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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOVELTY TEXTILE, INC., a
California Corporation,

Plaintiff,

vs.

WHITE MARK UNIVERSAL, INC.,
a
California Corporation; WALMART,
INC., a Delaware Corporation;
and DOES 1 through 10,

Defendants.

Case No.: 2:18-cv-07142-JFW-FFM

~~[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

1 not confer blanket protections on all disclosures or responses to discovery and that
2 the protection it affords from public disclosure and use extends only to the limited
3 information or items that are entitled to confidential treatment under the applicable
4 legal principles. The parties further acknowledge, as set forth in Section 12.3, below,
5 that this Stipulated Protective Order does not entitle them to file confidential
6 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
7 followed and the standards that will be applied when a party seeks permission from
8 the court to file material under seal.

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10 B. GOOD CAUSE STATEMENT

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12 It is the intent of the parties and the Court that information will not be
13 designated as confidential for tactical reasons in this case and that nothing shall be
14 designated without a good faith belief that there is good cause why it should not be
15 part of the public record of this case. Examples of confidential information that the
16 parties may seek to protect from unrestricted or unprotected disclosure include, but
17 are not limited to:

- 18 (a) Information that is the subject of a non-disclosure or
19 confidentiality agreement or obligation;
- 20 (b) The names, or other information tending to reveal the identity of
21 a party's supplier, designer, distributor, or customer;
- 22 (c) Agreements with third-parties, including license agreements,
23 distributor agreements, manufacturing agreements, design
24 agreements, development agreements, supply agreements, sales
25 agreements, or service agreements;
- 26 (d) Research and development information;
- 27 (e) Proprietary engineering or technical information, including
28 product design, manufacturing techniques, processing
information, drawings, memoranda and reports;

- 1 (f) Information related to budgets, sales, profits, costs, margins,
2 licensing of technology or designs, product pricing, or other
3 internal financial/accounting information, including non-public
4 information related to financial condition or performance and
5 income or other non-public tax information;
- 6 (g) Information related to internal operations including personnel
7 information;
- 8 (h) Information related to past, current and future product
9 development;
- 10 (i) Information related to past, current and future market analyses
11 and business and marketing development, including plans,
12 strategies, forecasts and competition; and
- 13 (j) Trade secrets (as defined by the jurisdiction in which the
14 information is located).

15 Unrestricted or unprotected disclosure of such confidential technical,
16 commercial, financial, or personal information would result in prejudice or harm to
17 the producing party by revealing the producing party's competitive confidential
18 information, which has been developed at the expense of the producing party and
19 which represents valuable tangible and intangible assets of that party. Additionally,
20 privacy interests must be safeguarded. Accordingly, the parties respectfully submit
21 that there is good cause for the entry of this Order.

22 The parties agree, subject to the Court's approval, that the following terms
23 and conditions shall apply to this civil action. The parties acknowledge that this
24 Order does not confer blanket protections on all disclosures or responses to
25 discovery and that the protection it affords from public disclosure and use extends
26 only to the limited information or items that are entitled to confidential treatment
27 under the applicable legal principles. Nothing herein shall prevent any party from
28 withholding or redacting any documents and/or information that the party deems
privileged, irrelevant, or otherwise objectionable.

1 2. DEFINITIONS

2 2.1 Action: this pending federal lawsuit bearing Case No. 2:18-cv-07142-
3 JFW-FFM.

4 2.2 Challenging Party: a Party or Non-Party that challenges the
5 designation of information or items under this Order.

6 2.3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
7 EYES ONLY” Information or Items: information (regardless of how it is generated,
8 stored or maintained) or tangible things that qualify for protection under Federal Rule
9 of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

10 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
11 support staff).

12 2.5 Designating Party: a Party or Non-Party that designates information or
13 items that it produces in disclosures or in responses to discovery as
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
15 ONLY.”

16 2.6 Designated Material: all items or information, regardless of the medium
17 or manner in which it is generated, stored, or maintained (including, among other
18 things, testimony, transcripts, and tangible things), that are produced or generated in
19 disclosures or responses to discovery in this matter.

