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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 JITRADE, INC., a California Corporation;

11 Plaintiff,

12 v.

13 NEIMAN MARCUS GROUP, INC., a
14 Delaware Corporation; and DOES 1-10,
15 inclusive,

16 Defendant.

Case No. 2:16-cv-4434 GW (FFMx)

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

17 **1. A. PURPOSES AND LIMITATIONS**

18 Discovery in this action is likely to involve production of confidential, proprietary, or
19 private information for which special protection from public disclosure and from use for any
20 purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby
21 stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties
22 acknowledge that this Order does not confer blanket protections on all disclosures or responses
23 to discovery and that the protection it affords from public disclosure and use extends only to the
24 limited information or items that are entitled to confidential treatment under the applicable legal
25 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this
26 Stipulated Protective Order does not entitle them to file confidential information under seal;
27 Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will
28 be applied when a party seeks permission from the court to file material under seal.

1 **B. GOOD CAUSE STATEMENT**

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

20 **2. DEFINITIONS**

21 2.1 Action: This pending federal law suit

22 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
23 information or items under this Order.

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

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

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

3 2.6 Disclosure or Discovery Material: all items or information, regardless of the
4 medium or manner in which it is generated, stored, or maintained (including, among other things,
5 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
6 responses to discovery in this matter.

7 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent
8 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as
9 a consultant in this Action.

10 2.8 House Counsel: attorneys who are employees of a party to this Action. House
11 Counsel does not include Outside Counsel of Record or any other outside counsel.

12 2.9 Non-Party: any natural person, partnership, corporation, association, or other
13 legal entity not named as a Party to this action.

14 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
15 Action but are retained to represent or advise a party to this Action and have appeared in this
16 Action on behalf of that party or are affiliated with a law firm which has appeared on behalf of
17 that party, and includes support staff.

18 2.11 Party: any party to this Action, including all of its officers, directors, employees,
19 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

20 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
21 Material in this Action.

22 2.13 Professional Vendors: persons or entities that provide litigation support services
23 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
24 organizing, storing, or retrieving data in any form or medium) and their employees and
25 subcontractors.

26 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
27 “CONFIDENTIAL.”
28

1 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
2 Producing Party.

3
4 **3. SCOPE**

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

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

11 **4. DURATION**

12 Once a case proceeds to trial, all of the information that was designated as confidential or
13 maintained pursuant to this protective order becomes public and will be presumptively available
14 to all members of the public, including the press, unless compelling reasons supported by
15 specific factual findings to proceed otherwise are made to the trial judge in advance of the trial.
16 See *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180-81 (9th Cir. 2006)
17 (distinguishing “good cause” showing for sealing documents produced in discovery from
18 “compelling reasons” standard when merits-related documents are part of court record).
19 Accordingly, the terms of this protective order do not extend beyond the commencement of the
20 trial.

21 **5. DESIGNATING PROTECTED MATERIAL**

22 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
23 or Non-Party that designates information or items for protection under this Order must take care
24 to limit any such designation to specific material that qualifies under the appropriate standards.
25 The Designating Party must designate for protection only those parts of material, documents,
26 items, or oral or written communications that qualify so that other portions of the material,
27 documents, items, or communications for which protection is not warranted are not swept
28 unjustifiably within the ambit of this Order.

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

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

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

12 Designation in conformity with this Order requires:

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

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

1 (b) Any Designating Party wishes to designate as Confidential testimony or
2 exhibits in a deposition may do so on the record during the deposition, or within 15 business
3 days after receipt of the deposition transcript and exhibits, by providing written notice of the
4 designation to the opposing Party, to the court reporter, and to the recording technician, if any.
5 Until the end of such 15 business day period, or before said written notice by the Designating
6 Party (whichever is sooner), the Parties shall treat such transcript and exhibits as Confidential. If
7 the designation is made on the record at the deposition, the Designating Party shall be
8 responsible for ensuring that those portions of the deposition transcript and exhibits designated
9 as Confidential are marked by the court reporter and the recording technician in the manner
10 described herein. If the designation is made by notice after receipt of the transcript or exhibits,
11 any Party shall stamp as Confidential the designated portions of any copies of the transcript or
12 exhibits and all recordings in its possession, and shall take all reasonable steps to assure that
13 notice of the designation will be affixed to transcripts and recordings copied but no longer in the
14 possession of said Party.

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

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

25 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
27 confidentiality at any time that is consistent with the Court's Scheduling Order.
28

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
2 process under Local Rule 37.1 et seq.

3 6.3 The burden of persuasion in any such challenge proceeding shall be on the
4 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass
5 or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party
6 to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality
7 designation, all parties shall continue to afford the material in question the level of protection to
8 which it is entitled under the Producing Party’s designation until the Court rules on the
9 challenge.

