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15
 16 **UNITED STATES DISTRICT COURT**
 17 **CENTRAL DISTRICT OF CALIFORNIA**

18 UNICOLORS, INC., a California
 19 Corporation,

20 Plaintiff,

21 v.

22 RAINBOW USA, INC., a New York
 Corporation; STEVEN YOUNG a/k/a
 23 STEPHEN JUNG, an individual; S & J
 APPAREL, INC., a California
 24 Corporation; PNL TEXTILE, INC., a
 California Corporation; and DOES 1 -
 25 10, inclusive,

26 Defendants.

CASE NO. 2:17-cv-05994-PSG-JPR

Honorable Judge: Philip S. Gutierrez
 Referred to: Hon. Jean P. Rosenbluth

DISCOVERY MATTER

STIPULATED PROTECTIVE ORDER

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity 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 The parties acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from public
9 disclosure and use extends only to the limited information or items that are entitled
10 to confidential treatment under the applicable legal principles. The parties further
11 acknowledge, as set forth in Section 12.4, below, that this Stipulated Protective
12 Order does not entitle them to file confidential information under seal; Civil Local
13 Rule 79-5.1 sets forth the procedures that must be followed and the standards that
14 will be applied when a party seeks permission from the court to file material under
15 seal.

16 **2. DEFINITIONS**

17 2.1 Challenging Party: a Party or Non-Party that challenges the
18 designation of information or items under this Order.

19 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
20 how it is generated, stored or maintained) or tangible things that qualify for
21 protection under Federal Rule of Civil Procedure 26(c). Such information may
22 include, but is not limited to:

23 (a) The financial performance or results of the Designating Party,
24 including without limitation income statements, balance sheets, cash flow analyses,
25 and budget projections;

26 (b) Corporate and strategic planning by the Designating Party,
27 including without limitation marketing plans, sales projections and competitive
28 strategy documents;

1 (c) Names, addresses, and other information that would identify
2 customers or prospective customers, or the distributors or prospective distributors
3 of the Designating Party;

4 (d) Research and development data, and any other confidential
5 commercial information, including but not limited to trade secrets of the
6 Designating Party;

7 (e) Information used by the Designating Party in or pertaining to its
8 trade or business, which information the Designating Party believes in good faith
9 has competitive value, which is not generally known to others and which the
10 Designating Party would not normally reveal to third parties except in confidence,
11 or has undertaken with others to maintain in confidence;

12 (f) Information which the Designating Party believes in good faith
13 falls within the right to privacy guaranteed by the laws of the United States or
14 California; and

15 (g) Information which the Designating Party believes in good faith
16 to constitute, contain, reveal or reflect proprietary, financial, business, technical, or
17 other confidential information.

18 (h) The fact that an item or category is listed as an example in this
19 or other sections of this Protective Order does not, by itself, render the item or
20 category discoverable.

21 2.3 Counsel (without qualifier): Outside Counsel of Record and House
22 Counsel (as well as their support staff).

23 2.4 Designating Party: a Party or Non-Party that designates information or
24 items that it produces in disclosures or in responses to discovery as
25 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
26 ONLY”.

27 2.5 Disclosure or Discovery Material: all items or information, regardless
28 of the medium or manner in which it is generated, stored, or maintained (including,

1 among other things, testimony, transcripts, and tangible things), that are produced
2 or generated in disclosures or responses to discovery in this matter.

3 2.6 Expert: a person with specialized knowledge or experience in a matter
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as
5 an expert witness or as a consultant in this action.

6 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
7 Information or Items: extremely sensitive “Confidential Information or Items,”
8 disclosure of which to another Party or Non-Party would create a substantial risk of
9 serious harm that could not be avoided by less restrictive means. Information and
10 material that may be subject to this protection includes, but is not limited to,
11 research and development data, intellectual property, financial, marketing and other
12 sales data, and/or information having strategic commercial value pertaining to the
13 Designating Party’s trade or business.