20 2.7 Expert: a person with specialized knowledge or experience in a matter
21 pertinent to the litigation who has been retained by a Party or its counsel to serve as
22 an expert witness or as a consultant in this Action.

23 2.8 House Counsel: attorneys who are employees of a party to this Action.
24 House Counsel does not include Outside Counsel of Record or any other outside
25 counsel.

26 2.9 Non-Party: any natural person, partnership, corporation, association, or
27 other legal entity not named as a Party to this Action.

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1 2.10 Outside Counsel of Record: attorneys who are not employees of a party
2 to this Action but are retained to represent or advise a party to this Action and have
3 appeared in this Action on behalf of that party or are affiliated with a law firm which
4 has appeared on behalf of that party, and includes support staff.

5 2.11 Party: any party to this Action, including all of its officers, directors,
6 employees, consultants, retained experts, and Outside Counsel of Record (and their
7 support staffs).

8 2.12 Producing Party: a Party or Non-Party that produces Designated
9 Material in this Action.

10 2.13 Professional Vendors: persons or entities that provide litigation support
11 services (e.g., photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or medium)
13 and their employees and subcontractors.

14 2.14 Protected Material: any Designated Material that is designated as
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
16 ONLY.”

17 2.15 Receiving Party: a Party that receives Designated Material from a
18 Producing Party.

19
20 3. SCOPE

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

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

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1 4. DURATION

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

10
11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.

13 Each Party or Non-Party that designates information or items for protection under this
14 Order must take care to limit any such designation to specific material that qualifies
15 under the appropriate standards. The Designating Party must designate for protection
16 only those parts of material, documents, items, or oral or written communications that
17 qualify so that other portions of the material, documents, items, or communications
18 for which protection is not warranted are not swept unjustifiably within the ambit of
19 this Order.

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

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

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1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
3 stipulated or ordered, Designated Material that qualifies for protection under this
4 Order must be clearly so designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

6 (a) For information in documentary form (e.g., paper or electronic
7 documents, but excluding transcripts of depositions or other pretrial or trial
8 proceedings), that the Producing Party affix at a minimum, the legend
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY” (hereinafter “CONFIDENTIAL legend”), to each page so designated prior to
11 production. If the first or cover page of a multi-page document bears the legend
12 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
13 the entire document shall be deemed so designated, and the absence of marking each
14 page shall not constitute a waiver of the terms of this Order. If the label affixed to a
15 computer disk containing multiple files bears the legend “CONFIDENTIAL,”
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” the entire disk shall
17 be deemed so protected, and the absence of marking of each file shall not constitute a
18 waiver of the terms of this Order. A designation of ““CONFIDENTIAL,” or
19 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as to any item, thing
20 or object that cannot otherwise be categorized as a document, shall be made: (1) by
21 placing the legend “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL –
22 ATTORNEYS’ EYES ONLY” on the thing, object or container within which it is
23 stored; or (2) by specifically identifying, in writing, the item and the level of
24 confidentiality designation, where such labeling is not feasible. When a party wishes
25 to designate as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL –
26 ATTORNEYS’ EYES ONLY” materials produced by someone other than the
27 Designating Party (a “Producing Party”), such designation shall be made within forty-
28 five (45) business days from the date that the Designating Party receives copies of the

1 materials from the producing or disclosing entity and by notice to all parties to this
2 Action and to the Producing Party, if such party is not a party to this Action,
3 identifying the materials to be designated with particularity (either by production
4 numbers or by providing other adequate identification of the specific material). Such
5 notice shall be sent by email and regular mail. A Party shall be permitted to designate
6 as “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY” material produced by a Producing Party only where: (a) the material being
8 produced was provided to or developed by such Producing Party (i) under a written
9 confidentiality agreement with the Designating Party, or (ii) within a relationship with
10 the Designating Party (or a party operating under the control thereof) in which
11 confidentiality is imposed by law (including, but not limited, to the employment
12 relationship and the vendor-customer relationship); or (b) the material being produced
13 could be considered “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL –
14 ATTORNEYS’ EYES ONLY” material of the Designating Party if it were in the
15 possession of the Designating Party. Upon notice of designation, all persons receiving
16 notice of the requested designation of materials shall (1) make no further disclosure
17 of such Designated Material or information contained therein, except as allowed in
18 this Order, and (2) take reasonable steps to notify any persons known to have
19 possession of or access to such Designated Materials of the effect of such designation
20 under this Order. If “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY” material or information contained therein is disclosed
22 to any person other than those entitled to disclosure in the manner authorized by this
23 Order, the party responsible for the disclosure shall, immediately upon learning of
24 such disclosure, inform the Designating Party in writing of all pertinent facts relating
25 to such disclosure, and shall make every effort to prevent further disclosure by the
26 unauthorized person(s).

