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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

NEMAN BROTHERS, & ASSOC., a  
California Corporation;

Plaintiff,

vs.

BURLINGTON STORES, INC., a New  
Jersey corporation; ROSS STORES,  
INC. d/b/a DD's DISCOUNTS, a  
Delaware Corporation; ONE STEP UP  
LTD., a New York Corporation;  
RAINBOW USA, INC., a New York  
Corporation; and DOES 1-10, inclusive,

Defendants.

Case No.: 2:15-cv-03837 RGK (SSx)

**[Discovery Document: Referred to  
Magistrate Judge Suzanne H. Segal]**

**PROTECTIVE ORDER**

Assigned to Hon. R. Gary Klausner,  
District Court Judge

Assigned to Hon. Suzanne H. Segal

[Note changes made by Court]

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

3  
4 1. A. PURPOSES AND LIMITATIONS

5  
6 Discovery in this action is likely to involve production of confidential,  
7 proprietary, or private information for which special protection from public  
8 disclosure and from use for any purpose other than prosecuting this litigation may  
9 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
10 enter the following Stipulated Protective Order. The parties acknowledge that this  
11 Order does not confer blanket protections on all disclosures or responses to discovery  
12 and that the protection it affords from public disclosure and use extends only to the  
13 limited information or items that are entitled to confidential treatment under the  
14 applicable legal principles. The parties further acknowledge, as set forth in Section  
15 12.3, below, that this Stipulated Protective Order does not entitle them to file  
16 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures  
17 that must be followed and the standards that will be applied when a party seeks  
18 permission from the court to file material under seal.

19  
20 B. GOOD CAUSE STATEMENT

21  
22 This action is likely to involve trade secrets, customer and pricing lists and  
23 other valuable research, development, commercial, financial, technical and/or  
24 proprietary information for which special protection from public disclosure and from  
25 use for any purpose other than prosecution of this action is warranted. Such  
26 confidential and proprietary materials and information consist of, among other  
27 things, confidential business or financial information, information regarding  
28 confidential business practices, or other confidential research, development, or  
commercial information (including information implicating privacy rights of third

1 parties), information otherwise generally unavailable to the public, or which may be  
2 privileged or otherwise protected from disclosure under state or federal statutes,  
3 court rules, case decisions, or common law. Accordingly, to expedite the flow of  
4 information, to facilitate the prompt resolution of disputes over confidentiality of  
5 discovery materials, to adequately protect information the parties are entitled to keep  
6 confidential, to ensure that the parties are permitted reasonable necessary uses of  
7 such material in preparation for and in the conduct of trial, to address their handling  
8 at the end of the litigation, and serve the ends of justice, a protective order for such  
9 information is justified in this matter. It is the intent of the parties that information  
10 will not be designated as confidential for tactical reasons and that no information  
11 shall be so designated.

12 Notwithstanding anything contained in this Protective Order, the Parties  
13 acknowledge and agree that the discoverability of sensitive documents and/or  
14 information, as well as a party's ability and/or decision to disclose, withhold, or  
15 redact any sensitive documents and/or information, shall not otherwise be affected  
16 by its ability to classify such sensitive documents and/or information as  
17 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY,  
18 as defined hereinafter. Nothing herein shall prevent any Party from withholding or  
19 redacting any documents and/or information that the Party deems privileged,  
20 irrelevant, or otherwise objectionable.

21  
22 2. DEFINITIONS

23  
24 2.1 Action: This pending federal law suit NEMAN BROTHERS &  
25 ASSOC. v. BURLINGTON STORES, INC. *et al.* (2:15-cv-03837-RGK(SSx))

26 2.2 Challenging Party: a Party or Non-Party that challenges the  
27 designation of information or items under this Order.  
28

1           2.3 “CONFIDENTIAL” Information or Items: information (regardless  
2 of how it is generated, stored or maintained) or tangible things that qualify for  
3 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the  
4 Good Cause Statement. Such information may include, but is not limited to:

5           (a) The financial performance or results of the Designating Party,  
6 including without limitation income statements, balance sheets, cash flow analyses,  
7 budget projections, and present value calculations;

8           (b) Corporate and strategic planning by the Designating Party,  
9 including without limitation marketing plans, competitive intelligence reports, sales  
10 projections and competitive strategy documents;

