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

10  
 11 LAURY PULVER,  
 12 Plaintiff,  
 13 v.

Case No. 2:15-cv-05908-RSWL-AGR  
 Hon. Ronald S.W. Lew, Senior

14 J.C. PENNEY CORPORATION, a  
 corporation; GENERAL GROWTH  
 15 PROPERTIES, INC., a corporation; and  
 DOES 1-100, Inclusive,  
 16 Defendants.  
 17

**ORDER RE: STIPULATED  
 PROTECTIVE ORDER**

18  
 19 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

20 The Court having considered the stipulation between Plaintiff Laury Pulver  
 21 and Defendant J.C. Penney Corporation, Inc., and finding good cause therein,  
 22 hereby orders as follows:

23 The Stipulation for Protective Order is GRANTED.

24  
 25 DATED: March 2, 2016

*Alicia G. Rosenberg*  
 \_\_\_\_\_  
 Hon. Alicia G. Rosenberg  
 United States Magistrate Judge

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DOES 1-100, Inclusive,

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Case No. 2:15-cv-05908-RSWL-AGR

Hon. Ronald S.W. Lew, Senior

**STIPULATED PROTECTIVE ORDER**

18  
19 1. A. PURPOSES AND LIMITATIONS

20 Discovery in this action is likely to involve production of confidential,  
21 proprietary, or private information for which special protection from public  
22 disclosure and from use for any purposes other than prosecuting this litigation may  
23 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
24 enter the following Stipulated Protective Order. The parties acknowledge that this  
25 Order does not confer blanket protections on all disclosures or responses to  
26 discovery and that the protection it affords from public disclosure and use extends  
27 only to the limited information or items that are entitled to confidential treatment  
28 under the applicable legal principles. The parties further acknowledge, as set forth in

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1 Section 12.3, below, that this Stipulated Protective Order does not entitle them to  
2 file confidential information under seal; Civil Local Rule 79-5 sets for the the  
3 procedures that must be followed and the standards that will be applied when a party  
4 seeks permission from the court to file material under seal.

5 **B. GOOD CAUSE STATEMENT**

6 This action is likely to involve valuable research, development, commercial,  
7 technical and/or proprietary information for which special protection from public  
8 disclosure and from use for any purpose other than prosecution of this action is  
9 warranted. Such confidential and proprietary materials and information consist of,  
10 among other things, confidential business information, information regarding  
11 confidential business practices or other confidential research, development or  
12 commercial information (including information implicating privacy rights of third  
13 parties), information otherwise generally unavailable to the public, or which may be  
14 privileged or otherwise protected from disclosure under state or federal statutes,  
15 court rules, case decisions or common law. Accordingly, to expedite the flow of  
16 information, to facilitate the prompt resolution of disputes over confidentiality of  
17 discovery materials, to adequately protect information the parties are entitled to keep  
18 confidential, to ensure that the parties are permitted reasonable necessary uses of  
19 such material in preparation for and in the conduct of trial, to address their handling  
20 at the end of the litigation, and serve the ends of justice, a protective order for such  
21 information is justified in this matter. It is the intent of the parties that information  
22 will not be designated as confidential for tactical reasons and that nothing be so  
23 designated without a good faith belief that it has been maintained in a confidential,  
24 non-public manner, and there is good cause why it should not be part of the public  
25 record of this case.

26  
27 **2. DEFINITIONS**

28 **2.1 Action: This pending federal lawsuit entitled Laury Pulver v. J.C.**

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1 Penny Corporation, a corporation, et al.

2 2.2 Challenging Party: A party or Non-Party that challenges the  
3 designation of information or items under this Order.

4 2.3 "CONFIDENTIAL" Information or Items: Information  
5 (regardless of how it is generated, stored or maintained) or tangible things that  
6 qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified  
7 above in the Good Cause Statement.

