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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

JAREL BROWN, an individual, on behalf of himself and others similarly situated,

Plaintiff,

v.

SAKS & COMPANY, LLC a Delaware Limited Liability Corporation, and DOES 1 thru 50, inclusive,

Defendants.

Case No. 2:17-cv-04210 (SJO)JEM
DISCOVERY MATTER

2 17 Magistrate Judge John E. McDermott

STIPULATION FOR PROTECTIVE ORDER

Complaint Filed: June 6, 2017

1 *(Additional Plaintiff's Counsel-Continued)*

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1 Plaintiff Jarel Brown (“Plaintiff”) and Defendant Saks & Company, LLC
2 (“Saks” or “Defendant”) (collectively, the “Parties”) in the above-captioned matter
3 hereby submit this stipulated protective order and agree to the following:

4 **Introduction and Good Cause Statement**

5 The Parties have agreed that the proceedings in the above-captioned matter may
6 involve the discovery and use of confidential, non-public, sensitive, and/or proprietary
7 business, employment, trade secret, financial, and/or personally identifiable
8 information, documents, and other materials. The Parties have agreed to produce such
9 documents only on the agreement that such information or items will be disclosed as
10 provided in this Order. In order to enable discovery in this matter, the Parties have
11 agreed to stipulate to protect certain privileged and otherwise protected documents,
12 data (including electronically stored information) and other information, including
13 without limitation, metadata (collectively “Documents”), against claims of waiver and
14 inadvertent production in the event they are produced during the course of this
15 litigation whether pursuant to a Court Order, a Party’s discovery request or informal
16 production.

17 Both Parties may be required to produce large volumes of Documents and the
18 Parties wish to comply with discovery deadlines and complete discovery as
19 expeditiously as possible, while preserving and without waiving any evidentiary
20 protections or privileges applicable to the information contained in the Documents
21 produced, including as against third parties and other Federal and State proceedings,
22 and in addition to their agreement, need the additional protections of a Court Order
23 under Federal Rule of Evidence (“FRE”) 502(d) and (e) to do so. In order to comply
24 with applicable discovery deadlines, a party may be required to produce certain
25 categories of Documents that have been subject to minimal or no attorney review (the
26 “Disclosures”). This Stipulated Protective Order and Clawback Order (the “Order”) is
27 designed to foreclose any arguments that by making such Disclosures, the disclosure
28 or production of Documents subject to a legally recognized claim of privilege,

1 including without limitation the attorney-client privilege, work-product doctrine, or
2 other applicable privilege:

- 3 (a) was not inadvertent by the Producing Party;
- 4 (b) that the Producing Party did not take reasonable steps to prevent
5 the disclosure of privileged Documents;
- 6 (c) that the Producing Party did not take reasonable or timely steps to
7 rectify such Disclosure; and/or
- 8 (d) that such Disclosure acts as a waiver of applicable privileges or
9 protections associated with such Documents.

10 Because the purpose of this Order is to protect and preserve privileged
11 Documents, the Parties agree they are bound as follows from and after the date their
12 counsel have signed it, even if such execution occurs prior to Court approval.

13 The Parties seek the entry of the Order, pursuant to Federal Rule of Civil
14 Procedure 26(c), governing the disclosure of documents and information designated as
15 "Confidential" or "Attorneys' Eyes Only" based on the terms below, as well as an
16 Order, pursuant to FRE 502, governing the return of inadvertently produced
17 documents and data and affording them the protections of FRE 502(d) and (e) based
18 on the terms below.

19 **THE PARTIES STIPULATE AND AGREE AS FOLLOWS:**

20 **1. DEFINITIONS**

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

24 b. Disclosures or Discovery Material: all items or information,
25 regardless of the medium or manner generated, stored, or maintained (including,
26 among other things, documents, data (including electronically stored information),
27 testimony, transcripts, or tangible things) that are produced or generated in disclosures
28 or responses to another party in this matter.

