

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TEXTILE 26 CORP, a California Corporation;
Plaintiff,
vs.
OSGOOD TEXTILE COMPANY, INC., a Massachusetts Corporation d/b/a ONLINE FABRIC STORE; MAYER KAHAN, an individual; and DOES 1-10, inclusive,
Defendants.

Case No. 2:17-cv-8883-JVS-RAO
[PROPOSED] STIPULATED PROTECTIVE ORDER

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends 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
3 to 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 **B. 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 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

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

10 There is a strong presumption that the public has a right of access to judicial
11 proceedings and records in civil cases. In connection with non-dispositive motions,
12 good cause must be shown to support a filing under seal. *See Kamakana v. City and*
13 *County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors*
14 *Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electrics,*
15 *Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders
16 require good cause showing), and a specific showing of good cause or compelling
17 reasons with proper evidentiary support and legal justification, must be made with
18 respect to Protected Material that a party seeks to file under seal. The parties' mere
19 designation of Disclosure or Discovery Material as CONFIDENTIAL does not—
20 without the submission of competent evidence by declaration, establishing that the
21 material sought to be filed under seal qualifies as confidential, privileged, or
22 otherwise protectable—constitute good cause.

23 Further, if a party requests sealing related to a dispositive motion or trial,
24 then
25 compelling reasons, not only good cause, for the sealing must be shown, and the
26 relief sought shall be narrowly tailored to serve the specific interest to be protected.
27 See *Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For
28 each item or type of information, document, or thing sought to be filed or

1 introduced under seal in connection with a dispositive motion or trial, the party
2 seeking protection must articulate compelling reasons, supported by specific facts
3 and legal justification, for the requested sealing order. Again, competent evidence
4 supporting the application to file documents under seal must be provided by
5 declaration.

6 Any document that is not confidential, privileged, or otherwise protectable in
7 its entirety will not be filed under seal if the confidential portions can be redacted.
8 If documents can be redacted, then a redacted version for public viewing, omitting
9 only the confidential, privileged, or otherwise protectable portions of the document,
10 shall be filed. Any application that seeks to file documents under seal in their
11 entirety should include an explanation of why redaction is not feasible.

12
13 2. DEFINITIONS

14 2.1 Action: This pending federal law suit.

15 2.2 Challenging Party: a Party or Non-Party that challenges the
16 designation of information or items under this Order.

17 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
18 how it is generated, stored or maintained) or tangible things that qualify for
19 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
20 the Good Cause Statement.

21 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
22 their support staff).

23 2.5 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.”

26 2.6 Disclosure or Discovery Material: all items or information, regardless
27 of the medium or manner in which it is generated, stored, or maintained (including,
28

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 2.7 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
5 as an expert witness or as a consultant in this Action.

6 2.8 House Counsel: attorneys who are employees of a party to this Action.
7 House Counsel does not include Outside Counsel of Record or any other outside
8 counsel.

9 2.9 Non-Party: any natural person, partnership, corporation, association,
10 or other legal entity not named as a Party to this action.

11 2.10 Outside Counsel of Record: attorneys who are not employees of a
12 party to this Action but are retained to represent or advise a party to this Action
13 and have appeared in this Action on behalf of that party or are affiliated with a law
14 firm which has appeared on behalf of that party, and includes support staff.

15 2.11 Party: any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record (and their
17 support staffs).

18 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 2.13 Professional Vendors: persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
22 demonstrations, and organizing, storing, or retrieving data in any form or medium)
23 and their employees and subcontractors.

24 2.14 Protected Material: any Disclosure or Discovery Material that is
25 designated as “CONFIDENTIAL.”

26 2.15 Receiving Party: a Party that receives Disclosure or Discovery
27 Material from a Producing Party.
28

1 3. SCOPE

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

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

9
10
11 4. DURATION

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

20
21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection.
23 Each Party or Non-Party that designates information or items for protection under
24 this Order must take care to limit any such designation to specific material that
25 qualifies under the appropriate standards. The Designating Party must designate for
26 protection only those parts of material, documents, items, or oral or written
27 communications that qualify so that other portions of the material, documents,
28

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

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

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

11 5.2 Manner and Timing of Designations. Except as otherwise provided in
12 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
13 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
14 under this Order must be clearly so designated before the material is disclosed or
15 produced.

16 Designation in conformity with this Order requires:

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

24 A Party or Non-Party that makes original documents available for inspection
25 need not designate them for protection until after the inspecting Party has indicated
26 which documents it would like copied and produced. During the inspection and
27 before the designation, all of the material made available for inspection shall be
28 deemed "CONFIDENTIAL." After the inspecting Party has identified the

1 documents it wants copied and produced, the Producing Party must determine
2 which documents, or portions thereof, qualify for protection under this Order.
3 Then, before producing the specified documents, the Producing Party must affix
4 the “CONFIDENTIAL legend” to each page that contains Protected Material. If
5 only a portion or portions of the material on a page qualifies for protection, the
6 Producing Party also must clearly identify the protected portion(s) (e.g., by making
7 appropriate markings in the margins).