14 2.8 House Counsel: attorneys who are employees of a party to this action.
15 House Counsel does not include Outside Counsel of Record or any other outside
16 counsel.

17 2.9 Non-Party: any natural person, partnership, corporation, association, or
18 other legal entity not named as a Party to this action.

19 2.10 Outside Counsel of Record: attorneys who are not employees of a
20 party to this action but are retained to represent or advise a party to this action and
21 have appeared in this action on behalf of that party or are affiliated with a law firm
22 which has appeared on behalf of that party.

23 2.11 Party: any party to this action, including all of its officers, directors,
24 employees, consultants, retained experts, and Outside Counsel of Record (and their
25 support staffs).

26 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
27 Discovery Material in this action.

28 2.13 Professional Vendors: persons or entities that provide litigation

1 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
2 demonstrations, and organizing, storing, or retrieving data in any form or medium)
3 and their employees and subcontractors.

4 2.14 Protected Material: any Disclosure or Discovery Material that is
5 designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY.”

7 2.15 Receiving Party: a Party that receives Disclosure or Discovery
8 Material from a Producing Party.

9 **3. SCOPE**

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

25 The designation of any information or materials as “CONFIDENTIAL” or
26 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” is intended solely
27 to facilitate the conduct of this litigation. Neither such designation nor treatment
28 in conformity with such designation shall be construed in any way as an

1 admission or agreement by the Receiving Party that the Protected Materials
2 constitute or contain any trade secret or confidential information, or the
3 discoverability thereof. Except as provided in this Protective Order, the Receiving
4 Party shall not be obligated to challenge the propriety of any designation, and a
5 failure to do so shall not preclude a subsequent attack on the propriety of such
6 designation.

7 Nothing contained herein in any way restricts the ability of the Receiving
8 Party to use “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
9 ATTORNEYS’ EYES ONLY” material produced to it in examining or cross-
10 examining any employee or consultant of the Designating Party. The Parties
11 acknowledge and agree that Receiving Party may not use Protected Materials
12 marked by a Designating Party to examine or cross-examine an employee or
13 consultant or another individual associated with a non-Designating Party. At
14 deposition, the party using Designated Material must request that the portion of
15 the proceeding where use is made be conducted so as to exclude persons not
16 qualified to receive such Designated Material.

17 If a party wishes to use Protected Material during an examination of an
18 employee or consultant or another individual associated with a non-Designating
19 Party, and the Designating Party objects to such use, the parties shall hold a meet
20 and confer to resolve the dispute. If the meet and confer is unsuccessful, the parties
21 may contact the Court to request an informal discovery conference with the
22 Magistrate Judge, to be held telephonically, to resolve the dispute. The Magistrate
23 Judge is under no obligation to agree to the informal discovery conference.

24 **4. DURATION**

25 Even after final disposition of this litigation, the confidentiality obligations
26 imposed by this Order shall remain in effect until a Designating Party agrees
27 otherwise in writing or a court order otherwise directs. Final disposition shall be
28 deemed to be the later of (1) dismissal of all claims and defenses in this action, with

1 or without prejudice; and (2) final judgment herein after the completion and
2 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
3 including the time limits for filing any motions or applications for extension of time
4 pursuant to applicable law.

5 **5. DESIGNATING PROTECTED MATERIAL**

6 5.1 Exercise of Restraint and Care in Designating Material for Protection.

7 Each Party or Non-Party that designates information or items for protection under
8 this Order must take care to limit any such designation to specific material that
9 qualifies under the appropriate standards. To the extent it is practical to do so, the
10 Designating Party must designate for protection only those parts of material,
11 documents, items, or oral or written communications that qualify – so that other
12 portions of the material, documents, items, or communications for which protection
13 is not warranted are not swept unjustifiably within the ambit of this Order.

14 Mass, indiscriminate, or routinized designations are prohibited. Designations
15 that are shown to be clearly unjustified or that have been made for an improper
16 purpose (e.g., to unnecessarily encumber or retard the case development process or
17 to impose unnecessary expenses and burdens on other parties) expose the
18 Designating Party to sanctions.