1 c. “Confidential” Information or Items: information (regardless of
2 how generated, stored or maintained) that has not been made public or is not
3 otherwise available or accessible in the public domain and that concerns or relates to
4 the confidential or proprietary information of either Party or any third parties.
5 Further, Confidential Information is information for which disclosure is likely to have
6 the effect of causing harm to either Party, or person from whom the information was
7 obtained, or to the Parties’ or third-parties’ privacy. Confidential Information also
8 includes private information pertaining to Defendant’s employees, including without
9 limitation contact and other personally identifiable information, for which the Parties
10 or any third party have a duty to maintain confidentiality.

11 d. “Attorneys’ Eyes Only” Information or Items: extremely sensitive
12 “Confidential” Information or Items whose disclosure to another Party or nonparty
13 would create a substantial risk of serious harm that could not be avoided by less
14 restrictive means.

15 e. Receiving Party: a Party that receives Disclosure or Discovery
16 Material from a Producing Party in this action.

17 f. Producing Party: a Party that produces Disclosure or Discovery
18 Material in this action.

19 g. Designating Party: a Party that designates information or items
20 that it produces in disclosures or in responses to discovery as “Confidential” or
21 “Attorneys’ Eyes Only.”

22 h. Protected Material: any Disclosure or Discovery Material that is
23 designated as “Confidential” or as “Attorneys’ Eyes Only” pursuant to this Order.

24 i. Outside Counsel: attorneys who are not employees of a Party but
25 who are retained to represent or advise a Party in this action.

26 j. In-House Counsel: attorneys who are employees of a Party.

27 k. Counsel (without qualifier): Outside Counsel and In-House
28 Counsel (as well as their support staffs).

1 l. Expert: a person with specialized knowledge or experience in a
2 matter pertinent to the litigation who has been retained by a Party or its Counsel to
3 serve as an expert witness or as a consultant in this action and who is not a past or a
4 current employee of a Party or of a competitor of a Party and who, at the time of
5 retention, is not anticipated to become an employee of a Party or a competitor of a
6 Party. This definition includes a professional jury or trial consultant retained in
7 connection with this litigation.

8 m. Professional Vendors: persons or entities that provide litigation
9 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
10 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and
11 their employees and subcontractors.

12 2. **SCOPE**

13 The protections conferred by this Order cover not only Protected Material (as
14 defined above), but also any information copied or extracted therefrom, as well as all
15 copies, excerpts, summaries, or compilations thereof, plus testimony, conversations,
16 or presentations by Parties or Counsel to or in Court or in other settings that might
17 reveal Protected Material.

18 3. **DURATION**

19 Even after the termination of this litigation, the confidentiality obligations
20 imposed by this Order shall remain in effect until a Designating Party agrees
21 otherwise in writing or a Court order otherwise directs.

22 4. **DESIGNATING PROTECTED MATERIAL**

23 a. Exercise of Restraint and Care in Designating Material for
24 Protection. Each Party or non-party that designates information or items for
25 protection under this Order must take care to limit any such designation to specific
26 material that qualifies under appropriate standards. A Designating Party must take
27 care to designate for protection only those parts of material, documents, items, or oral
28 or written communications that qualify – so that other portions of the material

1 documents, items, or communications for which protection is not warranted are not
2 swept unjustifiably within the ambit of this Order.

3 If it comes to a Party's attention that information or items that it designated for
4 protection do not qualify for protection at all, or do not qualify for the level of
5 protection initially asserted, that Party must promptly notify the other Party that it is
6 withdrawing the mistaken designation.

7 b. Manner and Timing of Designations. Except as otherwise
8 provided in this Order (see, e.g., second paragraph of Paragraph 4(b)(i) below), or as
9 otherwise stipulated or ordered, material that qualifies for protection under this Order
10 must be clearly so designated before the material is disclosed or produced.

11 Designation in conformity with this Order requires:

12 i. For **information in documentary form** (apart from
13 transcripts of depositions or other pretrial or trial proceedings), that the Producing
14 Party affix the legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" on each
15 page that contains protected material. If only a portion or portions of the material on a
16 page qualifies for protection, the Producing Party also must clearly identify the
17 protected portion(s) (e.g., by making appropriate markings in the margins) and must
18 specify, for each portion, the level of protection being asserted (either
19 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY").