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

10 2.5 Designating Party: A Party or Non-Party that designates  
11 information or items that it produces in disclosures or in responses to discovery as  
12 "CONFIDENTIAL".

13 2.6 Disclosure of 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 response 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 House Counsel: Attorneys who are employees of a party to this  
21 Action. House Counsel does not include Outside Counsel of Record or any other  
22 outside counsel.

23 2.9 Non-Party: Any natural person, partnership, corporation,  
24 association, or other legal entity not named as a Party to this action.

25 2.10 Outside Counsel of Record: Attorneys who are not employees of  
26 a party to this Action but are retained to represent or advise a party to this Action  
27 and have appeared in this Action on behalf of that party or are affiliated with a law  
28 firm which has appeared on behalf of that party, and includes support staff.

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1           2.11 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           2.12 Producing Party: A Party of Non-Party that produces Disclosure  
5 or Discovery Material in this Action.

6           2.13 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           2.14 Protected Material: Any Disclosure or Discovery Material that is  
11 designated as "CONFIDENTIAL".

12           2.15 Receiving Party: A Party that receives Disclosure or Discovery  
13 Material from a Producing Party.

14           3.     SCOPE

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

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

22           4.     DURATION

23           Even after final disposition of this litigation, the confidentiality obligations  
24 imposed by this Order shall remain in effect until a Designating Party agrees  
25 otherwise in writing or a court order otherwise directs. Final disposition shall be  
26 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with  
27 our without prejudice; and (2) final judgment herein after the completion and  
28 exhaustion of all appeals, re-hearings, remands, trials, or reviews of this Action,

1 including the time limits for filing any motions or applications for extension of time  
2 pursuant to applicable law.

3 5. DESIGNATING PROTECTED MATERIAL

4 5.1 Exercise of Restraint and Care in Designating Material for  
5 Protection.

6 Each Party or Non-Party that designates information or items for protection  
7 under this Order must take care to limit any such designation to specific material  
8 that qualifies under the appropriate standards. The Designating Party must designate  
9 for protection only those parts of material, documents, items, or oral or written  
10 communications that qualify so that other portions of the material, documents,  
11 items, or communications for which protection is not warranted are not swept  
12 unjustifiably within the ambit of this Order.

13 Mass, indiscriminate or routinized designations are prohibited. Designations  
14 that are shown to be clearly unjustified or that have been made for an improper  
15 purposes (e.g., to unnecessarily encumber the case development process or to  
16 impose unnecessary expenses and burdens on other parties) may expose the  
17 Designating Party to sanctions.

18 If it comes to a Designating Party's attention that information or items that it  
19 designated for protection do not qualify for protection, that Designating Party must  
20 promptly notify all other Parties that it is withdrawing the inapplicable designation.

21 5.2 Manner and Timing of Designations. Except as otherwise  
22 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or as  
23 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for  
24 protection under this Order must be clearly so designated before the material is  
25 disclosed or produced.

26 Designation in conformity with this Order requires:

27 (a) for information in documentary form (e.g., paper or electronic  
28 documents, but excluding transcripts of depositions or other pretrial or trial

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1 proceedings), that the Producing Party affix at a minimum, the legend  
2 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL" legend), to each page that  
3 contains protected material. If only a portion of portions of the material on a page  
4 qualifies for protection, the Producing Party also must clearly identify the protected  
5 portion(s)(e.g., by making appropriate marking in the margins).

6 A Party or Non-Party that makes original documents available for inspection  
7 need not designate them for protection until after the inspecting Party has indicated  
8 which documents it would like copied and produced. During the inspection and  
9 before the designation, all of the material made available for inspection shall be  
10 deemed "CONFIDENTIAL." After the inspecting Party has identified the  
11 documents it wants copied and produced, the Producing Party must determine which  
12 documents, or portions thereof, qualify for protection under this Order. Then, before  
13 producing the specified documents, the Producing Party must affix the  
14 "CONFIDENTIAL legend" to each page that contains Protected Material. If only a  
15 portion or portions of the material on a page qualifies for protection, the Producing  
16 Party must also clearly identify the protected portion(s)(e.g., by making appropriate  
17 markings in the margins).