19 If it comes to a Designating Party's attention that information or items that it
20 designated for protection do not qualify for protection at all or do not qualify for the
21 level of protection initially asserted, that Designating Party must promptly notify all
22 other parties that it is withdrawing the mistaken designation.

23 5.2 Manner and Timing of Designations. Except as otherwise provided in
24 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
25 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
26 under this Order must be clearly so designated before the material is disclosed or
27 produced.

28 Designation in conformity with this Order requires:

1 (a) for information in documentary form (e.g., paper or electronic documents,
2 but excluding transcripts of depositions or other pretrial or trial proceedings), that
3 the Producing Party affix the legend “CONFIDENTIAL” or “HIGHLY
4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains
5 protected material. If only a portion or portions of the material on a page qualifies
6 for protection, the Producing Party also must clearly identify the protected
7 portion(s) (e.g., by making appropriate markings in the margins) and must specify,
8 for each portion, the level of protection being asserted.

9 A Party or Non-Party that makes original documents or materials available
10 for inspection need not designate them for protection until after the inspecting Party
11 has indicated which material it would like copied and produced. During the
12 inspection and before the designation, all of the material made available for
13 inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
14 ONLY.” After the inspecting Party has identified the documents it wants copied
15 and produced, the Producing Party must determine which documents, or portions
16 thereof, qualify for protection under this Order. Then, before producing the
17 specified documents, the Producing Party must affix the appropriate legend
18 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
19 ONLY”) to each page that contains Protected Material. If only a portion or portions
20 of the material on a page qualifies for protection, the Producing Party also must
21 clearly identify the protected portion(s) (e.g., by making appropriate markings in
22 the margins) and must specify, for each portion, the level of protection being
23 asserted.

24 (b) for testimony given in deposition or in other discovery-related
25 proceedings, that the Designating Party identify on the record, before the close of
26 the deposition, hearing, or other proceeding, all protected testimony and specify the
27 level of protection being asserted. When it is impractical to identify separately each
28 portion of testimony that is entitled to protection and it appears that substantial

1 portions of the testimony may qualify for protection, the Designating Party may
2 invoke on the record (before the deposition, hearing, or other proceeding is
3 concluded) a right to have up to 45 days to identify the specific portions of the
4 testimony as to which protection is sought and to specify the level of protection
5 being asserted. Only those portions of the testimony that are appropriately
6 designated for protection within the 45 days shall be covered by the provisions of
7 this Stipulated Protective Order. Alternatively, a Designating Party may specify, at
8 the deposition or up to 45 days afterwards if that period is properly invoked, that
9 the entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

11 Parties shall give the other parties notice if they reasonably expect a
12 deposition, hearing or other proceeding to include Protected Material so that the
13 other parties can ensure that only authorized individuals who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
15 proceedings. The use of a document as an exhibit at a deposition shall not in any
16 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
17 – ATTORNEYS’ EYES ONLY.”

18 Transcripts containing Protected Material shall have an obvious legend on
19 the title page that the transcript contains Protected Material, and the title page shall
20 be followed by a list of all pages (including line numbers as appropriate) that have
21 been designated as Protected Material and the level of protection being asserted by
22 the Designating Party. The Designating Party shall inform the court reporter of
23 these requirements. Any transcript that is prepared before the expiration of a 45-
24 day period for designation shall be treated during that period as if it had been
25 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its
26 entirety unless otherwise agreed. After the expiration of that period, the transcript
27 shall be treated only as actually designated.

28 (c) for information produced in some form other than documentary and for

1 any other tangible items, that the Producing Party affix in a prominent place on the
2 exterior of the container or containers in which the information or item is stored the
3 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
4 EYES ONLY”. If only a portion or portions of the information or item warrant
5 protection, the Producing Party, to the extent practicable, shall identify the
6 protected portion(s) and specify the level of protection being asserted.

