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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

COUTURE TEXTILE, INC., a
California corporation,

Plaintiff,

v.

CLEO PATRA JEANS, INC., a
California corporation dba Cleo Apparel,
dba Cleo Casual, dba Cleo, dba C.L.O.;
ANS PRODUCTION CORPORATION,
a California corporation dba Cleo
Apparel, dba Cleo Casual, dba Cleo, dba
C.L.O.; CLO APPAREL, INC., a
California corporation dba Cleo;
RAINBOW APPAREL
DISTRIBUTION CENTER, CORP., a
New Jersey corporation dba Rainbow
Apparel; ANTTOI CORP., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: 2:16-cv-06579-JAK-AFM

[Assigned for all purposes to Hon.
John A. Kronstadt, judge presiding]

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

1 1. 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 14.4, 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 This action is likely to involve trade secrets, customer and pricing lists and
17 other valuable research, development, commercial, financial, technical and/or
18 proprietary information for which special protection from public disclosure and
19 from use for any purpose other than prosecution of this action is warranted. Such
20 confidential and proprietary materials and information consist of, among other
21 things, confidential business or financial information, information regarding
22 confidential business practices, or other confidential research, development, or
23 commercial information (including information implicating privacy rights of third
24 parties), information otherwise generally unavailable to the public, or which may be
25 privileged or otherwise protected from disclosure under state or federal statutes,
26 court rules, case decisions, or common law. Accordingly, to expedite the flow of
27 information, to facilitate the prompt resolution of disputes over confidentiality of
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1 discovery materials, to adequately protect information the parties are entitled to
2 keep confidential, to ensure that the parties are permitted reasonable necessary uses
3 of such material in preparation for and in the conduct of trial, to address their
4 handling at the end of the litigation, and serve the ends of justice, a protective order
5 for such information is justified in this matter. It is the intent of the parties that
6 information will not be designated as confidential for tactical reasons and that no
7 information shall be so designated.

8 Notwithstanding anything contained in this Protective Order, the Parties
9 acknowledge and agree that the discoverability of sensitive documents and/or
10 information, as well as a party's ability and/or decision to disclose, withhold, or
11 redact any sensitive documents and/or information, shall not otherwise be affected
12 by its ability to classify such sensitive documents and/or information as
13 CONFIDENTIAL or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY,
14 as defined hereinafter. Nothing herein shall prevent any Party from withholding or
15 redacting any documents and/or information that the Party deems privileged,
16 irrelevant, or otherwise objectionable.

17 **2. DEFINITIONS**

18 2.1 Challenging Party: a Party or Non-Party that challenges the
19 designation of information or items under this Order.

20 2.2 "CONFIDENTIAL" Information or Items: information (regardless of
21 how it is generated, stored or maintained) or tangible things that qualify for
22 protection under Federal Rule of Civil Procedure 26(c). Such information may
23 include, but is not limited to:

24 (a) The financial performance or results of the Designating Party,
25 including without limitation income statements, balance sheets, cash flow analyses,
26 and budget projections;

27 (b) Corporate and strategic planning by the Designating Party,
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1 including without limitation marketing plans, sales projections and competitive
2 strategy documents;

3 (c) Names, addresses, and other information that would identify
4 customers or prospective customers, or the distributors or prospective distributors
5 of the Designating Party;

6 (d) Research and development data, and any other confidential
7 commercial information, including but not limited to trade secrets of the
8 Designating Party;

9 (e) Information used by the Designating Party in or pertaining to its
10 trade or business, which information the Designating Party believes in good faith
11 has competitive value, which is not generally known to others and which the
12 Designating Party would not normally reveal to third parties except in confidence,
13 or has undertaken with others to maintain in confidence;

14 (f) Information which the Designating Party believes in good faith
15 falls within the right to privacy guaranteed by the laws of the United States or
16 California; and

17 (g) Information which the Designating Party believes in good faith
18 to constitute, contain, reveal or reflect proprietary, financial, business, technical, or
19 other confidential information.