18 (b) for testimony given in depositions that the Designating Party identify  
19 the Disclosure or Discovery Material on the record, before the close of the deposition  
20 all protected testimony.

21 (c) for information produced in some form other than documentary and for  
22 any other tangible items, that the Producing Party affix in a prominent place on the  
23 exterior of the container or containers in which the information is stored the legend  
24 "CONFIDENTIAL." If only a portion or portions of the information warrants  
25 protection, the Producing Party, to the extent practicable, shall identify the protected  
26 portion(s).

27 5.3 Inadvertent Failures to Designate: If timely corrected, an inadvertent  
28 failure to designate qualified information or items does not, standing alone, waive



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1 the Designating Party's right to secure protection under this Order for such material.  
2 Upon timely correction of a designation, the Receiving Party must make reasonable  
3 efforts to assure that the material is treated in accordance with the provisions of this  
4 Order.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
7 designation of confidentiality at any time that is consistent with the Court's  
8 Scheduling Order.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
10 resolution process under Local Rule 37.1 et seq.

11 6.3 The burden of persuasion in any such challenge proceeding  
12 shall be on the Designating Party. Frivolous challenges, and those made for an  
13 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
14 other parties) may expose the Challenging Party to sanctions. Unless the  
15 Designating Party has waived or withdrawn the confidentiality designation, all  
16 parties shall continue to afford the material in question the level of protection to  
17 which it is entitled under the Producing Party's designation until the Court rules on  
18 the challenge.

19 7. ACCESS TO AND USE OF PROTECTED MATERIALS

20 7.1 Basic Principles. A Receiving Party may use Protected Material  
21 that is disclosed or produced by another Party or by a Non-Party in connection with  
22 this Action only for prosecuting, defending, or attempting to settle this Action. Such  
23 Protected Material may be disclosed only to the categories of persons under the  
24 conditions described in this Order. When the Action has been terminated, a  
25 Receiving Party must comply with the provisions of section 13 below (FINAL  
26 DISPOSITION).

27 Protected Material must be stored and maintained by a Receiving Party at a  
28 location and in a secure manner that ensures that access is limited to the persons



1 authorized under this Order.

2           7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless  
3 otherwise ordered by the court or permitted in writing by the Designating Party, a  
4 Receiving Party may disclose any information or item designated  
5 "CONFIDENTIAL" only to:

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

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

12           (c) Experts (as defined in this Order) of the Receiving Party to  
13 whom 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  
18 Professional Vendors to whom disclosure is reasonably necessary for this Action  
19 and who have signed the "Acknowledgement and Agreement to Be Bound" (Exhibit  
20 A);

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

24           (h) during their depositions, witnesses, and attorneys for  
25 witnesses, in the Action to whom disclosure is reasonably necessary provided: (1)  
26 the deposing party requests that the witness sign the form attached as Exhibit 1  
27 hereto; and (2) they will not be permitted to keep any confidential information  
28 unless they sign the "Acknowledgement and Agreement to Be Bound: (Exhibit A),

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1 unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
2 transcribed deposition testimony or exhibits to depositions that reveal Protected  
3 Material may be separately bound by the court reporter and may not be disclosed to  
4 anyone except as permitted under this Stipulated Protective Order.

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

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

10 If a Party is served with a subpoena or a court order issued in other litigation  
11 that compels disclosure of any information or items designated in this Action as  
12 "CONFIDENTIAL," that Party must:

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

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

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

21 If the Designating Party timely seeks a protective order, the Party served with  
22 the subpoena or court order shall not produce any information designated in this  
23 action as "CONFIDENTIAL" before a determination by the court from which the  
24 subpoena or order issued, unless the Party has obtained the Designating Party's  
25 permission. The Designating Party shall bear the burden and expense of seeking  
26 protection in that court of its confidential material and nothing in these provisions  
27 should be construed as authorizing or encouraging a Receiving Party in this Action  
28 to disobey a lawful directive from another court.

