer. A Party that elects to initiate a challenge to a
21 Designating Party's confidentiality designation must do so in good faith and must
22 begin the process by conferring with counsel for the Designating Party in writing.
23 In conferring, the challenging Party must explain the basis for its belief that the
24 confidentiality designation was not proper and must give the Designating Party an
25 opportunity to review the designated material, to reconsider the circumstances, and,
26 if no change in designation is offered, to explain the basis for the chosen
27 designation. A challenging Party may proceed to the next stage of the challenge
28 process only if it has engaged in this meet-and-confer process first.

1 6.3 Court Intervention. A Party that elects to press a challenge to a
2 confidentiality designation after considering the justification offered by the
3 Designating Party may file and serve a motion that identifies the challenged
4 material and sets forth in detail the basis for the challenge. Each such motion must
5 be accompanied by a competent declaration that affirms that the movant has
6 complied with the meet-and-confer requirements imposed in the preceding
7 paragraph and that sets forth with specificity the justification for the confidentiality
8 designation that was given by the Designating Party in the meet-and-confer
9 dialogue. **The motion must be accompanied by a Joint Statement in**
10 **compliance with Local Rule 37.**^{FFM} The parties agree that a confidentiality
11 designation shall not create a presumption in favor of such confidentiality
12 designation, and that the Court shall decide the issue as such.

13 Until the Court rules on the challenge, all parties shall continue to
14 afford the material in question the level of protection to which it is entitled under
15 the Producing Party's designation.

16
17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected
19 Material that is disclosed or produced by another Party or by a non-party in
20 connection with this case only for prosecuting, defending, or attempting to settle
21 this litigation. Such Protected Material may be disclosed only to the categories of
22 persons and under the conditions described in this Order. When the litigation has
23 been terminated, a Receiving Party must comply with the provisions of section 11,
24 below (FINAL DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving
26 Party at a location and in a secure manner that ensures that access is limited to the
27 persons authorized under this Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items

2 Unless otherwise ordered by the Court or permitted in writing by the Designating
3 Party, a Receiving Party may disclose any information or item designated
4 “CONFIDENTIAL” only to:

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7 (a) the Receiving Party’s outside counsel, as well as
8 employees of said outside counsel to whom it is reasonably necessary to disclose
9 the information for this litigation;

10 (b) Board members, officers and directors of the Receiving
11 Party;

12 (c) Other employees of the Receiving Party to whom
13 disclosure is reasonably necessary for this litigation and who are bound by internal
14 confidentiality obligations as part of their employment or who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (d) Experts (as defined in this Order) of the Receiving Party
17 to whom disclosure is reasonably necessary for this litigation and who have signed
18 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (e) the Court personnel assigned to this litigation;

20 (f) court reporters, their staffs, and professional vendors to
21 whom disclosure is reasonably necessary for this litigation and who have signed
22 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

23 (g) during their depositions, witnesses in the action to whom
24 disclosure is reasonably necessary and who have signed the “Acknowledgment and
25 Agreement to Be Bound” (Exhibit A). Pages of transcribed deposition testimony
26 or exhibits to depositions that reveal Protected Material must be separately bound
27 by the court reporter and may not be disclosed to anyone except as permitted under
28 this Stipulated Protective Order; and

1 (h) the author of the document or the original source of the
2 information.

3 7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or
4 Items. Unless otherwise ordered by the Court or permitted in writing by the
5 Designating Party, a Receiving Party may disclose any information or item
6 designated “ATTORNEYS’ EYES ONLY” only to:

7 (a) the Receiving Party’s outside counsel, as well as
8 employees of said outside counsel to whom it is reasonably necessary to disclose
9 the information for this litigation;

10 (b) Experts (as defined in this Order) of the Receiving Party
11 to whom disclosure is reasonably necessary for this litigation and who have signed
12 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (c) the Court personnel assigned to this litigation;

14 (d) court reporters, their staffs, and professional vendors to
15 whom disclosure is reasonably necessary for this litigation and who have signed
16 the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

17 (e) the author of the document or the original source of the
18 information.

19
20 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
21 PRODUCED IN OTHER LITIGATION

22 If a Receiving Party is served with a subpoena or an order issued in other
23 litigation that would compel disclosure of any Discovery Material, the Receiving
24 Party must so notify the Designating Party, in writing immediately and in no event
25 more than five business days after receiving the subpoena or order. Such
26 notification must include a copy of the subpoena or court order. The Receiving
27 Party also must immediately inform in writing the Party who caused the subpoena
28 or order to issue in the other litigation that some or all of the material covered by

1 the subpoena or order is the subject of this Protective Order. In addition, the
2 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to
3 the Party in the other action that caused the subpoena or order to issue.