10 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

11 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed
12 or produced by another Party or by a Non-Party in connection with this Action only for
13 prosecuting, defending, or attempting to settle this Action. Such Protected Material may be
14 disclosed only to the categories of persons and under the conditions described in this Order.
15 When the Action has been terminated, a Receiving Party must comply with the provisions of
16 section 13 below (FINAL DISPOSITION).

17 7.2 Protected Material must be stored and maintained by a Receiving Party at a
18 location and in a secure manner that ensures that access is limited to the persons authorized
19 under this Order.

20 7.3 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
21 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
22 disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

4 (d) the court and its personnel;

5 (e) court reporters and their staff;

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

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

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

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

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

23 8.1 If a Party is served with a subpoena or a court order issued in other litigation that
24 compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,”
25 that Party must:

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

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

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

7 8.2 If the Designating Party timely seeks a protective order, the Party served with the
8 subpoena or court order shall not produce any information designated in this action as
9 “CONFIDENTIAL” before a determination by the court from which the subpoena or order
10 issued, unless the Party has obtained the Designating Party’s permission. The Designating Party
11 shall bear the burden and expense of seeking protection in that court of its confidential material
12 and nothing in these provisions should be construed as authorizing or encouraging a Receiving
13 Party in this Action to disobey a lawful directive from another court.

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

16 (a) The terms of this Order are applicable to information produced by a Non-
17 Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-
18 Parties in connection with this litigation is protected by the remedies and relief provided by this
19 Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
20 additional protections.

21 (b) In the event that a Party is required, by a valid discovery request, to
22 produce a Non-Party’s confidential information in its possession, and the Party is subject to an
23 agreement with the Non-Party not to produce the Non-Party’s confidential information, then the
24 Party shall:

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

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

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

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

13 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

14 10.1 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
15 Protected Material to any person or in any circumstance not authorized under this Stipulated
16 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating
17 Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of
18 the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
19 made of all the terms of this Order, and (d) request such person or persons to execute the
20 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

21 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
22 **PROTECTED MATERIAL**

23 11.1 When a Producing Party gives notice to Receiving Parties that certain
24 inadvertently produced material is subject to a claim of privilege or other protection, the
25 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure
26 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in
27 an e-discovery order that provides for production without prior privilege review. Pursuant to
28 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect

1 of disclosure of a communication or information covered by the attorney-client privilege or work
2 product protection, the parties may incorporate their agreement in the stipulated protective order
3 submitted to the court.

4 **12. MISCELLANEOUS**

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
6 seek its modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
8 Order no Party waives any right it otherwise would have to object to disclosing or producing any
9 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
10 no Party waives any right to object on any ground to use in evidence of any of the material
11 covered by this Protective Order.

12 12.3 Filing Protected Material. A Party that seeks to file under seal any Protected
13 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under
14 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If
15 a Party's request to file Protected Material under seal is denied by the court, then the Receiving
16 Party may file the information in the public record unless otherwise instructed by the court.

17 **13. FINAL DISPOSITION**

18 13.1 After the final disposition of this Action, as defined in paragraph 4, within 60
19 days of a written request by the Designating Party, each Receiving Party must return all
20 Protected Material to the Producing Party or destroy such material. As used in this subdivision,
21 "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other
22 format reproducing or capturing any of the Protected Material. Whether the Protected Material is
23 returned or destroyed, the Receiving Party must submit a written certification to the Producing
24 Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that
25 (1) identifies (by category, where appropriate) all the Protected Material that was returned or
26 destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts,
27 compilations, summaries or any other format reproducing or capturing any of the Protected
28 Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all

1 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
2 correspondence, deposition and trial exhibits, expert reports, attorney work product, and
3 consultant and expert work product, even if such materials contain Protected Material. Any such
4 archival copies that contain or constitute Protected Material remain subject to this Protective
5 Order as set forth in Section 4 (DURATION).

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

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4 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

5 DATED: November 29, 2016

6 /S/FREDERICK F. MUMM
7 Honorable Frederick F. Mumm
8 United States District/Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2 I, _____ [print or type full name], of _____
3 [print or type full address], declare under penalty of perjury that I have read in its entirety and
4 understand the Stipulated Protective Order that was issued by the United States District Court for
5 the Central District of California on [date] in the case of JITRADE, INC. v. NEIMAN MARCUS
6 GROUP, INC.; 2:16-cv-4434 GW (FFMx). I agree to comply with and to be bound by all the
7 terms of this Stipulated Protective Order and I understand and acknowledge that failure to so
8 comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
9 promise that I will not disclose in any manner any information or item that is subject to this
10 Stipulated Protective Order to any person or entity except in strict compliance with the
11 provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the
13 Central District of California for the purpose of enforcing the terms of this Stipulated Protective
14 Order, even if such enforcement proceedings occur after termination of this action. I hereby
15 appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone
17 number] as my California agent for service of process in connection with this action or any
18 proceedings related to enforcement of this Stipulated Protective Order.

19 Date: _____

20 City and State where sworn and signed: _____

21
22 Printed name: _____

23
24 Signature: _____
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