20 (h) The fact that an item or category is listed as an example in this
21 or other sections of this Protective Order does not, by itself, render the item or
22 category discoverable.

23 2.3 Counsel (without qualifier): Outside Counsel of Record and House
24 Counsel (as well as their support staff).

25 2.4 Designating Party: a Party or Non-Party that designates information or
26 items that it produces in disclosures or in responses to discovery as
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
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1 ONLY”.

2 2.5 Disclosure or Discovery Material: all items or information, regardless
3 of the medium or manner in which it is generated, stored, or maintained (including,
4 among other things, testimony, transcripts, and tangible things), that are produced
5 or generated in disclosures or responses to discovery in this matter.

6 2.6 Expert: a person with specialized knowledge or experience in a matter
7 pertinent to the litigation who has been retained by a Party or its counsel to serve as
8 an expert witness or as a consultant in this action.

9 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
10 Information or Items: extremely sensitive “Confidential Information or Items,”
11 disclosure of which to another Party or Non-Party would create a substantial risk of
12 serious harm that could not be avoided by less restrictive means. Information and
13 material that may be subject to this protection includes, but is not limited to,
14 research and development data, intellectual property, financial, marketing and other
15 sales data, and/or information having strategic commercial value pertaining to the
16 Designating Party’s trade or business.

17 2.8 House Counsel: attorneys who are employees of a party to this action.
18 House Counsel does not include Outside Counsel of Record or any other outside
19 counsel.

20 2.9 Non-Party: any natural person, partnership, corporation, association, or
21 other legal entity not named as a Party to this action.

22 2.10 Outside Counsel of Record: attorneys who are not employees of a
23 party to this action but are retained to represent or advise a party to this action and
24 have appeared in this action on behalf of that party or are affiliated with a law firm
25 which has appeared on behalf of that party.

26 2.11 Party: any party to this action, including all of its officers, directors,
27 employees, consultants, retained experts, and Outside Counsel of Record (and their
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1 support staffs).

2 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
3 Discovery Material in this action.

4 2.13 Professional Vendors: persons or entities that provide litigation
5 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
6 demonstrations, and organizing, storing, or retrieving data in any form or medium)
7 and their employees and subcontractors.

8 2.14 Protected Material: any Disclosure or Discovery Material that is
9 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
10 ATTORNEYS’ EYES ONLY.”

11 2.15 Receiving Party: a Party that receives Disclosure or Discovery
12 Material from a Producing Party.

13 3. SCOPE

14 The protections conferred by this Stipulation and Order cover not only
15 Protected Material (as defined above), but also (1) any information copied or
16 extracted from Protected Material; (2) all copies, excerpts, summaries, or
17 compilations of Protected Material; and (3) any testimony, conversations, or
18 presentations by Parties or their Counsel that might reveal Protected Material.
19 However, the protections conferred by this Stipulation and Order do not cover the
20 following information: (a) any information that is in the public domain at the time
21 of disclosure to a Receiving Party or becomes part of the public domain after its
22 disclosure to a Receiving Party as a result of publication not involving a violation
23 of this Order, including becoming part of the public record through trial or
24 otherwise; and (b) any information known to the Receiving Party prior to the
25 disclosure or obtained by the Receiving Party after the disclosure from a source
26 who obtained the information lawfully and under no obligation of confidentiality to
27 the Designating Party. Any use of Protected Material at trial shall be governed by a
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1 separate agreement or order.

2 The designation of any information or materials as “CONFIDENTIAL” or
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” is intended solely
4 to facilitate the conduct of this litigation. Neither such designation nor treatment
5 in conformity with such designation shall be construed in any way as an
6 admission or agreement by the Receiving Party that the Protected Materials
7 constitute or contain any trade secret or confidential information, or the
8 discoverability thereof. Except as provided in this Protective Order, the Receiving
9 Party shall not be obligated to challenge the propriety of any designation, and a
10 failure to do so shall not preclude a subsequent attack on the propriety of such
11 designation.

