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8 Attorneys for Plaintiff Eveden Inc.

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

11 EVEDEN INC., a Massachusetts
 12 corporation,
 13 Plaintiff,
 14 v.
 15 COLOR IMAGE APPAREL, INC.,
 16 a California corporation; and DOES
 17 1 through 10,
 18 Defendants.

Case No. 2:17-cv-02121-MWF-JC
STIPULATED PROTECTIVE ORDER

**[CHANGES MADE BY COURT TO
 PARAGRAPHS 5, 12, 15, 24, 26]**

PROTECTIVE ORDER

19 This protective order (“Protective Order”) is issued to expedite the flow of
 20 discovery materials, to facilitate the prompt resolution of disputes over
 21 confidentiality of discovery materials, to adequately protect information the parties
 22 are entitled to keep confidential, to ensure that only materials the parties are entitled
 23 to keep confidential are subject to such treatment, and to ensure that the parties are
 24 permitted reasonably necessary uses of such materials in preparation for and in the
 25 conduct of trial, pursuant to Fed. R. Civ. P. 26(c) and any other applicable rule of
 26 this Court. Unless modified, superseded or terminated pursuant to the terms
 27 contained in this Order, this Protective Order shall remain in effect through the
 28 conclusion of this litigation and thereafter as set forth below.

1 **GOOD CAUSE STATEMENT**

2 In support of this Protective Order the Court finds that good cause exists for
3 entry of this Protective Order because:

4 1. The parties anticipate that the exchange of information in this case may
5 include documents that constitute non-public, highly sensitive financial information
6 regarding revenues, expenses and profits generated in connection with Plaintiff’s or
7 Defendant’s sales of merchandise. The parties further seek to protect documents or
8 information containing confidential and proprietary business information, including
9 business strategies, business plans, non-public creative/artistic materials, and other
10 business information the disclosure of which could cause competitive harm.
11 Additionally, the parties seek to protect personal financial information of the
12 Parties’ employees and third parties, including for example licensees of Plaintiff or
13 Defendant that are not a party to this litigation, as well as all confidential and
14 proprietary business or commercial information or trade secrets within the meaning
15 of Fed. R. Civ. P. 26(c) or California Civil Code § 3426.1;

16 2. The parties believe that public dissemination and disclosure of
17 confidential information could injure or damage the party or a non-party disclosing
18 or producing the confidential information and/or could place that party or non-party
19 at a competitive disadvantage; and

20 3. To protect the prospective interests of the parties and to facilitate the
21 progress of disclosure and discovery in this case, the following Protective Order
22 should issue.

23 **THEREFORE, IT IS HEREBY STIPULATED AND ORDERED AS**
24 **FOLLOWS:**

25 4. Any document, written discovery response, testimony, deposition
26 transcript, and all other materials and information (collectively hereinafter
27 “Material”) produced or furnished in connection with the above-captioned litigation
28 (the “Action”), or any portion thereof, that is reasonably believed by any party to the

1 Action to contain or constitute trade secrets, or confidential or proprietary business
2 or financial information, or personal information protected by a right of privacy, or
3 non-public creative/artistic material, may be designated, in whole or in part, as
4 “Confidential” or “Confidential – Attorneys’ Eyes Only” as set forth below.

5 5. Any Material or portion thereof that is designated as “Confidential” or
6 “Confidential – Attorneys’ Eyes Only” in accordance with the provisions for such
7 designation contained herein (hereinafter, “Confidential Information”), shall be
8 deemed confidential and shall be disclosed only to “Qualified Persons” as defined
9 herein and in accordance with the terms hereof. The protections conferred by this
10 Protective Order cover not only Confidential Information as defined herein, but also
11 (1) any information copied or extracted from the Confidential Information; (2) all
12 copies, excerpts, summaries, or compilations of the Confidential Information; and
13 (3) any testimony, conversations, or presentations by the parties to this Action or
14 their counsel that might reveal Confidential Information, other than during a court
15 hearing or at trial. However, the protections conferred by this Protective Order do
16 not cover any information that is in the public domain at the time of disclosure or
17 becomes part of the public domain after its disclosure not involving a violation of
18 this Protective Order, including becoming part of the public record through trial or
19 otherwise. Any use of Confidential Information during a court hearing or at trial
20 shall be governed by the orders of the presiding judge. This Order does not govern
21 the use of Confidential Information during a court hearing or at trial.

