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19 UNITED STATES DISTRICT COURT
 20 CENTRAL DISTRICT OF CALIFORNIA

21 YS Garments d/b/a Next Level
 22 Apparel,

23 Plaintiffs,

24 vs.

25 Continental Casualty Company,
 26 Defendant.

27 Case No. 2:17-cv-3345 SJO (JEMx)

28 **PROTECTIVE ORDER**

1 1. PURPOSES AND LIMITATIONS

2 1.1 Purpose: Disclosure and discovery in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
6 stipulate to and petition the court to enter the following Stipulated Protective Order
7 (“this Protective Order”).

8 1.2 Good Cause Statement: The parties to this action respectfully request
9 the court to enter this Protective Order to prevent public disclosure of their
10 confidential proprietary business information. This action is likely to involve trade
11 secrets, customer and pricing lists and other valuable research, development,
12 commercial, financial, technical and/or proprietary information for which special
13 protection from public disclosure and from use for any purpose other than
14 prosecution of this action is warranted. Such confidential and proprietary materials
15 and information consist of, among other things, confidential business or financial
16 information, information regarding confidential business practices, or other
17 confidential research, development, or commercial information (including
18 information implicating privacy rights of third parties), information otherwise
19 generally unavailable to the public, or which may be privileged or otherwise
20 protected from disclosure. Also, a confidential settlement agreement was reached
21 in the Underlying Action which is the basis of this lawsuit.

22 To expedite the flow of information, to facilitate the prompt resolution of
23 disputes over confidentiality of discovery materials, to adequately protect
24 information the parties are entitled to keep confidential, to ensure that the parties
25 are permitted reasonable necessary uses of such material in preparation for and in
26 the conduct of trial, to address their handling at the end of the litigation, and to
27 serve the ends of justice, a protective order for such information is justified in this
28 matter. It is the intent of the parties that information will not be designated as

1 confidential for tactical reasons and that nothing be so designated without a good
2 faith belief that it has been maintained in a confidential, non-public manner, and
3 there is good cause why it should not be part of the public record of this case.

4 2. DEFINITIONS

5 2.1 Challenging Party: a Party or Non-Party that challenges the
6 designation of information or items under this Protective Order.

7 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
8 how it is generated, stored or maintained) or tangible things the party designating or
9 producing it reasonably believes contains or reflects information subject to
10 protection, including without limitation: (1) information in the nature of a trade
11 secret or other research, investigation, development, commercial or operational
12 information of a confidential or proprietary nature; (2) financial, marketing,
13 planning, strategic, investigative, or other internal information, data, analyses, or
14 specifications of a proprietary, confidential or competitive nature; (3) information
15 deemed confidential or non-public by any regulatory body; (4) information
16 otherwise protected by law from disclosure; and/or (5) any other information with
17 respect to which there is a compelling need for confidentiality. Documents
18 designated as “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER” shall be
19 limited to documents that have not been made public, which the disclosing party in
20 good faith believes will, if disclosed, have the effect of causing harm to its business
21 or competitive position; or in the case of individuals, shall be limited to documents
22 that reveal personal information, such as contact information, social security
23 numbers, or Protected Health Information (as defined in 45 CFR § 160.103).

24 2.3 Counsel (without qualifier): Outside Counsel of Record and House
25 Counsel (as well as their support staff).

26 2.4 Designating Party: a Party or Non-Party that designates information or
27 items that it produces in disclosures or in responses to discovery as
28 “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER.”

1 2.5 Disclosure or Discovery Material: all items or information, regardless
2 of the medium or manner in which it is generated, stored, or maintained (including,
3 among other things, testimony, transcripts, and tangible things), that are produced
4 or generated in disclosures or responses to discovery in this matter.

5 2.6 Expert: a person with specialized knowledge or experience in a matter
6 pertinent to the litigation who has been retained by a Party or its counsel to serve as
7 an expert witness or as a consultant in this action.

8 2.7 House Counsel: attorneys who are employees of a party to this action.
9 House Counsel does not include Outside Counsel of Record or any other outside
10 counsel.

11 2.8 Non-Party: any natural person, partnership, corporation, association,
12 or other legal entity not named as a Party to this action.

13 2.9 Outside Counsel of Record: attorneys who are not employees of a
14 party to this action but are retained to represent or advise a party to this action and
15 have appeared in this action on behalf of that party or are affiliated with a law firm
16 which has appeared on behalf of that party.

