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

URBAN TEXTILE, INC., a California Corporation;

Plaintiff,

vs.

FASHION AVENUE KNITS, INC., a New York Corporation; WAL-MART STORES, INC., a Delaware Corporation; WHITE STAG MANUFACTURING CO., a Delaware Corporation and DOES 1-20, inclusive,

Defendants.

Case No.: 2:16-cv-6786-MWF-KS

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

1 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and
2 based on the parties' Stipulation For Protective Order ("Stipulation") filed
3 on January 10, 2017, the terms of the protective order to which the parties
4 have agreed are adopted as a protective order of this Court (which generally
5 shall govern the pretrial phase of this action) except to the extent, as set forth
6 below, that those terms have been modified by the Court's amendment of
7 paragraphs 3, 4, 10, 12, and 14 of the Stipulation.

8
9 **AGREED TERMS OF THE PROTECTIVE ORDER AS ADOPTED AND**
10 **MODIFIED BY THE COURT**¹
11

12 A. Good Cause Statement

13 This action is likely to involve trade secrets, customer and pricing lists and
14 other valuable research, development, commercial, financial, technical and/or
15 proprietary information of the parties to this action as well as various third-parties,
16 for which special protection from public disclosure and from use for any purpose
17 other than prosecution of this action is warranted. Such confidential and
18 proprietary materials and information consist of, among other things, confidential
19 business or financial information, information regarding confidential business
20 practices, or other confidential research, development, or commercial information
21 (including information implicating privacy rights of third parties), information
22 otherwise generally unavailable to the public, or which may be privileged or
23 otherwise protected from disclosure under state or federal statutes, court rules,
24 case decisions, or common law. Accordingly, to expedite the flow of information,
25 to facilitate the prompt resolution of disputes over confidentiality of discovery
26 materials, to adequately protect information the parties are entitled to keep

27 _____
28 ¹ The Court's additions to the agreed terms of the Protective Order are generally indicated in bold typeface, and the Court's deletions are indicated by lines through the text being deleted.

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

9 B. Scope

10 1. This Confidentiality Order shall govern the disclosure of materials
11 designated as Confidential Material during the course of discovery. Confidential
12 Material, as used in this Order, shall refer to any document or item designated as
13 Confidential or Highly Confidential – Attorneys’ Eyes Only, including but not
14 limited to, documents or items produced during discovery, all copies thereof, and
15 the information contained in such material.

16 2. Confidential Material, as used in this Order, consists of the following
17 materials and categories of materials:

18 a. Materials relating to any privileged, confidential, or nonpublic
19 information, including, but not limited to, trade secrets, research,
20 design, development, financial, technical, marketing, planning,
21 personal, or commercial information, as such terms are used in the
22 Federal Rules of Civil Procedure and any applicable case law
23 interpreting Rule 26(c)(1)(G) or the former Rule 26(c)(7),
24 contracts; proprietary information; vendor agreements; personnel
25 files; claim/litigation information; or certain policies and
26 procedures.

27 b. Materials containing corporate trade secrets, nonpublic research and
28 development data, pricing formulas, inventory management

1 programs, confidential business information not generally known to
2 the general public, and customer-related Protected Data are
3 considered Highly Confidential Material and shall be deemed
4 “ATTORNEYS’ EYES ONLY”. Qualified recipients of materials
5 marked "ATTORNEYS' EYES ONLY" shall include only the
6 following: In-house counsel and law firms for each party and the
7 secretarial, clerical and paralegal staff of each.

8 c. Protected Data shall refer to any information that a party believes in
9 good faith to be subject to federal, state or foreign data protection
10 laws or other privacy obligations. Examples of such data protection
11 laws include but are not limited to The Gramm-Leach-Bliley Act,
12 15 U.S.C. § 6801 et seq. (financial information); and, The Health
13 Insurance Portability and Accountability Act and the regulations
14 thereunder, 45 CFR Part 160 and Subparts A and E of Part 164
15 (medical information). Certain Protected Data may compel
16 alternative or additional protections beyond those afforded Highly
17 Confidential Material, in which event the parties shall meet and
18 confer in good faith, and, if unsuccessful, shall move the Court for
19 appropriate relief.

