

1 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” as defined in Paragraph 2
2 below.

3 e. “Material” means any document, testimony or information in any
4 form or medium whatsoever, including, without limitation, any written or printed
5 matter, Provided in this action by a Party before or after the date of this Protective
6 Order.

7 f. “Party” means the Parties to this action, their attorneys of record
8 and their agents.

9 g. “Person” means any individual, corporation, partnership,
10 unincorporated association, governmental agency, or other business or governmental
11 entity whether a Party or not.

12 h. “Producing Party” means any Person who Provides Material during
13 the course of this action.

14 i. “Provide” means to produce any Material, whether voluntarily or
15 involuntarily, whether pursuant to request or process.

16 **CONFIDENTIAL DESIGNATION**

17 2. A Producing Party may designate as “CONFIDENTIAL” any material
18 provided to a Party which contains or discloses any of the following:

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

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

25 c. The Producing Party may designate as “ATTORNEYS’ EYES
26 ONLY,” documents Parties contend contain or disclose materials which they in good
27 faith believe to be of an extremely high degree of current commercial sensitivity and/or
28 would provide a competitive advantage to its competitors if disclosed.

1 d. The designation of "CONFIDENTIAL" and/or "ATTORNEYS
2 EYES ONLY" by the producing party shall in no way restrict the receiving party from
3 naming additional parties to the litigation, such as manufacturers, distributors,
4 importers, retailers and others in the supply chain of the alleged infringing goods, or
5 otherwise conducting discovery, such as serving subpoenas, on potential parties to the
6 litigation.

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

12 a. By physically marking the confidential portions with the following
13 inscription prior to Providing it to a Party:

14 CONFIDENTIAL

15 or

16 ATTORNEYS' EYES ONLY

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

1 alternatively, will destroy all the previously Provided Material, at the option of the
2 Producing Party. For previously Provided Material which was not designated as
3 Confidential Material at the time of its being Provided, this Protective Order shall
4 apply to such materials beginning on the date that the Producing Party makes such
5 designation.

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

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

15 **RESTRICTION ON USE OF CONFIDENTIAL MATERIAL**

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

23 5. Confidential Material Provided by a Producing Party to a Discovering
24 Party shall not be used by the Discovering Party or anyone other than the Producing
25 Party, specifically including the persons identified in Paragraphs 7 or 8 as appropriate,
26 for any purpose, including, without limitation any personal, business, governmental,
27 commercial, publicity, public-relations, or litigation (administrative or judicial)
28 purpose, other than the prosecution or defense of this action.

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

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

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

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

14 c. Court and deposition reporters and their staff.

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

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

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

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

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

28 i. Any Person identified on the face of any such Material designated

1 as CONFIDENTIAL as an author or recipient thereof;

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

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

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

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

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

18 b. Court and deposition reporters and their staff.

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

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

23 e. Experts and consultants assisting counsel with respect to this action
24 and their secretarial, technical and clerical employees who are actively assisting in the
25 preparation of this action, in accordance with the procedures set forth in paragraphs
26 11-13.

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

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

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

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

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

20 10. The individuals designated in subparagraph 8(a) above, are specifically
21 prohibited from publishing, releasing, or otherwise disclosing Material designated as
22 ATTORNEYS' EYES ONLY, or the contents thereof, to any directors, officers, or
23 employees of the company for which the individual is employed, or to any other
24 persons not authorized under this Protective Order to receive such information. The
25 designated individuals in subparagraph 8(a) shall retain all ATTORNEYS' EYES
26 ONLY material in a secure manner under separate and confidential file, so as to avoid
27 inadvertent access by, or disclosure to, unauthorized persons.

DEPOSITIONS

1
2 11. Absent a court order to the contrary, those portions of depositions taken
3 by any Party at which any Material designated as CONFIDENTIAL is used or inquired
4 into, may not be conducted in the presence of any Person(s) other than (a) the
5 deposition witness, (b) his or her counsel, and (c) Persons authorized under Paragraph
6 7 of this Protective Order to view such Confidential Material. During those portions of
7 depositions in which Material designated ATTORNEYS' EYES ONLY is used or
8 inquired into, only those persons authorized under Paragraph 8 to view such Materials
9 may be present unless a court orders otherwise.

10 12. Counsel for any deponent may designate testimony or exhibits as
11 Confidential Material by indicating on the record at the deposition that the testimony
12 of the deponent or any exhibits to his or her testimony are to be treated as Confidential
13 Material. Counsel for any Party may designate exhibits in which that Party has a
14 cognizable interest as Confidential Material by indicating on the record at the
15 deposition that such exhibit(s) are to be treated as Confidential Material. Failure of
16 counsel to designate testimony or exhibits as confidential at deposition, however, shall
17 not constitute a waiver of the protected status of the testimony or exhibits. Within
18 thirty (30) calendar days of receipt of the transcript of the deposition, or thirty days of
19 the date on which this Protective Order becomes effective, whichever occurs last,
20 counsel shall be entitled to designate specific testimony or exhibits as Confidential
21 Material by advising the court reporter and counsel in writing. If counsel for the
22 deponent or Party fails to designate the transcript or exhibits as Confidential within the
23 above-described thirty (30) day period, any other Party shall be entitled to treat the
24 transcript or exhibits as non-confidential material. For purposes of this Paragraph 12,
25 this Protective Order shall be deemed "effective" on the date on which it has been
26 executed by all counsel for the Parties.