22 6. In designating Material as “Confidential – Attorneys’ Eyes Only,” the
23 designating party must have a good faith and reasonable belief that those Materials
24 constitute trade secrets as defined by the UTSA. The “Confidential – Attorneys’
25 Eyes Only” designation shall be used in only extreme circumstances and only for
26 the most highly sensitive material the disclosure of which the disclosing party
27 believes would cause an immediate and irreparable competitive injury if disclosed

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1 to the principals, employees, or in-house counsel involved in competitive decision
2 making of the receiving party.

3 7. Any Material other than deposition testimony may be designated as
4 “Confidential” or “Confidential – Attorneys’ Eyes Only” by stamping or otherwise
5 marking the document or other tangible material containing or embodying the
6 Confidential Information as follows: “Confidential – Subject to Protective Order,”
7 “Confidential” or “Confidential – Attorneys’ Eyes Only” at the time of production.

8 8. (a) Counsel for any party or non-party may designate deposition
9 testimony as “Confidential” or “Confidential – Attorneys’ Eyes Only” by indicating
10 on the record at the deposition that the testimony of the deponent is to be treated as
11 “Confidential” or “Confidential – Attorneys’ Eyes Only.” Failure of counsel to
12 designate testimony as Confidential Information on the record at the deposition,
13 however, shall not constitute a waiver of the confidentiality of the testimony, if
14 such testimony is designated as Confidential Information within thirty (30) days
15 after the receipt of the transcript of the deposition. Within thirty (30) days after
16 receipt of the transcript of the deposition, counsel for a party or non-party shall be
17 entitled to designate specific pages and lines of the deposition transcript as
18 Confidential Information by a letter addressed to all counsel in the Action that
19 identifies all pages and lines of the transcript being designated as Confidential
20 Information. The party or third party designating material as Confidential
21 Information at a deposition shall take care to ensure that only those portions of the
22 transcript containing Confidential Information are so designated.

23 (b) To maintain the confidentiality of any deposition testimony or
24 exhibits that have been designated as “Confidential” or “Confidential – Attorneys’
25 Eyes Only” in accordance with the terms of this Protective Order, the court reporter
26 who transcribes the deposition testimony shall mark the cover page of the
27 deposition transcript to indicate that Confidential Information is contained therein.
28 The party introducing Confidential Information bears the burden of adhering to the

1 provisions of this Protective Order, and, as such, shall inform the court reporter of
2 its designation and request that the transcript be marked accordingly.

3 9. Any non-party that produces or furnishes Material in connection with
4 this Action may obtain the protections provided by this Protective Order with
5 respect to the designation of Material as “Confidential” or “Confidential –
6 Attorneys’ Eyes Only” by agreeing with the parties in writing that this Protective
7 Order shall apply to Material produced by such non-party.

8 10. Unless otherwise expressly authorized by the provisions of this
9 Protective Order, by a written agreement of the parties executed following the
10 effective date hereof or by Court order, any Material that is designated as
11 “Confidential” in accordance with the terms hereof may be disclosed only to the
12 following “Qualified Persons”:

13 a. The named parties in this Action and their respective officers,
14 directors, managers, partners, principals and employees who are assisting that
15 party’s counsel in this Action;

16 b. Inside or outside counsel for the parties, including members of
17 such attorneys’ staff (e.g., paralegals, legal secretaries and law clerks);

18 c. Independent consultants or experts retained by any party in this
19 case who are expected to testify at trial or employed by counsel in order to assist in
20 preparation for trial or for deposition;

21 d. Deponents in this Action (before, during and after their
22 depositions);

23 e. The Court and court personnel;

24 f. Court reporters or videographers selected by the parties; and

25 g. Any persons who authored or can demonstrate to the satisfaction
26 of the disclosing party prior to receiving such information that he/she previously
27 received the Confidential Information.