20 3. ~~If any party seeks to designate additional documents or categories of~~
21 ~~documents as Confidential Material, it will be the burden of the party seeking~~
22 ~~protected status to move for a Court Order designating the materials as confidential~~
23 ~~after the parties confer.~~

24 4. ~~The parties agree that such Confidential Material as described in~~
25 ~~paragraph 2 should be given the protection of an order of this Court to prevent~~
26 ~~injury through disclosure to persons other than those person involved in the~~
27 ~~prosecution or defense of this litigation. **If any Party should desire to include**~~
28 **any Confidential Information or Item in any papers filed with the Court, the**

1 **Party shall file an application, in accordance with the requirements of Local**
2 **Rule 79-5 for a Court order allowing such papers to be filed under seal**
3 **pursuant to Federal Rule of Civil Procedure Rule 5.2(d).**

4 5. To designate information as confidential, the producing party shall
5 mark Confidential Material with the legend “CONFIDENTIAL- SUBJECT TO
6 PROTECTIVE ORDER” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
7 ONLY – SUBJECT TO PROTECTIVE ORDER” and shall submit confidential
8 discovery, such as answers to interrogatories or answers to requests for admissions,
9 in a separate document stamped with the appropriate legend. The Receiving Party
10 may make copies of Confidential Material and such copies shall become subject to
11 the same protections as the Confidential Material from which those copies were
12 made.

13 a. Information on a disk or other electronic format may be designated
14 confidential by marking the storage medium itself with the legend
15 “CONFIDENTIAL- SUBJECT TO CONFIDENTIALITY
16 ORDER” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
17 ONLY – SUBJECT TO CONFIDENTIALITY ORDER.” The
18 Receiving Party shall mark any hard-copy printouts and the storage
19 medium of any permissible copies of such electronic material with
20 the corresponding legend contained on the original and such copies
21 shall become subject to the same protections, as the Confidential
22 Material from which those copies were made.

23 b. Information disclosed at any deposition of a party taken in this
24 action may be designated by the party as confidential by indicating
25 on the record at the deposition that the information is confidential
26 and subject to the provisions of this Order. Copies of material
27 described in paragraph 2 above, or incorporated into paragraph 2 by
28 Court Order, and which were produced without the designation of

1 “CONFIDENTIAL- SUBJECT TO CONFIDENTIALITY
2 ORDER” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
3 ONLY – SUBJECT TO CONFIDENTIALITY ORDER” may be so
4 designated later if the Producing Party failed to make such
5 designation at the time of production through inadvertence or error.
6 If such information has been disclosed to persons not qualified
7 pursuant to paragraph 7 below, the party who disclosed such
8 information shall take reasonable efforts to retrieve previously
9 disclosed Confidential Material and advise such persons that the
10 material is Confidential.

11 6. Pursuant to Federal Rule of Evidence 502(d), disclosure (including
12 production) of information that a party or non-party later claims should not have
13 been disclosed because of a privilege, including, but not limited to, the attorney-
14 client privilege or work product doctrine (“Privileged Information”), shall not
15 constitute a waiver of, or estoppel to, any claim of attorney-client privilege,
16 attorney work product, or other ground for withholding production as to which the
17 Producing Party would be entitled in the Litigation or any other federal or state
18 proceeding. Pursuant to Federal Rule of Civil Procedure 26(b)(5)(B) and Federal
19 Rule of Evidence 502(e), the Receiving Party hereby agrees to return, sequester, or
20 destroy any Privileged Information disclosed or produced by the Producing Party
21 upon request. If the Receiving Party reasonably believes that Privileged
22 Information has been inadvertently disclosed or produced to it, it shall promptly
23 notify the Producing Party and sequester such information until instructions as to
24 disposition are received. The failure of any party to provide notice or instructions
25 under this Paragraph shall not constitute a waiver of, or estoppel to, any claim of
26 attorney-client privilege, attorney work product, or other ground for withholding
27 production as to which the Producing Party would be entitled in the Litigation or
28 any other federal or state proceeding. This provision is designed to foreclose any

1 arguments that by making such production, the production of Confidential
2 Materials subject to a legally recognized claim of privilege, including without
3 limitation the attorney-client privilege, work-product doctrine, or other applicable
4 privilege:

- 5 (a) was not inadvertent by the Producing Party;
- 6 (b) that the Producing Party did not take reasonable steps to
 - 7 a. prevent the disclosure of privileged Documents;
- 8 (c) that the Producing Party did not take reasonable or timely
 - 9 steps
 - 10 b. to rectify such Disclosure; and/or
- 11 (d) that such Disclosure acts as a waiver of applicable privileges
12 or protections associated with such Documents.