11           (c) Names, addresses, and other information that would identify  
12 customers or prospective customers, or the distributors or prospective distributors of  
13 the Designating Party;

14           (d) Technical data, research and development data, and any other  
15 confidential commercial information, including but not limited to trade secrets of the  
16 Designating Party;

17           (e) Information used by the Designating Party in or pertaining to its  
18 trade or business, which information the Designating Party believes in good faith has  
19 competitive value, which is not generally known to others and which the Designating  
20 Party would not normally reveal to third parties except in confidence, or has  
21 undertaken with others to maintain in confidence;

22           (f) Information which the Designating Party believes in good faith  
23 falls within the right to privacy guaranteed by the laws of the United States or  
24 California; and

25           (g) Information which the Designating Party believes in good faith  
26 to constitute, contain, reveal or reflect proprietary, financial, business, technical, or  
27 other confidential information.  
28

1 (h) The fact that an item or category is listed as an example in this or  
2 other sections of this Protective Order does not, by itself, render the item or category  
3 discoverable.

4 2.3.1 Unless otherwise ordered by the court or permitted in writing by  
5 the Designating Party, a Receiving Party may disclose any information or item  
6 designated “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this Action, as  
8 well as employees of said Outside Counsel of Record to whom it is reasonably  
9 necessary to disclose the information for this Action;

10 (b) the officers, directors, and employees (including House Counsel) of  
11 the Receiving Party to whom disclosure is reasonably necessary for this Action;

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

15 (d) the court and its personnel;

16 (e) court reporters and their staff;

17 (f) professional jury or trial consultants, mock jurors, and Professional  
18 Vendors to whom disclosure is reasonably necessary for this Action and who have  
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (g) the author or recipient of a document containing the information or  
21 a custodian or other person who otherwise possessed or knew the information;

22 (h) during their depositions, witnesses, , other than those under Section  
23 2.3.1(b) above, and attorneys for witnesses, , other than those under Section 2.3.1(b)  
24 above, in the Action to whom disclosure is reasonably necessary provided: (1) the  
25 deposing party requests that the witness sign the form attached as Exhibit 1 hereto;  
26 and (2) they will not be permitted to keep any confidential information unless they  
27 sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless  
28 otherwise agreed by the Designating Party or ordered by the court. Pages of

1 transcribed deposition testimony or exhibits to depositions that reveal Protected  
2 Material may be separately bound by the court reporter and may not be disclosed to  
3 anyone except as permitted under this Stipulated Protective Order; and

4 (i) any mediator or settlement officer, and their supporting personnel,  
5 mutually agreed upon by any of the parties engaged in settlement discussions.

6  
7 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as  
8 their support staff).

9 2.5 Designating Party: a Party or Non-Party that designates information  
10 or items that it produces in disclosures or in responses to discovery as  
11 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES  
12 ONLY”

13 2.6 Disclosure or Discovery Material: all items or information,  
14 regardless of the medium or manner in which it is generated, stored, or maintained  
15 (including, among other things, testimony, transcripts, and tangible things), that are  
16 produced or generated in disclosures or responses to discovery in this matter.

17 2.7 Expert: a person with specialized knowledge or experience in a  
18 matter pertinent to the litigation who has been retained by a Party or its counsel to  
19 serve as an expert witness or as a consultant in this Action.

20 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”:  
21 Subject to the limitations in this Protective Order, Discovery Materials may be  
22 marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” for the  
23 purpose of preventing the disclosure of information or materials which, if disclosed  
24 to the Receiving Party, might cause competitive harm to the Designating Party.  
25 Information and material that may be subject to this protection includes, but is not  
26 limited to, technical and/or research and development data, intellectual property,  
27 financial, marketing and other sales data, and/or information having strategic  
28 commercial value pertaining to the Designating Party’s trade or business. Nothing

1 in paragraph 2.5 shall limit the information or material that can be designated  
2 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under this  
3 paragraph. Before designating any specific information “HIGHLY  
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the Designating Party’s counsel  
5 shall make a good faith determination that the information warrants such protection.

6 Materials designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
7 ONLY” materials may be disclosed only to the following Designees:

- 8 (a) Persons who appear on the face of Designated Materials  
9 marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
10 ONLY” as an author, addressee, or recipient thereof;
- 11 (b) Counsel for the parties to this action, as defined in section  
12 2.4;
- 13 (c) Expert for the parties to this action, as defined in section 2.7;
- 14 (d) The Court, its clerks and secretaries, and any court reporter  
15 retained to record proceedings before the Court;
- 16 (e) Any mediator employed by the Parties and his or her staff; and
- 17 (f) Court reporters retained to transcribe depositions.

