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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JITRADE, INC. a California Corporation;

Plaintiff,

vs.

APPLE TREE APPAREL, INC., a California Corporation; CHRIS Y KIM, an individual; DONG HUN KIM. d/b/a G1K, an individual; HYUN SUK KIM. d/b/a G1K, an individual; JUNG WON HWANG, an individual; VANILLA MONKEY LTD. d/b/a 1 MAD FIT, a California Corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 2:17-cv-8993 GW (FFMx)

**PROTECTIVE ORDER PURSUANT
TO STIPULATION**

1. INTRODUCTION

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

B. GOOD CAUSE STATEMENT

This action is likely to involve trade secrets, customer and pricing lists and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted, especially because the parties are engaged in the same or similar business. Such confidential and proprietary materials and information consist of, among other things, confidential business or financial information, information regarding confidential and proprietary trade secrets, and matters protected under intellectual property rights, confidential business practices, or other confidential research, development, or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected

1 from disclosure under state or federal statutes, court rules, case decisions, or common
2 law. Accordingly, to expedite the flow of information, to facilitate the prompt
3 resolution of disputes over confidentiality of discovery materials, to adequately protect
4 information the parties are entitled to keep confidential, to ensure that the parties are
5 permitted reasonable necessary uses of such material in preparation for and in the
6 conduct of trial, to address their handling at the end of the litigation, and serve the ends
7 of justice, a protective order for such information is justified in this matter. It is the
8 intent of the parties that information will not be designated as confidential for tactical
9 reasons and that nothing be so designated without a good faith belief that it has been
10 maintained in a confidential, non-public manner, and there is good cause why it should
11 not be part of the public record of this case.

12 2. DEFINITIONS

13 2.1 Action: this pending federal law suit entitled above.

14 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
17 how it is generated, stored or maintained) or tangible things that qualify for
18 protection under Federal Rule of Civil Procedure 26(c), and as specified above
19 in the Good Cause Statement.

20 2.4 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” Information or
21 Items: “CONFIDENTIAL” information that is highly confidential or proprietary
22 in nature that qualifies for protection under Federal Rule of Civil Procedure
23 26(c), as specified above in the Good Cause Statement.

24 2.5 Counsel: Outside Counsel of Record and House Counsel, if applicable, (as
25 well as their support staff).

26 2.6 Designating Party: a Party or Non-Party that designates information or
27 items that it produces in disclosures or in responses to discovery as
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1 “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

2 2.7 Disclosure or Discovery Material: all items or information, regardless of
3 the medium or manner in which it is generated, stored, or maintained (including,
4 among other things, testimony, transcripts, and tangible things), that are
5 produced or generated in disclosures or responses to discovery in this matter.

6 2.8 Expert: a person with specialized knowledge or experience in a matter
7 pertinent to the litigation who has been retained by a Party or its counsel to serve
8 as an expert witness or as a consultant in this Action.

9 2.9 House Counsel: attorneys who are employees of a party to this Action.
10 House Counsel does not include Outside Counsel of Record or any other outside
11 counsel.

12 2.10 Non-Party: any natural person, partnership, corporation, association, or
13 other legal entity not named as a Party to this action.

14 2.11 Outside Counsel of Record: attorneys who are not employees of a party to
15 this Action but are retained to represent or advise a party to this Action and have
16 appeared in this Action on behalf of that party or are affiliated with a law firm
17 which has appeared on behalf of that party, and includes support staff.

18 2.12 Party: any party to this Action, including all of its officers, directors,
19 employees, consultants, retained experts, and Outside Counsel of Record (and
20 their support staffs).

21 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this Action.

23 2.14 Professional Vendors: persons or entities that provide litigation support
24 services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or
26 medium) and their employees and subcontractors.
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1 2.15 Protected Material: any Disclosure or Discovery Material that is
2 designated as “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’
3 EYES ONLY.”

