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 11 B.A.S.A. TRADING, INC.

12 UNITED STATES DISTRICT COURT
 13 CENTRAL DISTRICT OF CALIFORNIA

14 B.A.S.A. TRADING, INC. dba CORAL
 15 TEXTILE, a California corporation,

16 Plaintiff,

17 v.

18 CLO APPAREL, INC. dba CLEO
 19 CASUAL, a California corporation;
 20 ITEX CORPORATION, a Nevada
 21 corporation; S & J APPAREL, INC., a
 22 California corporation; and DOES 1-10,
 23 inclusive,

24 Defendants.

Case No.: 2:15-cv-09954-AB-AS

[Assigned for all purposes to Hon.
 Alka Sagar judge presiding]

**AMENDED STIPULATED
 PROTECTIVE ORDER**

1 A. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
6 stipulate to and petition the court to enter the following Stipulated Protective Order.
7 The parties acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from public
9 disclosure and use extends only to the limited information or items that are entitled
10 to confidential treatment under the applicable legal principles. The parties further
11 acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective
12 Order does not entitle them to file confidential information under seal; Civil Local
13 Rule 79-5.1 sets forth the procedures that must be followed and the standards that
14 will be applied when a party seeks permission from the court to file material under
15 seal.

16 B. GOOD CAUSE STATEMENT

17 This action is likely to involve trade secrets, consumer and pricing lists, and
18 other valuable commercial, financial, and/or proprietary information for which
19 special protection from public disclosure and from use for any purpose other than
20 prosecution of this action is warranted. Such confidential and proprietary materials
21 and information consist of, among other things, confidential business or financial
22 information, information regarding confidential business practices, or commercial
23 information, or information which may be privileged or otherwise protected from
24 disclosure under state or federal statutes, court rules, case decisions, or common
25 law. Accordingly, to expedite the flow of information, to facilitate prompt
26 resolution of disputes over confidentiality of discovery materials, to adequately
27 protect information the parties are entitled to keep confidential, to ensure that the
28 parties are permitted reasonable necessary uses of such material in preparation for

1 and in the conduct of trial, to address their handling at the end of the litigation, and
2 serve the ends of justice, a protective order for such information is justified in this
3 matter. It is the intent of the parties that information will not be designated as
4 confidential for tactical reasons and that nothing be so designated without a good
5 faith belief that it has been maintained in a confidential, non-public manner, and
6 there is good cause why it should not be part of the public record of this case.

7 **2. DEFINITIONS**

8 2.1 Action: This pending federal law suit.

9 2.2 Challenging Party: a Party or Non-Party that challenges the
10 designation of information or items under this Order.

11 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
12 how it is generated, stored or maintained) or tangible things that qualify for
13 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
14 the Good Cause Statement.

15 2.4 Counsel (without qualifier): Outside Counsel of Record (as well as
16 their support staff).

17 2.5 Designating Party: a Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL.”

20 2.6 Disclosure or Discovery Material: all items or information, regardless
21 of the medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced
23 or generated in disclosures or responses to discovery in this matter.

24 2.7 Expert: a person with specialized knowledge or experience in a matter
25 pertinent to the litigation who (1) has been retained by a Party or its counsel to
26 serve as an expert witness or as a consultant in this action, (2) is not a past or
27 current employee of a Party or of a Party’s competitor, and (3) at the time of
28 retention, is not anticipated to become an employee of a Party or of a Party’s

1 competitor.

2 2.8 Non-Party: any natural person, partnership, corporation, association, or
3 other legal entity not named as a Party to this action.

4 2.9 Outside Counsel of Record: attorneys who are not employees of a
5 party to this Action but are retained to represent or advise a party to this Action and
6 have appeared in this Action on behalf of that party or are affiliated with a law firm
7 which has appeared on behalf of that party, and includes support staff.

8 2.10 Party: any party to this action, including all of its officers, directors,
9 employees, consultants, retained experts, and Outside Counsel of Record (and their
10 support staffs).

11 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
12 Discovery Material in this Action.

13 2.15 Professional Vendors: persons or entities that provide litigation
14 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
15 demonstrations, and organizing, storing, or retrieving data in any form or medium)
16 and their employees and subcontractors.

17 2.16 Protected Material: any Disclosure or Discovery Material that is
18 designated as "CONFIDENTIAL."

19 2.17 Receiving Party: a Party that receives Disclosure or Discovery
20 Material from a Producing Party.

