

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NEMAN BROTHERS & ASSOC.,
INC., a California Corporation;

Plaintiff,

vs.

TRUE DESTINY, LLC, a New York
Limited Liability Company; ROSS
STORES, INC., D/B/A DD'S
DISCOUNTS, INC., a California
Corporation; and DOES 1-10, inclusive,

Defendants.

Case No.: 2:16-cv-09224-JFW-AJW

**STIPULATION FOR PROTECTIVE
ORDER**

Hon. John F. Walter, Judge Presiding

Hon. Andrew J. Wistrich, Magistrate
Judge

1 On stipulation of the Parties, the Court enters a Protective Order in this
2 matter as follows:

3
4 1. A. PURPOSES AND LIMITATIONS

5 Disclosure and discovery activity in this action are likely to involve
6 production of confidential, proprietary, or private information for which special
7 protection from public disclosure and from use for any purpose other than
8 prosecuting this matter would be warranted. Accordingly, the parties have
9 stipulated to and petitioned this Court to enter the following Stipulated Protective
10 Order. The parties acknowledge that this Order does not confer blanket protections
11 on all disclosures or responses to discovery and that the protection it affords
12 extends only to the limited information or items that are entitled under the
13 applicable legal principles to treatment as confidential. The parties have agreed
14 that the terms of this Protective Order shall also apply to any future voluntary
15 disclosures of confidential, proprietary, or private information. The parties reserve
16 their rights to object to or withhold any information, including confidential,
17 proprietary, or private information, on any other applicable grounds permitted by
18 law, including third-party rights and relevancy. The parties further acknowledge,
19 as set forth in Section 12.3, below, that this Stipulated Protective Order does not
20 entitle them to file confidential information under seal; Civil Local Rule 79-5 sets
21 forth the procedures that must be followed and the standards that will be applied
22 when a party seeks permission from the court to file material under seal.

23
24 B. GOOD CAUSE STATEMENT

25 This action involves claims for copyright infringement under the Copyright
26 Act of 1976, Title 17 U.S.C., § 101 *et seq.* The parties, who are variously
27 manufacturers, licensors and vendors of textile designs, and apparel distributors
28 and retailers, are direct and/or indirect competitors of each other. In order to

1 establish their claims and defenses, the parties intend to seek discovery regarding
2 information which the parties deem confidential, including but not limited to
3 information regarding sales, vendor identities and preferences, customer identities
4 and preferences, import and export practice, other financial information, and
5 potentially other commercially and competitively sensitive information.

6 There will also potentially be multiple depositions of the parties' employees
7 or agents and third party vendors, customers, licensees or clients and such persons
8 will likely be asked to answer questions on these potentially sensitive subject areas.
9 Because this matter will necessarily involve requests for disclosure of confidential
10 information, a protective order is therefore necessary to avoid any prejudice or
11 harm which would likely result if such information was disclosed in the absence of
12 the protections set forth herein. Accordingly, to expedite the flow of information, to
13 facilitate the prompt resolution of disputes over confidentiality of discovery
14 materials, to adequately protect information the parties are entitled to keep
15 confidential, to ensure that the parties are permitted reasonable necessary uses of
16 such material in preparation for and in the conduct of trial, to address their handling
17 at the end of the litigation, and serve the ends of justice, a protective order for such
18 information is justified in this matter.

19
20 2. DEFINITIONS

21 2.1 Party: any party to this action, including all of its officers,
22 directors, employees, consultants, retained experts, and outside counsel (and their
23 support staff).

24 2.2 Challenging Party: a Party or Non-Party that challenges the
25 designation of information or items under this Order.

26
27 2.3 Disclosure or Discovery Material: all items or information,
28 regardless of the medium or manner generated, stored, or maintained (including,

1 among other things, testimony, transcripts, or tangible things), that are produced or
2 generated in disclosures or responses to discovery in this matter.

3 2.4A “Confidential” Information or Items: information (regardless of
4 how it is generated, stored or maintained) or tangible things that qualify for
5 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
6 the Good Cause Statement.

7 2.4B “Attorneys’ Eyes Only”: A Designating Party may only
8 designate material ATTORNEYS’ EYES ONLY if it deems that disclosure of such
9 material to another person or party would be injurious to the commercial interests
10 of the designating entity under the standards of Rule 26 and that the material
11 contains highly propriety technical or trade secret or business information so that
12 the risk of improper use or disclosure to another party outweighs the right of that
13 party to review such information.

