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

12 UNICOLORS, INC.,  
13 Plaintiff,  
14 v.  
15 NB BROTHER CORP., *et al*,  
16 Defendants.

Case No. 2:16-CV-08178-ODW-JC

**PROTECTIVE ORDER**

**[CORRECTIONS TO CROSS-  
REFERENCES MADE BY  
COURT IN PARAGRAPHS 1, 6.b,  
8.a & 14]**

17  
18  
19 **1. PURPOSES AND LIMITATIONS**

20 As the parties have represented that discovery in this action is likely to  
21 involve production of confidential, proprietary, or private information for which  
22 special protection from public disclosure and from use for any purpose other than  
23 prosecuting this litigation may be warranted, this Court enters the following  
24 Protective Order. This Order does not confer blanket protections on all disclosures  
25 or responses to discovery. The protection it affords from public disclosure and use  
26 extends only to the limited information or items that are entitled to confidential  
27 treatment under the applicable legal principles. Further, as set forth in Section 13.c,  
28 below, this Protective Order does not entitle the parties to file confidential

1 information under seal. Rather, when the parties seek permission from the court to  
2 file material under seal, the parties must comply with Civil Local Rule 79-5 and  
3 with any pertinent orders of the assigned District Judge and Magistrate Judge.

4 2. GOOD CAUSE STATEMENT

5 In light of the nature of the claims and allegations in this case and the parties'  
6 representations that discovery in this case will involve the production of confidential  
7 records, and in order to expedite the flow of information, to facilitate the prompt  
8 resolution of disputes over confidentiality of discovery materials, to adequately  
9 protect information the parties are entitled to keep confidential, to ensure that the  
10 parties are permitted reasonable necessary uses of such material in connection with  
11 this action, to address their handling of such material at the end of the litigation, and  
12 to serve the ends of justice, a protective order for such information is justified in this  
13 matter. The parties shall not designate any information/documents as confidential  
14 without a good faith belief that such information/documents have been maintained  
15 in a confidential, non-public manner, and that there is good cause or a compelling  
16 reason why it should not be part of the public record of this case.

17 3. DEFINITIONS

18 A. Action: The instant action: *Unicolors, Inc. v. NB Brother Corp., et al*  
19 *2:16-CV-08178-ODW-JC*.

20 B. Challenging Party: a Party or Non-Party that challenges the  
21 designation of information or items under this Order.

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

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

28 E. Designating Party: a Party or Non-Party that designates information or

1 items that it produces in disclosures or in responses to discovery as  
2 “CONFIDENTIAL.”

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

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

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

14 I. Non-Party: any natural person, partnership, corporation, association, or  
15 other legal entity not named as a Party to this action.

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

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

24 L. Producing Party: a Party or Non-Party that produces Disclosure or  
25 Discovery Material in this Action.

26 M. Professional Vendors: persons or entities that provide litigation  
27 support services (e.g., photocopying, videotaping, translating, preparing  
28 exhibits or demonstrations, and organizing, storing, or retrieving data in

1 any form or medium) and their employees and subcontractors.

2 N. Protected Material: any Disclosure or Discovery Material that is  
3 designated as “CONFIDENTIAL.”

4 O. Receiving Party: a Party that receives Disclosure or Discovery  
5 Material from a Producing Party.

6 4. SCOPE

7 The protections conferred by this Order cover not only Protected Material (as  
8 defined above), but also (1) any information copied or extracted from Protected  
9 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;  
10 and (3) any deposition testimony, conversations, or presentations by Parties or their  
11 Counsel that might reveal Protected Material, other than during a court hearing or at  
12 trial.

13 Any use of Protected Material during a court hearing or at trial shall be  
14 governed by the orders of the presiding judge. This Order does not govern the use  
15 of Protected Material during a court hearing or at trial.

16 5. DURATION

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

25 6. DESIGNATING PROTECTED MATERIAL

26 a. Exercise of Restraint and Care in Designating Material for Protection.

27 Each Party or Non-Party that designates information or items for protection  
28 under this Order must take care to limit any such designation to specific material

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

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

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

14 b. Manner and Timing of Designations.

15 Except as otherwise provided in this Order (see, e.g., paragraph 6.b.i below),  
16 or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies  
17 for protection under this Order must be clearly so designated before the material is  
18 disclosed or produced.

19 Designation in conformity with this Order requires:

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

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

15 ii. for testimony given in depositions that the Designating Party  
16 identifies on the record, before the close of the deposition as  
17 protected testimony.

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

25 c. Inadvertent Failures to Designate.

26 If timely corrected, an inadvertent failure to designate qualified information  
27 or items does not, standing alone, waive the Designating Party’s right to secure  
28 protection under this Order for such material. Upon timely correction of a

1 designation, the Receiving Party must make reasonable efforts to assure that the  
2 material is treated in accordance with the provisions of this Order.