20 In the event that a party makes documents available for inspection, rather than
21 delivering copies to another party, no marking need be made in advance of the initial
22 inspection. For purposes of the initial inspection, all documents produced shall be
23 considered as marked "ATTORNEYS' EYES ONLY." Thereafter, upon the
24 inspecting party's selection of documents for copying, the Producing Party may mark
25 the copies "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY," pursuant to this
26 Order.

27 For **testimony given in deposition or in other pretrial or trial proceedings,**
28 that the Party offering or sponsoring the testimony identify on the record, before the

1 close of the deposition, hearing, or other proceeding, all protected testimony, and
2 further specify any portions of the testimony that qualify as “ATTORNEYS’ EYES
3 ONLY.” When it is impractical to identify separately each portion of testimony that is
4 entitled to protection, and when it appears that substantial portions of the testimony
5 may qualify for protection, the Party that sponsors, offers, or gives the testimony may
6 invoke on the record (before the deposition or proceeding is concluded) a right to have
7 up to twenty (20) days after the transcript is made available to identify the specific
8 portions of the testimony as to which protection is sought and to specify the level of
9 protection being asserted (“CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY”).
10 Only those portions of the testimony that are appropriately designated for protection
11 within the 20 days shall be covered by the provisions of this Stipulated Protective
12 Order. Until the passage of 20 days, the entire transcript shall be treated as
13 “CONFIDENTIAL” OR “ATTORNEYS’ EYES ONLY” pursuant to this Order as
14 instructed by the Party offering or sponsoring the witness or presenting the testimony.

15 Transcript pages containing Protected Material must be separately bound by the
16 court reporter, who must affix to the top of each such page the legend
17 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” as instructed by the Party
18 offering or sponsoring the witness or presenting the testimony.

19 ii. For **information produced in some form other than**
20 **documentary, and for any other tangible items**, that the Producing Party affix in a
21 prominent place on the exterior of the container or containers in which the information
22 or item is stored the legend “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”
23 If only portions of the information or item warrant protection, the Producing Party, to
24 the extent practicable, shall identify the protected portions, specifying whether they
25 qualify as “CONFIDENTIAL” or as “ATTORNEYS’ EYES ONLY.”

26 c. Inadvertent Failures to Designate. If timely corrected, an
27 inadvertent failure to designate qualified information or items as “CONFIDENTIAL”
28 or “ATTORNEYS’ EYES ONLY” does not, standing alone, waive the Designating

1 Party's right to secure protection under this Order for such material. If material is
2 appropriately designated as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY"
3 after the material was initially produced, the Receiving Party, on timely notification of
4 the designation, must make reasonable efforts to assure that the material is treated in
5 accordance with the provisions of this Order from that point forward. The
6 Designating Party may seek relief to address any situation where the Receiving Party
7 refuses, either directly or indirectly, to accord proper treatment of materials after
8 notice of an inadvertent failure to designate by the Designating Party.

9 d. Use of Confidential and Attorneys' Eyes Only Material.

10 Documents and other material designated "CONFIDENTIAL" and "ATTORNEYS'
11 EYES ONLY" shall be used solely and exclusively for preparing for and prosecuting
12 this case, including any claims on behalf of the named plaintiff(s) and any putative
13 class members pending the completion of the judicial process, including appeal.
14 "CONFIDENTIAL" and "ATTORNEYS' EYES ONLY" Documents and other
15 material cannot be used for any other purpose in any other matter or proceeding for
16 any reason whatsoever.

17 5. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 a. Timing of Challenges. The Parties agree to make best efforts to
19 promptly notify the other Party of any confidentiality designation that is in dispute.
20 However, unless a prompt challenge to a Designating Party's confidentiality
21 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary
22 economic burdens, or a significant disruption or delay of the litigation, a Party does
23 not waive its right to challenge a confidentiality designation by electing in good faith
24 not to mount a challenge promptly after the original designation is disclosed. Until
25 agreement is reached between Parties as to a Confidentiality Designation or the Court
26 rules on a judicial challenge to a Confidentiality Designation pursuant to the
27 procedures in Paragraph 5(b) below, the document shall be treated as
28 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" pursuant to this Agreement.