13 7. Any Confidential Material and the information contained therein
14 shall be disclosed only to the Court, its staff, and counsel of record, and also shall
15 be disclosed on a need-to-know basis only to the parties, counsel's staff personnel,
16 employees of a party to whom disclosure is necessary in connection with the
17 preparation for and trial of this action, and any witnesses in the case (including
18 consulting and testifying experts) as may from time to time reasonably be
19 necessary in prosecution or defense of this action. Confidential Material shall not
20 be disclosed to any outside experts or consultants who are current or former
21 employees or current or former consultants of a direct competitor of any party
22 named in the Litigation. Counsel shall advise all persons to whom Confidential
23 Material is disclosed pursuant to this Order of the existence of this Order, and shall
24 provide all such persons (other than the Court and its staff) with a copy of this
25 Order. Counsel also shall require all persons, except the Court, its staff, the parties,
26 counsel of record and counsel's staff personnel, to execute the Affidavit attached
27 as *Exhibit A*, prior to the disclosure of Confidential Material. It shall be the
28 obligation of counsel, upon learning of any breach or threatened breach of this

1 Confidentiality Order, to promptly notify counsel for the Producing Party of such
2 breach or threatened breach. Counsel shall not otherwise offer or permit
3 disclosure of any Confidential Material, its contents, or any portion or summary
4 thereof. Disputes concerning the confidential nature of such materials shall be
5 resolved by the Court upon motion prior to dissemination of any Confidential
6 Material.

7 8. Persons having knowledge of Confidential Material and information
8 by virtue of their participation in the conduct of this litigation shall use them for
9 that purpose only and only as permitted herein, and shall not disclose such
10 Confidential Material, their contents or any portion or summary thereof to any
11 person(s) not involved in the conduct of this litigation. If any person having access
12 to the Confidential Material herein shall violate this Order, he/she may be subject
13 to sanctions by the Court.

14 9. The provisions of this Confidentiality Order shall not affect, and this
15 Order does not limit, the use or admissibility of Confidential Material (or
16 references to that material) as evidence at trial, or during a hearing or similar
17 proceeding in this action or as part of the record on appeal, provided that either
18 party may seek an appropriate Court Order to protect Confidential Material.

19 10. Nothing in this Confidentiality Order shall be deemed to preclude any
20 party or interested member of the public from seeking and obtaining, on an
21 appropriate showing, a modification of this Order including additional protection
22 with respect to confidentiality of material or the removal of a confidential
23 designation. Should counsel or an interested member of the public disagree with
24 any designation of material as confidential, he or she first shall attempt to resolve
25 such dispute with the parties' counsel and, if unsuccessful, apply to the Court for a
26 determination as to whether the material or information should remain designated
27 as Confidential Material. Pending resolution of any challenges, the material at
28 issue shall continue to be treated as Confidential Material until ordered otherwise

1 by the Court. **The Designating Party shall bear the burdens and the expenses**
2 **of seeking protection in court of its confidential material.**

3 11. The restrictions set forth in any of the preceding paragraphs shall not
4 apply to information or material that was, is or becomes public knowledge in a
5 manner other than by violation of this Order.

6 12. Filing Protected Material. A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 79-5 **and provide the**
8 **requisite showing based on competent evidence of “good cause” or**
9 **“compelling reasons” for a Court order allowing such papers to be filed under**
10 **seal.** Protected Material may only be filed under seal pursuant to a court order
11 authorizing the sealing of the specific Protected Material at issue. If a Party’s
12 request to file Protected Material under seal is denied by the court, then the
13 Receiving Party may file the information in the public record unless otherwise
14 instructed by the court.

