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

13 UNICOLORS, INC., a California  
 14 Corporation;

15 Plaintiff,

16 vs.

17 APOLLO APPAREL GROUP, LLC., a  
 18 New York Limited Liability Company;  
 19 NB BROTHER CORP, a California  
 20 Corporation; BURLINGTON STORES,  
 21 INC., a New Jersey Corporation; and  
 22 DOES 1-20, inclusive,

23 Defendants.

Case No.: 2:16-CV-02268-MWF(JPRx)

**PROTECTIVE ORDER**

Hon. Michael W. Fitzgerald, Judge  
 Presiding

Hon. Jean P. Rosenbluth, Magistrate  
 Judge

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

3  
4 1. PURPOSES AND LIMITATIONS

5 Disclosure and discovery activity in this action are likely to involve  
6 production of confidential, proprietary, or private information for which special  
7 protection from public disclosure and from use for any purpose other than  
8 prosecuting this matter would be warranted. Accordingly, the parties have  
9 stipulated to and petitioned this Court to enter the following Stipulated Protective  
10 Order. The parties acknowledge that this Order does not confer blanket protections  
11 on all disclosures or responses to discovery and that the protection it affords  
12 extends only to the limited information or items that are entitled under the  
13 applicable legal principles to treatment as confidential. The parties have agreed  
14 that the terms of this Protective Order shall also apply to any future voluntary  
15 disclosures of confidential, proprietary, or private information. The parties reserve  
16 their rights to object to or withhold any information, including confidential,  
17 proprietary, or private information, on any other applicable grounds permitted by  
18 law, including third-party rights and relevancy.

19  
20 2. DEFINITIONS

21 2.1 Party: any party to this action, including all of its officers,  
22 directors, employees, consultants, retained experts, and outside counsel (and their  
23 support staff).

24 2.2 Disclosure or Discovery Material: all items or information,  
25 regardless of the medium or manner generated, stored, or maintained (including,  
26 among other things, testimony, transcripts, or tangible things), that are produced or  
27 generated in disclosures or responses to discovery in this matter.

1           2.3 “Confidential” Information or Items: All information in  
2 whatever form, such as oral, written, documentary, tangible, intangible, electronic,  
3 or digitized now or hereafter in existence that that the producing party or protected  
4 person reasonably believes not to be in the public domain and reasonably believes  
5 contains any trade secret or other confidential, strategic, research, development, or  
6 commercial information, as such terms are used in Fed. R. Civ. P. 26(c)(7), that, if  
7 disclosed, would materially affect the party's or protected person's business,  
8 commercial or financial interests. :

9  
10           2.4 “Attorneys’ Eyes Only”: Discovery Material or such portion of  
11 such material that the disclosing party has a reasonable belief that the information  
12 disclosed, if known to one or more parties in the case would have a reasonable  
13 chance of putting the disclosing party to a competitive disadvantage or otherwise  
14 result in the disclosure of sensitive proprietary information that could cause future  
15 harm. Notwithstanding the terms of this agreement, Plaintiff’s attorney is entitled  
16 to disclose to Plaintiff the total revenue and gross profit data related to the accused  
17 product, , as well as the names of any parties responsible for distributing the  
18 accused product at issue, so long as Plaintiff agrees to keep such information  
19 confidential.

20           2.5 Receiving Party: a Party that receives Disclosure or Discovery  
21 Material from a Producing Party.

22           2.6 Producing Party: a Party or non-party that produces Disclosure  
23 or Discovery Material in this action.

24           2.7 Designating Party: a Party or non-party that designates  
25 information or items that it produces in disclosures or in responses to discovery as  
26 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

27           2.8 Protected Material: any Disclosure or Discovery Material that  
28 is designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

1           2.9 Expert: a person with specialized knowledge or experience in a  
2 matter pertinent to the litigation who has been retained by a Party or its counsel to  
3 serve as an expert witness or as a consultant in this action. This definition includes  
4 a professional jury or trial consultant retained in connection with this litigation.  
5 The expert witness or consultant may not be a past or a current employee of the  
6 Party (including any affiliates or related entities) adverse to the Party engaging the  
7 expert witness or consultant, or someone who at the time of retention is anticipated  
8 to become an employee of the Party (including any affiliates or related entities)  
9 adverse to the Party engaging the expert witness or consultant.

10           2.10 Professional Vendors: persons or entities that provide litigation  
11 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or  
12 demonstrations; organizing, storing, or retrieving data in any form or medium; etc.)  
13 and their employees and subcontractors.