27 A Party or Non-Party that makes original documents available for inspection
28 need not designate them for protection until after the inspecting Party has indicated

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

11 (b) For testimony given in depositions that the Designating Party identify
12 the Designated Material on the record, before the close of the deposition all protected
13 testimony, and have the court reporter identify the portion in the transcript as
14 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
15 ONLY.” The designated testimony shall be bound in a separate volume and marked
16 by the reporter accordingly. Where testimony is designated during the deposition, the
17 Designating Party shall have the right to exclude, at those portions of the deposition,
18 all persons not authorized by the terms of this Order to receive such Designated
19 Material. Within sixty (60) days after a deposition transcript is certified by the court
20 reporter, any party may designate pages of the transcript and/or its exhibits as
21 Designated Material. During such sixty (60) day period, the transcript in its entirety
22 shall be treated as “CONFIDENTIAL” (except for those portions identified earlier as
23 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” which shall be treated
24 accordingly from the date of designation). If any party so designates such material,
25 the parties shall provide written notice of such designation to all parties within the
26 sixty (60) day period. Designated Material within the deposition transcript or the
27 exhibits thereto may be identified in writing by page and line, or by underlining and

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1 marking such portions “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL –
2 ATTORNEYS’ EYES ONLY” and providing such marked-up portions to all counsel.

3 (c) For information produced in some form other than documentary and for
4 any other tangible items, that the Producing Party affix in a prominent place on the
5 exterior of the container or containers in which the information is stored the legend
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
7 ONLY.” If only a portion or portions of the information warrants protection, the
8 Producing Party, to the extent practicable, shall identify the protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
10 failure to designate qualified information or items does not, standing alone, waive the
11 Designating Party’s right to secure protection under this Order for such material.
12 Upon timely correction of a designation, the Receiving Party must make reasonable
13 efforts to assure that the material is treated in accordance with the provisions of this
14 Order.

15 5.4 Legal Effect of Designation. The designation of any information or
16 materials as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – ATTORNEYS’
17 EYES ONLY” is intended solely to facilitate the conduct of this Action. Neither
18 such designation nor treatment in conformity with such designation shall be
19 construed in any way as an admission or agreement by any party that the Designated
20 Material constitutes or contains any trade secret or confidential information. Except
21 as provided in this Order, no party to this action shall be obligated to challenge the
22 propriety of any designation, and a failure to do so shall not preclude a subsequent
23 attack on the propriety of such designation. Nothing herein in any way restricts the
24 ability of the receiving party to use “CONFIDENTIAL,” “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material produced to it in
26 examining or cross-examining any employee or consultant of the Designating Party.
27 The parties agree that the Plaintiff and Defendants White Mark Universal, Inc. and
28 Walmart, Inc. may be provided a summary of the alleged infringers’ full identities,

1 revenues, and gross profits numbers. The information in summary format may be
2 provided to Plaintiff and Defendants White Mark Universal, Inc. and Walmart, Inc.
3 notwithstanding any party’s designation of documents showing such information as
4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Plaintiff and
5 Defendants White Mark Universal, Inc. and Walmart, Inc. may not disclose the
6 information from such Designated Materials to any party other than the Designating
7 Party.