12 Nothing contained herein in any way restricts the ability of the Receiving
13 Party to use “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY” material produced to it in examining or cross-
15 examining any employee or consultant of the Designating Party. The Parties
16 acknowledge and agree that Receiving Party may not use Protected Materials
17 marked by a Designating Party to examine or cross-examine an employee or
18 consultant or another individual associated with a non-Designating Party. At
19 deposition, the party using Designated Material must request that the portion of
20 the proceeding where use is made be conducted so as to exclude persons not
21 qualified to receive such Designated Material.

22 If a party wishes to use Protected Material during an examination of an
23 employee or consultant or another individual associated with a non-Designating
24 Party, and the Designating Party objects to such use, the parties shall hold a meet
25 and confer to resolve the dispute. If the meet and confer is unsuccessful, the parties
26 may contact the Court to request an informal discovery conference with the
27 Magistrate Judge, to be held telephonically, to resolve the dispute.
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1 4. DURATION

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

10 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

12 Each Party or Non-Party that designates information or items for protection under
13 this Order must take care to limit any such designation to specific material that
14 qualifies under the appropriate standards. To the extent it is practical to do so, the
15 Designating Party must designate for protection only those parts of material,
16 documents, items, or oral or written communications that qualify – so that other
17 portions of the material, documents, items, or communications for which protection
18 is not warranted are not swept unjustifiably within the ambit of this Order.

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

24 If it comes to a Designating Party’s attention that information or items that it
25 designated for protection do not qualify for protection at all or do not qualify for the
26 level of protection initially asserted, that Designating Party must promptly notify all
27 other parties that it is withdrawing the mistaken designation.
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1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

7 (a) for information in documentary form (e.g., paper or electronic documents,
8 but excluding transcripts of depositions or other pretrial or trial proceedings), that
9 the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains
11 protected material. If only a portion or portions of the material on a page qualifies
12 for protection, the Producing Party also must clearly identify the protected
13 portion(s) (e.g., by making appropriate markings in the margins) and must specify,
14 for each portion, the level of protection being asserted.

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

3 (b) for testimony given in deposition or in other pretrial or trial proceedings,
4 that the Designating Party identify on the record, before the close of the deposition,
5 hearing, or other proceeding, all protected testimony and specify the level of
6 protection being asserted. When it is impractical to identify separately each portion
7 of testimony that is entitled to protection and it appears that substantial portions of
8 the testimony may qualify for protection, the Designating Party may invoke on the
9 record (before the deposition, hearing, or other proceeding is concluded) a right to
10 have up to 45 days to identify the specific portions of the testimony as to which
11 protection is sought and to specify the level of protection being asserted. Only
12 those portions of the testimony that are appropriately designated for protection
13 within the 45 days shall be covered by the provisions of this Stipulated Protective
14 Order. Alternatively, a Designating Party may specify, at the deposition or up to 45
15 days afterwards if that period is properly invoked, that the entire transcript shall be
16 treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
17 EYES ONLY.”

18 Parties shall give the other parties notice if they reasonably expect a
19 deposition, hearing or other proceeding to include Protected Material so that the
20 other parties can ensure that only authorized individuals who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
22 proceedings. The use of a document as an exhibit at a deposition shall not in any
23 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
24 – ATTORNEYS’ EYES ONLY.”

25 Transcripts containing Protected Material shall have an obvious legend on
26 the title page that the transcript contains Protected Material, and the title page shall
27 be followed by a list of all pages (including line numbers as appropriate) that have
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1 been designated as Protected Material and the level of protection being asserted by
2 the Designating Party. The Designating Party shall inform the court reporter of
3 these requirements. Any transcript that is prepared before the expiration of a 45-
4 day period for designation shall be treated during that period as if it had been
5 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its
6 entirety unless otherwise agreed. After the expiration of that period, the transcript
7 shall be treated only as actually designated.

