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 NORDSTROM, INC.

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

11 JAN DAVIDSON, a citizen of
 California, and LAUGH LINES, a
 12 California Corporation,

13 Plaintiffs,

14 v.

15 NORDSTROM, INC., a Washington
 corporation, and DOES 1-10,
 16 inclusive,

17 Defendants.

Case No.: 2:17-CV-07123-CAS-RAO

Judge: Christina A. Snyder
Magistrate Judge: Rozella A. Oliver

**[PROPOSED] STIPULATED
 PROTECTIVE ORDER**

Complaint served: October 9, 2017

20 1. PURPOSES AND LIMITATIONS

21 Discovery in this action is likely to involve production of confidential,
 22 proprietary, or private information for which special protection from public
 23 disclosure and from use for any purpose other than prosecuting this litigation may
 24 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
 25 enter the following Stipulated Protective Order. The parties acknowledge that this
 26 Order does not confer blanket protections on all disclosures or responses to
 27 discovery and that the protection it affords from public disclosure and use extends
 28 only to the limited information or items that are entitled to confidential treatment

1 under the applicable legal principles. The parties further acknowledge, as set forth
2 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
3 file confidential information under seal; Civil Local Rule 79-5 sets forth the
4 procedures that must be followed and the standards that will be applied when a
5 party seeks permission from the court to file material under seal.

6
7 **A. GOOD CAUSE STATEMENT**

8 This action is likely to involve trade secrets, customer and pricing lists and
9 other valuable research, development, commercial, financial and/or technical
10 information for which special protection from public disclosure and from use for
11 any purpose other than prosecution of this action is warranted. Such confidential
12 materials and information consist of, among other things, confidential business or
13 financial information, information regarding purchase and sale prices of fabric or
14 garments by suppliers, manufacturers, importers, distributors or fashion retailers,
15 information regarding business practices, information regarding the creation,
16 purchase or sale of graphics used on textiles and garments, or other confidential
17 commercial information (including information implicating privacy rights of third
18 parties), information generally unavailable to the public, or which may be
19 privileged or otherwise protected from disclosure under state or federal rules, court
20 rules, case decisions, or common law. Accordingly, to expedite the flow of
21 information, to facilitate the prompt resolution of disputes over confidentiality of
22 discovery materials, to adequately protect information the parties are entitled to
23 keep confidential, to ensure that the parties are permitted reasonable necessary uses
24 of such material in preparation for and in the conduct of trial, to address their
25 handling at the end of the litigation, and serve the ends of justice, a protective order
26 for such information is justified in this matter. It is the intent of the parties that
27 information will not be designated as confidential for tactical reasons and that
28 nothing be so designated without a good faith belief that it has been maintained in a

1 confidential, non-public manner, and there is good cause why it should not be part
2 of the public record of this case.

3
4 **2. DEFINITIONS**

5 2.1 Action: This pending federal law suit.

6 2.2 Challenging Party: a Party or Non-Party that challenges the
7 designation of information or items under this Order.

8 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
9 how it is generated, stored or maintained) or tangible things that qualify for
10 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
11 the Good Cause Statement.

12 2.4 “ATTORNEYS EYES ONLY” Information or Items: information
13 (regardless of how it is generated, stored or maintained) or tangible things
14 that qualify for
15 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
16 the Good Cause Statement that, due to the inherent trade secret nature and
17 competitive advantage maintained by one or both parties is only viewable by
18 counsel for the parties and other persons specified below.

19 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as
20 their support staff).

21 2.6 Designating Party: a Party or Non-Party that designates information or
22 items that it produces in disclosures or in responses to discovery as
23 “CONFIDENTIAL” or “ATTORNEYS EYES ONLY.”

24 2.7 Disclosure or Discovery Material: all items or information, regardless
25 of the medium or manner in which it is generated, stored, or maintained (including,
26 among other things, testimony, transcripts, and tangible things), that are produced
27 or generated in disclosures or responses to discovery in this matter.

28 2.8 Expert: a person with specialized knowledge or experience in a matter

1 pertinent to the litigation who has been retained by a Party or its counsel to serve as
2 an expert witness or as a consultant in this Action.