8
9 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

10 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
11 designation of confidentiality at any time that is consistent with the Court’s
12 Scheduling Order. By stipulating to the entry of this Order no party waives any right
13 it otherwise would have to object to disclosing or producing any information or item
14 on any ground not addressed in this Order. Similarly, no party waives any right to
15 object on any ground to use in evidence of any of the material covered by this Order.
16 Moreover, this Order shall not preclude or limit any party’s right to seek further and
17 additional protection against or limitation upon production of documents produced in
18 response to discovery. The parties reserve their rights to object to, redact or withhold
19 any information, including confidential, proprietary, or private information, on any
20 other applicable grounds permitted by law, including third-party rights and relevancy.

21 6.2 Meet and Confer. If the Parties cannot resolve a challenge without
22 court intervention, the Challenging Party shall file and serve a motion to challenge
23 confidentiality under Civil Local Rule 37-1 *et seq.* (and in compliance with Civil
24 Local Rule 79-5.1, if applicable) within twenty-one (21) days of the initial notice of
25 challenge or within fourteen (14) days of the parties agreeing that the meet and
26 confer process will not resolve their dispute, whichever is earlier. Each such motion
27 must be accompanied by a competent declaration affirming that the movant has
28 complied with the meet and confer requirements imposed in the preceding
paragraph. In addition, the Designating Party may file a motion for a protective

1 order preserving the confidential designation at any time if there is good cause for
2 doing so. Any motion brought pursuant to this provision must be accompanied by a
3 competent declaration affirming that the movant has complied with the meet and
4 confer requirements imposed by the preceding paragraph. The burden of persuasion
5 in any such challenge proceeding shall be on the Designating Party. Frivolous
6 challenges and those made for an improper purpose (e.g., to harass or impose
7 unnecessary expenses and burdens on other parties) may expose the Challenging
8 Party to sanctions. Designations not made in good faith may expose the Designating
9 Party to sanctions. Any party claiming non-disclosure of material protected by the
10 attorney-client privilege or the attorney work-product doctrine shall prepare a
11 privilege log pursuant to Federal Rule of Civil Procedure 26(b)(5). The parties shall
12 meet and confer in writing or telephonically on how privileged materials should be
13 logged, including with respect to ESI and metadata. Upon receipt of a privilege
14 log, the receiving party shall challenge in writing any contended deficiencies within
15 fourteen (14) days of receipt by identifying (1) the materials for which it questions
16 the claim of privilege, and (2) the reasons (including legal support) for its assertion
17 that the materials are not privileged. Each party is entitled to a total of ten (10)
18 challenges of deficiencies; the parties may meet and confer to amend the total
19 number of challenges allotted. ~~If the receiving party fails to challenge any~~ **FFM**
20 ~~contended deficiencies within the fourteen (14) days of receipt, that party waives its~~
21 ~~right to make any challenges thereafter.~~ Within fourteen (14) days of receiving a
22 challenge of contended deficiencies in a privilege log, the party seeking to support
23 the claim(s) of privilege shall provide a written response supporting the claim(s) of
24 privilege (including legal support). The burden of persuasion in any challenge of
25 contended deficiencies shall be on the party asserting the privilege or protection as
26 the parties meet and confer in resolving challenges of contended deficiencies. If an
27 agreement cannot be met after ten (10) days, any party may with Court approval
28 submit the material or materials under seal to the Court for a determination as to
privilege or protection. Unless the Designating Party has waived or withdrawn the

1 confidentiality designation, all parties shall continue to afford the material in
2 question the level of protection to which it is entitled under the Producing Party's
3 designation until the Court rules on the challenge.

4
5 7. ACCESS TO AND USE OF PROTECTED MATERIAL

6 7.1 Basic Principles. A Receiving Party may use Protected Material that is
7 disclosed or produced by another Party or by a Non-Party in connection with this
8 Action only for prosecuting, defending, or attempting to settle this Action. Such
9 Protected Material may be disclosed only to the categories of persons and under the
10 conditions described in this Order. When the Action has been terminated, a Receiving
11 Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Subject to the
16 limitations set forth in this Order, Designated Material may be marked
17 "CONFIDENTIAL" for the purpose of preventing the disclosure of information or
18 materials that the designating party in good faith believes is confidential. Before
19 designating any specific information or material "CONFIDENTIAL," the
20 Designating Party's counsel shall make a good faith determination that the
21 information warrants protection under Rule 26(c) of the Federal Rules of Civil of the
22 Federal Rules of Civil Procedure. Such information may include, but is not limited
23 to:

