

1 Paul M. Gelb (SBN 214439)
 Paul.Gelb@dbr.com
 2 Zoë K. Wilhelm (SBN 305932)
 Zoe.Wilhelm@dbr.com
 3 DRINKER BIDDLE & REATH LLP
 1800 Century Park East, Suite 1500
 4 Los Angeles, California 90067-1517
 Telephone: (310) 203-4000
 5 Facsimile: (310) 229-1285

NOTE: CHANGES MADE BY THE COURT

6 Attorneys for Defendants
 P.J. SALVAGE, WUNDIES ENTERPRISES,
 7 INC., ANDRA GROUP L.P., BLUM'S
 SWIMWEAR AND INTIMATE APPAREL,
 8 CENTURY 21 DEPARTMENT STORES, LLC,
 DILLARD'S INC., AND NORDSTROM, INC.

9
 10 James W. Spertus (SBN 159825)
 Jim@spertuslaw.com
 11 Ezra D. Landes (SBN 253052)
 Ezra@spertuslaw.com
 12 SPERTUS, LANDES & UMHOFFER, LLP
 1990 S. Bundy Drive, Suite 705
 13 Los Angeles, California 90025
 Telephone: (310) 826-4700
 14 Facsimile: (310) 826-4711

15 Attorneys for Defendants
 AMAZON.COM, INC., LORD & TAYLOR,
 16 LLC, MACY'S INC., AND ZAPPOS IP, INC.

17 **UNITED STATES DISTRICT COURT**
 18 **CENTRAL DISTRICT OF CALIFORNIA**

19
 20 KLAUBER BROTHERS, INC., a New
 York corporation,

21 Plaintiff,

22 v.

23 P.J. SALVAGE, a business entity of
 24 form unknown; WUNDIES
 ENTERPRISES, INC., a New Jersey
 25 Corporation; ANDRA GROUP L.P.,
 individually and doing business as
 26 "HerRoom.com," a Texas Limited
 Partnership; AMAZON.COM, INC., a
 27 Washington Corporation; BLUM'S
 SWIMWEAR AND INTIMATE
 28 APPAREL, a business entity of form

Case No. 2:18-cv-05470-MWF-JPR

STIPULATION AND
~~**[PROPOSED]**~~ **PROTECTIVE**
ORDER REGARDING
CONFIDENTIAL DOCUMENTS

Magistrate Judge: Hon. Jean P.
 Rosenbluth
 Courtroom: Courtroom 690

Complaint Filed: June 19, 2018
 First Amended Complaint Filed:
 November 20, 2018

1 unknown; THE BRA GENIE, a business
2 entity of form unknown; CENTURY 21
3 DEPARTMENT STORES, LLC, a New
4 York Limited Liability Company;
5 DILLARD'S INC., and Arkansas
6 Corporation; LORD & TAYLOR, LLC,
7 a Delaware Limited Liability Company;
8 MACY'S INC., individually and doing
9 business as "Bloomingdale's", a
10 Delaware Corporation; NORDSTROM,
11 INC., a Washington Corporation;
12 ZAPPOS IP, INC., individually and
13 doing business as "Zappos.com" and
14 "6pm.com," and DOES 1 through 10,

Defendants.

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1 **WHEREAS**, Plaintiff Klauber Brothers, Inc. (“Plaintiff”) filed a lawsuit
2 against defendants P.J. Salvage, Wundies Enterprises, Inc., Andra Group L.P.,
3 Blum’s Swimwear and Intimate Apparel, Century 21 Department Stores, LLC,
4 Dillard’s Inc., Nordstrom, Inc., Amazon.com, Inc., Lord & Taylor, LLC, Macy’s
5 Inc., and Zappos IP, Inc. (“Defendants”) titled *Klauber Brothers, Inc. v. P.J.*
6 *Salvage, et al.*, 2:18-cv-05470-MWF-JPR (the “Action”).

7 **WHEREAS**, Plaintiff, by and through counsel of record, has requested
8 copies of confidential records;

9 **WHEREAS**, the aforementioned documents contain sensitive and
10 proprietary confidential business information;

11 The following Stipulation and Protective Order is agreed to between the
12 Parties, by and through their counsel, regarding the production of confidential
13 information without prejudice to any party’s position concerning any issue:

14 1. **BINDING EFFECT**

15 The following procedures shall govern the handling, examination, review and
16 use of Confidential information (as herein defined) during the course of the
17 proceedings in this Action. Furthermore, this stipulation shall take effect
18 immediately upon the parties’ joint execution of this stipulation, pending the
19 Court’s approval of the proposed protective order or an order of the same or similar
20 effect. Should the Court refuse or fail to enter such an order, the Plaintiff and
21 Defendants nonetheless agree to comply with the terms of this stipulation as to any
22 and all Confidential information disclosed or shared.

