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

URBAN TEXTILE, INC., a California Corporation;

Plaintiff,

vs.

HOTGINGER, INC, a California Corporation; 599FASHION, INC, a California corporation and DOES 1-10, inclusive 1-10, inclusive,

Defendants.

Case No.: 2:16-cv-8156 PSG (MRWx)

STIPULATED PROTECTIVE ORDER

1 1. A. PURPOSES AND LIMITATIONS

2
3 Discovery in this action is likely to involve production of confidential,
4 proprietary, or private information for which special protection from public
5 disclosure and from use for any purpose other than prosecuting this litigation may
6 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
7 enter the following Stipulated Protective Order. The parties acknowledge that this
8 Order does not confer blanket protections on all disclosures or responses to
9 discovery and that the protection it affords from public disclosure and use extends
10 only to the limited information or items that are entitled to confidential treatment
11 under the applicable legal principles. The parties further acknowledge, as set forth
12 in Section 12.3, below, that this Stipulated Protective Order does not entitle them
13 to file confidential information under seal; Civil Local Rule 79-5 sets forth the
14 procedures that must be followed and the standards that will be applied when a
15 party seeks permission from the court to file material under seal.

16
17 B. GOOD CAUSE STATEMENT

18
19 This action is likely to involve trade secrets, customer and pricing lists and
20 other valuable research, development, commercial, financial and/or technical
21 information for which special protection from public disclosure and from use for
22 any purpose other than prosecution of this action is warranted. Such confidential
23 materials and information consist of, among other things, confidential business or
24 financial information, information regarding purchase and sale prices of fabric or
25 garments by suppliers, manufacturers, importers, distributors or fashion retailers,
26 information regarding business practices, information regarding the creation,
27 purchase or sale of graphics used on textiles and garments, or other confidential
28 commercial information (including information implicating privacy rights of third

1 parties), information generally unavailable to the public, or which may be
2 privileged or otherwise protected from disclosure under state or federal rules, court
3 rules, case decisions, or common law. Accordingly, to expedite the flow of
4 information, to facilitate the prompt resolution of disputes over confidentiality of
5 discovery materials, to adequately protect information the parties are entitled to
6 keep confidential, to ensure that the parties are permitted reasonable necessary uses
7 of such material in preparation for and in the conduct of trial, to address their
8 handling at the end of the litigation, and serve the ends of justice, a protective order
9 for such information is justified in this matter. It is the intent of the parties that
10 information will not be designated as confidential for tactical reasons and that
11 nothing be so designated without a good faith belief that it has been maintained in a
12 confidential, non-public manner, and there is good cause why it should not be part
13 of the public record of this case.

14
15 2. DEFINITIONS

16 2.1 Action: This pending federal law suit.

17 2.2 Challenging Party: a Party or Non-Party that challenges the
18 designation of information or items under this Order.

19 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
20 how it is generated, stored or maintained) or tangible things that qualify for
21 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
22 the Good Cause Statement.

23 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
24 their support staff).

25 2.5 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.”

28 2.6 Disclosure or Discovery Material: all items or information, regardless

1 of the medium or manner in which it is generated, stored, or maintained (including,
2 among other things, testimony, transcripts, and tangible things), that are produced
3 or generated in disclosures or responses to discovery in this matter.

4 2.7 Expert: a person with specialized knowledge or experience in a matter
5 pertinent to the litigation who has been retained by a Party or its counsel to serve
6 as an expert witness or as a consultant in this Action.

7 2.8 House Counsel: attorneys who are employees of a party to this Action.
8 House Counsel does not include Outside Counsel of Record or any other outside
9 counsel.

10 2.9 Non-Party: any natural person, partnership, corporation, association, or
11 other legal entity not named as a Party to this action.

12 2.10 Outside Counsel of Record: attorneys who are not employees of a
13 party to this Action but are retained to represent or advise a party to this Action
14 and have appeared in this Action on behalf of that party or are affiliated with a law
15 firm which has appeared on behalf of that party, and includes support staff.

16 2.11 Party: any party to this Action, including all of its officers, directors,
17 employees, consultants, retained experts, and Outside Counsel of Record (and their
18 support staffs).

19 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
20 Discovery Material in this Action.

21 2.13 Professional Vendors: persons or entities that provide litigation
22 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
23 demonstrations, and organizing, storing, or retrieving data in any form or medium)
24 and their employees and subcontractors.

