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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VAHDAT AGHDASY, on behalf of
himself and all others similarly situated,

Plaintiffs,

v.

NORDSTROM, INC.; HAUTELOOK,
INC.,

Defendants.

Case No. 2:16-cv-01829-DSF (KSx)

STIPULATED PROTECTIVE
ORDER

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to

1 file confidential information under seal; Civil Local Rule 79-5 sets forth the
2 procedures that must be followed and the standards that will be applied when a party
3 seeks permission from the court to file material under seal.

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5 **B. GOOD CAUSE STATEMENT**

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7 This action is likely to involve trade secrets, customer and pricing lists and
8 other valuable research, development, commercial, financial, technical and/or
9 proprietary information for which special protection from public disclosure and
10 from use for any purpose other than prosecution of this action is warranted. Such
11 confidential and proprietary materials and information consist of, among other
12 things, confidential business or financial information, information regarding
13 confidential business practices, or other confidential research, development, or
14 commercial information (including information implicating privacy rights of third
15 parties), information otherwise generally unavailable to the public, or which may be
16 privileged or otherwise protected from disclosure under state or federal statutes,
17 court rules, case decisions, or common law. Much of the discovery sought in this
18 case will concern the business practices, policies, procedures, and supplier
19 relationships of the flash-sale website HauteLook. The flash-sale website industry is
20 highly competitive, and HauteLook contends that these documents are confidential,
21 proprietary and/or trade secret, and that disclosure of the documents without a
22 Protective Order would cause HauteLook serious competitive and/or financial harm.
23 *See In re Coordinated Pretrial Proceedings in Petroleum Products Antitrust*
24 *Litigation*, 101 F.R.D. 34, 41 n.7 (C.D. Cal. 1984) (holding that “Rule [26(c)(1)(G)]
25 provides that upon a showing of good cause, a court may order that trade secrets,
26 confidential research or other commercial information produced during discovery
27 may be protected from public disclosure”). Furthermore, as a putative class action,
28 this case may involve discovery of absent class members’ identities, addresses,

1 contact information, and purchase histories. Protection from public disclosure is
2 appropriate to protect these third parties' rights to privacy under the California
3 Constitution. Cal. Const. Art. I, § I (among an individual's inalienable rights are
4 "pursuing and obtaining safety, happiness, and privacy"); Fed. Rule Evid. 501 (state
5 law governs privilege regarding a claim or defense for which state law supplies the
6 rule of decision). Accordingly, to expedite the flow of information, to facilitate the
7 prompt resolution of disputes over confidentiality of discovery materials, to
8 adequately protect information the parties are entitled to keep confidential, to ensure
9 that the parties are permitted reasonable necessary uses of such material in
10 preparation for and in the conduct of trial, to address their handling at the end of the
11 litigation, and serve the ends of justice, a protective order for such information is
12 justified in this matter. It is the intent of the parties that information will not be
13 designated as confidential for tactical reasons and that nothing be so designated
14 without a good faith belief that it has been maintained in a confidential, non-public
15 manner, and there is good cause why it should not be part of the public record of this
16 case.

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18 2. DEFINITIONS

19 2.1 Action: this pending federal law suit.

20 2.2 Challenging Party: a Party or Non-Party that challenges the designation
21 of information or items under this Order.

22 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
23 how it is generated, stored or maintained) or tangible things that qualify for
24 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
25 the Good Cause Statement.

26 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
27 their support staff).

28

1 2.5 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL.”

4 2.6 Disclosure or Discovery Material: all items or information, regardless
5 of the medium or manner in which it is generated, stored, or maintained (including,
6 among other things, testimony, transcripts, and tangible things), that are produced or
7 generated in disclosures or responses to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a matter
9 pertinent to the litigation who has been retained by a Party or its counsel to serve as
10 an expert witness or as a consultant in this Action.

11 2.8 House Counsel: attorneys who are employees of a party to this Action.
12 House Counsel does not include Outside Counsel of Record or any other outside
13 counsel.

14 2.9 Non-Party: any natural person, partnership, corporation, association, or
15 other legal entity not named as a Party to this action.

16 2.10 Outside Counsel of Record: attorneys who are not employees of a party
17 to this Action but are retained to represent or advise a party to this Action and have
18 appeared in this Action on behalf of that party or are affiliated with a law firm which
19 has appeared on behalf of that party, and includes support staff.

20 2.11 Party: any party to this Action, including all of its officers, directors,
21 employees, consultants, retained experts, and Outside Counsel of Record (and their
22 support staffs).

23 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
24 Discovery Material in this Action.

25 2.13 Professional Vendors: persons or entities that provide litigation support
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or
27 demonstrations, and organizing, storing, or retrieving data in any form or medium)
28 and their employees and subcontractors.

1 2.14 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL.”

3 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
4 from a Producing Party.

5
6 3. SCOPE

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

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

14 4. DURATION

15 Even after final disposition of this litigation, the confidentiality obligations
16 imposed by this Order shall remain in effect until a Designating Party agrees
17 otherwise in writing or a court order otherwise directs. Final disposition shall be
18 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
19 or without prejudice; and (2) final judgment herein after the completion and
20 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
21 including the time limits for filing any motions or applications for extension of time
22 pursuant to applicable law.