17 2.10 Party: any party to this action, including all of its officers, directors,
18 employees, consultants, retained experts, and Outside Counsel of Record (and their
19 support staffs).

20 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
21 Discovery Material in this action.

22 2.12 Professional Vendors: persons or entities that provide litigation
23 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
24 demonstrations, and organizing, storing, or retrieving data in any form or medium)
25 and their employees and subcontractors.

26 2.13 Protected Material: any Disclosure or Discovery Material that is
27 designated as “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER.”
28

1 2.14 Receiving Party: a Party that receives Disclosure or Discovery
2 Material from a Producing Party.

3 3. SCOPE

4 The protections conferred by this Protective Order cover not only Protected
5 Material (as defined above), but also (1) any information copied or extracted from
6 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
7 Material; and (3) any testimony, conversations, or presentations by Parties or their
8 Counsel that might reveal Protected Material. However, the protections conferred
9 by this Protective Order do not cover the following information: (a) any information
10 that is in the public domain at the time of disclosure to a Receiving Party or
11 becomes part of the public domain after its disclosure to a Receiving Party as a
12 result of publication not involving a violation of this Protective Order, including
13 becoming part of the public record through trial or otherwise; and (b) any
14 information known to the Receiving Party prior to the disclosure or obtained by the
15 Receiving Party after the disclosure from a source who obtained the information
16 lawfully and under no obligation of confidentiality to the Designating Party. Any
17 use of Protected Material at trial shall be governed by a separate agreement or
18 order.

19 4. DURATION

20 Final disposition shall be deemed (1) dismissal of all claims and defenses in
21 this action, with or without prejudice; or (2) if there is a trial, after completion of
22 post-trial briefing, final determination of all appeals, and entry of final judgment.

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection.

25 Each Party or Non-Party that designates information or items for protection under
26 this Order must take care to limit any such designation to specific material that
27 qualifies under the appropriate standards. The Designating Party must designate for
28 protection only those parts of material, documents, items, or oral or written

1 communications that qualify – so that other portions of the material, documents,
2 items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this Protective Order.

4 Mass, indiscriminate, or routinized designations are prohibited, as are
5 designations that are shown to be clearly unjustified or that have been made for an
6 improper purpose (e.g., to unnecessarily encumber or retard the case development
7 process or to impose unnecessary expenses and burdens on other parties). If it
8 comes to a Designating Party’s attention that information or items that it designated
9 for protection do not qualify for protection, that Designating Party must promptly
10 notify all other Parties that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in
12 this Protective Order (see, e.g., second paragraph of section 5.2(a) below), or as
13 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
14 protection under this Protective Order must be clearly so designated before the
15 material is disclosed or produced. Because Continental already has produced
16 documents in response to discovery requests, Continental shall have fourteen (14)
17 days from the date this stipulation is executed to designate any previously produced
18 documents or information. In the event it so designates, the documents or
19 information previously produced without the designation shall be destroyed by
20 Plaintiff and its counsel and any other person to whom such documents or
21 information have been provided.

22 Designation in conformity with this Protective Order requires:

23 (a) for information in documentary form (e.g., paper or electronic
24 documents, including discovery responses, but excluding transcripts of depositions
25 or other pretrial or trial proceedings), that the Producing Party affix the legend
26 “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER” to each page that
27 contains protected material. If only a portion or portions of the material on a page
28 qualifies for protection, the Producing Party also must clearly identify the protected

1 portion(s) (e.g., by making appropriate markings in the margins).

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

15 (b) for testimony given in deposition or in other pretrial or trial
16 proceedings, that the Designating Party either: (i) identify the protected testimony
17 on the record, before the close of the deposition, hearing, or other proceeding; or (ii)
18 send a letter to all counsel within the time permitted for the review and signing of
19 the deposition by the witness (in the event of a deposition) or within 45 days of
20 receipt of the transcript of the hearing (in the event of a hearing) identifying the
21 protected testimony.

22 (c) for information produced in some form other than documentary and
23 for any other tangible items, that the Producing Party affix in a prominent place on
24 the exterior of the container or containers in which the information or item is stored
25 the legend “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER.” If only a
26 portion or portions of the information or item warrant protection, the Producing
27 Party, to the extent practicable, shall identify the protected portion(s).

