

1 William P. Cole, Bar No. 186772
 wcole@calljensen.com
 2 Scott P. Shaw, Bar No. 223592
 sshaw@calljensen.com
 3 Samuel G. Brooks, Bar No. 272107
 sbrooks@calljensen.com
 4 CALL & JENSEN
 5 A Professional Corporation
 6 610 Newport Center Drive, Suite 700
 Newport Beach, CA 92660
 7 Tel: (949) 717-3000
 Fax: (949) 717-3100
 8

9 Attorneys for Defendants Kohl's Department Stores, Inc.
 and Iconix Brand Group, Inc.

10
 11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**
 13

14 UNICOLORS, INC., a California
 Corporation,

15
 16 Plaintiff,

17 vs.

18 KOHL'S DEPARTMENT STORES, INC.,
 19 a Delaware Corporation; ICONIX BRAND
 GROUP, INC., individually and d/b/a
 20 "Candie's," a Delaware Corporation; and
 DOES 1 through 10,

21
 22 Defendants.

Case No. 2:17-cv-04073-GW-PLA

PROTECTIVE ORDER

23
 24 Complaint Filed: May 31, 2017

25 Trial Date: None Set



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

3 **A. PURPOSES AND LIMITATIONS**

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

16 **B. GOOD CAUSE STATEMENT**

17 This action is likely to involve trade secrets, customer and pricing lists and other
18 valuable proprietary information for which special protection from public disclosure
19 and from use for any purpose other than prosecution of this action is warranted. Such
20 confidential and proprietary materials and information consist of, among other things,
21 sales summaries, pricing, internal business strategies, and other confidential business or
22 financial information, or information regarding confidential business practices. The
23 confidential information at issue is generally unavailable to the public and may be
24 privileged or otherwise protected from disclosure under state or federal statutes, court
25 rules, case decisions, or common law.

26 Accordingly, to expedite the flow of information, to facilitate the prompt
27 resolution of disputes over confidentiality of discovery materials, to adequately protect
28 information the parties are entitled to keep confidential, to ensure that the parties are

1 permitted reasonable necessary uses of such material in preparation for and in the
2 conduct of trial, to address their handling at the end of the litigation, and serve the ends
3 of justice, a protective order for such information is justified in this matter. It is the
4 intent of the parties that information will not be designated as confidential for tactical
5 reasons and that nothing be so designated without a good faith belief that it has been
6 maintained in a confidential, non-public manner, and there is good cause why it should
7 not be part of the public record of this case.

8 **2. DEFINITIONS**

9 2.1 Action: this pending federal law suit.

10 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
11 information or items under this Order.

12 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how
13 it is generated, stored or maintained) or tangible things that qualify for protection under
14 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
15 Statement.

16 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
17 support staff).

18 2.5 Designating Party: a Party or Non-Party that designates information or
19 items that it produces in disclosures or in responses to discovery as
20 “CONFIDENTIAL.”

21 2.6 Disclosure or Discovery Material: all items or information, regardless of
22 the medium or manner in which it is generated, stored, or maintained (including, among
23 other things, testimony, transcripts, and tangible things), that are produced or generated
24 in disclosures or responses to discovery in this matter.

25 2.7 Expert: a person with specialized knowledge or experience in a matter
26 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
27 expert witness or as a consultant in this Action.
28

1 2.8 “HIGHLY CONFIDENTIAL” or “ATTORNEY EYES ONLY”
2 Information or Items: information (regardless of how it is generated, stored or
3 maintained) or tangible things that qualify for protection under Federal Rule of Civil
4 Procedure 26(c), and as specified above in the Good Cause Statement for which
5 disclosures to another party is likely to result in harm to the Designating Party.

6 2.9 House Counsel: attorneys who are employees of a party to this Action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.10 Non-Party: any natural person, partnership, corporation, association, or
10 other legal entity not named as a Party to this action.

11 2.11 Outside Counsel of Record: attorneys who are not employees of a party to
12 this Action but are retained to represent or advise a party to this Action and have
13 appeared in this Action on behalf of that party or are affiliated with a law firm that has
14 appeared on behalf of that party, including support staff.

15 2.12 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 2.14 Professional Vendors: persons or entities that provide litigation support
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
23 their employees and subcontractors.

24 2.15 Protected Material: any Disclosure or Discovery Material that is designated
25 as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or “ATTORNEY EYES
26 ONLY.”

27 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
28 from a Producing Party.

1 **3. SCOPE**

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

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

9 **4. DURATION**

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

20 **5. DESIGNATING PROTECTED MATERIAL**

21 5.1 Exercise of Restraint and Care in Designating Material for Protection.
22 Each Party or Non-Party that designates information or items for protection under this
23 Order must take care to limit any such designation to specific material that qualifies
24 under the appropriate standards. The Designating Party must designate for protection
25 only those parts of material, documents, items, or oral or written communications that
26 qualify so that other portions of the material, documents, items, or communications for
27 which protection is not warranted are not swept unjustifiably within the ambit of this
28 Order.

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

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

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this
10 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
11 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
12 must be clearly so designated before the material is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (e.g., paper or electronic documents,
15 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
16 Producing Party affix, at a minimum, the legend "CONFIDENTIAL," "HIGHLY
17 CONFIDENTIAL," or "ATTORNEY EYES ONLY" (hereinafter "CONFIDENTIAL
18 legend"), to each page that contains protected material. If only a portion or portions of
19 the material on a page qualifies for protection, the Producing Party also must clearly
20 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

21 A Party or Non-Party that makes original documents available for inspection
22 need not designate them for protection until after the inspecting Party has indicated
23 which documents it would like copied and produced. During the inspection and before
24 the designation, all of the material made available for inspection shall be deemed
25 "CONFIDENTIAL." After the inspecting Party has identified the documents it wants
26 copied and produced, the Producing Party must determine which documents, or portions
27 thereof, qualify for protection under this Order. Then, before producing the specified
28 documents, the Producing Party must affix the "CONFIDENTIAL legend" to each page

1 that contains Protected Material. If only a portion or portions of the material on a page
2 qualifies for protection, the Producing Party also must clearly identify the protected
3 portion(s) (e.g., by making appropriate markings in the margins).