1 b. Judicial Intervention. In the event that the Receiving Party objects
2 to a confidentiality designation, the Receiving Party's counsel shall advise counsel for
3 the Designating Party, in writing, of the grounds for all such objections, the specific
4 documents, testimony or information to which each objection pertains, and the
5 specific reasons and legal authority or support for all such objections (the
6 "Designation Objections"). The purpose of the objection(s) is to: (1) give the
7 Designating Party a fair basis to decide whether to de-designate, and (2) to facilitate a
8 good faith discussion about whether the document(s) should be de-
9 designated. Counsel for the Designating Party shall have thirty (30) days from
10 receipt of the written Designation Objections to either (a) agree in writing to de-
11 designate documents, testimony or information pursuant to any or all of the
12 Designation Objections and/or (b) file a motion with the Court seeking to uphold any
13 or all designations on documents, testimony or information addressed by the
14 Designation Objections (the "Designation Motion"). Pending a resolution of the
15 Designation Motion by the Court, any and all existing designations on the documents,
16 testimony or information at issue in such Motion shall remain in place. The
17 Designating Party shall have the burden on any Designation Motion of establishing
18 the applicability of its confidentiality designation.

19 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

20 a. Basic Principles. A Receiving Party may use Protected Material
21 that is disclosed or produced by another Party in connection with this case only for
22 prosecuting, defending, or attempting to settle this litigation. Such Protected Material
23 may be disclosed only to the categories of persons and under the conditions described
24 in this Order. When the litigation has been terminated, a Receiving Party must comply
25 with the provisions of Paragraph 10 below (FINAL DISPOSITION).

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

1 b. Disclosure of "CONFIDENTIAL" Information or Items. Unless
2 otherwise ordered by the Court or permitted in writing by the Designating Party, a
3 Receiving Party may disclose any information or item designated CONFIDENTIAL
4 only to:

5 i. the Receiving Party's Outside Counsel of record in this
6 action, as well as employees of said Outside Counsel engaged in the representation of
7 the Parties in the above-captioned action;

8 ii. the Parties (if an entity, this includes present and former
9 officers, directors, agents and employees (including In-House Counsel));

10 iii. Experts (as defined in this Order) of the Receiving Party to
11 whom disclosure is reasonably necessary for this litigation and who have signed the
12 "Agreement to Be Bound by Protective Order" (Exhibit A);

13 iv. the Court and its personnel, subject to the procedures of
14 Paragraph 9 below;

15 v. court reporters, their staff, and professional vendors retained
16 for purposes of this litigation;

17 vi. potential, anticipated or actual fact witnesses and their
18 counsel to whom disclosure is reasonably necessary and who have signed the
19 "Agreement to Be Bound by Protective Order" (Exhibit A); and

20 vii. the author of the document or the original source of the
21 information.

22 c. Disclosure of "ATTORNEYS' EYES ONLY" Information or
23 Items. Unless otherwise ordered by the court or permitted in writing by the
24 Designating Party, a Receiving Party may disclose any information or item designated
25 "ATTORNEYS' EYES ONLY" only to:

26 i. the Receiving Party's Outside Counsel of record in this action, as
27 well as employees of said Outside Counsel engaged in the representation of the Parties
28 in the above-captioned action;

- 1 ii. In-House Counsel of the Receiving Party;
- 2 iii. Experts (as defined in this Order) of the Receiving Party (1) to
- 3 whom disclosure is reasonably necessary for this litigation; (2) who have signed the
- 4 “Agreement to Be Bound by Protective Order” (Exhibit A).
- 5 iv. the Court and its personnel, subject to the procedures of Paragraph
- 6 9 below;
- 7 v. court reporters, their staff, and professional vendors retained for
- 8 purposes of this litigation; and
- 9 vi. the author of the document or the original source of the
- 10 information.