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1 11. Unless otherwise expressly authorized by the provisions of this
2 Protective Order, by a written agreement of the parties or by Court order, any
3 Material that is designated as “Confidential – Attorneys’ Eyes Only” in accordance
4 with the terms hereof may be disclosed only to the following “Qualified Persons”:

5 a. Any persons who authored or can demonstrate to the satisfaction
6 of the disclosing party prior to receiving such information that he/she previously
7 received the Confidential Information;

8 b. Outside counsel for the parties and licensed in-house counsel
9 (but only if in-house counsel is not involved in competitive decision making on
10 behalf of the receiving party [*Brown Bag Software v. Symantec Corp.*, 960 F.2d
11 1465, 1465-72 (9th Cir. 1992)]) directly assisting that party’s outside counsel in the
12 defense of this Action, including members of such attorneys’ staff (e.g., paralegals,
13 legal secretaries and law clerks);

14 c. Independent consultants or experts retained by any party in this
15 case who are expected to testify at trial or employed by counsel in order to assist in
16 preparation for trial or for deposition, and who are not currently competitors of any
17 party or employed by a competitor of any party;

18 d. Non-party witnesses during the course of their depositions,
19 provided that (1) counsel for the designating party is informed that the witness will
20 be shown such Material before the designated information is shown to the witness,
21 to give counsel for the designating party an opportunity to object, and (2) if an
22 objection to showing the witness is made, the designated Material shall not be
23 shown to the witness until the Court rules on the objection;

24 e. The Court and court personnel;

25 f. Court reporters or videographers selected by the parties.

26 Copies may be made by or for the foregoing persons, provided that all copies
27 are appropriately marked.

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1 12. Before counsel for a party may disclose Confidential Information to
2 any Qualified Person other than those Qualified Persons identified in
3 subparagraphs (b), (e) and (f) of Paragraph 10 hereof or subparagraphs (e) and (f)
4 of Paragraph 11 hereof, the disclosing counsel shall obtain from the Qualified
5 Person who is to receive such Confidential Information, an executed copy of a
6 Non-Disclosure Certificate in the form attached hereto as Exhibit “A.” Counsel
7 shall be responsible for obtaining signatures of all such Qualified Persons, and for
8 advising all such Qualified Persons that they are not permitted to disclose
9 Confidential Information to any person other than Qualified Persons as set forth
10 herein.

11 13. Except for the deponent, no person shall attend those portions of any
12 deposition at which Material that has been designated as “Confidential” or
13 “Confidential – Attorneys’ Eyes Only” is discussed or used as an exhibit, unless
14 such person is a Qualified Person authorized to view such material and, if required
15 to do so, has executed a copy of the Non-Disclosure Certificate in the form attached
16 as Exhibit “A” hereto.

17 14. If original documents or materials are made available for inspection,
18 such documents or materials need not be designated for protection until after the
19 inspecting party has indicated which material it would like copied and produced.
20 During the inspection and before the designation, all of the material made available
21 for inspection shall be deemed Confidential Information.

22 15. All Material produced or furnished in this Action (including but not
23 limited to material not marked Confidential or Confidential – Attorneys’ Eyes
24 Only) including deposition transcripts and deposition videos, shall be used only in
25 connection with this Action and shall not be otherwise disclosed except as agreed
26 to by the parties, as required by any court, judicial tribunal, administrative agency,
27 taxing body or other governmental unit or entity, or as otherwise required by law.
28 All Material, including such deposition transcripts or videos, produced or furnished

1 in this Action shall not be used or disclosed for any business, commercial or
2 competitive purpose and, furthermore, shall not be used in connection with the
3 media or in connection with materials for public dissemination of any kind or type,
4 including but not limited to dissemination of such Material to the public via the
5 internet, social media or any other means now or hereafter known. Subject to the
6 other provisions of this Order governing the parties' filing of Confidential
7 Information (see paragraph 16), the immediately foregoing prohibition against
8 public dissemination of the Material is not intended to encompass Material
9 disseminated to the public by virtue of inclusion in a public filing on the docket in
10 this Action.

11 16. The parties acknowledge that this Protective Order does not entitle
12 them to file Confidential Information under seal. Any party or non-party must seek
13 permission to file Confidential Information under seal in accordance with the
14 Federal Rules of Civil Procedure and the Local Rules of this Court. No
15 Confidential Information shall be publicly filed with the Court absent agreement of
16 the producing party or Order of the Court.