18 2.9 House Counsel: attorneys who are employees of a party to this  
19 Action. House Counsel does not include Outside Counsel of Record or any other  
20 outside counsel.

21 2.10 Non-Party: any natural person, partnership, corporation,  
22 association, or other legal entity not named as a Party to this action.

23 2.11 Outside Counsel of Record: attorneys who are not employees of a  
24 party to this Action but are retained to represent or advise a party to this Action and  
25 have appeared in this Action on behalf of that party or are affiliated with a law firm  
26 which has appeared on behalf of that party, and includes support staff.

1           2.12 Party: any party to this Action, including all of its officers,  
2 directors, employees, consultants, retained experts, and Outside Counsel of Record  
3 (and their support staffs).

4           2.13 Producing Party: a Party or Non-Party that produces Disclosure or  
5 Discovery Material in this Action.

6           2.14 Professional Vendors: persons or entities that provide litigation  
7 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
9 and their employees and subcontractors.

10           2.15 Protected Material: any Disclosure or Discovery Material that is  
11 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
12 ATTORNEYS’ EYES ONLY.”

13           2.16 Receiving Party: a Party that receives Disclosure or Discovery  
14 Material from a Producing Party.

15  
16 3.     SCOPE  
17

18           The protections conferred by this Stipulation and Order cover not only  
19 Protected Material (as defined above), but also (1) any information copied or  
20 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
21 compilations of Protected Material; and (3) any testimony, conversations, or  
22 presentations by Parties or their Counsel that might reveal Protected Material.

23           Any use of Protected Material at trial shall be governed by the orders of the  
24 trial judge. This Order does not govern the use of Protected Material at trial.

25           The designation of any information or materials as “CONFIDENTIAL” or  
26 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” is intended solely to  
27 facilitate the conduct of this litigation. Neither such designation nor treatment in  
28 conformity with such designation shall be construed in any way as an admission or



1 agreement by the Receiving Party that the Protected Materials constitute or contain  
2 any trade secret or confidential information, or the discoverability thereof. Except  
3 as provided in this Protective Order, the Receiving Party shall not be obligated to  
4 challenge the propriety of any designation, and a failure to do so shall not preclude  
5 a subsequent attack on the propriety of such designation.

6 Nothing contained herein in any way restricts the ability of the Receiving  
7 Party to use “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
8 EYES ONLY” material produced to it in examining or cross-examining any  
9 employee or consultant of the Designating Party. The Parties acknowledge and agree  
10 that Receiving Party may not use Protected Materials marked by a Designating Party  
11 to examine or cross-examine an employee or consultant or another individual  
12 associated with a non-Designating Party. At deposition, the party using Designated  
13 Material must request that the portion of the proceeding where use is made be  
14 conducted so as to exclude persons not qualified to receive such Designated Material.

15  
16 **If a party wishes to use Protected Material during an examination of**  
17 **employee or consultant or another individual associated with a non-Designating**  
18 **Party, and the Designating Party objects to such use, the parties shall hold a**  
19 **meet and confer to resolve the dispute. If the meet and confer is unsuccessful,**  
20 **the parties may contact the courtroom deputy to the Magistrate Judge and**  
21 **request an informal discovery conference, to be held telephonically, to resolve**  
22 **the dispute.**

23  
24 4. DURATION

25  
26 Once a case proceeds to trial, all of the information that was designated as  
27 confidential or maintained pursuant to this protective order becomes public and will  
28 be presumptively available to all members of the public, including the press, unless

1 compelling reasons supported by specific factual findings to proceed otherwise are  
2 made to the trial judge in advance of the trial. See Kamakana v. City and County of  
3 Honolulu, 447 F.3d 1172, 1180-81 (9th Cir. 2006) (distinguishing “good cause”  
4 showing for sealing documents produced in discovery from “compelling reasons”  
5 standard when merits-related documents are part of court record). Accordingly, the  
6 terms of this protective order do not extend beyond the commencement of the trial.

7 If this matter is resolved, settled or otherwise concluded prior to trial, Section  
8 13 of this Protective Order shall apply.