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1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed  
2 Protected Material to any person or in any circumstance not authorized under this  
3 Stipulated Protective Order, the Receiving Party must immediately (a) notify in  
4 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts  
5 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
6 persons to whom unauthorized disclosures were made of all the terms of this Order,  
7 and (d) request such person or persons to execute the "Acknowledgment and  
8 Agreement to Be Bound" that is attached hereto as Exhibit A.

9 11. INADVERTENT PRODUCTION OF PRIVILEGED OR  
10 OTHERWISE PROTECTED MATERIAL

11 When a Producing Party gives notice to Receiving Parties that certain  
12 inadvertently produced material is subject to a claim of privilege or other protection,  
13 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil  
14 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure  
15 may be established in an e-discovery order that provides for production without  
16 prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and ( insofar as  
17 the parties reach an agreement on the effect of disclosure of a communication or  
18 information covered by the attorney-client privilege or work product protection, the  
19 parties may incorporate their agreement in the stipulated protective order submitted  
20 to the court.

21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right  
23 of any person to seek its modification by the Court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of  
25 this Protective Order no Party waives any right it otherwise would have to object to  
26 disclosing or producing any information or item on any ground not addressed in this  
27 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
28 ground to use in evidence of any of the material covered by this Protective Order.



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1           12.3 Filing Protected Material. A Party that seeks to file under seal  
2 any Protected Material must comply with Civil Local Rule 79-5. Protected Material  
3 may only be filed under seal pursuant to a court order authorizing the sealing of the  
4 specific Protected Material at issue. If a Party's request to file Protected Material  
5 under seal is denied by the court, then the Receiving Party may file the information  
6 in the public record unless otherwise instructed by the court.

7           13. FINAL DISPOSITION

8           After the final disposition of this Action, as defined in paragraph 4, within 60  
9 days of a written request by the Designating Party, each Receiving Party must return  
10 all Protected Material to the Producing Party or destroy such material. As used in  
11 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
12 summaries, and any other format reproducing or capturing any of the Protected  
13 Material. Whether the Protected Material is returned or destroyed, the Receiving  
14 Party must submit a written certification to the Producing Party (and, if not the same  
15 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
16 (by category, where appropriate) all the Protected Material that was returned or  
17 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
18 abstracts, compilations, summaries or any other format reproducing or capturing any  
19 of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
20 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
21 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
22 reports, attorney work product, and consultant and expert work product, even if such  
23 materials contain Protected Material. Any such archival copies that contain or  
24 constitute Protected Material remain subject to this Protective Order as set forth in  
25 Section 4 (DURATION).

26           14. Any violation of this Order may be punished by any and all appropriate  
27 measures including, without limitation, contempt proceedings and/or monetary  
28 sanctions.

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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: T. Vincent Consolo 2/24/16

Gerald A. Marcus, Esq.  
T. Vincent Consolo  
Law Offices of Gerald A. Marcus  
Attorneys for Plaintiff, Laury Pulver

DATED: [Signature]

Sharon S. Jeffrey, Esq.  
Manning & Kass,  
Ellrod, Ramirez, Trester, LLP  
Attorneys for Defendant,  
J.C. Penney Corporation, Inc.

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**EXHIBIT A**

**ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

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 Stipulated Protective Order that was issued by the United States District Court for the Central District of California on \_\_\_\_\_, 2016 in the case of Laury Pulver v. J.C. Penney Corporation, a corporation.; Case No: 2:15-cv-05908-RSWL-AGR

agree to comply with and to be bound by all the terms of this Stipulated 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 Stipulated 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. I hereby appoint [print or type full name] of [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

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

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

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