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

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

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

2 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
3 resolution process by providing written notice of each designation it is challenging
4 and describing the basis for each challenge. To avoid ambiguity as to whether a
5 challenge has been made, the written notice must recite that the challenge to
6 confidentiality is being made in accordance with this specific paragraph of the
7 Protective Order. The parties shall attempt to resolve each challenge in good faith
8 and must begin the process by conferring directly (in voice to voice dialogue; other
9 forms of communication are not sufficient) within 14 days of the date of service of
10 notice. In conferring, the Challenging Party must explain the basis for its belief that
11 the confidentiality designation was not proper and must give the Designating Party
12 an opportunity to review the designated material, to reconsider the circumstances,
13 and, if no change in designation is offered, to explain the basis for the chosen
14 designation. A Challenging Party may proceed to the next stage of the challenge
15 process only if it has engaged in this meet and confer process first or establishes
16 that the Designating Party is unwilling to participate in the meet and confer process
17 in a timely manner.

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

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

14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

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

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

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, and
14 Professional Vendors to whom disclosure is reasonably necessary for this litigation
15 and who have signed the “Acknowledgment and Agreement to Be Bound”
16 (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 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
27 ONLY” Information or Items. Unless otherwise ordered by the court or permitted
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1 in writing by the Designating Party, a Receiving Party may disclose any
2 information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
3 EYES ONLY” only to:

4 (a) Counsel for the parties, as that term is defined in Section 2.3 herein, as
5 well as employees of said Counsel to whom it is reasonably necessary to disclose
6 the information for this litigation;

7 (c) Experts of the Receiving Party to whom disclosure is reasonably
8 necessary for this litigation, and who have signed the “Acknowledgment and
9 Agreement to Be Bound” (Exhibit A);

10 (d) the court and its personnel;

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

15 (f) the author or recipient of a document containing the information or a
16 custodian or other person who otherwise possessed or knew the information.

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
18 IN OTHER LITIGATION

19 If a Party is served with a subpoena or a court order issued in other litigation
20 that compels disclosure of any information or items designated in this action as
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY” that Party must:

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

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

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

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

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

15 (a) The terms of this Order are applicable to information produced by a
16 Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
17 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced
18 by Non-Parties in connection with this litigation is protected by the remedies and
19 relief provided by this Order. Nothing in these provisions should be construed as
20 prohibiting a Non-Party from seeking 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
23 subject to an agreement with the Non-Party not to produce the Non-Party’s
24 confidential information, then the Party shall:

25 1. promptly notify in writing the Requesting Party and the Non-
26 Party that some or all of the information requested is subject to a confidentiality
27 agreement with a Non-Party;
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2 2. promptly provide the Non-Party with a copy of the Stipulated
3 Protective Order in this litigation, the relevant discovery request(s), and a
4 reasonably specific description of the information requested; and

5 3. make the information requested available for inspection by the
6 Non-Party.

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

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17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

26 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
27 PROTECTED MATERIAL

28 When a Producing Party gives notice to Receiving Parties that certain

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

10 12. MISCELLANEOUS

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
12 person to seek its modification by the court in the future.

13 12.2 Right to Assert Other Objections. By stipulating to the entry of this
14 Protective Order no Party waives any right it otherwise would have to object to
15 disclosing or producing any information or item on any ground not addressed in
16 this Stipulated Protective Order. Similarly, no Party waives any right to object on
17 any ground to use in evidence of any of the material covered by this Protective
18 Order. Moreover, this Order shall not preclude or limit any Party's right to seek
19 further and additional protection against or limitation upon production of
20 documents produced in response to discovery. The parties reserve their rights to
21 object to, redact or withhold any information, including confidential, proprietary, or
22 private information, on any other applicable grounds permitted by law, including
23 third-party rights and relevancy.