21 3. SCOPE

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

27 However, the protections conferred by this Stipulation and Order do not cover the
28 following information: (a) any information that is in the public domain at the time

1 of disclosure to a Receiving Party or becomes part of the public domain after its
2 disclosure to a Receiving Party as a result of publication not involving a violation
3 of this Order, including becoming part of the public record through trial or
4 otherwise; and (b) any information known to the Receiving Party prior to the
5 disclosure or obtained by the Receiving Party after the disclosure from a source
6 who obtained the information lawfully and under no obligation of confidentiality to
7 the Designating Party.

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

10 4. DURATION

11 Even after final disposition of this litigation, 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. Final disposition shall be
14 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
15 or without prejudice; and (2) final judgment herein after the completion and
16 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
17 including the time limits for filing any motions or applications for extension of time
18 pursuant to applicable law.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection.

21 Each Party or Non-Party that designates information or items for protection under
22 this Order must take care to limit any such designation to specific material that
23 qualifies under the appropriate standards. The Designating Party must designate for
24 protection only those parts of material, documents, items, or oral or written
25 communications that qualify so that other portions of the material, documents,
26 items, or communications for which protection is not warranted are not swept
27 unjustifiably within the ambit of this Order.

28 Mass, indiscriminate, or routinized designations are prohibited. Designations

1 that are shown to be clearly unjustified or that have been made for an improper
2 purpose (e.g., to unnecessarily encumber or retard the case development process or
3 to impose unnecessary expenses and burdens on other parties) expose the
4 Designating Party to sanctions.

5 If it comes to a Designating Party's attention that information or items that it
6 designated for protection do not qualify for protection, that Designating Party must
7 promptly notify all other parties that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in
9 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
10 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
11 under this Order must be clearly so designated before the material is disclosed or
12 produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic
15 documents, but excluding transcripts of depositions or other pretrial or trial
16 proceedings), that the Producing Party affix the legend "CONFIDENTIAL"
17 (hereinafter "CONFIDENTIAL legend") to each page that contains protected
18 material. If only a portion or portions of the material on a page qualifies for
19 protection, the Producing Party also must clearly identify the protected portion(s)
20 (e.g., by making appropriate markings in the margins).

21 A Party or Non-Party that makes original documents or materials available
22 for inspection need not designate them for protection until after the inspecting Party
23 has indicated which material it would like copied and produced. During the
24 inspection and before the designation, all of the material made available for
25 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
26 identified the documents it wants copied and produced, the Producing Party must
27 determine which documents, or portions thereof, qualify for protection under this
28 Order. Then, before producing the specified documents, the Producing Party must

1 affix the “CONFIDENTIAL legend” to each page that contains Protected Material.
2 If only a portion or portions of the material on a page qualifies for protection, the
3 Producing Party also must clearly identify the protected portion(s) (e.g., by making
4 appropriate markings in the margins).

5 (b) for testimony given in depositions that the Designating Party identify
6 the Disclosure or Discover Material on the record, before the close of the deposition
7 all protected testimony.

8 (c) for information produced in some form other than documentary and
9 for any other tangible items, that the Producing Party affix in a prominent place on
10 the exterior of the container or containers in which the information or item is stored
11 the legend “CONFIDENTIAL.” If only a portion or portions of the information or
12 item warrant protection, the Producing Party, to the extent practicable, shall identify
13 the protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
15 failure to designate qualified information or items does not, standing alone, waive
16 the Designating Party’s right to secure protection under this Order for such
17 material. Upon timely correction of a designation, the Receiving Party must make
18 reasonable efforts to assure that the material is treated in accordance with the
19 provisions of this Order.

20 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

21 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
22 designation of confidentiality at any time. Unless a prompt challenge to a
23 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
24 substantial unfairness, unnecessary economic burdens, or a significant disruption or
25 delay of the litigation, a Party does not waive its right to challenge a confidentiality
26 designation by electing not to mount a challenge promptly after the original
27 designation is disclosed.