25 2.14 Protected Material: any Disclosure or Discovery Material that is
26 designated as “CONFIDENTIAL.”

27 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
28 from a Producing Party.

1
2 3. SCOPE

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

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

12
13 4. DURATION

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

25
26 5. DESIGNATING PROTECTED MATERIAL

27 5.1 Exercise of Restraint and Care in Designating Material for Protection.

28 Each Party or Non-Party that designates information or items for protection under

1 this Order must take care to limit any such designation to specific material that
2 qualifies under the appropriate standards. The Designating Party must designate for
3 protection only those parts of material, documents, items, or oral or written
4 communications that qualify so that other portions of the material, documents,
5 items, or communications for which protection is not warranted are not swept
6 unjustifiably within the ambit of this Order.

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

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

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

20 Designation in conformity with this Order requires:

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

28 A Party or Non-Party that makes original documents available for inspection

1 need not designate them for protection until after the inspecting Party has indicated
2 which documents it would like copied and produced. During the inspection and
3 before the designation, all of the material made available for inspection shall be
4 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
5 documents it wants copied and produced, the Producing Party must determine
6 which documents, or portions thereof, qualify for protection under this Order.
7 Then, before producing the specified documents, the Producing Party must affix
8 the “CONFIDENTIAL legend” to each page that contains Protected Material. If
9 only a portion or portions of the material on a page qualifies for protection, the
10 Producing Party also must clearly identify the protected portion(s) (e.g., by making
11 appropriate markings in the margins).

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

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

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

27
28 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

1 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
2 designation of confidentiality at any time that is consistent with the Court’s
3 Scheduling Order.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
5 resolution process under Local Rule 37.1 et seq.

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

14
15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

26 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
27 otherwise ordered by the court or permitted in writing by the Designating Party, a
28 Receiving Party may disclose any information or item designated

1 “CONFIDENTIAL” only to:

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

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

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

10 (d) the court and its personnel;

11 (e) court reporters and their staff;

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

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

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

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

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

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

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

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

14 If the Designating Party timely seeks a protective order, the Party served with
15 the subpoena or court order shall not produce any information designated in this
16 action as “CONFIDENTIAL” before a determination by the court from which the
17 subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission. The Designating Party shall bear the burden and expense of seeking
19 protection in that court of its confidential material and nothing in these provisions
20 should be construed as authorizing or encouraging a Receiving Party in this Action
21 to disobey a lawful directive from another court.
22

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

25 (a) The terms of this Order are applicable to information produced by a
26 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
27 produced by Non-Parties in connection with this litigation is protected by the
28 remedies and relief provided by this Order. Nothing in these provisions should be

1 construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

22
23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

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

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

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

18 12. MISCELLANEOUS

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
20 person to seek its modification by the Court in the future.

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

27 12.3 Filing Protected Material. A Party that seeks to file under seal any
28

1 Protected Material must comply with Civil Local Rule 79-5. Protected Material
2 may only be filed under seal pursuant to a court order authorizing the sealing of the
3 specific Protected Material at issue. If a Party's request to file Protected Material
4 under seal is denied by the court, then the Receiving Party may file the information
5 in the public record unless otherwise instructed by the court.

6
7 13. FINAL DISPOSITION

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

26 //

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1 14. Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.
4

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

6 Dated: April 11, 2017


7 /s/ C. Yong Jeong
8 C. Yong Jeong
9 JEONG & LIKENS, L.C.
Attorneys for Plaintiff

10 Dated: April 11, 2017

11 /s/ Henrik Mosesi
12 Henrik Mosesi
13 LAW OFFICE OF HENRIK MOSESI
14 Attorneys for Defendant
15 599 FASHION, INC.

16
17 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

18
19 DATED: April 11, 2017

20 

21 Honorable MICHAEL R. WILNER
22 United States Magistrate Judge
23
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on [date] in the case of *URBAN TEXTILE, INC. v. HOTGINGER, INC.; et al 2:16-*
8 *cv-8156 PSG (MRWx)* . I agree to comply with and to be bound by all the terms of
9 this Stipulated Protective Order and I understand and acknowledge that failure to
10 so comply could expose me to sanctions and punishment in the nature of contempt.
11 I solemnly promise that I will not disclose in any manner any information or item
12 that is subject to this Stipulated Protective Order to any person or entity except in
13 strict compliance with the provisions of this Order.

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

22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26 Signature: _____
27
28