### 14

15           3. SCOPE

16           The protections conferred by this Stipulation and Order cover not only  
17 Protected Material (as defined above), but also any information copied or extracted  
18 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus  
19 testimony, conversations, or presentations by parties or counsel to or in litigation or  
20 in other settings that might reveal Protected Material. This Protective Order does  
21 not confer blanket protections on all disclosures or responses to discovery. The  
22 protection it affords extends only to the limited information or items that are  
23 entitled under the applicable legal principles to treatment as confidential.

### 24

25           4. DURATION

26           Even after the termination of this action, the confidentiality obligations  
27 imposed by this Order shall remain in effect until a Designating Party agrees  
28 otherwise in writing or a court order otherwise directs.

1           5.     DESIGNATING PROTECTED MATERIAL

2           5.1   Exercise of Restraint and Care in Designating Material for  
3 Protection. Each Party or non-party that designates information or items for  
4 protection under this Order must take care to limit any such designation to specific  
5 material that qualifies under the appropriate standards. A Designating Party must  
6 take care to designate for protection only those parts of material, documents, items,  
7 or oral or written communications that qualify – so that other portions of the  
8 material, documents, items, or communications for which protection is not  
9 warranted are not swept unjustifiably within the ambit of this Order.

10                   If it comes to a Party’s or a non-party’s attention that information or  
11 items that it designated for protection do not qualify for protection at all, or do not  
12 qualify for the level of protection initially asserted, that Party or non-party must  
13 promptly notify all other parties that it is withdrawing the mistaken designation.

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

18                   Designation in conformity with this Order requires:

19                   (a)   for information in documentary form (apart from  
20 transcripts of depositions or other pretrial or trial proceedings), that the Producing  
21 Party affix the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” at  
22 the top or bottom of each page that contains protected material.

23                   A Party or non-party that makes originals or copies of  
24 documents or materials available for inspection need not designate them for  
25 protection until after the inspecting Party has indicated which material it intends to  
26 copy. During the inspection and before the designation, all of the material made  
27 available for inspection shall be deemed “ATTORNEYS’ EYES ONLY.” After  
28 the inspecting Party has identified the documents it wants copied and produced, the

1 Producing Party must designate, either in writing or on the record (at a deposition),  
2 which documents, or portions thereof, qualify for protection under this Order.  
3 Then the Receiving Party must affix the “CONFIDENTIAL” or “ATTORNEYS’  
4 EYES ONLY” legend at the top of each copied page that contains Protected  
5 Material. If only a portion or portions of the material on a page qualifies for  
6 protection, the Producing Party also must clearly identify the protected portion(s)  
7 (e.g., by making appropriate markings in the margins) and must specify, for each  
8 portion, the level of protection being asserted (either “CONFIDENTIAL” or  
9 “ATTORNEYS’ EYES ONLY”).

10 (b) for testimony given in deposition or in other discovery-  
11 related proceedings, that the Party or non-party offering or sponsoring the  
12 testimony identify on the record, before the close of the deposition, hearing, or  
13 other proceeding, all protected testimony, and further specify any portions of the  
14 testimony that qualify as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”  
15 When it is impractical to identify separately each portion of testimony that is  
16 entitled to protection, and when it appears that substantial portions of the testimony  
17 may qualify for protection, the Party or non-party that sponsors, offers, or gives the  
18 testimony may invoke on the record (before the deposition or proceeding is  
19 concluded) a right to have up to 20 days to identify the specific portions of the  
20 testimony as to which protection is sought and to specify the level of protection  
21 being asserted (“CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”). Only  
22 those portions of the testimony that are appropriately designated for protection  
23 within the 20 days shall be covered by the provisions of this Protective Order.

24 Transcript pages containing Protected Material must be  
25 separately bound by the court reporter, who must affix to the top of each such page  
26 the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” as instructed  
27 by the Party or non-party offering or sponsoring the witness or presenting the  
28 testimony.

1 (c) for information produced in some form other than  
2 documentary, and for any other tangible items, that the Producing Party affix in a  
3 prominent place on the exterior of the container or containers in which the  
4 information or item is stored the legend “CONFIDENTIAL” or “ATTORNEYS’  
5 EYES ONLY.” If only portions of the information or item warrant protection, the  
6 Producing Party, to the extent practicable, shall identify the protected portions,  
7 specifying whether they qualify as “CONFIDENTIAL” or as “ATTORNEYS’  
8 EYES ONLY.”

9 5.3 Inadvertent Failures to Designate. If timely corrected, an  
10 inadvertent failure to designate qualified information or items as  
11 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” does not, standing alone,  
12 waive the Designating Party’s right to secure protection under this Order for such  
13 material. If material is appropriately designated as “CONFIDENTIAL” or  
14 “ATTORNEYS’ EYES ONLY” after the material was initially produced, the  
15 Receiving Party, on timely notification of the designation, must make reasonable  
16 efforts to assure that the material is treated in accordance with the provisions of this  
17 Order.