17 17. The failure of a party or non-party to file a motion or application to
18 seal in accordance with the applicable rules shall not operate as or result in a waiver
19 of the right of such party or non-party to designate or seek to have the Confidential
20 Information at issue treated as Confidential Information for other purposes.

21 18. If Material that a party or non-party intends to designate as
22 Confidential Information is inadvertently disclosed without being marked as
23 Confidential Information in accordance with the provisions of this Protective
24 Order, the failure so to designate such Material shall not be deemed a waiver of its
25 confidentiality. The disclosing party shall be permitted to correct its error and
26 provide notice of the confidentiality of the Materials. Such correction and notice
27 thereof shall be made in writing, accompanied by substitute copies of any
28 document(s) or response(s) appropriately marked as Confidential Information. At

1 such time as the Material is designated as Confidential Information, it shall be
2 treated as Confidential Information in accordance with this Protective Order.
3 Within ten (10) days of receipt of the substitute copies, the receiving party shall
4 return or destroy the previously-unmarked items and all copies thereof.

5 19. In the event that Confidential Information is, either intentionally or
6 inadvertently, disclosed to someone not authorized to receive such Information
7 under this Protective Order or, if a person so authorized breaches any of its
8 obligations under this Protective Order, counsel of record for any party who is
9 involved in or aware of such disclosure shall immediately give written notice of
10 such unauthorized disclosure or breach to counsel for the party or non-party that
11 initially produced the subject Confidential Information and/or requested the
12 confidentiality designation, and also shall disclose the circumstances of the
13 unauthorized disclosure or breach. The responsible party shall also take all
14 reasonable measures promptly to ensure that no further or greater unauthorized
15 disclosure of Confidential Information is made by anyone.

16 20. The acceptance by a party of documents designated as Confidential
17 Information shall not constitute an agreement, admission or concession, or permit
18 an inference, that the Material(s) are in fact properly the subject for protection
19 under Fed. R. Civ. P. 26(c), or some other basis. Documents designated as
20 Confidential Information shall be treated in accordance with the provisions of this
21 Protective Order, except that any party may at any time seek an Order from the
22 Court determining that specified information or categories of information are not
23 properly designated as Confidential Information, provided that prior to making
24 such a motion the parties shall meet and confer in good faith to resolve any
25 differences over the designation. A party shall not be obligated to challenge the
26 propriety of a designation of Confidential Information at the time made, and failure
27 to do so shall not preclude subsequent challenge. The burden of proving that
28 Confidential Information is entitled to be designated as such rests with the party or

1 third party making such designation. With regard to any motion or application to
2 the Court concerning the improper designation of Confidential Information, the
3 prevailing party shall be entitled to receive reasonable attorneys' fees and costs
4 incurred on such motion or application.

5 21. Notwithstanding the pendency of any challenge to the designation of
6 Material as Confidential Information, all Material so designated shall be treated as
7 such and shall be subject to the provisions hereof unless and until one of the
8 following occurs: (a) the party or non-party who claims that the Material is
9 Confidential Information withdraws such designation in writing; or (b) the Court
10 rules that the Material is not Confidential Information.

11 22. In the event that a Qualified Person: (a) is served with a subpoena in
12 another action, (b) is served with a demand in another action to which the Qualified
13 Person is a party, or (c) is served with any other legal process that seeks
14 Confidential Information that was produced or designated as such by someone
15 other than the Qualified Person who receives the subpoena, demand or other legal
16 process, such Qualified Person shall give prompt written notice of the receipt of
17 such subpoena, demand or other written notice to the party or non-party who
18 produced or designated the Material as Confidential Information, and shall object
19 to its production. Should the person seeking access to the Confidential Information
20 take action to enforce the subpoena, demand or other legal process against the
21 Qualified Person from whom the Confidential Information is sought, the Qualified
22 Person shall cooperate with the party or non-party to this Action who produced or
23 designated the Material as Confidential Information in resisting any efforts by such
24 other parties to obtain such Confidential Information from the Qualified Person.
25 Nothing herein shall be construed as requiring the Qualified Person from whom the
26 Confidential Information is sought, or anyone else subject to this Protective Order,

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1 to challenge or appeal any court order requiring production of the Confidential
2 Information, or to subject himself or herself to any penalties for noncompliance
3 with any legal process or order, or to seek any relief from this Court.