4 The purpose of imposing these duties is to alert the interested parties to the
5 existence of this Protective Order and to afford the Designating Party in this case
6 an

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8 opportunity to try to protect its confidentiality interests in the court from which the
9 subpoena or order issued.

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11 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

12 If a Receiving Party learns that, by inadvertence or otherwise, it has
13 disclosed Protected Material to any person or in any circumstance not authorized
14 under this Stipulated Protective Order, the Receiving Party must immediately (a)
15 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
16 best efforts to retrieve all copies of the Protected Material, (c) inform the person or
17 persons to whom unauthorized disclosures were made of all the terms of this Order,
18 and (d) request such person or persons to execute the “Acknowledgment and
19 Agreement to Be Bound” that is attached hereto as Exhibit A.

20
21 10. FILING PROTECTED MATERIAL

22 Without written permission from the Designating Party, or a court order
23 secured after appropriate notice to all interested persons, a Party may not file in the
24 public record in this action any Protected Material. Protected Material may be filed
25 under seal in accordance with the procedure specified in Local Rule 79-5.1, or such
26 other procedure as may be ordered by the Court.

27
28 11. FINAL DISPOSITION

1 Unless otherwise ordered or agreed to in writing by the Producing Party,
2 within 60 days after the final termination of this action, each Receiving Party must
3 return all Protected Material to the Producing Party or destroy the Protected
4 Material. As used in this subdivision, “all Protected Material” includes all copies,
5 abstracts, compilations, summaries or any other form of reproducing or capturing
6 any of the Protected Material. Notwithstanding this provision, counsel are entitled
7 to retain an archival copy of all pleadings, motion papers, transcripts, legal
8 memoranda, correspondence or attorney work product, even if such materials
9 contain Protected Material. Any such archival copies that contain or constitute
10 Protected Material remain subject to this Protective Order as set forth in Section 4
11 (DURATION), above.

12
13 12. MISCELLANEOUS

14 12.1 Right to Further Relief. Nothing in this Order abridges the right
15 of any person to seek its modification in the future.

16 12.2 Right to Assert Other Objections. By stipulating to the entry of
17 this Protective Order no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in
19 this Stipulated Protective Order. Similarly, no Party waives any right to object on
20 any ground to use in evidence of any of the material covered by this Protective
21 Order.

22 12.3 Inadvertent Production of Privileged Documents. If a Party,
23 through inadvertence, produces any document or information that it believes is
24 immune from discovery pursuant to an attorney-client privilege, the work product
25 privilege, or any other privilege, such production shall not be deemed a waiver of
26 any privilege, and the Producing Party may give written notice to the Receiving
27 Party that the document or information produced is deemed privileged and that
28 return of the document or information is requested. Upon receipt of such notice,

1 the Receiving Party shall immediately gather the original and all copies of the
2 document or information of which the Receiving Party is aware, in addition to any
3 abstracts, summaries, or descriptions thereof, and shall immediately return the
4 original and all

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10 such copies to the Producing Party. Nothing stated herein shall preclude a Party
11 from challenging an assertion by the other Party of privilege or confidentiality.

12
13 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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15 Dated: January 21, 2016

16 By: /S/
17 Honorable Frederick F. Mumm
18 U.S. Magistrate Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print full
4 name], of _____ [print
5 full address], declare under penalty of perjury that I have read in its entirety and
6 understand the Stipulated Protective Order that was issued by the United States
7 District Court for the Central District of California in the case of *Urban Textile,*
8 *Inc. v. Specialty Retailers, Inc. et al.*, Case No. 2:15-cv-3456-ODW(FFMx). I agree
9 to comply with and to be bound by all of the terms of this Stipulated Protective
10 Order and I understand and acknowledge that failure to so comply could expose me
11 to sanctions and punishment in the nature of contempt. I solemnly promise that I
12 will not disclose in any manner any information or item that is subject to this
13 Stipulated Protective Order to any person or entity except in strict compliance with
14 the provisions of this Order.

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

19 I hereby appoint _____ [print full
20 name] of _____ [print full
21 address and telephone number] as my California agent for service of process in
22 connection with this action or any proceedings related to enforcement of this
23 Stipulated Protective Order.

24
25 Date: _____

26 City and State where sworn and signed: _____

27 Printed name: _____

28 Signature: _____