- 24 (a) Materials relating to any privileged, confidential, or nonpublic
25 information, including but not limited to trade secrets, research, design, development,
26 financial, technical, marketing, planning, personal, or commercial information, as
27 such terms are used in in the Federal Rules of Civil Procedure and any applicable case
28 law interpreting Rule 26(c)(1)(G);

1 (b) Contracts; proprietary information; vendor agreements; personnel files;
2 claim/litigation information; or certain policies and procedures;

3 (c) Information which the Designating Party believes in good faith falls
4 within the right to privacy guaranteed by the laws of the United States or California;
5 and

6 (d) Information which the Designating Party believes in good faith to
7 constitute, contain, reveal or reflect proprietary, financial, business, technical, or other
8 confidential information which is not otherwise protected as Highly Confidential.

9 (e) The fact that an item or category is listed as an example in this or other
10 sections of this Order does not, by itself, render the item or category discoverable.

11 Unless otherwise ordered by the court or permitted in writing by the
12 Designating Party, a Receiving Party may disclose any information or item designated
13 “CONFIDENTIAL” only to:

14 (a) Persons who appear on the face of Designated Materials marked
15 “CONFIDENTIAL” as an author, addressee, or recipient thereof;

16 (b) Counsel to the parties in this Action, including any in-house counsel,
17 and their respective associates, clerks, legal assistants, stenographic, videographic and
18 support personnel, and other employees of such outside litigation attorneys, and
19 organizations retained by such attorneys to provide litigation support services in this
20 action and the employees of said organizations;

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

24 (d) A party’s officers and/or employees, which may include in-house
25 counsel;

26 (e) The Court, its clerks and secretaries, and any court reporter retained to
27 record proceedings before the Court;

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

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

13 (i) Any mediator or settlement officer, and their supporting personnel,
14 mutually agreed upon by any of the parties engaged in settlement discussions. Each
15 mediator or settlement officer must sign a certification that he or she has read this
16 Order, will abide by its provisions, and will submit to the jurisdiction of this Court
17 regarding the enforcement of this Order’s provisions.

18 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
19 ONLY” Information or Items. Subject to the limitations in this Order, Designated
20 Materials may be marked “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
21 ONLY” for the purpose of preventing the disclosure of information or materials
22 which, if disclosed to the receiving party, might cause competitive harm to the
23 Designating Party. Information and material that may be subject to this protection
24 includes, but is not limited to, technical and/or research and development data,
25 intellectual property, financial, marketing and other sales data, and/or information
26 having strategic commercial value pertaining to the Designating Party’s trade or
27 business. Nothing in paragraph 2.1 shall limit the information or material that can be
28 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” under this

1 paragraph. Before designating any specific information “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” the Designating Party’s counsel
3 shall make a good faith determination that the information warrants such protection.
4 Such information may include, but is not limited to:

5 (a) The financial performance or results of the Designating Party,
6 including without limitation income statements, profit and loss statements, balance
7 sheets, cash flow analyses, budget projections, purchase and sale records and present
8 value calculations;

9 (b) Corporate and strategic planning by the Designating Party, including
10 without limitation marketing plans, competitive intelligence reports, sales
11 projections and competitive strategy documents;

12 (c) Names, addresses, and other information that would identify customers
13 or prospective customers, or the distributors or prospective distributors of the
14 Designating Party;

15 (d) Information used by the Designating Party in or pertaining to its trade
16 or business, such as trade secrets, nonpublic research and development, pricing
17 formulas, inventory management programs and confidential business information
18 not generally known to the general public, which information the Designating Party
19 believes in good faith has competitive value, which is not generally known to others
20 and which the Designating Party would not normally reveal to third parties except in
21 confidence, or has undertaken with others to maintain in confidence; and

22 (e) Customer-related protected data, which means and refers to any
23 information that the Designating Party believes in good faith to be subject to federal,
24 state or foreign data protection laws or other privacy obligations; such data
25 protection laws include but are not limited to The Gramm-Leach-Bliley Act, 15
26 U.S.C. § 6801 et seq. (financial information), and The Health Insurance Portability
27 and Accountability Act and the regulations thereunder, 45 C.F.R. Part 10 and
28 Subparts A and E of Part 164 (medical information).