27 13. When Material disclosed during a deposition is designated Confidential
28 Material at the time testimony is given, the reporter shall separately transcribe those

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

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

12 **PAPERS**

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

22 **OBJECTIONS TO DESIGNATION**

23 15. Any Party may at any time notify the Designating Party in writing of its
24 contention that specified Material designated as Confidential Material is not properly
25 so designated because such Material does not warrant protection under applicable law.
26 The Designating Party shall within ten (10) calendar days, meet and confer in good
27 faith with the Party challenging the designation in an attempt to resolve such dispute.
28 The objecting Party shall have twenty-one (21) calendar days from the initial meet and

1 confer to file a motion with the Court for relief from designation of the material in
2 question. The Designating Party shall have the burden of showing, on such motion,
3 that the material being objected to was appropriately designated as Confidential
4 Material. Any such motion shall be set for hearing on the first available calendar date.
5 Pending resolution of any motion filed pursuant to this Paragraph, all Persons bound
6 by this Protective Order shall continue to treat the Material which is the subject of the
7 motion as Confidential Material.

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

12 **INADVERTENT PRODUCTION OF PROTECTED MATERIAL**

13 17. The inadvertent failure by a Producing Party to designate Material as
14 CONFIDENTIAL or ATTORNEYS' EYES ONLY shall not waive any such
15 designation provided that the Producing Party notifies all Discovering Parties that such
16 Material is CONFIDENTIAL or ATTORNEYS' EYES ONLY within ten (10) days
17 from when the failure to designate first becomes known to the Producing Party. A
18 Discovering Party shall not be in breach of this Order for any use of such Material
19 before the Discovering Party receives notice of the inadvertent failure to designate.
20 Once a Discovering Party has received notice of the inadvertent failure to designate
21 pursuant to this provision, the Discovering Party shall treat such Material at the
22 appropriately designated level pursuant to the terms of this Protective Order. If, before
23 the Producing Party notifies a Discovering Party of such designation of already-
24 produced Material, the Discovering Party discloses such Material in a manner or to any
25 Person, inconsistent with the subsequent designation, that Discovering Party shall
26 notify the Producing Party within ten (10) days of receiving such notice.

27 **RETURN OF MATERIAL**

1 required to be provided pursuant to California law; (b) to seek to modify or obtain
2 relief from any aspect of this Protective Order; (c) to object to the use, relevance, or
3 admissibility at trial or otherwise of any Material, whether or not designated in whole
4 or in part as Confidential Material governed by this Protective Order; or (d) otherwise
5 to require that discovery be conducted according to governing laws and rules.

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

9 23. This Protective Order shall not preclude any Person from waiving the
10 applicability of this Protective Order with respect to any Confidential Material
11 Provided by that Person or using any Confidential Material Provided by that Person or
12 using any Confidential Material owned by that Person in any manner that Person
13 deems appropriate.

14 24. This Protective Order shall not affect any contractual, statutory or other
15 legal obligation or the rights of any Party or Person with respect to Confidential
16 Material designated by that Party.

17 25. The restrictions set out in the Protective Order shall not apply to any
18 Material which:

- 19 a. At the time it is Provided is available to the public;
- 20 b. After it is Provided, becomes available to the public through no act,
21 or failure to act, of the Discovering Party; or
- 22 c. The Discovering Party can show
 - 23 i. Was already known to the Discovering Party independently
24 of receipt of the Confidential Material in this or prior litigation; or
 - 25 ii. Was received by the Discovering Party, after the time it was
26 designated as Confidential Material hereunder, from a third party having the right to
27 make such disclosure.

1 **EXHIBIT A**

2
3 **UNDERTAKING TO BE BOUND BY THE PRETRIAL PROTECTIVE ORDER**
4 **REGARDING CONFIDENTIALITY OF DOCUMENTS**

5 I, _____ [print or type full name], of _____
6 [print or type full address], declare under penalty of perjury that I have read in its
7 entirety and understand the Protective Order that was issued by the United States
8 District Court for the Central District of California in the case of *Fabritex, Inc. v*
9 *Target Corporation, et al.*, No. 2:15-CV-08231-AB(JPRx). I agree to comply with and
10 to be bound by all the terms of this Protective Order and I understand and acknowledge
11 that failure to so comply could expose me to sanctions and punishment in the nature of
12 contempt. I solemnly promise that I will not disclose in any manner any information
13 or item that is subject to this 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 for
16 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
20 Date: _____, 2016

21
22 City and State where sworn and signed: _____

23
24 Signed: _____
25 [Print Name] [Signature]