14 2.5 Receiving Party: a Party that receives Disclosure or Discovery
15 Material from a Producing Party.

16 2.6 Producing Party: a Party or non-party that produces Disclosure
17 or Discovery Material in this action.

18 2.7 Designating Party: a Party or non-party that designates
19 information or items that it produces in disclosures or in responses to discovery as
20 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

21 2.8 Protected Material: any Disclosure or Discovery Material that
22 is designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

23 2.9 Expert: a person with specialized knowledge or experience in a
24 matter pertinent to the litigation who has been retained by a Party or its counsel to
25 serve as an expert witness or as a consultant in this action. This definition includes
26 a professional jury or trial consultant retained in connection with this litigation.
27 The expert witness or consultant may not be a past or a current employee of the
28 Party (including any affiliates or related entities) adverse to the Party engaging the

1 expert witness or consultant, or someone who at the time of retention is anticipated
2 to become an employee of the Party (including any affiliates or related entities)
3 adverse to the Party engaging the expert witness or consultant.

4 2.10 Professional Vendors: persons or entities that provide litigation
5 support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or
6 demonstrations; organizing, storing, or retrieving data in any form or medium; etc.)
7 and their employees and subcontractors.

8
9 3. SCOPE

10 The protections conferred by this Stipulation and Order cover not only
11 Protected Material (as defined above), but also any information copied or extracted
12 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
13 testimony, conversations, or presentations by parties or counsel to or in litigation or
14 in other settings that might reveal Protected Material.

15
16 4. DURATION

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

27 Even after the termination of this action, the confidentiality obligations
28 imposed by this Order shall remain in effect until a Designating Party agrees

1 otherwise in writing or a court order otherwise directs. Final disposition shall be
2 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
3 with or without prejudice; and (2) final judgment herein after the completion and
4 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
5 including the time limits for filing any motions or applications for extension of
6 time pursuant to applicable law.

7
8 **5. DESIGNATING PROTECTED MATERIAL**

9 **5.1 Exercise of Restraint and Care in Designating Material for**
10 **Protection.** Each Party or non-party that designates information or items for
11 protection under this Order must take care to limit any such designation to specific
12 material that qualifies under the appropriate standards. A Designating Party must
13 take care to designate for protection only those parts of material, documents, items,
14 or oral or written communications that qualify – so that other portions of the
15 material, documents, items, or communications for which protection is not
16 warranted are not swept unjustifiably within the ambit of this Order.

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

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (apart from
23 transcripts of depositions or other pretrial or trial proceedings), that the Producing
24 Party affix the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” at
25 the top or bottom of each page that contains protected material.

26 A Party or non-party that makes originals or copies of
27 documents or materials available for inspection need not designate them for
28 protection until after the inspecting Party has indicated which material it intends to

1 copy. During the inspection and before the designation, all of the material made
2 available for inspection shall be deemed “ATTORNEYS’ EYES ONLY.” After
3 the inspecting Party has identified the documents it wants copied and produced, the
4 Producing Party must designate, either in writing or on the record (at a deposition),
5 which documents, or portions thereof, qualify for protection under this Order.
6 Then the Receiving Party must affix the “CONFIDENTIAL” or “ATTORNEYS’
7 EYES ONLY” legend at the top of each copied page that contains Protected
8 Material. If only a portion or portions of the material on a page qualifies for
9 protection, the Producing Party also must clearly identify the protected portion(s)
10 (e.g., by making appropriate markings in the margins) and must specify, for each
11 portion, the level of protection being asserted (either “CONFIDENTIAL” or
12 “ATTORNEYS’ EYES ONLY”).

13 (b) for testimony given in deposition or in other pretrial or
14 trial proceedings, that the Party or non-party offering or sponsoring the testimony
15 identify on the record, before the close of the deposition, hearing, or other
16 proceeding, all protected testimony, and further specify any portions of the
17 testimony that qualify as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”
18 When it is impractical to identify separately each portion of testimony that is
19 entitled to protection, and when it appears that substantial portions of the testimony
20 may qualify for protection, the Party or non-party that sponsors, offers, or gives the
21 testimony may invoke on the record (before the deposition or proceeding is
22 concluded) a right to have up to 30 days to identify the specific portions of the
23 testimony as to which protection is sought and to specify the level of protection
24 being asserted (“CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”). Only
25 those portions of the testimony that are appropriately designated for protection
26 within the 30 days shall be covered by the provisions of this Stipulated Protective
27 Order.