11 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
12 **PRODUCED IN OTHER LITIGATION**

13 If a Receiving Party is served with a subpoena or an order issued in other
14 litigation that would compel disclosure of any information or items designated in this
15 action as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” the Receiving Party
16 must so notify the Designating Party, in writing (by email, if possible) immediately
17 and in no event more than three (3) court days after receiving the subpoena or order.
18 Such notification must include a copy of the subpoena or court order. The Receiving
19 Party also must immediately inform in writing the Party who caused the subpoena or
20 order to issue in the other litigation that some or all the material covered by the
21 subpoena or order is the subject of this Protective Order. In addition, the Receiving
22 Party must deliver a copy of this Stipulated Protective Order promptly to the Party in
23 the other action that caused the subpoena or order to issue. Under no circumstances
24 shall the Receiving Party produce “CONFIDENTIAL” or “ATTORNEYS’ EYES
25 ONLY” absent a specific Order by the Court after an appropriate Motion to Quash
26 and/or Compel has been filed.

27 The purpose of imposing these duties is to alert the interested parties to the
28 existence of this Protective Order and to afford the Designating Party in this case an

1 opportunity to try to protect its confidentiality interests in the court from which the
2 subpoena or order issued. The Designating Party shall bear the burdens and the
3 expenses of seeking protection in that court of its confidential material – and nothing
4 in these provisions should be construed as authorizing or encouraging a Receiving
5 Party in this action to disobey a lawful directive from another court.

6 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

15 **9. FILING PROTECTED MATERIAL**

16 All documents containing “CONFIDENTIAL” or “ATTORNEYS’ EYES
17 ONLY” information that are filed with the Court in this action shall, as permitted by
18 the Court, be sealed pursuant to Central District Civil Local Rule 79-5 and the
19 applicable Chamber Rules of the Court, and designated with the appropriate
20 Confidentiality Designation, along with a notation that the contents are subject to a
21 Protective Order and are not to be revealed except by further order of the Court.

22 **10. FINAL DISPOSITION**

23 Unless otherwise ordered or agreed in writing by the Producing Party, within
24 sixty (60) days after the final termination of this action (including any appeals), each
25 Receiving Party must either: (1) return all Protected Material to the Producing Party;
26 or (2) destroy all Protected Material. As used in this subdivision, “all Protected
27 Material” includes all copies, abstracts, compilations, summaries or any other form of
28 reproducing or capturing any of the Protected Material. Upon request by the

1 Designating Party, the Receiving Party must submit a written certification to the
2 Designating Party by the sixty (60) day deadline that identifies (by category, where
3 appropriate) all the Protected Material that was returned or destroyed and that affirms
4 that the Receiving Party has not retained any copies, abstracts, compilations,
5 summaries or other forms of reproducing or capturing any of the Protected Material.
6 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
7 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney
8 work product, even if such materials contain Protected Material. Any such archival
9 copies that contain or constitute Protected Material remain subject to this Protective
10 Order as set forth in Paragraph 3 (DURATION) above.

11 **11. CLAWBACK AGREEMENT**

12 Pursuant to FRE 502(d) and (e), the Parties agree to and the Court orders
13 protection of privileged and otherwise protected Documents against claims of waiver
14 (including as against third parties and in other federal and state proceedings) as
15 follows:

16 (a) The disclosure or production of Documents by a Producing Party subject
17 to a legally recognized claim of privilege, including without limitation the attorney-
18 client privilege and the work-product doctrine, to a Receiving Party, shall in no way
19 constitute the voluntary disclosure of such Document.

20 (b) The inadvertent disclosure or production of any Document in this action
21 shall not result in the waiver of any privilege, evidentiary protection or other
22 protection associated with such Document as to the Receiving Party or any third
23 parties, and shall not result in any waiver, including subject matter waiver, of any
24 kind.

25 (c) If, during the course of this litigation, a party determines that any
26 Document produced by another party is or may reasonably be subject to a legally
27 recognizable privilege or evidentiary protection ("Protected Document"):
28

1 i. the Receiving Party shall: (A) refrain from reading the Protected
2 Document any more closely than is necessary to ascertain that it is privileged or
3 otherwise protected from disclosure; (B) immediately notify the Producing Party in
4 writing that it has discovered Documents believed to be privileged or protected; (C)
5 specifically identify the Protected Documents by Bates number range, and, (D) within
6 ten (10) days of discovery by the Receiving Party, return, sequester, or destroy all
7 copies of such Protected Documents, along with any notes, summaries, abstracts or
8 compilations of the content of the Protected Documents. To the extent that a
9 Protected Document has been loaded into a litigation review database under the
10 control of the Receiving Party, the Receiving Party shall have all electronic copies of
11 the Protected Document extracted from the database. Where such Protected
12 Documents cannot be destroyed or separated, they shall not be reviewed, disclosed, or
13 otherwise used by the Receiving Party. Notwithstanding, the Receiving Party is under
14 no obligation to search or review the Producing Party's Documents to identify
15 potentially privileged or work product Protected Documents.