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

6 3. SCOPE

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

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

14 4. DURATION

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

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this
13 Order (see, e.g., second paragraph of section 5.2(b) below), or as otherwise stipulated
14 or ordered, Disclosure or Discovery Material that qualifies for protection under this
15 Order must be clearly so designated before the material is disclosed or produced.
16

17 Designation in conformity with this Order requires:

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

25 (b) for original documents made available for inspection, the Designating Party
26 need not designate them for protection until after the inspecting Party has indicated
27 which documents it would like copied and produced. During the inspection and before
28 the designation, all of the material made available for inspection shall be deemed

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

10 (c) for testimony given in depositions, that the Designating Party identify the
11 Protected Material on the record before the close of the deposition whenever possible.
12 However, a Party may designate portions of depositions as containing Protected
13 Material after transcription of the proceedings by notifying the other Parties to the
14 action of the portions of the transcript to be designated “CONFIDENTIAL” or
15 “CONFIDENTIAL—ATTORNEYS EYES ONLY.” A party will have until fourteen
16 (14) days after receipt of the deposition transcript to designate any such portions as
17 Protected Material. Until that fourteen (14) day period, the entire transcript shall be
18 treated as ““CONFIDENTIAL—ATTORNEYS EYES ONLY.”

19 (d) for information produced in some form other than documentary and for
20 any other tangible items, that the Producing Party affix in a prominent place on the
21 exterior of the container or containers in which the information is stored the legend
22 “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS EYES ONLY.” If only a
23 portion or portions of the information warrants protection, the Producing Party, to the
24 extent practicable, shall identify the protected portion(s).
25

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

1 timely correction of a designation, the Receiving Party must treat the material as
2 Protected Material in accordance with the provisions of this Order. If the Receiving
3 Party has disclosed the materials before receiving the designation, the Receiving Party
4 must notify the Designating Party in writing of each such disclosure.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
7 designation of confidentiality at any time that is consistent with the Court's Scheduling
8 Order.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
10 resolution process under Local Rule 37.1 et seq.

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

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

25 Protected Material must be stored and maintained by a Receiving Party at a
26 location and in a secure manner that ensures that access is limited to the persons
27 authorized under this Order.
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1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
2 ordered by the court or permitted in writing by the Designating Party, a Receiving
3 Party may disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

12 (d) the court and its personnel;

13 (e) court reporters and their staff;

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

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

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

3 7.3 Disclosure of “CONFIDENTIAL—ATTORNEYS’ EYES ONLY”
4 Information or Items. Unless otherwise ordered by the court or permitted in writing by
5 the Designating Party, a Receiving Party may disclose any information or item
6 designated “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” only to:

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

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

13 (c) the author or recipient of a document containing the information or a
14 custodian or other person who otherwise possessed or knew the information.

15 (d) any mediator or settlement officer, and their supporting personnel, mutually
16 agreed upon by any of the parties engaged in settlement discussions.

17 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
18 OTHER LITIGATION

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

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

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

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

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

13
14 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
15 IN THIS LITIGATION

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

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

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

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

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

6 (c) If the Non-Party fails to seek a protective order from this court within
7 fourteen (14) days of receiving the notice and accompanying information, the
8 Receiving Party may produce the Non-Party's confidential information responsive to
9 the discovery request. If the Non-Party timely seeks a protective order, the Receiving
10 Party shall not produce any information in its possession or control that is subject to
11 the confidentiality agreement with the Non-Party before a determination by the court.
12 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
13 of seeking protection in this court of its Protected Material.
14

15 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

24 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
25 PROTECTED MATERIAL

26 When a Producing Party gives notice to Receiving Parties that certain
27 inadvertently produced material is subject to a claim of privilege or other protection,
28 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil

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

8 12. MISCELLANEOUS

9 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
10 person to seek its modification by the Court in the future.

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

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

22 13. FINAL DISPOSITION

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

14
15 14. Any violation of this Order may be punished by any and all appropriate
16 measures including, without limitation, contempt proceedings and/or monetary
17 sanctions.

18
19 IT IS SO ORDERED.

20
21 DATED: April 13, 2018

22 /S/ Frederick F. Mumm
23 Honorable Frederick F. Mumm
24 United States District/Magistrate Judge
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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 that I
5 have read in its entirety and understand the Stipulated Protective Order that was issued
6 by the United States District Court for the Central District of California on [date] in the
7 case of *Jitrade Inc. v. Apple Tree Apparel, Inc., et al., Case No. Case No.: 2:17-cv-*
8 *8993-GW-FFM*. I agree to comply with and to be bound by all the terms of this
9 Stipulation for Protective Order and I understand and acknowledge that failure to so
10 comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that is
12 subject to this Stipulated Protective Order to any person or entity except in strict
13 compliance with the provisions of this Order.

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

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 Signature: _____

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