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

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

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

23 24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
26 designation of confidentiality at any time that is consistent with the Court’s
27 Scheduling Order.
28

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

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

12 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

23 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
24 otherwise ordered by the court or permitted in writing by the Designating Party, a
25 Receiving Party may disclose any information or item designated
26 “CONFIDENTIAL” only to:
27
28

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

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

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

9 (d) the court and its personnel;

10 (e) court reporters and their staff;

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

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

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

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

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

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

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

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

12 (c) cooperate with respect to all reasonable procedures sought to be pursued
13 by the Designating Party whose Protected Material may be affected. If the
14 Designating Party timely seeks a protective order, the Party served with the
15 subpoena or court order shall not produce any information designated in this action
16 as “CONFIDENTIAL” before a determination by the court from which the
17 subpoena or order issued, unless the Party has obtained the Designating Party’s
18 permission. The Designating Party shall bear the burden and expense of seeking
19 protection in that court of its confidential material and nothing in these provisions
20 should be construed as authorizing or encouraging a Receiving Party in this Action
21 to disobey a lawful directive from another court.

22
23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
24 PRODUCED IN THIS LITIGATION

25 (a) The terms of this Order are applicable to information produced by a Non-
26 Party in this Action and designated as “CONFIDENTIAL.” Such information
27 produced by Non-Parties in connection with this litigation is protected by the
28

1 remedies and relief provided by this Order. Nothing in these provisions should be
2 construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

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

15 (c) If the Non-Party fails to seek a protective order from this court within
16 14 days of receiving the notice and accompanying information, the Receiving
17 Party may produce the Non-Party's confidential information responsive to the
18 discovery request. If the Non-Party timely seeks a protective order, the Receiving
19 Party shall not produce any information in its possession or control that is subject
20 to the confidentiality agreement with the Non-Party before a determination by the
21 court. Absent a court order to the contrary, the Non-Party shall bear the burden and
22 expense of seeking protection in this court of its Protected Material.

23
24 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

25 If a Receiving Party learns that, by inadvertence or otherwise, it has
26 disclosed Protected Material to any person or in any circumstance not authorized
27 under this Stipulated Protective Order, the Receiving Party must immediately (a)
28 notify in writing the Designating Party of the unauthorized disclosures, (b) use its

1 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
2 the person or persons to whom unauthorized disclosures were made of all the terms
3 of this Order, and (d) request such person or persons to execute the
4 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
5 A.

6
7 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
8 PROTECTED MATERIAL

9 When a Producing Party gives notice to Receiving Parties that certain
10 inadvertently produced material is subject to a claim of privilege or other
11 protection, the obligations of the Receiving Parties are those set forth in Federal
12 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
13 whatever procedure may be established in an e-discovery order that provides for
14 production without prior privilege review. Pursuant to Federal Rule of Evidence
15 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
16 of a communication or information covered by the attorney-client privilege or
17 work product protection, the parties may incorporate their agreement in the
18 stipulated protective order submitted to the court.

19
20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
22 person to seek its modification by the Court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this
24 Protective Order no Party waives any right it otherwise would have to object to
25 disclosing or producing any information or item on any ground not addressed in
26 this Stipulated Protective Order. Similarly, no Party waives any right to object on
27 any ground to use in evidence of any of the material covered by this Protective
28 Order.

1 12.3 Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Civil Local Rule 79-5. Protected Material
3 may only be filed under seal pursuant to a court order authorizing the sealing of the
4 specific Protected Material at issue. If a Party's request to file Protected Material
5 under seal is denied by the court, then the Receiving Party may file the information
6 in the public record unless otherwise instructed by the court.

7
8 13. FINAL DISPOSITION

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

27
28 14. VIOLATION

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

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
5

6 DATED: March 6, 2018

7
8 /s/ C. Yong Jeong

9 Chan Yong Jeong
10 JEONG & LIKENS, L.C.
11 Attorney for Plaintiff
12 TEXTILE 26 CORP

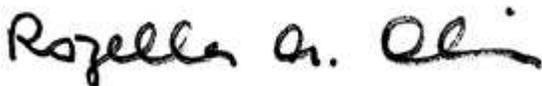
13
14 DATED: March 6, 2018

15 /s/ Michael J. Niborski

16 Michael J. Niborski
17 PRYOR CASHMAN LLP
18 Attorney for Defendant
19 OSGOOD TEXTILE COMPANY, INC. and MAYER KAHAN

20
21 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

22 DATED: March 6, 2018

23 

24
25
26
27
28
HON. ROZELLA A. OLIVER
United States District/Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Stipulated Protective Order that
7 was issued by the United States District Court for the Central District of California
8 on [date] in the case of _____ *Textile 26 Corp. v. Osgood Textile Company,*
9 *Inc. et al 2:17-cv-08883-JVS-RAO.* I agree to comply with and to be bound by all
10 the terms of this Stipulated Protective Order and I understand and acknowledge
11 that failure to so comply could expose me to sanctions and punishment in the
12 nature of contempt. I solemnly promise that I will not disclose in any manner any
13 information or item that is subject to this Stipulated Protective Order to any person
14 or entity except in strict compliance with the provisions of this Order.

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

23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27 Signature: _____