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
8 failure to designate qualified information or items does not, standing alone, waive
9 the Designating Party’s right to secure protection under this Order for such
10 material. Upon timely correction of a designation, the Receiving Party must make
11 reasonable efforts to assure that the material is treated in accordance with the
12 provisions of this Order.

13 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
15 designation of confidentiality at any time. Unless a prompt challenge to a
16 Designating Party’s confidentiality designation is necessary to avoid foreseeable,
17 substantial unfairness, unnecessary economic burdens, or a significant disruption or
18 delay of the litigation, a Party does not waive its right to challenge a confidentiality
19 designation by electing not to mount a challenge promptly after the original
20 designation is disclosed.

21 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
22 resolution process by providing written notice of each designation it is challenging
23 and describing the basis for each challenge. To avoid ambiguity as to whether a
24 challenge has been made, the written notice must recite that the challenge to
25 confidentiality is being made in accordance with this specific paragraph of the
26 Protective Order as well as Local Rule 37. The parties shall attempt to resolve each
27 challenge in good faith and must begin the process by conferring directly (in voice
28 to voice dialogue; other forms of communication are not sufficient) within 10 days

1 of the date of service of notice. In conferring, the Challenging Party must explain
2 the basis for its belief that the confidentiality designation was not proper and must
3 give the Designating Party an opportunity to review the designated material, to
4 reconsider the circumstances, and, if no change in designation is offered, to explain
5 the basis for the chosen designation. A Challenging Party may proceed to the next
6 stage of the challenge process only if it has engaged in this meet and confer process
7 first or establishes that the Designating Party is unwilling to participate in the meet
8 and confer process in a timely manner.

9 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
10 court intervention, the Challenging Party shall file and serve a motion to challenge
11 confidentiality under Civil Local Rule 37 (and in compliance with Civil Local Rule
12 79-5.1, if applicable) within 21 days of the initial notice of challenge or within 14
13 days of the parties agreeing that the meet and confer process will not resolve their
14 dispute, whichever is earlier. Each such motion must be accompanied by a
15 competent declaration affirming that the movant has complied with the meet and
16 confer requirements imposed in the preceding paragraph. Failure by the
17 Challenging Party to make such a motion including the required declaration within
18 21 days (or 14 days, if applicable) shall automatically waive the ability to challenge
19 the confidentiality designation for each challenged designation. In addition, the
20 Designating Party may file a motion for a protective order preserving the
21 confidential designation at any time consistent with the Court's scheduling order if
22 there is good cause for doing so. Any motion brought pursuant to this provision
23 must be accompanied by a competent declaration affirming that the movant has
24 complied with the meet and confer requirements imposed by the preceding
25 paragraph.

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

1 expose the Challenging Party to sanctions. Until such time as a determination has
2 been made on any such motion by the Court, all parties shall continue to afford the
3 material in question the level of protection to which it is entitled under the
4 Producing Party's designation until the court rules on the challenge.

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

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

13 Protected Material must be stored and maintained by a Receiving Party at a
14 location and in a secure manner¹ that ensures that access is limited to the persons
15 authorized under this Order.

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
17 otherwise ordered by the court or permitted in writing by the Designating Party, a
18 Receiving Party may disclose any information or item designated
19 "CONFIDENTIAL" only to:

20 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
21 employees of said Outside Counsel of Record to whom it is reasonably necessary to
22 disclose the information for this litigation and who have signed the
23 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit
24 A;

25 (b) the officers, directors, and employees (including House Counsel) of the
26 Receiving Party to whom disclosure is reasonably necessary for this litigation and
27 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

28 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any
electronic Protected Material in password-protected form.