1 Transcript pages containing Protected Material must be
2 separately bound by the court reporter, who must affix to the top of each such page
3 the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” as instructed
4 by the Party or non-party offering or sponsoring the witness or presenting the
5 testimony.

6 (c) for information produced in some form other than
7 documentary, and for any other tangible items, that the Producing Party affix in a
8 prominent place on the exterior of the container or containers in which the
9 information or item is stored the legend “CONFIDENTIAL” or “ATTORNEYS’
10 EYES ONLY.” If only portions of the information or item warrant protection, the
11 Producing Party, to the extent practicable, shall identify the protected portions,
12 specifying whether they qualify as “CONFIDENTIAL” or as “ATTORNEYS’
13 EYES ONLY.”

14 5.3 Inadvertent Failures to Designate. If timely corrected, an
15 inadvertent failure to designate qualified information or items as
16 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” does not, standing alone,
17 waive the Designating Party’s right to secure protection under this Order for such
18 material. If material is appropriately designated as “CONFIDENTIAL” or
19 “ATTORNEYS’ EYES ONLY” after the material was initially produced, the
20 Receiving Party, on timely notification of the designation, must make reasonable
21 efforts to assure that the material is treated in accordance with the provisions of this
22 Order.

23
24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
26 designation of confidentiality at any time that is consistent with the Court’s
27 Scheduling Order.
28

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

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

11
12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

23 7.2 Disclosure of “CONFIDENTIAL” Information or Items.
24 Unless otherwise ordered by the Court or permitted in writing by the Designating
25 Party, a Receiving Party may disclose any information or item designated
26 “CONFIDENTIAL” only to:

1 (a) the Receiving Party’s outside counsel, as well as
2 employees of said outside counsel to whom it is reasonably necessary to disclose
3 the information for this litigation;

4 (b) the officers, directors, and employees (including in-house
5 counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
6 Action;

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

16 (g) during their depositions, witnesses in the action to whom
17 disclosure is reasonably necessary and who have signed the “Acknowledgment and
18 Agreement to Be Bound” (Exhibit A). Pages of transcribed deposition testimony
19 or exhibits to depositions that reveal Protected Material must be separately bound
20 by the court reporter and may not be disclosed to anyone except as permitted under
21 this Stipulated Protective Order; and

22 (h) the author of the document or the original source of the
23 information.

24 7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or
25 Items. Unless otherwise ordered by the Court or permitted in writing by the
26 Designating Party, a Receiving Party may disclose any information or item
27 designated “ATTORNEYS’ EYES ONLY” only to:
28

1 (a) the Receiving Party's outside counsel, as well as
2 employees of said outside counsel to whom it is reasonably necessary to disclose
3 the information for this litigation;

4 (b) Experts (as defined in this Order) of the Receiving Party
5 to whom disclosure is reasonably necessary for this litigation and who have signed
6 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

7 (c) the court and its personnel;

8 (d) court reporters and their staff;

9 (e) professional jury or trial consultants, mock jurors, and
10 Professional Vendors to whom disclosure is reasonably necessary for this litigation
11 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
12 A);(f) during their depositions, witnesses in the action to whom disclosure is
13 reasonably necessary and who have signed the "Acknowledgment and Agreement
14 to Be Bound" (Exhibit A). Pages of transcribed deposition testimony or exhibits to
15 depositions that reveal Protected Material must be separately bound by the court
16 reporter and may not be disclosed to anyone except as permitted under this
17 Stipulated Protective Order; and

18 (g) the author of the document or the original source of the
19 information.

20
21 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED
22 PRODUCED IN OTHER LITIGATION

23 If a Receiving Party is served with a subpoena or an order issued in other
24 litigation that would compel disclosure of any information or items designation in
25 this case as CONFIDENTIAL or ATTORNEYS' EYES ONLY, the Receiving
26 Party must promptly notify the Designating Party. Such notification must include a
27 copy of the subpoena or court order. The Receiving Party also must immediately
28 inform in writing the Party who caused the subpoena or order to issue in the other

1 litigation that some or all of the material covered by the subpoena or order is the
2 subject of this Protective Order. In addition, the Receiving Party must deliver a
3 copy of this Stipulated Protective Order promptly to the Party in the other action
4 that caused the subpoena or order to issue. The Receiving Party must cooperate
5 with respect to all reasonable procedures sought to be pursued by the Designating
6 Party whose Protected Material may be affected.

