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 INC., LAURA BYRNES DESIGN, INC.,
 8 and LAURA BYRNES

9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

12 MICHELINE PITT, an individual;
 MICHELINE PITT DESIGN, INC., a
 13 California corporation,,

14 Plaintiffs,

15 vs.

16 PIN UP GIRL, INC., a California
 corporation; LAURA BYRNES
 17 DESIGN, INC., a California
 corporation; LAURA BYRNES, an
 18 individual; and DOES 1-50, inclusive,

19 Defendants.

20 PIN UP GIRL, INC., a California
 corporation; LAURA BYRNES, an
 21 individual,

22 Counterclaimants,

23 vs.

24 MICHELINE PITT, an individual;
 25 MICHELINE PITT DESIGN, INC., a
 California corporation,

26 Counter-Defendants.
 27

Case No. 2:17-cv-04816-DSF-JC

DISCOVERY MATTER

PROTECTIVE ORDER

The Hon. Dale S. Fischer

Trial Date: November 6, 2018

1 this action, to address their handling of such material at the end of the litigation, and
 2 to serve the ends of justice, a protective order for such information is justified in this
 3 matter. The parties shall not designate any information/documents as confidential
 4 without a good faith belief that such information/documents have been maintained
 5 in a confidential, non-public manner, and that there is good cause or a compelling
 6 reason why it should not be part of the public record of this case.

7 **2. DEFINITIONS**

8 Action: The instant action: *Micheline Pitt, et al. v. Pin Up Girl, Inc., et al.*,
 9 and related Counter-Claims, Case No. 2:17-cv-04816-DSF-JC.

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

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

16 “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” Information
 17 or Items: extremely sensitive “CONFIDENTIAL” Information or Items, the
 18 disclosure of which to another Party or Non-Party would create a substantial risk of
 19 serious harm that could not be avoided by less restrictive means.

20 Counsel: Outside Counsel of Record and House Counsel (as well as their
 21 support staff).

22 Designating Party: a Party or Non-Party that designates information or items
 23 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL” or
 24 “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY.”

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

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

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

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

8 Outside Counsel of Record: attorneys who are not employees of a party to
 9 this Action but are retained to represent or advise a party to this Action and have
 10 appeared in this Action on behalf of that party or are affiliated with a law firm which
 11 has appeared on behalf of that party, and includes support staff.

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

15 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
 16 Material in this Action.

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

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

24 Receiving Party: a Party that receives Disclosure or Discovery Material from
 25 a Producing Party.

26 **3. SCOPE**

27 The protections conferred by this Order cover not only Protected Material (as
 28 defined above), but also (1) any information copied or extracted from Protected

1 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material;
2 and (3) any deposition testimony, conversations, or presentations by Parties or their
3 Counsel that might reveal Protected Material, other than during a court hearing or at
4 trial.

5 Any use of Protected Material during a court hearing or at trial shall be
6 governed by the orders of the presiding judge. This Order does not govern the use
7 of Protected Material during a court hearing or at trial.

8 **4. DURATION**

9 Even after final disposition of this litigation, the confidentiality obligations
10 imposed by this Order shall remain in effect until a Designating Party agrees
11 otherwise in writing or a court order otherwise directs. Final disposition shall be
12 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
13 or without prejudice; and (2) final judgment herein after the completion and
14 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
15 including the time limits for filing any motions or applications for extension of time
16 pursuant to applicable law.

17 **5. DESIGNATING PROTECTED MATERIAL**

18 **A. Exercise of Restraint and Care in Designating Material for Protection**

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

26 Mass, indiscriminate, or routinized designations are prohibited. Designations
27 that are shown to be clearly unjustified or that have been made for an improper
28 purpose (e.g., to unnecessarily encumber the case development process or to impose

1 unnecessary expenses and burdens on other parties) may expose the Designating
2 Party to sanctions.