23 2. **CONFIDENTIAL INFORMATION**

24 As used herein, “Producing Party” shall refer to any person or entity
25 producing information or documents in connection with this litigation. As used
26 herein, “Confidential” information shall mean any information subject to the right
27 to privacy of any individual or entity, and designated as such by any Producing
28 Party as provided herein. Any testimony, information, document or thing produced

1 in connection with this litigation may be designated as “confidential” by such
2 Producing Party at the time such Producing Party produces or provides that
3 testimony, information, document or thing.

4 3. ACCESS TO CONFIDENTIAL DOCUMENTS AND
5 INFORMATION BY COUNSEL AND PARTIES

6 As used herein, Plaintiff and Defendants are collectively referenced as the
7 “Parties” and Plaintiff and Defendants each is referenced as a “Party.” As used
8 herein, the term “Qualified Person” means: (a) the Court and necessary Court
9 personnel, including stenographic reporters engaged in such proceedings as are
10 necessary incident to preparation for trial, trial of the Action, or any appeal of the
11 Action; (b) counsel for any Party, and the paralegal, stenographic, clerical and
12 secretarial personnel employed by such counsel; (c) any Party; (d) non-Party
13 experts or consultants (together with their associates, consultants and clerical and
14 secretarial staff) retained in this Action to assist in prosecution, defense, settlement
15 or other disposition of the Action; (e) any other person to whom the Producing
16 Party has consented to disclosure in advance and in writing, on notice to each Party
17 hereto.

18 Confidential documents and information contained therein shall be made
19 available only to a Qualified Person as provided herein. No Qualified Person who
20 gains access to Confidential documents may disclose the contents or information
21 contained in them to any person not a Qualified Person, without the advance written
22 approval of the Parties, as provided by this Protective Order, or by order of this
23 Court after properly noticed motion. This protective order does not govern trial or
24 related proceedings. The parties must separately seek an order from the Court at
25 the appropriate time concerning the use of confidential material at trial.

26 4. ACCESS TO CONFIDENTIAL DOCUMENTS AND
27 INFORMATION BY EXPERTS AND CONSULTANTS

28 Independent expert witnesses who may testify at trial and/or nontestifying

1 experts retained by any party shall be informed by the party of the terms of this
2 Order and such party shall provide a copy thereof to the expert and request and
3 obtain the expert's written consent to be bound by this Protective Order or any
4 protective order governing trial.

5 5. DISCLOSURES TO PERSONS OTHER THAN "QUALIFIED
6 PERSONS"

7 In the event that a party desires to disclose to any person other than a
8 Qualified Person, any Confidential documents and information contained therein,
9 counsel for that party shall give at least fourteen (14) written days notice to the
10 designating party giving the identity, name, address and occupation of each person
11 to whom such disclosure is desired and the documents that would be disclosed.
12 The designated party may serve by facsimile a written objection to such disclosures
13 to requesting counsel, but failure to serve any objection does not constitute waiver
14 of right to object, nor does it tacitly imply agreement. Absent agreement, any such
15 objections shall be resolved by the Court, on properly noticed Motion under Local
16 Rule 37 by the party seeking production of the document to Non-Qualified Persons.
17 Upon any production to a Non-Qualified Person, whether by agreement, order or
18 otherwise, the party providing the Confidential documents or information contained
19 therein shall provide a copy of the Protective Order to said persons to whom
20 disclosure is made.

21 6. USE OF CONFIDENTIAL DOCUMENTS AND INFORMATION

22 Confidential documents and information contained therein may be used
23 solely for the purposes of this Action and for no other purposes. The use of any
24 Confidential document or information contained therein at deposition in this lawsuit
25 is subject to all preceding and succeeding paragraphs, including, but not limited to,
26 that Confidential documents and information contained therein shall not be
27 provided at the deposition of a non-Qualified Person, unless by agreement of all
28 counsel, or Court Order, or other operation of this Agreement.

1 7. USE OF CONFIDENTIAL DOCUMENTS AND INFORMATION IN
2 THIS LAWSUIT.