28

1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the Designating Party’s right to secure protection under this Protective Order for
4 such material. Upon timely correction of a designation, the Receiving Party must
5 make reasonable efforts to assure that the material is treated in accordance with the
6 provisions of this Protective Order.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
9 designation of confidentiality but must do so within the discovery period set by the
10 Court. Unless a prompt challenge to a Designating Party’s confidentiality
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
12 economic burdens, or a significant disruption or delay of the litigation, a Party does
13 not waive its right to challenge a confidentiality designation by electing not to
14 mount a challenge promptly after the original designation is disclosed.

15 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
16 resolution process by providing written notice of each designation it is challenging
17 and describing the basis for each challenge. To avoid ambiguity as to whether a
18 challenge has been made, the written notice must recite that the challenge to
19 confidentiality is being made in accordance with this specific paragraph of this
20 Protective Order. The parties shall attempt to resolve each challenge in good faith
21 and must begin the process by conferring directly (in voice to voice dialogue; other
22 forms of communication are not sufficient). In conferring, the Challenging Party
23 must explain the basis for its belief that the confidentiality designation was not
24 proper and must give the Designating Party an opportunity to review the designated
25 material, to reconsider the circumstances, and, if no change in designation is
26 offered, to explain the basis for the chosen designation. A Challenging Party may
27 proceed to the next stage of the challenge process only if it has engaged in this meet
28 and confer process first or establishes that the Designating Party is unwilling to

1 participate in the meet and confer process in a timely manner.

2 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
3 court intervention, the Parties shall file and serve a Joint Stipulation following the
4 procedure set forth in Local Rule 37. The Stipulation must be accompanied by a
5 competent declaration affirming that the Parties complied with the meet and confer
6 requirements imposed in the preceding paragraph.

7 The burden of persuasion in any such challenge proceeding shall be on the
8 Designating Party. Frivolous challenges, and those made for an improper purpose
9 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
10 expose the Challenging Party to sanctions.

11 If the Parties need to file the Joint Stipulation under Local Rule 37 under
12 seal, the Parties may file a stipulation to that effect or the moving party may file an
13 *ex parte* application making the appropriate request. The Parties must set forth good
14 cause in the stipulation or *ex parte* application as to why the Joint Stipulation or
15 portions thereof should be filed under seal.

16 7. ACCESS TO AND USE OF PROTECTED MATERIAL

17 7.1 Basic Principles. A Receiving Party may only use Protected Material
18 that is disclosed or produced by another Party or by a Non-Party in connection with
19 this case for prosecuting, defending, or attempting to settle this litigation. Protected
20 Material may not be used for any other purpose whatsoever. Protected Material may
21 be disclosed only to the categories of persons and under the conditions described in
22 this Protective Order. When the litigation has been terminated, a Receiving Party
23 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

27 7.2 Disclosure of “CONFIDENTIAL-SUBJECT TO PROTECTIVE
28 ORDER” Information or Items. Unless otherwise ordered by the court or permitted

1 in writing by the Designating Party, a Receiving Party may disclose any
2 information or item designated “CONFIDENTIAL-SUBJECT TO PROTECTIVE
3 ORDER” only to:

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

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

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

12 (d) the court and its personnel;

13 (e) court reporters and their staff, professional jury or trial consultants,
14 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary
15 for this litigation and who have signed the “Acknowledgment and Agreement to Be
16 Bound” (Exhibit A);

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

23 (g) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information.

25 7.3 Court Hearings. If any party or Non-Party bound by this Protective
26 Order intends to disclose, discuss or otherwise refer to any Protected Material in
27 open court at any hearing or trial, that person must notify the Court, the party that
28 designated the Protected Material, and all other parties in the action of its intention

1 to do so.

2 7.4 Filings with the Court. If confidential material is included in any
3 papers to be filed in Court, such papers shall be accompanied by an application to
4 file the papers -- or the confidential portion thereof – under seal; the application
5 must demonstrate good cause for the under seal filing.

6 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
7 IN OTHER LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation
9 that compels disclosure of any information or items designated in this action as
10 “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER,” that Party must:

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

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

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

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

28

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

3 (a) The terms of this Protective Order are applicable to information
4 produced by a Non-Party in this action and designated as “CONFIDENTIAL-
5 SUBJECT TO PROTECTIVE ORDER.” Such information produced by Non-
6 Parties in connection with this litigation is protected by the remedies and relief
7 provided by this Protective Order. Nothing in these provisions should be construed
8 as prohibiting a Non-Party from seeking additional protections.