## 18

## 19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Unless a prompt challenge to a  
21 Designating Party’s confidentiality designation is necessary to avoid foreseeable  
22 substantial unfairness, unnecessary economic burdens, or a later significant  
23 disruption or delay of the litigation, a Party does not waive its right to challenge a  
24 confidentiality designation by electing not to mount a challenge promptly after the  
25 original designation is disclosed.

26 6.2 Meet and Confer. A Party that elects to initiate a challenge to a  
27 Designating Party’s confidentiality designation must do so in good faith and must  
28 begin the process by conferring with counsel for the Designating Party in writing

1 In conferring, the challenging Party must explain the basis for its belief that the  
2 confidentiality designation was not proper and must give the Designating Party an  
3 opportunity to review the designated material, to reconsider the circumstances, and,  
4 if no change in designation is offered, to explain the basis for the chosen  
5 designation. A challenging Party may proceed to the next stage of the challenge  
6 process only if it has engaged in this meet-and-confer process first.

7           6.3 Court Intervention. A Party that elects to press a challenge to a  
8 confidentiality designation after considering the justification offered by the  
9 Designating Party may file and serve a motion in compliance with Local Rule 37  
10 that identifies the challenged material and sets forth in detail the basis for the  
11 challenge. Each such motion must be accompanied by a competent declaration that  
12 affirms that the movant has complied with the meet-and-confer requirements  
13 imposed in the preceding paragraph and that sets forth with specificity the  
14 justification for the confidentiality designation that was given by the Designating  
15 Party in the meet-and-confer dialogue. The parties agree that a confidentiality  
16 designation shall not create a presumption in favor of such confidentiality  
17 designation, and that the Court shall decide the issue as such.

18           Until the Court rules on the challenge, all parties shall continue to  
19 afford the material in question the level of protection to which it is entitled under  
20 the Producing Party's designation.

21  
22           7. ACCESS TO AND USE OF PROTECTED MATERIAL

23           7.1 Basic Principles. A Receiving Party may use Protected  
24 Material that is disclosed or produced by another Party or by a non-party in  
25 connection with this case only for prosecuting, defending, or attempting to settle  
26 this litigation. Such Protected Material may be disclosed only to the categories of  
27 persons and under the conditions described in this Order. When the litigation has  
28



1 been terminated, a Receiving Party must comply with the provisions of section 11,  
2 below (FINAL DISPOSITION).

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

6           7.2 Disclosure of “CONFIDENTIAL” Information or Items

7 Unless otherwise ordered by the Court or permitted in writing by the Designating  
8 Party, a Receiving Party may disclose any information or item designated  
9 “CONFIDENTIAL” only to:

10           (a) the Receiving Party’s outside counsel, as well as  
11 employees of said outside counsel to whom it is reasonably necessary to disclose  
12 the information for this litigation;

13           (b) Board members, officers and directors of the Receiving  
14 Party;(c) Other employees of the Receiving Party to whom disclosure is  
15 reasonably necessary for this litigation and who have agreed in writing to be bound  
16 by this Order;

17           (d) Experts (as defined in this Order) of the Receiving Party  
18 to whom disclosure is reasonably necessary for this litigation and who have agreed  
19 in writing to be bound by this Order;

20           (e) the Court and its personnel;

21           (f) court reporters, their staffs, and professional vendors to  
22 whom disclosure is reasonably necessary for this litigation and who have agreed in  
23 writing to be bound by this Order;

24           (g) during their depositions, witnesses in the action to whom  
25 disclosure is reasonably necessary and who have agreed in writing to be bound by  
26 this Order. Pages of transcribed deposition testimony or exhibits to depositions  
27 that reveal Protected Material must be separately bound by the court reporter and  
28

1 may not be disclosed to anyone except as permitted under this Protective Order;  
2 and

3 (h) the author of the document or the original source of the  
4 information.

5 7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or  
6 Items. Unless otherwise ordered by the Court or permitted in writing by the  
7 Designating Party, a Receiving Party may disclose any information or item  
8 designated “ATTORNEYS’ EYES ONLY” only to:

9 (a) the Receiving Party’s outside counsel, as well as  
10 employees of said outside counsel to whom it is reasonably necessary to disclose  
11 the information for this litigation;

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

15 (c) the Court personnel assigned to this litigation;

16 (d) court reporters, their staffs, and professional vendors to  
17 whom disclosure is reasonably necessary for this litigation and who have signed  
18 the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

19 (e) the author of the document or the original source of the  
20 information.