4 (b) for testimony given in depositions that the Designating Party identify the
5 Disclosure or Discovery Material on the record, before the close of the deposition.

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

12 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
13 failure to designate qualified information or items does not, standing alone, waive the
14 Designating Party’s right to secure protection under this Order for such material. Upon
15 timely correction of a designation, the Receiving Party must make reasonable efforts to
16 assure that the material is treated in accordance with the provisions of this Order.

17 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
19 designation of confidentiality at any time that is consistent with the Court’s Scheduling
20 Order.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
22 resolution process under Local Rule 37.1, et seq. Any discovery motion must strictly
23 comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.

24 6.3 Burden. The burden of persuasion in any such challenge proceeding shall
25 be on the Designating Party. Frivolous challenges, and those made for an improper
26 purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties)
27 may expose the Challenging Party to sanctions. Unless the Designating Party has
28 waived or withdrawn the confidentiality designation, all parties shall continue to afford

1 the material in question the level of protection to which it is entitled under the
2 Producing Party’s designation until the Court rules on the challenge.

3
4 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with this
7 Action only for prosecuting, defending, or attempting to settle this Action. Such
8 Protected Material may be disclosed only to the categories of persons and under the
9 conditions described in this Order. When the Action has been terminated, a Receiving
10 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).
11 Protected Material must be stored and maintained by a Receiving Party at a location and
12 in a secure manner that ensures that access is limited to the persons authorized under
13 this Order.

14 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
15 ordered by the Court or permitted in writing by the Designating Party, a Receiving
16 Party may disclose any information or item designated “CONFIDENTIAL” only to:

- 17 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
18 employees of said Outside Counsel of Record to whom it is reasonably necessary to
19 disclose the information for this Action;
- 20 (b) the officers, directors, and employees (including House Counsel) of the
21 Receiving Party to whom disclosure is reasonably necessary for this Action;
- 22 (c) Experts (as defined in this Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this Action and who have signed the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 25 (d) the Court and its personnel;
- 26 (e) court reporters and their staff;

CALL &
JENSEN
EST. 1981

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

4 (g) the author or recipient of a document containing the information or a
5 custodian or other person who otherwise possessed or knew the information;

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

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

17 7.3 Disclosure of “HIGHLY CONFIDENTIAL” or “HIGHLY
18 CONFIDENTIAL – ATTORNEY’S EYES ONLY” Information or Items. Unless
19 otherwise ordered by the court or permitted in writing by the Designating Party, a
20 Receiving Party may disclose any information or item designated “HIGHLY
21 CONFIDENTIAL” or “ATTORNEY EYES ONLY” only to:

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

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

28 (c) the court and its personnel;

1 (d) court reporters and their staff;

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

5 (f) the author or recipient of a document containing the information or a
6 custodian or other person who otherwise possessed or knew the information; and

7 (g) any mediator or settlement officer, and their supporting personnel,
8 mutually agreed upon by any of the parties engaged in settlement discussions.

9 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
10 **PRODUCED IN OTHER LITIGATION**

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

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

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

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

22 If the Designating Party timely seeks a protective order, the Party served with the
23 subpoena or court order shall not produce any information designated in this action as
24 “CONFIDENTIAL” before a determination by the court from which the subpoena or
25 order issued, unless the Party has obtained the Designating Party’s permission. The
26 Designating Party shall bear the burden and expense of seeking protection in that court
27 of its confidential material and nothing in these provisions should be construed as
28

1 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
2 directive from another court.

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

5 (a) The terms of this Order are applicable to information produced by a Non-
6 Party in this Action and designated as "CONFIDENTIAL." Such information produced
7 by Non-Parties in connection with this litigation is protected by the remedies and relief
8 provided by this Order. Nothing in these provisions should be construed as prohibiting a
9 Non-Party from seeking additional protections.

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

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

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

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

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

1 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
2 Court of its Protected Material.

3 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

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

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

24 **12. MISCELLANEOUS**

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

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this
28 Protective Order, no Party waives any right it otherwise would have to object to



1 disclosing or producing any information or item on any ground not addressed in this
2 Stipulated Protective Order. Similarly, no Party waives any right to object on any
3 ground to use in evidence of any of the material covered by this Protective Order.

4 12.3 Filing Protected Material. A Party that seeks to file under seal any
5 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
6 only be filed under seal pursuant to a court order authorizing the sealing of the specific
7 Protected Material at issue; good cause must be shown in the request to file under seal.
8 If a Party's request to file Protected Material under seal is denied by the Court, then the
9 Receiving Party may file the information in the public record unless otherwise
10 instructed by the Court.

11 **13. FINAL DISPOSITION**

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

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

5 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
6

7 

8 Dated: January 31, 2018

By:

Honorable Paul L. Abrams
United States Magistrate Judge

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 the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of *Unicolors, Inc. v. Kohl's Department Stores, Inc.* (Case No. 2:17-cv-04073-GW-PLA). I agree to comply with and to be bound by all the terms of this Stipulated 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 Stipulated 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 Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____