4 23. The provisions of this Protective Order may be modified at any time
5 by stipulation of the parties approved by order of the Court. In addition, a party
6 may at any time apply to the Court for modification of this Protective Order
7 pursuant to a motion brought on in accordance with the rules of the Court. The
8 parties consent to an expedited hearing upon any such application, provided that
9 reasonable time for response is allowed.

10 24. Nothing herein shall prevent any of the parties from using Confidential
11 Information in any hearing or trial in this litigation or from seeking further
12 protection with respect to the use of any Confidential Information in any hearing or
13 trial in this litigation. The parties shall consider, and if appropriate propose means
14 to preserve the confidentiality of Confidential Information presented at any hearing
15 or trial in advance of such hearing or trial.

16 25. By stipulating to the entry of this Protective Order, no party waives
17 any right it otherwise would have to object to disclosing or producing any
18 information or item on any ground not addressed in this Protective Order.
19 Similarly, no party waives any right to object on any ground to use in evidence of
20 any of the material covered by this Protective Order.

21 26. Within thirty (30) days of the final determination of this Action,
22 whether by judgment, settlement or otherwise, and including any appeal from a
23 final judgment, any person who is in possession of physical copies of documents
24 that have been designated as Confidential Information shall return such copies to
25 the person who produced it or the person's counsel, or shall destroy them, except
26 that this paragraph shall not apply to work product of counsel, to counsels' copies
27 of pleadings, briefs or declarations, or to Confidential Information in the possession
28 of the Court/Court personnel. Written confirmation of such return or destruction

1 shall be forwarded to the person producing such Confidential Information or the
2 person's counsel.

3 27. This Protective Order shall survive the final conclusion of this Action
4 and shall continue in full force and effect. The Court shall retain jurisdiction over
5 the parties and any other person bound by this Protective Order in order to enforce
6 the provisions contained herein.

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1 28. By affixing their signatures below, the parties agree to abide by the
2 terms of this Stipulation until this Protective Order or a further protective order is
3 entered by the Court.

4 **IT IS SO STIPULATED.**

5 Dated: October 26, 2017

6 SEITER LEGAL STUDIO
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8 By: /s/ William J. Seiter

9
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27 *Attorneys for Defendant Color Image Apparel, Inc.*

28 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED AS MODIFIED.**

Dated: November 7, 2017

/s/
Honorable Jacqueline Chooljian
United States Magistrate Judge

1 **EXHIBIT A** –

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____, declare under penalty of perjury
4 that my address is _____. I
5 have read in its entirety and understand the Protective Order that was issued by the
6 United States District Court for the Central District of California on
7 November 7, 2017, in the case of *Eveden Inc. v. Color Image Apparel, Inc.* (CD Cal.
8 2:17-cv-02121-MWF-JC).

9 I agree to comply with and to be bound by all the terms of the Protective
10 Order and I understand and acknowledge that failure to so comply could expose me
11 to sanctions and punishment in the nature of contempt.

12 I will hold all Confidential Information and any duplicates, notes, abstracts
13 or summaries thereof in confidence, will not disclose such information to anyone
14 not specifically entitled to access under the Protective Order, and will use the
15 Confidential Information solely for purposes of this litigation, except as provided
16 by the Protective Order.

17 At the conclusion of this litigation, I will return or destroy all Confidential
18 Information and any duplicates, notes, abstracts or summaries thereof, whether
19 prepared by me or anyone else, to counsel for the party by whom I am employed or
20 retained.

21 I further agree to submit to the jurisdiction of the United States District Court
22 for the Central District of California for the purpose of enforcing the terms of the
23 Protective Order, even if such enforcement proceedings occur after termination of
24 this action.

25 I hereby swear and affirm under the penalties of perjury that the foregoing is
26 true and correct.

27 Date: _____

28 City and State where sworn and signed: _____

Printed name: _____

Signature: _____