16 ii. If the Producing Party intends to assert a claim of privilege or other
17 protection over Documents identified by the Receiving Party as Protected Documents,
18 the Producing Party will, within ten (10) days of receiving the Receiving Party's
19 written notification described above, inform the Receiving Party of such intention in
20 writing and shall provide the Receiving Party with a log for such Protected
21 Documents that is consistent with the requirements of the Federal Rules of Civil
22 Procedure, setting forth the basis for the claim of privilege or other protection. In the
23 event that any portion of a Protected Document does not contain privileged or
24 protected information, the Producing Party shall also provide to the Receiving Party a
25 redacted copy of the document that omits the information that the Producing Party
26 believes is subject to a claim of privilege or other protection.

27 (d) If, during the course of this litigation, a Party determines it has produced
28 a Protected Document:

1 i. the Producing Party may notify the Receiving Party of such
2 inadvertent production in writing, and demand the return of such documents. Such
3 notice shall be in writing, however, it may be delivered orally on the record at a
4 deposition, promptly followed up in writing. The Producing Party's written notice
5 will identify the Protected Document inadvertently produced by bates number range,
6 the privilege or protection claimed, and the basis for the assertion of the privilege and
7 shall provide the Receiving Party with a log for such Protected Documents that is
8 consistent with the requirements of the Federal Rules of Civil Procedure, setting forth
9 the basis for the claim of privilege or other protection. In the event that any portion of
10 the Protected Document does not contain privileged or protected information, the
11 Producing Party shall also provide to the Receiving Party a redacted copy of the
12 Document that omits the information that the Producing Party believes is subject to a
13 claim of privilege or other protection.

14 ii. The Receiving Party must, within ten (10) days of receiving the
15 Producing Party's written notification described above, return, sequester, or destroy
16 the Protected Document and any copies, along with any notes, summaries, abstracts or
17 compilations of the content of the Protected Document. To the extent that a Protected
18 Document has been loaded into a litigation review database under the control of the
19 Receiving Party, the Receiving Party shall have all electronic copies of the Protected
20 Document extracted from the database.

21 (e) To the extent that the information contained in a Protected Document has
22 already been used in or described in other documents generated or maintained by the
23 Receiving Party prior to the date of receipt of written notice by the Producing Party as
24 set forth in paragraphs 11(c)(ii) and 11(d)(i), then the Receiving Party shall sequester
25 such documents until the claim has been resolved. If the Receiving Party disclosed
26 the Protected Document before being notified of its inadvertent production, it must
27 take all reasonable steps to retrieve it.

28

1 (f) The Receiving Party's return, sequestering or destruction of Protected
2 Documents as provided herein will not act as a waiver of the Requesting Party's right
3 to move for the production of the returned, sequestered or destroyed documents on the
4 grounds that the documents are not, in fact, subject to a viable claim of privilege or
5 protection. However, the Receiving Party is prohibited and estopped from arguing
6 that:

7 i. the disclosure or production of the Protected Documents acts as a
8 waiver of an applicable privilege or evidentiary protection;

9 ii. the disclosure of the Protected Documents was not inadvertent;

10 iii. the Producing Party did not take reasonable steps to prevent the
11 disclosure of the Protected Documents; or

12 iv. the Producing Party failed to take reasonable or timely steps to
13 rectify the error pursuant to Federal Rule of Civil Procedure 26(b)(5)(B), or otherwise.

14 (g) Either party may submit Protected Documents to the Court under seal,
15 pursuant to Central District Civil Local Rule 79-5 and the applicable Chamber Rules
16 of the Court, for a determination of the claim of privilege or other protection. The
17 Producing Party shall preserve the Protected Documents until such claim is resolved.
18 The Receiving Party may not use the Protected Documents for any purpose absent this
19 Court's order.