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

16
17 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
18 PRODUCED IN THIS LITIGATION

19 (a) The terms of this Order are applicable to information produced by a
20 Non-Party in this case and designated as “CONFIDENTIAL” or “ATTORNEYS’
21 EYES ONLY.” Such information produced by Non-Parties in connection with this
22 litigation is protected by the remedies and relief provided by this Order. Nothing in
23 these provisions should be construed as prohibiting a Non-Party from seeking
24 additional protections.

25 (b) In the event that a Party is required, by a valid discovery request, to
26 produce a Non-Party’s confidential information or Items in its possession, and the
27 Party is subject to an agreement with the Non-Party not to produce the Non-Party’s
28 Confidential Information or Items, then the Party shall:

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

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

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

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

18
19 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a Receiving Party learns that, by inadvertence or otherwise, it has
21 disclosed Protected Material to any person or in any circumstance not authorized
22 under this Stipulated Protective Order, the Receiving Party must immediately (a)
23 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
24 best efforts to retrieve all copies of the Protected Material, (c) inform the person or
25 persons to whom unauthorized disclosures were made of all the terms of this Order,
26 and (d) request such person or persons to execute the "Acknowledgment and
27 Agreement to Be Bound" that is attached hereto as Exhibit A.
28

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR
2 OTHERWISE PROTECTED MATERIAL

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

13
14 12. FINAL DISPOSITION

15 Unless otherwise ordered or agreed to in writing by the Producing Party,
16 within 60 days after the final termination of this action, each Receiving Party must
17 return all Protected Material to the Producing Party or destroy the Protected
18 Material. As used in this subdivision, “all Protected Material” includes all copies,
19 abstracts, compilations, summaries or any other form of reproducing or capturing
20 any of the Protected Material. Notwithstanding this provision, counsel are entitled
21 to retain an archival copy of all pleadings, motion papers, transcripts, legal
22 memoranda, correspondence or attorney work product, even if such materials
23 contain Protected Material. Any such archival copies that contain or constitute
24 Protected Material remain subject to this Protective Order as set forth in Section 4
25 (DURATION), above.

1 13. MISCELLANEOUS

2 13.1 Right to Further Relief. Nothing in this Order abridges the right
3 of any person to seek its modification by the Court in the future.

4 13.2 Right to Assert Other Objections. By stipulating to the entry of
5 this Protective Order no Party waives any right it otherwise would have to object to
6 disclosing or producing any information or item on any ground not addressed in
7 this Stipulated Protective Order. Similarly, no Party waives any right to object on
8 any ground to use in evidence of any of the material covered by this Protective
9 Order.

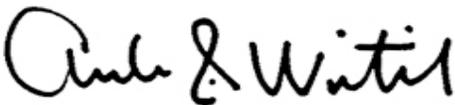
10 13.2 Filing Protected Material. A Party that seeks to file under seal
11 any Protected Material must comply with Civil Local Rule 79-5. Protected Material
12 may only be filed under seal pursuant to a court order authorizing the sealing of the
13 specific Protected Material at issue. If a Party's request to file Protected Material
14 under seal is denied by the court, then the Receiving Party may file the information
15 in the public record unless otherwise instructed by the court.

16 //

17 //

18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19
20 Dated: March 13, 2017

21 By: 
22 Hon. Andrew J. Wistrich,
23 Magistrate Judge
24
25
26
27
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print full
4 name], of _____ [print
5 full address], declare under penalty of perjury that I have read in its entirety and
6 understand the Stipulated Protective Order that was issued by the United States
7 District Court for the Central District of California in the case of *NEMAN*
8 *BROTHERS & ASSOC., INC., v. TRUE DESTINY, LLC*, Case No. 2:16-cv-09224-
9 JFW-AJW. I agree to comply with and to be bound by all of the terms of this
10 Stipulated Protective Order and I understand and acknowledge that failure to so
11 comply could expose me to sanctions and punishment in the nature of contempt. I
12 solemnly promise that I will not disclose in any manner any information or item
13 that is subject to this Stipulated Protective Order to any person or entity except in
14 strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District
16 Court for the Central District of California for the purpose of enforcing the terms of
17 this Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action.

19 I hereby appoint _____ [print full
20 name] of _____ [print full
21 address and telephone number] as my California agent for service of process in
22 connection with this action or any proceedings related to enforcement of this
23 Stipulated Protective Order.

24
25 Date: _____

26 City and State where sworn and signed: _____

27 Printed name: _____

28 Signature: _____