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

6 **B. Manner and Timing of Designations**

7 Except as otherwise provided in this Order (see, e.g., second paragraph of
8 Section 5.B(a) below), or as otherwise stipulated or ordered, Disclosure or
9 Discovery Material that qualifies for protection under this Order must be clearly so
10 designated before the material is disclosed or produced.

11 Designation in conformity with this Order requires:

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

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

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

4 (b) for testimony given in depositions that the Designating Party identifies on
 5 the record, before the close of the deposition as protected testimony.

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” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
 10 ONLY.” If only a portion or portions of the information warrants protection, the
 11 Producing Party, to the extent practicable, shall identify the protected portion(s).

12 **C. Inadvertent Failures to Designate**

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

19 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

20 **A. Timing of Challenges**

21 Any Party or Non-Party may challenge a designation of confidentiality at any
 22 time that is consistent with the Court’s Scheduling Order.

23 **B. Meet and Confer**

24 The Challenging Party shall initiate the dispute resolution process under
 25 Local Rule 37-1 *et seq.*

26 **C. Burden of Proof**

27 The burden of persuasion in any such challenge proceeding shall be on the
 28 Designating Party. Frivolous challenges, and those made for an improper purpose

1 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
 2 expose the Challenging Party to sanctions. Unless the Designating Party has waived
 3 or withdrawn the confidentiality designation, all parties shall continue to afford the
 4 material in question the level of protection to which it is entitled under the
 5 Producing Party’s designation until the Court rules on the challenge.

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

7 **A. Basic Principles**

8 A Receiving Party may use Protected Material that is disclosed or produced
 9 by another Party or by a Non-Party in connection with this Action only for
 10 prosecuting, defending, or attempting to settle this Action. Such Protected Material
 11 may be disclosed only to the categories of persons and under the conditions
 12 described in this Order. When the Action has been terminated, a Receiving Party
 13 must comply with the provisions of Section 13 below.

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

17 **B. Disclosure of “CONFIDENTIAL” Information or Items**

18 Unless otherwise ordered by the court or permitted in writing by the
 19 Designating Party, a Receiving Party may disclose any information or item
 20 designated “CONFIDENTIAL” only to:

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

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

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

1 (d) the court and its personnel;

2 (e) private court reporters and their staff to whom disclosure is reasonably
3 necessary for this Action and who have signed the “Acknowledgment and
4 Agreement to Be Bound” (Exhibit A);

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

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

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

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

21 **C. Disclosure of “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
22 ONLY” Information or Items**

23 Unless otherwise ordered by the court or permitted in writing by the
24 Designating Party, a Receiving Party may disclose any information or item
25 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

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

4 (c) the court and its personnel;

5 (d) private court reporters and their staff to whom disclosure is reasonably
6 necessary for this Action and who have signed the “Acknowledgment and
7 Agreement to Be Bound” (Exhibit A);

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

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

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

15 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
16 **IN OTHER LITIGATION**

17 If a Party is served with a subpoena or a court order issued in other litigation
18 that compels disclosure of any information or items designated in this Action as
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
20 ONLY,” that Party must:

21 (a) promptly notify in writing the Designating Party. Such notification shall
22 include a copy of the subpoena or court order unless prohibited by law;

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

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

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

11 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
 12 **PRODUCED IN THIS LITIGATION**

13 (a) The terms of this Order are applicable to information produced by a Non-
 14 Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
 15 CONFIDENTIAL -- ATTORNEYS’ EYES ONLY.” Such information produced by
 16 Non-Parties in connection with this litigation is protected by the remedies and relief
 17 provided by this Order. Nothing in these provisions should be construed as prohibiting
 18 a Non-Party from seeking additional protections.