3 **7. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

- 4 a. Timing of Challenges. Any Party or Non-Party may challenge a  
5 designation of confidentiality at any time that is consistent with the  
6 Court's Scheduling Order.
- 7 b. Meet and Confer. The Challenging Party shall initiate the dispute  
8 resolution process under Local Rule 37-1 et seq.
- 9 c. The burden of persuasion in any such challenge proceeding shall be on  
10 the Designating Party. Frivolous challenges, and those made for an  
11 improper purpose (e.g., to harass or impose unnecessary expenses and  
12 burdens on other parties) may expose the Challenging Party to  
13 sanctions. Unless the Designating Party has waived or withdrawn the  
14 confidentiality designation, all parties shall continue to afford the  
15 material in question the level of protection to which it is entitled under  
16 the Producing Party's designation until the Court rules on the  
17 challenge.

18 **8. ACCESS TO AND USE OF PROTECTED MATERIAL**

- 19 a. Basic Principles. A Receiving Party may use Protected Material that is  
20 disclosed or produced by another Party or by a Non-Party in connection  
21 with this Action only for prosecuting, defending, or attempting to settle  
22 this Action. Such Protected Material may be disclosed only to the  
23 categories of persons and under the conditions described in this Order.  
24 When the Action has been terminated, a Receiving Party must comply  
25 with the provisions of Section 14 below. Protected Material must be  
26 stored and maintained by a Receiving Party at a location and in a secure  
27 manner that ensures that access is limited to the persons authorized  
28 under this Order.

- 1                   b. Disclosure of “CONFIDENTIAL” Information or Items. Unless  
2 otherwise ordered by the court or permitted in writing by the  
3 Designating Party, a Receiving Party may disclose any information or  
4 item designated “CONFIDENTIAL” only to:
- 5                   i. the Receiving Party’s Outside Counsel of Record in this Action,  
6 as well as employees of said Outside Counsel of Record to  
7 whom it is reasonably necessary to disclose the information for  
8 this Action;
  - 9                   ii. the officers, directors, and employees (including House Counsel)  
10 of the Receiving Party to whom disclosure is reasonably  
11 necessary for this Action;
  - 12                   iii. Experts (as defined in this Order) of the Receiving Party to  
13 whom disclosure is reasonably necessary for this Action and who  
14 have signed the “Acknowledgment and Agreement to Be Bound”  
15 (Exhibit A);
  - 16                   iv. the court and its personnel;
  - 17                   v. court reporters and their staff;
  - 18                   vi. professional jury or trial consultants, mock jurors, and  
19 Professional Vendors to whom disclosure is reasonably  
20 necessary for this Action and who have signed the  
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
  - 22                   vii. the author or recipient of a document containing the information  
23 or a custodian or other person who otherwise possessed or knew  
24 the information;
  - 25                   viii. during their depositions, witnesses, and attorneys for witnesses,  
26 in the Action to whom disclosure is reasonably necessary  
27 provided: (1) the deposing party requests that the witness sign  
28 the “Acknowledgment and Agreement to Be Bound” form



1 attached as Exhibit A hereto; and (2) they will not be permitted  
2 to keep any confidential information unless they sign the  
3 “Acknowledgment and Agreement to Be Bound” attached as  
4 Exhibit A, unless otherwise agreed by the Designating Party or  
5 ordered by the court. Pages of transcribed deposition testimony  
6 or exhibits to depositions that reveal Protected Material may be  
7 separately bound by the court reporter and may not be disclosed  
8 to anyone except as permitted under this Protective Order; and  
9 ix. any mediator or settlement officer, and their supporting  
10 personnel, mutually agreed upon by any of the parties engaged in  
11 settlement discussions.

12 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**  
13 **IN OTHER LITIGATION**

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

- 17 a. promptly notify in writing the Designating Party. Such notification  
18 shall include a copy of the subpoena or court order unless prohibited by  
19 law;
- 20 b. promptly notify in writing the party who caused the subpoena or order  
21 to issue in the other litigation that some or all of the material covered  
22 by the subpoena or order is subject to this Protective Order. Such  
23 notification shall include a copy of this Protective Order; and
- 24 c. cooperate with respect to all reasonable procedures sought to be  
25 pursued by the Designating Party whose Protected Material may be  
26 affected. If the Designating Party timely seeks a protective order, the  
27 Party served with the subpoena or court order shall not produce any  
28 information designated in this action as “CONFIDENTIAL” before a

1 determination by the court from which the subpoena or order issued,  
2 unless the Party has obtained the Designating Party's permission, or  
3 unless otherwise required by the law or court order. The Designating  
4 Party shall bear the burden and expense of seeking protection in that  
5 court of its confidential material and nothing in these provisions should  
6 be construed as authorizing or encouraging a Receiving Party in this  
7 Action to disobey a lawful directive from another court.  
8

9 **10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**  
10 **PRODUCED IN THIS LITIGATION**

- 11 a. The terms of this Order are applicable to information produced by a  
12 Non-Party in this Action and designated as "CONFIDENTIAL." Such  
13 information produced by Non-Parties in connection with this litigation  
14 is protected by the remedies and relief provided by this Order. Nothing  
15 in these provisions should be construed as prohibiting a Non-Party  
16 from seeking additional protections.
- 17 b. In the event that a Party is required, by a valid discovery request, to  
18 produce a Non-Party's confidential information in its possession, and  
19 the Party is subject to an agreement with the Non-Party not to produce  
20 the Non-Party's confidential information, then the Party shall:
- 21 i. promptly notify in writing the Requesting Party and the Non-  
22 Party that some or all of the information requested is subject to a  
23 confidentiality agreement with a Non-Party;
  - 24 ii. promptly provide the Non-Party with a copy of the Protective  
25 Order in this Action, the relevant discovery request(s), and a  
26 reasonably specific description of the information requested; and
  - 27 iii. make the information requested available for inspection by the  
28 Non-Party, if requested.