3 Where Confidential documents and information contained therein are
4 permitted to be used at deposition, all portions of transcripts of such depositions
5 and exhibits thereto which refer or relate to such Confidential documents and
6 information contained therein shall themselves be considered as Confidential
7 documents and information. The parties shall take all necessary steps to insure
8 confidential portions of the transcripts and exhibits are preserved. In addition, the
9 deponent, whether or not a Qualified Person, shall be instructed by the producing
10 party, that he or she may not divulge any Confidential documents and information
11 except to Qualified Persons.

12 8. FILING AND SEALING

13 All Confidential documents and information contained therein, which are
14 filed with the Court shall be filed in accordance with Local Rule 79-5.

15 9. DISPOSAL AT THE CONCLUSION OF THE ACTION

16 At the conclusion of the action, all Confidential documents and copies
17 thereof either (i) shall be returned to counsel for the designated party who produced
18 such documents and information, or (ii) shall be destroyed. If any such
19 Confidential documents or information contained therein are furnished to any
20 expert, consultant, or to any other person, in accordance with this Stipulation and
21 Protective Order, counsel for the party who provided such information to the
22 expert, consultant, or to the other person shall insure that all Confidential
23 documents and information be returned to counsel for the designated party to whom
24 the documents belong, or shall be destroyed. If destroyed, certification thereof shall
25 be provided to opposing counsel. Nothing in the Stipulation and Protective Order
26 shall require the return or destruction of pleadings, court papers or other documents
27 which are not Confidential documents and information which are in the public
28 domain.

1 10. AMENDMENTS

2 Nothing in this Protective Order shall be construed to prohibit or prejudice
3 any party to this litigation from seeking amendments broadening or restricting the
4 rights of access to and use of Confidential documents and information, or from
5 contesting the designation of Confidential Document and information or the right of
6 a person to be treated as a Qualified Person as provided herein.

7 11. NO WAIVER OF PRIVILEGE

8 All parties acknowledge that the speed by which these documents were
9 produced might result in the inadvertent production of documents that are subject to
10 the attorney-client and/or work product privileges. Accordingly, all of the parties
11 herein agree that no waiver of any privileges will result from the production of any
12 Confidential documents which are in fact privileged. If any privileged documents
13 were discovered, they would be returned to the producing party.

14 12. NO RESTRICTIONS ON DOCUMENTS OR INFORMATION
15 FROM OTHER SOURCES

16 Nothing in this Protective Order shall be deemed to prevent any party from
17 using any documents or information contained therein for any purpose, if such
18 documents or information contained therein are in any manner identical, similar or
19 related to the documents produced pursuant to this Stipulation and Protective Order
20 as long as such documents or information was not obtained from the exchange of
21 documents set forth herein.

22 13. DISPUTES REGARDING DESIGNATION

23 If a Party disputes the designation of Information as being Confidential, that
24 Party shall advise the other Parties in writing of the objection, and the Party
25 designating the Information as being Confidential shall within ten (10) days set
26 forth the basis in writing for the designation. If the dispute cannot be
27 resolved, the Party objecting to the Confidential designation shall bear the
28 burden of applying to the Court for the entry of an appropriate Order with the

1 designating party bearing the burden of persuasion. All documents designated
2 Confidential shall remain so designated until they are redesignated by written
3 agreement of counsel or the issue is resolved by the Court.

4 [Signatures on the Following Page]
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1 Dated: January 31, 2019

Respectfully submitted,

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DRINKER BIDDLE & REATH LLP

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By: /s/ Paul M. Gelb

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Paul M. Gelb
Zoë K. Wilhelm

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Attorneys for Defendants
P.J. SALVAGE, WUNDIES
ENTERPRISES, INC., ANDRA
GROUP L.P., BLUM'S SWIMWEAR
AND INTIMATE APPAREL,
CENTURY 21 DEPARTMENT
STORES, LLC, DILLARD'S INC.,
AND NORDSTROM, INC.

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11 Dated: January 31, 2019

SPERTUS, LANDES & UMHOFFER,
LLP

12

By: /s/ Ezra D. Landes

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James W. Spertus
Ezra D. Landes

14

Attorneys for Defendants
AMAZON.COM, INC., LORD &
TAYLOR, LLC, MACY'S INC., AND
ZAPPOS IP, INC.

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18 Dated: January 31, 2019

DONIGER / BURROUGHS

19

By: /s/ Trevor W. Barrett

20

Stephen M. Doniger
Scott Alan Burroughs
Trevor W. Barrett
Justin M. Gomes

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Attorneys for Plaintiff
KLAUBER BROTHERS, INC.

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25 **IT IS SO ORDERED** this 11th day of February, 2019.

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Honorable Jean P. Rosenbluth
United States Magistrate Judge

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