20 (h) Upon a determination by the Court that the Protected Documents are
21 protected by the applicable privilege or evidentiary protection, and if the Protected
22 Documents have been sequestered rather than returned or destroyed by the Receiving
23 Party, the Protected Documents shall be returned or destroyed within 10 (ten) days of
24 the Court's order. The Court may also order the identification by the Receiving Party
25 of Protected Documents by search terms or other means.

26 (i) Nothing contained herein is intended to, or shall serve to limit a party's
27 right to conduct a review of documents, data (including electronically stored
28 information) and other information, including without limitation, metadata, for

1 relevance, responsiveness and/or the segregation of privileged and/or protected
2 information before such information is produced to another party.

3 (j) By operation of the Parties' agreement and Court Order, the Parties are
4 specifically afforded the protections of FRE 502 (d) and (e).

5 12. MISCELLANEOUS

6 a. Right to Further Relief. Nothing in this Order abridges the right of
7 any person to seek its modification by the Court in the future or the Court's right to
8 modify this Order.

9 b. Right to Assert Other Objections. By stipulating to the entry of
10 this Order, no Party waives any right it otherwise would have to object to disclosing
11 or producing any information or item on any ground not addressed in this Order.
12 Similarly, by agreeing to this Stipulation, no Party waives any right to object on any
13 ground to the use in evidence of any of the material covered by this Order.

14 Once executed by the Parties, the Stipulation shall be by treated by the Parties
15 as an Order of Court until it is formally approved by the Court. This Stipulation shall
16 also apply to additional parties, if any, that join this action unless otherwise specified
17 in writing by the parties and/or the Court.

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1 STIPULATED TO THIS 4TH DAY OF OCTOBER 2017.

3 Dated: October 4, 2017 LITTLER MENDELSON, P.C.

4 By: /s/ Dominic J. Messiha
5 JULIE A. DUNNE
6 DOMINIC J. MESSIHA
7 RUTH NOEL DAPPER
8 Attorneys for Defendant

9 Dated: October 4, 2017 ACKERMANN & TILAJEF, P.C.

10 By: /s/ Craig J. Ackermann
11 CRAIG J. ACKERMANN
12 Attorney for Plaintiff

13 Dated: October 4, 2017 WINSTON LAW GROUP, P.C.

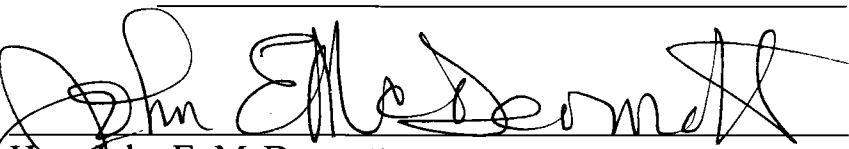
14 By: /s/ David S. Winston
15 DAVID S. WINSTON
16 Attorney for Plaintiff

17 Dated: October 4, 2017 MELMED LAW GROUP P.C.

18 By: /s/ Jonathan Melmed
19 JONATHAN LELMED
20 Attorney for Plaintiff

21 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED:**

22 DATED: 10-6-2017

23 

24 Hon. John E. McDermott
25 United States Magistrate Judge

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

EXHIBIT A

DECLARATION

I declare as follows:

1. My full name is: _____

I live at: _____
(state address)

I am employed as: _____
(state position)

by: _____

(state name and address of employer)

2. I am aware that the parties have stipulated to, and the Court has approved, a Protective Order limiting disclosure and use of the Confidential and Attorneys' Eyes Only information and documents produced by the parties in the matter of *Jarel Brown v. Saks & Company, LLC*, U.S. District Court for the Central District of California Case No. 2:17-CV-04210(SJO). A copy of the Order has been provided to me.

3. I promise that documents and information designated as "Confidential" or "Attorneys' Eyes Only" under the Order will be used by me only in testifying and/or assisting counsel in preparing for and participating in the above-referenced litigation and not for any business, personal or other purposes whatsoever.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: _____
(signature)