1 c. If a Non-Party represented by counsel fails to commence the process  
2 called for by Local Rules 45-1 and 37-1, et seq. within 14 days of  
3 receiving the notice and accompanying information or fails  
4 contemporaneously to notify the Receiving Party that it has done so,  
5 the Receiving Party may produce the Non-Party's confidential  
6 information responsive to the discovery request. If an unrepresented  
7 Non-Party fails to seek a protective order from this court within 14  
8 days of receiving the notice and accompanying information, the  
9 Receiving Party may produce the Non-Party's confidential information  
10 responsive to the discovery request. If the Non-Party timely seeks a  
11 protective order, the Receiving Party shall not produce any information  
12 in its possession or control that is subject to the confidentiality  
13 agreement with the Non-Party before a determination by the court  
14 unless otherwise required by the law or court order. Absent a court  
15 order to the contrary, the Non-Party shall bear the burden and expense  
16 of seeking protection in this court of its Protected Material.

#### 17 11.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 Protective Order, the Receiving Party must immediately (a) notify in writing the  
21 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve  
22 all unauthorized copies of the Protected Material, (c) inform the person or persons to  
23 whom unauthorized disclosures were made of all the terms of this Order, and (d)  
24 request such person or persons to execute the "Acknowledgment and Agreement to  
25 Be Bound" that is attached hereto as Exhibit A.

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

### 9 13.MISCELLANEOUS

- 10 a. Right to Further Relief. Nothing in this Order abridges the right of any  
11 person to seek its modification by the Court in the future.
- 12 b. Right to Assert Other Objections. No Party waives any right it  
13 otherwise would have to object to disclosing or producing any  
14 information or item on any ground not addressed in this Protective  
15 Order. Similarly, no Party waives any right to object on any ground to  
16 use in evidence of any of the material covered by this Protective Order.
- 17 c. Filing Protected Material. A Party that seeks to file under seal any  
18 Protected Material must comply with Civil Local Rule 79-5 and with  
19 any pertinent orders of the assigned District Judge and Magistrate  
20 Judge. If a Party's request to file Protected Material under seal is  
21 denied by the court, then the Receiving Party may file the information  
22 in the public record unless otherwise instructed by the court.

### 23 14.FINAL DISPOSITION

24 After the final disposition of this Action, as defined in Section 5, within 60  
25 days of a written request by the Designating Party, each Receiving Party must return  
26 all Protected Material to the Producing Party or destroy such material. As used in  
27 this subdivision, "all Protected Material" includes all copies, abstracts, compilations,  
28 summaries, and any other format reproducing or capturing any of the Protected

1 Material. Whether the Protected Material is returned or destroyed, the Receiving  
2 Party must submit a written certification to the Producing Party (and, if not the same  
3 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies  
4 (by category, where appropriate) all the Protected Material that was returned or  
5 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
6 abstracts, compilations, summaries or any other format reproducing or capturing any  
7 of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
8 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing  
9 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert  
10 reports, attorney work product, and consultant and expert work product, even if such  
11 materials contain Protected Material. Any such archival copies that contain or  
12 constitute Protected Material remain subject to this Protective Order as set forth in  
13 Section 5.

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

16  
17 IT IS SO ORDERED.

18  
19 DATED: February 28, 2018

20  
21 /s/ Jacqueline Chooljian  
22 Honorable Jacqueline Chooljian  
23 United States Magistrate Judge  
24  
25  
26  
27  
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3  
4 I, \_\_\_\_\_ [print or type full name], of  
5 \_\_\_\_\_ [print or type full address], declare under penalty of perjury  
6 that I have read in its entirety and understand the Protective Order that was issued  
7 by the United States District Court for the Central District of California on February  
8 28, 2018 in the case of *Unicolors, Inc. v. NB Brother Corp., et al* 2:16-CV-08178-  
9 ODW-JC.. I agree to comply with and to be bound by all the terms of this  
10 Protective Order and I understand and acknowledge that failure to so comply could  
11 expose me to sanctions and punishment in the nature of contempt. I solemnly  
12 promise that I will not disclose in any manner any information or item that is subject  
13 to this Protective Order to any person or entity except in strict compliance with the  
14 provisions of this Order.

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

22 Date: \_\_\_\_\_

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

24  
25 Printed name: \_\_\_\_\_

26  
27 Signature: \_\_\_\_\_

28