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

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants, and
6 Professional Vendors to whom disclosure is reasonably necessary for this litigation
7 and who have signed the “Acknowledgment and Agreement to Be Bound”
8 (Exhibit A);

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

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

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

23 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
24 employees of said Outside Counsel of Record to whom it is reasonably necessary to
25 disclose the information for this litigation and who have signed the
26 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
27 Exhibit A;

28 (b) Experts of the Receiving Party to whom disclosure is reasonably

1 necessary for this litigation, and who have signed the “Acknowledgment and
2 Agreement to Be Bound” (Exhibit A);

3 (c) the court and its personnel;

4 (d) court reporters and their staff, professional jury or trial consultants, and
5 Professional Vendors to whom disclosure is reasonably necessary for this litigation
6 and who have signed the “Acknowledgment and Agreement to Be Bound”
7 (Exhibit A); and

8 (e) 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 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
11 **PRODUCED IN OTHER LITIGATION**

12 If a Party is served with a subpoena or a court order issued in other litigation
13 that compels disclosure of any information or items designated in this action as
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
15 ONLY” that Party must:

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

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

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

24 If the Designating Party timely seeks a protective order, the Party served with
25 the subpoena or court order shall not produce any information designated in this
26 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
27 EYES ONLY” before a determination by the court from which the subpoena or
28 order issued, unless the Party has obtained the Designating Party’s permission. The

1 Designating Party shall bear the burden and expense of seeking protection in that
2 court of its confidential material – and nothing in these provisions should be
3 construed as authorizing or encouraging a Receiving Party in this action to disobey
4 a lawful directive from another court.

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

7 (a) The terms of this Order are applicable to information produced by a
8 Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced
10 by Non-Parties in connection with this litigation is protected by the remedies and
11 relief provided by this Order. Nothing in these provisions should be construed as
12 prohibiting a Non-Party from seeking additional protections.

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

17 1. promptly notify in writing the Requesting Party and the Non-
18 Party that some or all of the information requested is subject to a confidentiality
19 agreement with a Non-Party;

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

23 3. make the information requested available for inspection by the
24 Non-Party.

25 (c) If the Non-Party fails to object or seek a protective order from this
26 court within 21 days of receiving the notice and accompanying information, the
27 Receiving Party may produce the Non-Party’s confidential information responsive
28 to the discovery request. If the Non-Party timely seeks a protective order, the

1 Receiving Party shall not produce any information in its possession or control that
2 is subject to the confidentiality agreement with the Non-Party before a
3 determination by the court. Absent a court order to the contrary, the Non-Party
4 shall bear the burden and expense of seeking protection in this court of its Protected
5 Material.

6 **10. 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
11 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
12 person or persons to whom unauthorized disclosures were made of all the terms of
13 this Order, and (d) request such person or persons to execute the “Acknowledgment
14 and Agreement to Be Bound” that is attached hereto as Exhibit A.

15 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
16 **PROTECTED MATERIAL**

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

27 **12. MISCELLANEOUS**

28 12.1 Right to Further Relief. Nothing in this Order abridges the right of any

1 person to seek its modification by the court in the future.

2 12.2 Right to Assert Other Objections. By stipulating to the entry of this
3 Protective Order no Party waives any right it otherwise would have to object to
4 disclosing or producing any information or item on any ground not addressed in
5 this Stipulated Protective Order. Similarly, no Party waives any right to object on
6 any ground to use in evidence of any of the material covered by this Protective
7 Order. Moreover, this Order shall not preclude or limit any Party's right to seek
8 further and additional protection against or limitation upon production of
9 documents produced in response to discovery. The parties reserve their rights to
10 object to, redact or withhold any information, including confidential, proprietary, or
11 private information, on any other applicable grounds permitted by law, including
12 third-party rights and relevancy.

13 12.3 Other Privileges. Nothing in this Order shall require disclosure of
14 materials that a Party contends are protected from disclosure by the attorney-client
15 privilege or the attorney work-product doctrine. This provision shall not, however,
16 be construed to preclude any Party from moving the Court for an order directing the
17 disclosure of such materials where it disputes the claim of attorney-client privilege
18 or attorney work-product doctrine.