28 6.2 Meet and Confer. The Challenging Party shall initiate the dispute

1 resolution process by providing written notice of each designation it is challenging
2 and describing the basis for each challenge. To avoid ambiguity as to whether a
3 challenge has been made, the written notice must recite that the challenge to
4 confidentiality is being made in accordance with this specific paragraph of the
5 Protective Order. The parties shall attempt to resolve each challenge in good faith
6 and must begin the process by conferring directly (in voice to voice dialogue; other
7 forms of communication are not sufficient) within 14 days of the date of service of
8 notice. In conferring, the Challenging Party must explain the basis for its belief that
9 the confidentiality designation was not proper and must give the Designating Party
10 an opportunity to review the designated material, to reconsider the circumstances,
11 and, if no change in designation is offered, to explain the basis for the chosen
12 designation. A Challenging Party may proceed to the next stage of the challenge
13 process only if it has engaged in this meet and confer process first or establishes
14 that the Designating Party is unwilling to participate in the meet and confer process
15 in a timely manner.

16 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
17 court intervention, the Challenging Party shall file and serve a motion to challenge
18 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule
19 79-5.1, if applicable) within 21 days of the initial notice of challenge or within 14
20 days of the parties agreeing that the meet and confer process will not resolve their
21 dispute, whichever is earlier. Each such motion must be accompanied by a
22 competent declaration affirming that the movant has complied with the meet and
23 confer requirements imposed in the preceding paragraph. Failure by the
24 Challenging Party to make such a motion including the required declaration within
25 21 days (or 14 days, if applicable) shall automatically waive the ability to challenge
26 the confidentiality designation for each challenged designation. In addition, the
27 Designating Party may file a motion for a protective order preserving the
28 confidential designation at any time if there is good cause for doing so. Any

1 motion brought pursuant to this provision must be accompanied by a competent
2 declaration affirming that the movant has complied with the meet and confer
3 requirements imposed by the preceding paragraph.

4 6.4 The burden of persuasion in any such challenge proceeding shall be on
5 the Challenging Party. Frivolous challenges and those made for an improper
6 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
7 parties) may expose the Challenging Party to sanctions. Until such time as a
8 determination has been made on any such motion by the Court, all parties shall
9 continue to afford the material in question the level of protection to which it is
10 entitled under the Producing Party's designation until the court rules on the
11 challenge.

12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is
14 disclosed or produced by another Party or by a Non-Party in connection with this
15 case only for prosecuting, defending, or attempting to settle this litigation. Such
16 Protected Material may be disclosed only to the categories of persons and under the
17 conditions described in this Order. When the litigation has been terminated, a
18 Receiving Party must comply with the provisions of section 13 below (FINAL
19 DISPOSITION).

20 Protected Material must be stored and maintained by a Receiving Party at a
21 location and in a secure manner¹ that ensures that access is limited to the persons
22 authorized under this Order.

23 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
24 otherwise ordered by the court or permitted in writing by the Designating Party, a
25 Receiving Party may disclose any information or item designated
26 "CONFIDENTIAL" only to:

27 _____

28 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected Material in password-protected form.

1 (a) the Receiving Party's Outside Counsel of Record in this action, as well
2 as employees of said Outside Counsel of Record to whom it is reasonably necessary
3 to disclose the information for this litigation and who have signed the
4 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
5 A;

6 (b) the officers, directors, and employees of the Receiving Party to whom
7 disclosure is reasonably necessary for this litigation and who have signed the
8 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

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

12 (d) the court and its personnel;

13 (e) court reporters and their staff, professional jury or trial consultants,
14 and Professional Vendors to whom disclosure is reasonably necessary for this
15 litigation and who have signed the "Acknowledgment and Agreement to Be
16 Bound" (Exhibit A);

17 (f) during their depositions, witnesses in the action to whom disclosure is
18 reasonably necessary and who have signed the "Acknowledgment and Agreement
19 to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or
20 ordered by the court. Pages of transcribed deposition testimony or exhibits to
21 depositions that reveal Protected Material must be separately bound by the court
22 reporter and may not be disclosed to anyone except as permitted under this
23 Stipulated Protective Order.

24 (g) the author or recipient of a document containing the information or a
25 custodian or other person who otherwise possessed or knew the information.

26 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
27 IN OTHER LITIGATION

28 If a Party is served with a subpoena or a court order issued in other litigation

1 that compels disclosure of any information or items designated in this action as
2 “CONFIDENTIAL,” that Party must:

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

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

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

11 If the Designating Party timely seeks a protective order, the Party served with
12 the subpoena or court order shall not produce any information designated in this
13 action as “CONFIDENTIAL” before a determination by the court from which the
14 subpoena or order issued, unless the Party has obtained the Designating Party’s
15 permission. The Designating Party shall bear the burden and expense of seeking
16 protection in that court of its confidential material – and nothing in these provisions
17 should be construed as authorizing or encouraging a Receiving Party in this action
18 to disobey a lawful directive from another court.

