

1 Stephen M. Doniger (SBN 179314)
stephen@donigerlawfirm.com
2 Scott Alan Burroughs (SBN 235718)
scott@donigerlawfirm.com
3 Trevor W. Barrett (SBN 287174)
tbarrett@donigerlawfirm.com
4 Justin M. Gomes (SBN 301793)
jgomes@donigerlawfirm.com
5 DONIGER / BURROUGHS
6 603 Rose Avenue
7 Venice, California 90291
8 Telephone: (310) 590-1820

9 Attorneys for Plaintiff

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

13
14 GOLD VALUE INTERNATIONAL
TEXTILE, INC.,

15 Plaintiff,

16
17 v.

18 ZARA USA, INC.; et al.,

19
20 Defendants.
21

Case No.: 2:17-cv-08226-DSF-PLAx
Honorable Dale S. Fischer Presiding
Referred to Hon. Paul L. Abrams

DISCOVERY MATTER

PROTECTIVE ORDER

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

3 **A. PURPOSES AND LIMITATIONS**

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

17 **B. GOOD CAUSE STATEMENT**

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

Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

2. DEFINITIONS

2.1 Action: this pending federal law suit.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 2.15 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL,” or
3 “ATTORNEY EYES ONLY.”

4 2.16 Receiving Party: a Party that receives Disclosure or Discovery
5 Material from a Producing Party.

6 **3. SCOPE**

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

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

14 **4. DURATION**

15 Once a case proceeds to trial, all of the court-filed information to be
16 introduced that was previously designated as confidential or maintained pursuant to
17 this protective order becomes public and will be presumptively available to all
18 members of the public, including the press, unless compelling reasons supported by
19 specific factual findings to proceed otherwise are made to the trial judge in advance
20 of the trial. See *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180-
21 81 (9th Cir. 2006) (distinguishing “good cause” showing for sealing documents
22 produced in discovery from “compelling reasons” standard when merits-related
23 documents are part of court record). Accordingly, the terms of this protective order
24 do not extend beyond the commencement of the trial.

25 **5. DESIGNATING PROTECTED MATERIAL**

26 5.1 Exercise of Restraint and Care in Designating Material for Protection.
27 Each Party or Non-Party that designates information or items for protection under
28

1 this Order must take care to limit any such designation to specific material that
2 qualifies under the appropriate standards. The Designating Party must designate for
3 protection only those parts of material, documents, items, or oral or written
4 communications that qualify so that other portions of the material, documents,
5 items, or communications for which protection is not warranted are not swept
6 unjustifiably within the ambit of this Order.

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

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

15 5.2 Manner and Timing of Designations. Except as otherwise provided in
16 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
17 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
18 under this Order must be clearly so designated before the material is disclosed or
19 produced.

20 Designation in conformity with this Order requires:

21 (a) for information in documentary form (e.g., paper or electronic
22 documents, but excluding transcripts of depositions or other pretrial or trial
23 proceedings), that the Producing Party affix, at a minimum, the legend
24 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "ATTORNEY EYES
25 ONLY" (hereinafter "CONFIDENTIAL legend"), to each page that contains
26 protected material. If only a portion or portions of the material on a page qualifies
27
28

1 for protection, the Producing Party also must clearly identify the protected
2 portion(s) (e.g., by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for inspection
4 need not designate them for protection until after the inspecting Party has indicated
5 which documents it would like copied and produced. During the inspection and
6 before the designation, all of the material made available for inspection shall be
7 deemed “CONFIDENTIAL.” After the inspecting Party has identified the
8 documents it wants copied and produced, the Producing Party must determine
9 which documents, or portions thereof, qualify for protection under this Order.
10 Then, before producing the specified documents, the Producing Party must affix
11 the “CONFIDENTIAL legend” to each page that contains Protected Material. If
12 only a portion or portions of the material on a page qualifies for protection, the
13 Producing Party also must clearly identify the protected portion(s) (e.g., by making
14 appropriate markings in the margins).

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

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

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
25 failure to designate qualified information or items does not, standing alone, waive
26 the Designating Party’s right to secure protection under this Order for such
27 material. Upon timely correction of a designation, the Receiving Party must make
28

reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

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

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

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

7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

1 Party at a location and in a secure manner that ensures that access is limited to the
2 persons authorized under this Order.