15 14. This Order shall continue to be binding throughout and after the conclusion
16 of this litigation, including all appeals. Within 30 days of settlement or final
17 adjudication, including but not limited to final adjudication of any appeals or
18 petitions for extraordinary writs, **each Receiving Party shall either return to the**
19 **Producing Party or destroy** all items designated as “Confidential” or “Highly
20 Confidential – Attorneys’ Eyes Only.” ~~and all copies or summaries thereof shall be~~
21 ~~returned to the party that produced such materials or shall be destroyed.~~ Whether
22 the Confidential Material is returned or destroyed, the Receiving Party must submit
23 a written certification to the Producing Party by the 30-day deadline that (1)
24 identifies (by category, where appropriate) all the Confidential Material that was
25 returned or destroyed and (2) affirms that the Receiving Party has not retained any
26 copies, abstracts, compilations, summaries or any other format reproducing or
27 capturing any of the Confidential Material. Notwithstanding this provision,
28 counsel is entitled to retain any attorney work product.

1 15. If any person receiving documents covered by this Order is served with a
2 subpoena, order, interrogatory, or document or civil investigative demand
3 (collectively, a “Demand”) issued in any other action, investigation, or proceeding,
4 and such Demand seeks material that was produced or designated as Confidential
5 Material by someone other than the Receiving Party, the Receiving Party shall give
6 prompt written notice by hand or facsimile transmission within five (5) business
7 days of receipt of such Demand to the party or non-party who produced or
8 designated the material as Confidential Material, and shall object to the production
9 of such materials on the grounds of the existence of this Order. The burden of
10 opposing the enforcement of the Demand shall fall upon the party or non-party
11 who produced or designated the material as Confidential Material. Unless the
12 party or non-party who produced or designated the Confidential Material obtains
13 an order directing that the Demand not be complied with, and serves such order
14 upon the Receiving Party prior to production pursuant to the Demand, the
15 Receiving Party shall be permitted to produce documents responsive to the
16 Demand on the Demand response date, provided sufficient notice of the Demand is
17 provided. Compliance by the Receiving Party with any order directing production
18 pursuant to the Demand of any Confidential Material shall not constitute a
19 violation of this Order. Nothing in this Order shall be construed as authorizing a
20 party to disobey a lawful subpoena issued in another action.

21 16. In the event additional parties join or intervene in this litigation, the
22 newly joined party(ies) shall not have access to Confidential Material until its/their
23 counsel has executed and, at the request of any party, filed with the Court the
24 agreement of such party(ies) and such counsel to be fully bound by this Order.

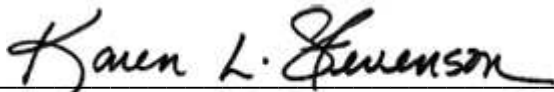
25 17. The parties agree that nothing in this Order shall be deemed to limit the
26 extent to which counsel for the parties may advise or represent their respective
27 clients, conduct discovery, prepare for trial, present proof at trial, including any
28

1 document herein, or oppose the production or admissibility of any information or
2 documents which have been requested.

3 18. This Order shall remain in full force and effect until such time as it is
4 modified, amended or rescinded by the Court.

5
6 **IT IS SO ORDERED**

7
8
9 Dated: January 11, 2017



KAREN L. STEVENSON
UNITED STATES MAGISTRATE JUDGE

1 **AFFIDAVIT**

2
3 1. My name is _____ . I live at

4 _____ .
5 2. I am aware that a Confidentiality Order has been entered in *Urban*
6 *Textile, Inc. v. Fashion Avenue Knits, Inc. et al.*, Case No.: 2:16-cv-6786-MWF-
7 KS (C.D. Cal.), pending in the Central District of California, and a copy thereof
8 has been given to me.

9 3. I acknowledge that documents and information designated as confidential
10 pursuant to such Confidentiality Order are being disclosed to me only upon the
11 condition that I agree to be subject to the jurisdiction of this Court and to that
12 Order. I hereby agree to abide by such Order, subject to all penalties prescribed
13 therein, including contempt of Court, for disobedience of said Order. I promise that
14 the documents and information given confidential treatment under the
15 Confidentiality Order entered in this case will be used by me only in connection
16 with assisting counsel for the parties in preparing for litigation of the above-
17 captioned matters. I understand that any use of such Confidential Material in any
18 manner contrary to the provisions of the Confidentiality Order will subject me to
19 the sanctions of this Court for contempt.

20 4. I promise that I will not disclose or discuss such Confidential Materials or
21 information any person other than the parties and counsel for the parties or
22 members of their staff.

23
24 DATED: _____, 201_ _____

25
26 **EXHIBIT A**