9  
10 5. DESIGNATING PROTECTED MATERIAL

11  
12 5.1 Exercise of Restraint and Care in Designating Material for  
13 Protection. Each Party or Non-Party that designates information or items for  
14 protection under this Order must take care to limit any such designation to specific  
15 material that qualifies under the appropriate standards. The Designating Party must  
16 designate for protection only those parts of material, documents, items, or oral or  
17 written communications that qualify so that other portions of the material,  
18 documents, items, or communications for which protection is not warranted are not  
19 swept unjustifiably within the ambit of this Order.

20 Mass, indiscriminate, or routinized designations are prohibited.  
21 Designations that are shown to be clearly unjustified or that have been made for an  
22 improper purpose (e.g., to unnecessarily encumber the case development process or  
23 to impose unnecessary expenses and burdens on other parties) may expose the  
24 Designating Party to sanctions.

25 If it comes to a Designating Party’s attention that information or items  
26 that it designated for protection do not qualify for protection, that Designating Party  
27 must promptly notify all other Parties that it is withdrawing the inapplicable  
28 designation a reasonable time following such discovery.

1           5.2 Manner and Timing of Designations. Except as otherwise  
2 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as  
3 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for  
4 protection under this Order must be clearly so designated before the material is  
5 disclosed or produced.

6           Designation in conformity with this Order requires:

7           (a) for information in documentary form (e.g., paper or electronic  
8 documents, but excluding transcripts of depositions or other pretrial or trial  
9 proceedings), that the Producing Party affix at a minimum, the legend  
10 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”) or “HIGHLY  
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” (“HIGHLY CONFIDENTIAL  
12 legend”), to each page that contains protected material. If only a portion or portions  
13 of the material on a page qualifies for protection, the Producing Party also must  
14 clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
15 margins).

16           A Party or Non-Party that makes original documents available for  
17 inspection need not designate them for protection until after the inspecting Party has  
18 indicated which documents it would like copied and produced. During the inspection  
19 and before the designation, all of the material made available for inspection shall be  
20 deemed “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL- ATTORNEYS’  
21 EYES ONLY.” After the inspecting Party has identified the documents it wants  
22 copied and produced, the Producing Party must determine which documents, or  
23 portions thereof, qualify for protection under this Order. Then, before producing the  
24 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”  
25 or “HIGHLY CONFIDENTIAL legend” to each page that contains Protected  
26 Material. If only a portion or portions of the material on a page qualifies for  
27 protection, the Producing Party also must clearly identify the protected portion(s)  
28 (e.g., by making appropriate markings in the margins).

1 (b) for testimony given in depositions deposition transcripts and  
2 portions thereof taken in this action may be designated as “CONFIDENTIAL” or  
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” during the  
4 deposition or after, in which case the portion of the transcript containing Protected  
5 Material shall be identified in the transcript by the Court Reporter as  
6 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
7 ONLY” and such designated testimony shall be bound in a separate volume and  
8 marked by the reporter accordingly.

9 Within sixty (60) days after a deposition transcript is certified by the  
10 court reporter, any party may designate pages of the transcript and/or its exhibits as  
11 Protected Material. During such sixty (60) day period, the transcript in its entirety  
12 shall be treated as “CONFIDENTIAL” (except for those portions identified earlier  
13 as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” which shall be  
14 treated accordingly from the date of designation). If any party so designates such  
15 material, the parties shall provide written notice of such designation to all parties  
16 within the sixty (60) day period. Protected Material within the deposition transcript  
17 or the exhibits thereto may be identified in writing by page and line, or by underlining  
18 and marking such portions “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
19 ATTORNEYS’ EYES ONLY” and providing such marked-up portions to all  
20 counsel.

21 Where testimony is designated during the deposition, the Designating  
22 Party shall have the right to exclude, at those portions of the deposition, all persons  
23 not authorized by the terms of this Protective Order to receive such Protected  
24 Material..

25 (c) for information produced in some form other than documentary and  
26 for any other tangible items, that the Producing Party affix in a prominent place on  
27 the exterior of the container or containers in which the information is stored the  
28 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL- ATTORNEYS’

1 EYES ONLY.” If only a portion or portions of the information warrants protection,  
2 the Producing Party, to the extent practicable, shall identify the protected portion(s).