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
4 otherwise ordered by the Court or permitted in writing by the Designating Party, a
5 Receiving Party may disclose any information or item designated
6 “CONFIDENTIAL” only to:

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

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

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

15 (d) the Court and its personnel;

16 (e) court reporters and their staff;

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

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

22 (h) during their depositions, witnesses, and attorneys for witnesses, in the
23 Action to whom disclosure is reasonably necessary provided: (1) the deposing
24 party requests that the witness sign the form attached as Exhibit 1 hereto; and (2)
25 they will not be permitted to keep any confidential information unless they sign the
26 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
27 agreed by the Designating Party or ordered by the Court. Pages of transcribed
28

1 deposition testimony or exhibits to depositions that reveal Protected Material may
2 be separately bound by the court reporter and may not be disclosed to anyone
3 except as permitted under this Stipulated Protective Order; and

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

6 7.3 Disclosure of “HIGHLY CONFIDENTIAL” or “HIGHLY
7 CONFIDENTIAL – ATTORNEY’S EYES ONLY” Information or Items. Unless
8 otherwise ordered by the court or permitted in writing by the Designating Party, a
9 Receiving Party may disclose any information or item designated “HIGHLY
10 CONFIDENTIAL” or “ATTORNEY EYES ONLY” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
12 well as employees of said Outside Counsel of Record to whom it is reasonably
13 necessary to disclose the information for this Action.

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

17 (c) the court and its personnel;

18 (d) court reporters and their staff;

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

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

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

26 Notwithstanding the terms of this section, a designation by Defendants that
27 certain materials are “HIGHLY CONFIDENTIAL” or “HIGHLY
28

CONFIDENTIAL – ATTORNEY’S EYES ONLY” shall not preclude Plaintiff’s attorney from disclosing to an officer of Plaintiff with settlement authority the total revenue and gross profits of a defendant as set forth in such material, so long as Plaintiff’s attorney does not disclose the designated document itself. This section shall also not preclude Plaintiff’s attorney from disclosing to an officer of Plaintiff with settlement authority the names of any parties identified in materials designated as “HIGHLY CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEY’S EYES ONLY” and not otherwise disclosed in this Action who distributed product which is alleged to infringe Plaintiff’s alleged copyright.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

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

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

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

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

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking

1 protection in that court of its confidential material and nothing in these provisions
2 should be construed as authorizing or encouraging a Receiving Party in this Action
3 to disobey a lawful directive from another court.

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

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

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

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

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

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

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

1 confidentiality agreement with the Non-Party before a determination by the Court.
2 Absent a court order to the contrary, the Non-Party shall bear the burden and
3 expense of seeking protection in this Court of its Protected Material.

4 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED**
5 **MATERIAL**

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

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

27 **12. MISCELLANEOUS**

1 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
2 person to seek its modification by the Court in the future.

3 12.2 Right to Assert Other Objections. By stipulating to the entry of this
4 Protective Order, no Party waives any right it otherwise would have to object to
5 disclosing or producing any information or item on any ground not addressed in
6 this Stipulated Protective Order. Similarly, no Party waives any right to object on
7 any ground to use in evidence of any of the material covered by this Protective
8 Order.

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

16 **13. FINAL DISPOSITION**

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

1 Protected Material. Notwithstanding this provision, counsel are entitled to retain an
2 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).

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

11
12 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

13
14
15 Dated: September 5, 2018

By:



16 Honorable Paul L. Abrams
17 United States Magistrate Judge
18
19
20
21
22
23
24
25
26
27
28

1 **EXHIBIT A**

2 **ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 in the case of *Gold Value International Textile, Inc. v. Zara USA, Inc., et al.* Case
8 No. 2:17-cv-08226-DSF-PLA. I agree to comply with and to be bound by all the
9 terms of this Stipulated Protective Order and I understand and acknowledge that
10 failure to so comply could expose me to sanctions and punishment in the nature of
11 contempt. I solemnly promise that I will not disclose in any manner any
12 information or item that is subject to this Stipulated Protective Order to any person
13 or entity except in strict compliance with the provisions of this Order.

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

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26 Signature: _____