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

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

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

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

3 (c) If a Non-Party represented by counsel fails to commence the process called
4 for by Local Rules 45-1 and 37-1, *et seq.* within 14 days of receiving the notice and
5 accompanying information or fails contemporaneously to notify the Receiving Party
6 that it has done so, the Receiving Party may produce the Non-Party's confidential
7 information responsive to the discovery request. If an unrepresented Non-Party fails to
8 seek a protective order from this court within 14 days of receiving the notice and
9 accompanying information, the Receiving Party may produce the Non-Party's
10 confidential information responsive to the discovery request. If the Non-Party timely
11 seeks a protective order, the Receiving Party shall not produce any information in its
12 possession or control that is subject to the confidentiality agreement with the Non-Party
13 before a determination by the court unless otherwise required by the law or court order.
14 Absent a court order to the contrary, the Non-Party shall bear the burden and expense of
15 seeking protection in this court of its Protected Material.

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

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

25 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
26 **PROTECTED MATERIAL**

27 When a Producing Party gives notice to Receiving Parties that certain
28 inadvertently produced material is subject to a claim of privilege or other protection,

1 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
 2 Procedure 26(b)(5)(B). This provision is not intended to modify whatever
 3 procedure may be established in an e-discovery order that provides for production
 4 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and
 5 (e), insofar as the parties reach an agreement on the effect of disclosure of a
 6 communication or information covered by the attorney-client privilege or work
 7 product protection, the parties may incorporate their agreement into this Protective
 8 Order.

9 **12. MISCELLANEOUS**

10 **A. Right to Further Relief**

11 Nothing in this Order abridges the right of any person to seek its modification
 12 by the Court in the future.

13 **B. Right to Assert Other Objections**

14 No Party waives any right it otherwise would have to object to disclosing or
 15 producing any information or item on any ground not addressed in this Protective
 16 Order. Similarly, no Party waives any right to object on any ground to use in
 17 evidence of any of the material covered by this Protective Order.

18 **C. Filing Protected Material**

19 A Party that seeks to file under seal any Protected Material must comply with
 20 Civil Local Rule 79-5 and with any pertinent orders of the assigned District Judge
 21 and Magistrate Judge. Protected Material may only be filed under seal pursuant to
 22 a court order authorizing the sealing of the specific Protected Material at issue. If a
 23 Party's request to file Protected Material under seal is denied by the court, then the
 24 Receiving Party may file the information in the public record unless otherwise
 25 instructed by the court.

26 **13. FINAL DISPOSITION**

27 After the final disposition of this Action, as defined in Section 2, within 60
 28 days of a written request by the Designating Party, each Receiving Party must return

1 all Protected Material to the Producing Party or destroy such material. As used in
2 this subdivision, “all Protected Material” includes all copies, abstracts, compilations,
3 summaries, and any other format reproducing or capturing any of the Protected
4 Material. Whether the Protected Material is returned or destroyed, the Receiving
5 Party must submit a written certification to the Producing Party (and, if not the same
6 person or entity, to the Designating Party) by the 60 day deadline that (1) identifies
7 (by category, where appropriate) all the Protected Material that was returned or
8 destroyed and (2) affirms that the Receiving Party has not retained any copies,
9 abstracts, compilations, summaries or any other format reproducing or capturing any
10 of the Protected Material. Notwithstanding this provision, Counsel are entitled to
11 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing
12 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
13 reports, attorney work product, and consultant and expert work product, even if such
14 materials contain Protected Material. Any such archival copies that contain or
15 constitute Protected Material remain subject to this Protective Order as set forth in
16 Section 4.

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1 **14. VIOLATIONS**

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

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6 **IT IS SO ORDERED.**

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8 DATED: January 9, 2018

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_____/s/_____
Honorable Jacqueline Chooljian
United States Magistrate Judge

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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 the Protective Order that was issued
by the United States District Court for the Central District of California on January
9, 2018 in the case of *Micheline Pitt, et al., v. Pin Up Girl, Inc., et al.*, and related
Counter-Claims, Case No. 2:17-cv-04816-DSF-JC. 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. 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 Protective Order.

Date: _____
City and State where sworn and signed: _____

Printed name: _____

Signature: _____