3 5.3 Inadvertent Failures to Designate If timely corrected, an  
4 inadvertent failure to designate qualified information or items does not, standing  
5 alone, waive the Designating Party’s right to secure protection under this Order for  
6 such material. Upon timely correction of a designation, the Receiving Party must  
7 make reasonable efforts to assure that the material is treated in accordance with the  
8 provisions of this Order.

9  
10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
12 designation of confidentiality at any time that is consistent with the Court’s  
13 Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
15 resolution process under Local Rule 37.1 et seq.

16 6.3 The burden of persuasion in any such challenge proceeding shall  
17 be on the Designating Party. Frivolous challenges, and those made for an improper  
18 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
19 parties) may expose the Challenging Party to sanctions. Unless the Designating Party  
20 has waived or withdrawn the confidentiality designation, all parties shall continue to  
21 afford the material in question the level of protection to which it is entitled under the  
22 Producing Party’s designation until the Court rules on the challenge.

23  
24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25  
26 7.1 Basic Principles. A Receiving Party may use Protected Material  
27 that is disclosed or produced by another Party or by a Non-Party in connection with  
28 this Action only for prosecuting, defending, or attempting to settle this Action. Such

1 Protected Material may be disclosed only to the categories of persons and under the  
2 conditions described in this Order. When the Action has been terminated, a  
3 Receiving Party must comply with the provisions of section 13 below (FINAL  
4 DISPOSITION).

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

8  
9 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
10 **IN OTHER LITIGATION**

11  
12 If a Party is served with a subpoena or a court order issued in other litigation  
13 that compels disclosure of any information or items designated in this Action as  
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL- ATTORNEYS’ EYES  
15 ONLY,” that Party must:

16 (a) promptly notify in writing the Designating Party. Such notification shall  
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to  
19 issue in the other litigation that some or all of the material covered by the subpoena  
20 or order is subject to this Protective Order. Such notification shall include a copy of  
21 this Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued  
23 by the Designating Party whose Protected Material may be affected.

24 If the Designating Party timely seeks a protective order, the Party served with  
25 the subpoena or court order shall not produce any information designated in this  
26 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL- ATTORNEYS’  
27 EYES ONLY” before a determination by the court from which the subpoena or order  
28 issued, unless the Party has obtained the Designating Party’s permission. The

1 Designating Party shall bear the burden and expense of seeking protection in that  
2 court of its confidential material and nothing in these provisions should be construed  
3 as authorizing or encouraging a Receiving Party in this Action to disobey a lawful  
4 directive from another court.

5  
6 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
7 PRODUCED IN THIS LITIGATION

8  
9 (a) The terms of this Order are applicable to information produced by a Non-  
10 Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY  
11 CONFIDENTIAL- ATTORNEYS’ EYES ONLY.” Such information produced by  
12 Non-Parties in connection with this litigation is protected by the remedies and relief  
13 provided by this Order. Nothing in these provisions should be construed as  
14 prohibiting a Non-Party from seeking additional protections.

15 (b) In the event that a Party is required, by a valid discovery request, to  
16 produce a Non-Party’s confidential information in its possession, and the Party is  
17 subject to an agreement with the Non-Party not to produce the Non-Party’s  
18 confidential information, then the Party shall:

19 (1) promptly notify in writing the Requesting Party and the Non-Party  
20 that some or all of the information requested is subject to a confidentiality  
21 agreement with a Non-Party;

22 (2) promptly provide the Non-Party with a copy of the Stipulated  
23 Protective Order in this Action, the relevant discovery request(s), and a  
24 reasonably specific description of the information requested; and

25 (3) make the information requested available for inspection by the Non-  
26 Party, if requested.

27 (c) If the Non-Party fails to seek a protective order from this court within 14  
28 days of receiving the notice and accompanying information, the Receiving Party may

1 produce the Non-Party’s confidential information responsive to the discovery  
2 request. If the Non-Party timely seeks a protective order, the Receiving Party shall  
3 not produce any information in its possession or control that is subject to the  
4 confidentiality agreement with the Non-Party before a determination by the court.  
5 Absent a court order to the contrary, the Non-Party shall bear the burden and expense  
6 of seeking protection in this court of its Protected Material.

7  
8 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9  
10 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
11 Protected Material to any person or in any circumstance not authorized under this  
12 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
13 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
14 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
15 persons to whom unauthorized disclosures were made of all the terms of this Order,  
16 and (d) request such person or persons to execute the “Acknowledgment and  
17 Agreement to Be Bound” that is attached hereto as Exhibit A.