23
24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection.
26 Each Party or Non-Party that designates information or items for protection under
27 this Order must take care to limit any such designation to specific material that
28 qualifies under the appropriate standards. The Designating Party must designate for

1 protection only those parts of material, documents, items, or oral or written
2 communications that qualify so that other portions of the material, documents,
3 items, or communications for which protection is not warranted are not swept
4 unjustifiably within the ambit of this Order.

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

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

13 5.2 Manner and Timing of Designations. Except as otherwise provided in
14 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
15 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
16 under this Order must be clearly so designated before the material is disclosed or
17 produced.

18 Designation in conformity with this Order requires:

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

26 A Party or Non-Party that makes original documents available for inspection
27 need not designate them for protection until after the inspecting Party has indicated
28 which documents it would like copied and produced. During the inspection and

1 before the designation, all of the material made available for inspection shall be
2 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
3 documents it wants copied and produced, the Producing Party must determine which
4 documents, or portions thereof, qualify for protection under this Order. Then, before
5 producing the specified documents, the Producing Party must affix the
6 “CONFIDENTIAL legend” to each page that contains Protected Material. If only a
7 portion or portions of the material on a page qualifies for protection, the Producing
8 Party also must clearly identify the protected portion(s) (e.g., by making appropriate
9 markings in the margins).

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

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

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

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1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court’s
4 Scheduling Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37.1 et seq.

7 6.3 The burden of persuasion in any such challenge proceeding shall be on
8 the Designating Party. Frivolous challenges, and those made for an improper
9 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
10 parties) may expose the Challenging Party to sanctions. Unless the Designating
11 Party has waived or withdrawn the confidentiality designation, all parties shall
12 continue to afford the material in question the level of protection to which it is
13 entitled under the Producing Party’s designation until the Court rules on the
14 challenge.

15
16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

27 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
28 otherwise ordered by the court or permitted in writing by the Designating Party, a

1 Receiving Party may disclose any information or item designated
2 “CONFIDENTIAL” only to:

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

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

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

11 (d) the court and its personnel;

12 (e) court reporters and their staff;

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

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

18 (h) during their depositions, witnesses ,and attorneys for witnesses, in
19 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
20 party requests that the witness sign the form attached as Exhibit 1 hereto; and
21 (2) they will not be permitted to keep any confidential information unless they sign
22 the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
23 agreed by the Designating Party or ordered by the court. Pages of transcribed
24 deposition testimony or exhibits to depositions that reveal Protected Material may
25 be separately bound by the court reporter and may not be disclosed to anyone except
26 as permitted under this Stipulated Protective Order; and

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

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8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION

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

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

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

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

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

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

(a) The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the

1 remedies and relief provided by this Order. Nothing in these provisions should be
2 construed as prohibiting a Non-Party from seeking additional protections.

3 (b) In the event that a Party is required, by a valid discovery request, to
4 produce a Non-Party's confidential information in its possession, and the Party is
5 subject to an agreement with the Non-Party not to produce the Non-Party's
6 confidential information, then the Party shall:

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

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

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

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

23
24 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this
27 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
28 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts

1 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
2 persons to whom unauthorized disclosures were made of all the terms of this Order,
3 and (d) request such person or persons to execute the “Acknowledgment and
4 Agreement to Be Bound” that is attached hereto as Exhibit A.

5
6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

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

18
19 12. MISCELLANEOUS

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
21 person to seek its modification by the Court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order no Party waives any right it otherwise would have to object to
24 disclosing or producing any information or item on any ground not addressed in this
25 Stipulated Protective Order. Similarly, no Party waives any right to object on any
26 ground to use in evidence of any of the material covered by this Protective Order.

27 12.3 Filing Protected Material. A Party that seeks to file under seal any
28 Protected Material must comply with Civil Local Rule 79-5. Protected Material may

1 only be filed under seal pursuant to a court order authorizing the sealing of the
2 specific Protected Material at issue. If a Party's request to file Protected Material
3 under seal is denied by the court, then the Receiving Party may file the information
4 in the public record unless otherwise instructed by the court.

5
6 13. FINAL DISPOSITION

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

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

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5 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

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7 DATED: October 27, 2016

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Karen L. Stevenson _____

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Hon. Karen L. Stevenson
United States Magistrate Judge

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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty
6 of perjury that I have read in its entirety and understand the Stipulated Protective
7 Order that was issued by the United States District Court for the Central District of
8 California on _____ in the case of Aghdasy v. Nordstrom, Inc., et al., Case No.
9 2:16-cv-01829-DSF (KSx). I agree to comply with and to be bound by all the terms
10 of this Stipulated Protective Order and I understand and acknowledge that failure to
11 so comply could expose me to sanctions and punishment in the nature of contempt.
12 I solemnly promise that I will not disclose in any manner any information or item
13 that is subject to this Stipulated Protective Order to any person or entity except in
14 strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for the
16 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. I hereby appoint _____ [print
19 or type full name] of _____ [print or type
20 full address and telephone number] as my California agent for service of process in
21 connection with this action or any proceedings related to enforcement of this
22 Stipulated Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____