24 12.3 Other Privileges. Nothing in this Order shall require disclosure of
25 materials that a Party contends are protected from disclosure by the attorney-client
26 privilege or the attorney work-product doctrine. This provision shall not, however,
27 be construed to preclude any Party from moving the Court for an order directing the
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1 disclosure of such materials where it disputes the claim of attorney-client privilege
2 or attorney work-product doctrine.

3 12.4 Filing Protected Material. Without written permission from the
4 Designating Party or a court order secured after appropriate notice to all interested
5 persons, a Party may not file in the public record in this action any Protected
6 Material. A Party that seeks to file under seal any Protected Material must comply
7 with Civil Local Rule 79-5.1. Protected Material may only be filed under seal
8 pursuant to a court order authorizing the sealing of the specific Protected Material
9 at issue. Pursuant to Civil Local Rule 79-5.1, a sealing order will issue only upon a
10 request establishing that the Protected Material at issue is privileged, protectable as
11 a trade secret, or otherwise entitled to protection under the law. If a Receiving
12 Party's request to file Protected Material under seal pursuant to Civil Local Rule
13 79-5.1 is denied by the court, then the Receiving Party may file the Protected
14 Material in the public record pursuant to Civil Local Rule 79-5.1 unless otherwise
15 instructed by the court.

16 12.5 No Prejudice. This Protective Order shall not diminish any existing
17 obligation or right with respect to Protected Material, nor shall it prevent a
18 disclosure to which the Designating Party consented in writing before the
19 disclosure takes place. Unless the parties stipulate otherwise, evidence of the
20 existence or nonexistence of a designation under this Protective Order shall not be
21 admissible for any purpose during any proceeding on the merits of this action.

22 12.6 Self-Disclosure. Nothing in this Order shall affect the right of the
23 Designating Party to disclose the Designating Party's own Confidential information
24 or items to any person or entity. Such disclosure shall not waive any of the
25 protections of this Order.

26 12.7 Captions. The captions of paragraphs contained in this Order are for
27 reference only and are not to be construed in any way as a part of this Order.
28

1 13. FINAL DISPOSITION

2 After the final disposition of this Action, within 60 days of a written request
3 by the Designating Party, each Receiving Party must return all Protected Material to
4 the Producing Party or destroy such material, provided that no party will be
5 required to expunge any system back-up media such as copies of any computer
6 records or files containing Protected Material which have been created pursuant to
7 automatic archiving or back-up procedures on secured central storage servers and
8 which cannot reasonably be expunged, and further provided that any destruction
9 does not destroy or affect the destroying party’s computer programs, hardware,
10 software, servers, or the like. As used in this subdivision, “all Protected Material”
11 includes all copies, abstracts, compilations, summaries, and any other format
12 reproducing or capturing any of the Protected Material. Whether the Protected
13 Material is returned or destroyed, the Receiving Party must submit a written
14 certification to the Producing Party (and, if not the same person or entity, to the
15 Designating Party) by the 60 day deadline that (1) identifies (by category, where
16 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
17 that the Receiving Party has not retained any copies, abstracts, compilations,
18 summaries or any other format reproducing or capturing any of the Protected
19 Material.

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1 Notwithstanding this provision, Counsel are entitled to retain archival copies
2 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal
3 memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
4 work product, and consultant and expert work product, even if such materials
5 contain Protected Material. Any such archival copies that contain or constitute
6 Protected Material remain subject to this Protective Order.
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8 IT IS SO ORDERED.

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10 Dated: 2/13/2017



11 _____
12 Alexander F. MacKinnon
13 United States Magistrate Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

The undersigned hereby acknowledges that he/she has read the PROTECTIVE ORDER entered in *Couture Textile, Inc. v. Cleo Patra Jeans, Inc., et al.*, Case No.: 2:16-cv-06579-JAK-AFM, and that he/she fully understands and agrees to abide by the obligations and conditions thereof.

Dated: _____

(Signature)

(Print Name)