3 2.9 House Counsel: attorneys who are employees of a party to this Action.
4 House Counsel does not include Outside Counsel of Record or any other outside
5 counsel.

6 2.10 Non-Party: any natural person, partnership, corporation, association, or
7 other legal entity not named as a Party to this action.

8 2.11 Outside Counsel of Record: attorneys who are not employees of a
9 party to this Action but are retained to represent or advise a party to this Action and
10 have appeared in this Action on behalf of that party or are affiliated with a law firm
11 which has appeared on behalf of that party, and includes support staff.

12 2.12 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 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
16 Discovery Material in this Action.

17 2.14 Professional Vendors: persons or entities that provide litigation
18 support 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 2.15 Protected Material: any Disclosure or Discovery Material that is
22 designated as “CONFIDENTIAL” or “ATTORNEYS EYES ONLY.”

23 2.16 Receiving Party: a Party that receives Disclosure or Discovery
24 Material from a Producing Party.

25
26 3. SCOPE

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

1 extracted from Protected Material; (2) all copies, excerpts, summaries, or
2 compilations of Protected Material; and (3) any testimony, conversations, or
3 presentations by Parties or their Counsel that might reveal Protected Material.

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

6
7 **4. DURATION**

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

16
17 **5. DESIGNATING PROTECTED MATERIAL**

18 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

19 Each Party or Non-Party that designates information or items for protection under
20 this Order must take care to limit any such designation to specific material that
21 qualifies under the appropriate standards. The Designating Party must designate for
22 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

1 impose unnecessary expenses and burdens on other parties) may expose the
2 Designating 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 5.2 Manner and Timing of Designations. Except as otherwise provided in
7 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
8 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
9 under this Order must be clearly so designated before the material is disclosed or
10 produced.

11 Designation in conformity with this Order requires:

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

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

1 Producing Party must affix the “CONFIDENTIAL legend” or the “ATTORNEYS
2 EYES ONLY legend” to each page that contains Protected Material. If only a
3 portion or portions of the material on a page qualifies for protection, the Producing
4 Party also must clearly identify the protected portion(s) (e.g., by making
5 appropriate markings in the margins).

6 (b) for testimony given in depositions that the Designating Party identify the
7 Disclosure or Discovery Material on the record, before the close of the deposition
8 all protected testimony.

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

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

21 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

22 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
23 designation of confidentiality at any time that is consistent with the Court’s
24 Scheduling Order.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
26 resolution process under Local Rule 37.1, et seq. Any discovery motion must
27 strictly comply with the procedures set forth in Local Rules 37-1, 37-2, and 37-3.
28

1 6.3 Burden. The burden of persuasion in any such challenge proceeding
2 shall be on the Designating Party. Frivolous challenges, and those made for an
3 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
4 other parties) may expose the Challenging Party to sanctions. Unless the
5 Designating Party has waived or withdrawn the confidentiality designation, all
6 parties shall continue to afford the material in question the level of protection to
7 which it is entitled under the Producing Party’s designation until the Court rules on
8 the challenge.

9
10 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

21 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
22 otherwise ordered by the court or permitted in writing by the Designating Party, a
23 Receiving Party may disclose any information or item designated
24 “CONFIDENTIAL” only to:

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

28 (b) the officers, directors, and employees (including House Counsel) of the

1 Receiving Party to whom disclosure is reasonably necessary for this Action;

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

5 (d) the court and its personnel;

6 (e) court reporters and their staff;

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

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

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

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

23 7.3 Disclosure of “ATTORNEYS EYES ONLY” Information or Items.

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

27 (a) the Receiving Party’s Outside Counsel of Record in this Action;

28 (b) Experts (as defined in this Order) of the Receiving Party to whom

1 disclosure is reasonably necessary for this Action and who have signed the
2 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

3 (c) the court and its personnel;

4 (d) court reporters and their staff;

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

12
13 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
14 IN OTHER LITIGATION

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

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

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

24 (c) cooperate with respect to all reasonable procedures sought to be pursued
25 by the Designating Party whose Protected Material may be affected. If the
26 Designating Party timely seeks a protective order, the Party served with the
27 subpoena or court order shall not produce any information designated in this action
28 as “CONFIDENTIAL” or “ATTORNEYS EYES ONLY” before a determination