18  
19 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
20 PROTECTED MATERIAL

21  
22 When a Producing Party gives notice to Receiving Parties that certain  
23 inadvertently produced material is subject to a claim of privilege or other protection,  
24 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
25 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
26 may be established in an e-discovery order that provides for production without prior  
27 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
28 parties reach an agreement on the effect of disclosure of a communication or



1 information covered by the attorney-client privilege or work product protection, the  
2 parties may incorporate their agreement in the stipulated protective order submitted  
3 to the court.

4  
5 12. MISCELLANEOUS

6  
7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
8 person to seek its modification by the Court in the future.

9 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
10 Protective Order no Party waives any right it otherwise would have to object to  
11 disclosing or producing any information or item on any ground not addressed in this  
12 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
13 ground to use in evidence of any of the material covered by this Protective Order.  
14 Moreover, this Order shall not preclude or limit any Party's right to seek further and  
15 additional protection against or limitation upon production of documents produced  
16 in response to discovery.

17 12.3 Other Privileges. Nothing in this Order shall require disclosure of  
18 materials that a Party contends are protected from disclosure by the attorney-client  
19 privilege or the attorney work-product doctrine. This provision shall not, however,  
20 be construed to preclude any Party from moving the Court for an order directing the  
21 disclosure of such materials where it disputes the claim of attorney-client privilege  
22 or attorney work-product doctrine.

23 12.4 Filing Protected Material. A Party that seeks to file under seal any  
24 Protected Material must comply with Civil Local Rule 79-5. Protected Material may  
25 only be filed under seal pursuant to a court order authorizing the sealing of the  
26 specific Protected Material at issue. If a Party's request to file Protected Material  
27 under seal is denied by the court, then the Receiving Party may file the information  
28 in the public record unless otherwise instructed by the court.

1           12.5 No Prejudice. This Protective Order shall not diminish any existing  
2 obligation or right with respect to Protected Material, nor shall it prevent a disclosure  
3 to which the Designating Party consented in writing before the disclosure takes  
4 place. Unless the parties stipulate otherwise, evidence of the existence or  
5 nonexistence of a designation under this Protective Order shall not be admissible for  
6 any purpose during any proceeding on the merits of this action.

7           12.6 Self-Disclosure. Nothing in this Order shall affect the right of the  
8 Designating Party to disclose the Designating Party's own Confidential information  
9 or items to any person or entity. Such disclosure shall not waive any of the  
10 protections of this Order.

11           12.7 Captions. The captions of paragraphs contained in this Order are for  
12 reference only and are not to be construed in any way as a part of this Order.

13 **13. FINAL DISPOSITION**

14  
15 After the final disposition of this Action within 60 days of a written request by the  
16 Designating Party, each Receiving Party must return all Protected Material to the  
17 Producing Party or destroy such material. As used in this subdivision, "all Protected  
18 Material" includes all copies, abstracts, compilations, summaries, and any other  
19 format reproducing or capturing any of the Protected Material. Whether the Protected  
20 Material is returned or destroyed, the Receiving Party must submit a written  
21 certification to the Producing Party (and, if not the same person or entity, to the  
22 Designating Party) by the 60 day deadline that (1) identifies (by category, where  
23 appropriate) all the Protected Material that was returned or destroyed and (2) affirms  
24 that the Receiving Party has not retained any copies, abstracts, compilations,  
25 summaries or any other format reproducing or capturing any of the Protected  
26 Material. Notwithstanding this provision, Counsel are entitled to retain archival  
27 copies of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
28 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney

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work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order.

**PURSUANT TO STIPULATION, AND FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

Dated: March 25, 2016

By:                   /S/                    
                  Honorable Suzanne H. Segal  
                  U.S. Magistrate Judge

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 NEMAN  
8 BROTHERS & ASSOC. v. BURLINGTON STORES, INC. *et al.* (2:15-cv-03837-  
9 RGK(SSx)). I agree to comply with and to be bound by all of the terms of this  
10 Stipulated Protective Order and I understand and acknowledge that failure to so  
11 comply could expose me to sanctions and punishment in the nature of contempt. I  
12 solemnly promise that I will not disclose in any manner any information or item that  
13 is subject to this Stipulated Protective Order to any person or entity except in strict  
14 compliance with the provisions of this Order.

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