19 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
20 PRODUCED IN THIS LITIGATION

21 (a) The terms of this Order are applicable to information produced by a
22 Non-Party in this action and designated as “CONFIDENTIAL.” Such information
23 produced by Non-Parties in connection with this litigation is protected by the
24 remedies and relief provided by this Order. Nothing in these provisions should be
25 construed as prohibiting a Non-Party from seeking additional protections.

26 (b) In the event that a Party is required, by a valid discovery request, to
27 produce a Non-Party’s confidential information in its possession, and the Party is
28 subject to an agreement with the Non-Party not to produce the Non-Party’s

1 confidential information, then the Party shall:

2 1. promptly notify in writing the Requesting Party and the Non-
3 Party that some or all of the information requested is subject to a confidentiality
4 agreement with a Non-Party;

5 2. promptly provide the Non-Party with a copy of the Stipulated
6 Protective Order in this litigation, the relevant discovery request(s), and a
7 reasonably specific description of the information requested; and

8 3. make the information requested available for inspection by the
9 Non-Party, if requested.

10 (c) If the Non-Party fails to object or seek a protective order from this
11 court within 14 days of receiving the notice and accompanying information, the
12 Receiving Party may produce the Non-Party's confidential information responsive
13 to the discovery request. If the Non-Party timely seeks a protective order, the
14 Receiving Party shall not produce any information in its possession or control that
15 is subject to the confidentiality agreement with the Non-Party before a
16 determination by the court. Absent a court order to the contrary, the Non-Party
17 shall bear the burden and expense of seeking protection in this court of its Protected
18 Material.

19 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other
5 protection, the obligations of the Receiving Parties are those set forth in Federal
6 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
7 whatever procedure may be established in an e-discovery order that provides for
8 production without prior privilege review. Pursuant to Federal Rule of Evidence
9 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
10 of a communication or information covered by the attorney-client privilege or work
11 product protection, the parties may incorporate their agreement in the stipulated
12 protective order submitted to the court.

13 12. MISCELLANEOUS

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

16 12.2 Right to Assert Other Objections. By stipulating to the entry of this
17 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 Filing Protected Material. Without written permission from the
23 Designating Party or a court order secured after appropriate notice to all interested
24 persons, a Party may not file in the public record in this action any Protected
25 Material. A Party that seeks to file under seal any Protected Material must comply
26 with Civil Local Rule 79-5.1. Protected Material may only be filed under seal
27 pursuant to a court order authorizing the sealing of the specific Protected Material
28 at issue. Pursuant to Civil Local Rule 79-5.1, a sealing order will issue only upon a

1 request establishing that the Protected Material at issue is privileged, protectable as
2 a trade secret, or otherwise entitled to protection under the law. If a Receiving
3 Party's request to file Protected Material under seal pursuant to Civil Local Rule
4 79-5.1 is denied by the court, then the Receiving Party may file the Protected
5 Material in the public record pursuant to Civil Local Rule 79-5.1 unless otherwise
6 instructed by the court.

7 13. FINAL DISPOSITION

8 Within 60 days after the final disposition of this action, as defined in
9 paragraph 4, each Receiving Party must return all Protected Material to the
10 Producing Party or destroy such material. As used in this subdivision, "all
11 Protected Material" includes all copies, abstracts, compilations, summaries, and any
12 other format reproducing or capturing any of the Protected Material. Whether the
13 Protected Material is returned or destroyed, the Receiving Party must submit a
14 written certification to the Producing Party (and, if not the same person or entity, to
15 the Designating Party) by the 60-day deadline that (1) identifies (by category,
16 where appropriate) all the Protected Material that was returned or destroyed and
17 (2) affirms that the Receiving Party has not retained any copies, abstracts,
18 compilations, summaries or any other format reproducing or capturing any of the
19 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
20 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
23 such 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).

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1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address],
5 declare under penalty of perjury that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District Court for
7 the Central District of California on _____ [date] in the case of *B.A.S.A.*
8 *Trading, Inc. v. CLO Apparel, Inc. et. al.*, Case No. 2:15-cv-09954-AB-AS. I agree
9 to comply with and to be bound by all the terms of this Stipulated Protective Order
10 and I understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will
12 not disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the
14 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 or type full name] of
20 _____
21 [print or type full address and telephone number] as my California agent for service
22 of process in connection with this action or any proceedings related to enforcement
23 of this Stipulated Protective Order.

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____

28