1 by the court from which the subpoena or order issued, unless the Party has obtained
2 the Designating Party's permission. The Designating Party shall bear the burden
3 and expense of seeking protection in that court of its confidential material and
4 nothing in these provisions should be construed as authorizing or encouraging a
5 Receiving Party in this Action to disobey a lawful directive from another court.
6

7 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
8 PRODUCED IN THIS LITIGATION

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

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

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

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

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

27 (c) If the Non-Party fails to seek a protective order from this court within
28 14 days of receiving the notice and accompanying information, the Receiving Party

1 may produce the Non-Party’s confidential information responsive to the discovery
2 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
3 not produce any information in its possession or control that is subject to the
4 confidentiality agreement with the Non-Party before a determination by the court.
5 Absent a court order to the contrary, the Non-Party shall bear the burden and
6 expense of seeking protection in this court of its Protected Material.
7

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

9 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
10 Protected Material to any person or in any circumstance not authorized under this
11 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
12 writing the Designating Party of the unauthorized disclosures, (b) use its best
13 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
14 person or persons to whom unauthorized disclosures were made of all the terms of
15 this Order, and (d) request such person or persons to execute the “Acknowledgment
16 and Agreement to Be Bound” that is attached hereto as Exhibit A.
17

18 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
19 **PROTECTED MATERIAL**

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

1 protective order submitted to the court.
2

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
5 person to seek its modification by the Court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this
7 Protective Order no Party waives any right it otherwise would have to object to
8 disclosing or producing any information or item on any ground not addressed in
9 this Stipulated Protective Order. Similarly, no Party waives any right to object on
10 any ground to use in evidence of any of the material covered by this Protective
11 Order.

12 12.3 Filing Protected Material. A Party that seeks to file under seal any
13 Protected Material must comply with Civil Local Rule 79-5. Protected Material
14 may only be filed under seal pursuant to a court order authorizing the sealing of the
15 specific Protected Material at issue. If a Party's request to file Protected Material
16 under seal is denied by the court, then the Receiving Party may file the information
17 in the public record unless otherwise instructed by the court.
18

19 13. FINAL DISPOSITION

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

1 returned or destroyed and (2) affirms that the Receiving Party has not retained any
2 copies, abstracts, compilations, summaries or any other format reproducing or
3 capturing any of the Protected Material. Notwithstanding this provision, Counsel
4 are entitled to retain an archival copy of all pleadings, motion papers, trial,
5 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
6 and trial exhibits, expert reports, attorney work product, and consultant and expert
7 work product, even if such materials contain Protected Material. Any such archival
8 copies that contain or constitute Protected Material remain subject to this Protective
9 Order as set forth in Section 4 (DURATION).

10
11 14. Any violation of this Order may be punished by any and all appropriate
12 measures including, without limitation, contempt proceedings and/or monetary
13 sanctions.

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15 Dated: April 9, 2018

16
17 /s/ Frank Frisenda
18 Frank Frisenda
19 FRISENDA QUINTON & NICHOLSON
Attorney for Plaintiffs
JAN DAVIDSON and LAUGH LINES

20
21 Dated: April 9, 2018

22
23 /s/ Allan E. Anderson
24 Allan E Anderson
25 Jake Gilbert
26 Arent Fox LLP
Attorneys for Defendant
NORDSTROM, INC.

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I hereby attest that all signatories listed above, on whose behalf this notice is being submitted, concur in the filing's content and have authorized the filing.

Dated: April 9, 2018

ARENT FOX LLP

By: /s/ Allan E. Anderson
ALLAN E. ANDERSON
Attorneys for Defendant
NORDSTROM, INC.

ORDER

PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED.

Dated: April 9, 2018

Rozella A. Oliver
Honorable Rozella A. Oliver
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 Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on [date] in the case of *Davidson et al. v. Nordstrom, Inc. 2:17-cv-07123-CAS-RAO*.
I agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me
to sanctions and punishment in the nature of contempt. I solemnly promise that I
will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with
the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action. I hereby appoint _____ [print
or type full name] of _____ [print or type
full address and telephone number] as my California agent for service of process in
connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____