9 (b) In the event that a Party is required, by a valid discovery request, to
10 produce a Non-Party’s confidential information in its possession, and the Party is
11 subject to an agreement with the Non-Party not to produce the Non-Party’s
12 confidential information, then the Party shall:

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

16 (2) promptly provide the Non-Party with a copy of the Stipulated
17 Protective Order in this litigation, the relevant discovery request(s), and a
18 reasonably specific description of the information requested; and

19 (3) make the information requested available for inspection by the
20 Non-Party.

21 (c) If the Non-Party fails to object or seek a protective order from this
22 court within 14 days of receiving the notice and accompanying information, the
23 Receiving Party may produce the Non-Party’s confidential information responsive
24 to the discovery request. If the Non-Party timely seeks a protective order, the
25 Receiving Party shall not produce any information in its possession or control that
26 is subject to the confidentiality agreement with the Non-Party before a
27 determination by the court. Absent a court order to the contrary, the Non-Party
28 shall bear the burden and expense of seeking protection in this court of its Protected

1 Material.

2 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

3 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
4 Protected Material to any person or in any circumstance not authorized under this
5 Protective Order, the Receiving Party must immediately (a) notify in writing the
6 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
7 all unauthorized copies of the Protected Material, (c) inform the person or persons
8 to whom unauthorized disclosures were made of all the terms of this Protective
9 Order, and (d) request such person or persons to execute the “Acknowledgment and
10 Agreement to Be Bound” that is attached hereto as Exhibit A.

11 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
12 PROTECTED MATERIAL

13 When a Producing Party gives notice to Receiving Parties that certain
14 inadvertently produced material is subject to a claim of privilege or other
15 protection, the obligations of the Receiving Parties are those set forth in Federal
16 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
17 whatever procedure may be established in an e-discovery order that provides for
18 production without prior privilege review. Pursuant to Federal Rule of Evidence
19 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
20 of a communication or information covered by the attorney-client privilege or work
21 product protection, the parties may incorporate their agreement in the stipulated
22 protective order submitted to the court.

23 12. MISCELLANEOUS

24 12.1 Right to Further Relief. Nothing in this Protective Order abridges the
25 right of any person to seek its modification by the court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this
27 Protective Order no Party waives any right it otherwise would have to object to
28 disclosing or producing any information or item on any ground not addressed in this

1 Protective Order. Similarly, no Party waives any right to object on any ground to
2 use in evidence of any of the material covered by this Protective Order.

3 13. FINAL DISPOSITION

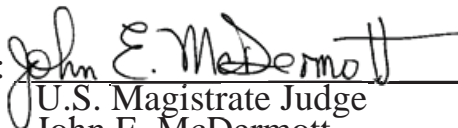
4 Within 30 days after the final disposition of this action, as defined in
5 paragraph 4 or the entry of a final judgment, each Receiving Party must return all
6 Protected Material to the Producing Party or destroy such material. As used in this
7 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
8 summaries, and any other format reproducing or capturing any of the Protected
9 Material. Whether the Protected Material is returned or destroyed, the Receiving
10 Party must submit a written certification to the Producing Party (and, if not the
11 same person or entity, to the Designating Party) by the 30 day deadline that (1)
12 identifies (by category, where appropriate) all the Protected Material that was
13 returned or destroyed and (2) affirms that the Receiving Party has not retained any
14 copies, abstracts, compilations, summaries or any other format reproducing or
15 capturing any of the Protected Material. Notwithstanding this provision, Counsel
16 are entitled to retain an archival copy of all pleadings, motion papers, trial,
17 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
18 and trial exhibits, expert reports, attorney work product, and consultant and expert
19 work product, even if such materials contain Protected Material. Any such archival
20 copies that contain or constitute Protected Material remain subject to this Protective
21 Order.

22 14. VIOLATION

23 Any violation of this Order may be punished by appropriate measures
24 including, without limitation, contempt proceedings and/or monetary sanctions.

25 **IT IS SO ORDERED.**

26
27 Date: October 2, 2017

Signed: 
U.S. Magistrate Judge
John E. McDermott

PROTECTIVE ORDER

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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand this
Protective Order issued by the United States District Court for the Central District
of California in the case of *YS Garments d/b/a Next Level Apparel v. Continental
Casualty Co.*, Case No. 2:17-cv-3345 SJO (JEMx).

I agree to comply with and to be bound by all the terms of this Protective
Order and I understand and acknowledge that failure to so comply could expose me
to sanctions and punishment in the nature of contempt. I solemnly promise that I
will not disclose in any manner any information or item that is subject to this
Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

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

Date: _____
City and State where signed: _____

Printed name: _____
Signature: _____