19 12.4 Filing Protected Material. Without written permission from the
20 Designating Party or a court order secured after appropriate notice to all interested
21 persons, a Party may not file in the public record in this action any Protected
22 Material. A Party that seeks to file under seal any Protected Material must comply
23 with Civil Local Rule 79-5. Protected Material may only be filed under seal
24 pursuant to a court order authorizing the sealing of the specific Protected Material
25 at issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a
26 request establishing that the Protected Material at issue is privileged, protectable as
27 a trade secret, or otherwise entitled to protection under the law. If a Receiving
28 Party's request to file Protected Material under seal pursuant to Civil Local Rule

1 79-5 is denied by the court, then the Receiving Party may file the Protected
2 Material in the public record pursuant to Civil Local Rule 79-5 unless otherwise
3 instructed by the court.

4 12.5 No Prejudice. This Protective Order shall not diminish any existing
5 obligation or right with respect to Protected Material, nor shall it prevent a
6 disclosure to which the Designating Party consented in writing before the
7 disclosure takes place. Unless the parties stipulate otherwise or a court so orders,
8 evidence of the existence or nonexistence of a designation under this Protective
9 Order shall not be admissible for any purpose during any proceeding on the merits
10 of this action.

11 12.6 Self-Disclosure. Nothing in this Order shall affect the right of the
12 Designating Party to disclose the Designating Party's own Confidential information
13 or items to any person or entity. Such disclosure shall not waive any of the
14 protections of this Order.

15 12.7 Captions. The captions of paragraphs contained in this Order are for
16 reference only and are not to be construed in any way as a part of this Order.

17 **13. FINAL DISPOSITION**

18 Within 60 days after the final disposition of this action, as defined in
19 paragraph 4, each Receiving Party must return all Protected Material to the
20 Producing Party or destroy such material. As used in this subdivision, "all
21 Protected Material" includes all copies, abstracts, compilations, summaries, and any
22 other format reproducing or capturing any of the Protected Material. Whether the
23 Protected Material is returned or destroyed, the Receiving Party must submit a
24 written certification to the Producing Party (and, if not the same person or entity, to
25 the Designating Party) by the 60-day deadline that (1) identifies (by category,
26 where appropriate) all the Protected Material that was returned or destroyed and
27 (2) affirms that the Receiving Party has not retained any copies, abstracts,
28 compilations, summaries or any other format reproducing or capturing any of the

1 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
2 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
3 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
4 reports, attorney work product, and consultant and expert work product, even if
5 such materials contain Protected Material. Any such archival copies that contain or
6 constitute Protected Material remain subject to this Protective Order as set forth in
7 Section 4 (DURATION).

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12 Dated: February 26, 2018

Respectfully submitted,

By: /s/
Scott Alan Burroughs, Esq.
Trevor W. Barrett, Esq.
DONIGER /BURROUGHS
Attorneys for Plaintiff

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18 Dated: February 26, 2018


Respectfully submitted,

By: /s/ Sang I. Lee
Sang I. Lee, Esq.
Law Offices of Lee & Park
Attorneys for Defendants Rainbow
USA, Inc., Steven Young and
S & J Apparel, Inc.

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24 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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Dated: February 26, 2018

By: 

Honorable Jean P. Rosenbluth
U.S. Magistrate Judge

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address],
5 declare under penalty of perjury that I have read in its entirety and understand the
6 Stipulated Protective Order that was issued by the United States District Court for
7 the Central District of California on _____ [date] in the case of *Unicolors,*
8 *Inc. v. Rainbow USA, Inc., et al.*, Case No.: 2:17-cv-05994-PSG-JPR. I agree to
9 comply with and to be bound by all the terms of this Stipulated Protective Order
10 and I understand and acknowledge that failure to so comply could expose me to
11 sanctions and punishment in the nature of contempt. I solemnly promise that I will
12 not disclose in any manner any information or item that is subject to this Stipulated
13 Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

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

19 I hereby appoint _____ [print or type full name] of
20 _____
21 [print or type full address and telephone number] as my California agent for service
22 of process in connection with this action or any proceedings related to enforcement
23 of this Stipulated Protective Order.

24 Date: _____

25 City and State where sworn and signed: _____

26 Printed name: _____

27 Signature: _____