21  
22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
23 PRODUCED IN OTHER LITIGATION

24 If a Receiving Party is served with a subpoena or an order issued in other  
25 litigation that would compel disclosure of any Discovery Material, the Receiving  
26 Party must so notify the Designating Party, in writing immediately and in no event  
27 more than five business days after receiving the subpoena or order. Such  
28 notification must include a copy of the subpoena or court order. The Receiving

1 Party also must immediately inform in writing the Party who caused the subpoena  
2 or order to issue in the other litigation that some or all of the material covered by  
3 the subpoena or order is the subject of this Protective Order. In addition, the  
4 Receiving Party must deliver a copy of this Stipulated Protective Order promptly to  
5 the Party in the other action that caused the subpoena or order to issue.

6 The purpose of imposing these duties is to alert the interested parties to the  
7 existence of this Protective Order and to afford the Designating Party in this case  
8 an opportunity to try to protect its confidentiality interests in the court from which  
9 the subpoena or order issued.

10  
11 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

20  
21 10. FILING PROTECTED MATERIAL

22 Without written permission from the Designating Party, or a court order  
23 secured after appropriate notice to all interested persons and after following the  
24 procedures provided for in Local Rule 79-5.1, a Party may not file in the public  
25 record in this action any Protected Material.

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28 //

1           11.    FINAL DISPOSITION

2           Unless otherwise ordered or agreed to in writing by the Producing Party,  
3 within 60 days after the final termination of this action, each Receiving Party must  
4 return all Protected Material to the Producing Party or destroy the Protected  
5 Material. As used in this subdivision, “all Protected Material” includes all copies,  
6 abstracts, compilations, summaries or any other form of reproducing or capturing  
7 any of the Protected Material

8           Notwithstanding this provision, counsel are entitled to retain an archival  
9 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence  
10 or attorney work product, even if such materials contain Protected Material. Any  
11 such archival copies that contain or constitute Protected Material remain subject to  
12 this Protective Order as set forth in Section 4 (DURATION), above.

13  
14           12.    MISCELLANEOUS

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

17           12.2 Right to Assert Other Objections. By stipulating to the entry of  
18 this Protective Order no Party waives any right it otherwise would have to object to  
19 disclosing or producing any information or item on any ground not addressed in  
20 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
21 any ground to use in evidence of any of the material covered by this Protective  
22 Order.

23           12.3 Inadvertent Production of Privileged Documents. If a Party,  
24 through inadvertence, produces any document or information that it believes is  
25 immune from discovery pursuant to an attorney-client privilege, the work product  
26 privilege, or any other privilege, such production shall not be deemed a waiver of  
27 any privilege, and the Producing Party may give written notice to the Receiving  
28 Party that the document or information produced is deemed privileged and that


1 return of the document or information is requested. Upon receipt of such notice,  
2 the Receiving Party shall immediately gather the original and all copies of the  
3 document or information of which the Receiving Party is aware, in addition to any  
4 abstracts, summaries, or descriptions thereof, and shall immediately return the  
5 original and all such copies to the Producing Party. Nothing stated herein shall  
6 preclude a Party from challenging an assertion by the other Party of privilege or  
7 confidentiality.

8 13. The provisions of this Stipulated Protective Order are subject to  
9 further Court order based upon public policy and other considerations.

10 14. Without separate and subsequent Court order, this Stipulated  
11 Protective Order does not change, amend, or circumvent any Court rule or Local  
12 Rule.

13  
14  
15  
16 PURSUANT TO STIPULATION, IT IS SO ORDERED.

17  
18 Dated: August 18, 2016

19 By:   
20 \_\_\_\_\_  
21 Honorable Jean P. Rosenbluth,  
22 Magistrate Judge  
23  
24  
25  
26  
27  
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print full name],  
4 of \_\_\_\_\_ [print 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 in the case of *UNICOLORS, INC. v. APOLLO*  
8 *APPAREL GROUP, LLC.; NB BROTHER CORP; BURLINGTON STORES, INC.*,  
9 Case No. 2:16-CV-02268-MWF(JPRx). I agree to comply with and to be bound by  
10 all of the terms of this Stipulated Protective Order and I understand and  
11 acknowledge that failure to so comply could expose me to sanctions and  
12 punishment in the nature of contempt. I solemnly promise that I will not disclose  
13 in any manner any information or item that is subject to this Stipulated Protective  
14 Order to any person or entity except in strict compliance with the provisions of this  
15 Order.

16 I further agree to submit to the jurisdiction of the United States District  
17 Court for the Central District of California for the purpose of enforcing the terms of  
18 this Stipulated Protective Order, even if such enforcement proceedings occur after  
19 termination of this action.

20 I hereby appoint \_\_\_\_\_ [print full  
21 name] of \_\_\_\_\_ [print full  
22 address and telephone number] as my California agent for service of process in  
23 connection with this action or any proceedings related to enforcement of this  
24 Stipulated Protective Order.

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

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

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

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