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1 Unless otherwise ordered by the court or permitted in writing by the
2 Designating Party, a Receiving Party may disclose any information or item designated
3 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

4 (a) Persons who appear on the face of Designated Materials marked
5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” as an author,
6 addressee, or recipient thereof;

7 (b) Counsel to the parties in this Action, including any in-house counsel,
8 and their respective associates, clerks, legal assistants, stenographic, videographic and
9 support personnel, and other employees of such outside litigation attorneys, and
10 organizations retained by such attorneys to provide litigation support services in this
11 action and the employees of said organizations;

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, its clerks and secretaries, and any court reporter retained to
16 record proceedings before the Court;

17 (e) 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 (f) Any mediator or settlement officer, and their supporting personnel,
21 mutually agreed upon by any of the parties engaged in settlement discussions. Each
22 mediator or settlement officer must sign a certification that he or she has read this
23 Order, will abide by its provisions, and will submit to the jurisdiction of this Court
24 regarding the enforcement of this Order’s provisions.

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1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 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
9 to 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 of
11 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.

14 If the Designating Party timely seeks a protective order, the Party served with
15 the 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 subpoena
17 or order issued, unless the Party has obtained the Designating Party’s permission. The
18 Designating Party shall bear the burden and expense of seeking protection in that court
19 of its confidential material and nothing in these provisions should be construed as
20 authorizing or encouraging a Receiving Party in this Action to disobey a lawful
21 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
26 Non-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 agreement
9 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 Non-
14 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 Party
17 may produce the Non-Party's confidential information responsive to the discovery
18 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
19 not produce any information in its possession or control that is subject to the
20 confidentiality agreement with the Non-Party before a determination by the court.
21 Absent a court order to the contrary, the Non-Party shall bear the burden and expense
22 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 disclosed
26 Protected Material to any person or in any circumstance not authorized under this
27 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
28 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts

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

5
6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

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

18
19 12. MISCELLANEOUS

20 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
21 person to seek its modification by the Court in the future.

22 12.2 Right to Assert Other Objections. By stipulating to the entry of this
23 Protective Order no Party waives any right it otherwise would have to object to
24 disclosing or producing any information or item on any ground not addressed in this
25 Stipulated Protective Order. Similarly, no Party waives any right to object on any
26 ground to use in evidence of any of the material covered by this Protective Order.

27 12.3 Filing Protected Material. Nothing in this Order shall vary the
28 requirements for filing under Seal imposed by the Federal Rules of Civil Procedure

1 or the Local Rules of this Court. If a party wishes to file with the Court any document,
2 transcript or thing containing information which has been designated
3 “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
4 ONLY” that party shall follow the procedures set forth in Local Rule 79-5.2.2 (which
5 sets out different procedures depending upon whether or not the party seeking to file
6 material under seal is the same party which designated the material as confidential)
7 and ensure the materials are marked with the legend:

8
9 **CONFIDENTIAL**

10 IN ACCORANCE WITH THE STIPULATED
11 PROTECTIVE ORDER OF THE COURT, THE
12 CONTENTS OF THIS ENVELOPE SHALL BE
13 TREATED AS CONFIDENTIAL AND MUST NOT BE
14 SHOWN TO A PERSON OTHER THAN THE COURT,
15 ATTORNEYS IN THIS CASE, OR TO PERSONS
16 ASSISTING THOSE ATTORNEYS.

17 Filing the document under seal shall not bar any party from unrestricted use or
18 dissemination of those portions of the document that do not contain material
19 designated “CONFIDENTIAL,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
20 EYES ONLY.” If a filing party fails to seek to file under seal items which a party in
21 good faith believes to have been designated as or to constitute “CONFIDENTIAL,”
22 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material, such
23 party may move the Court to file said information under seal within four (4) days of
24 service of the original filing. Notice of such designation shall be given to all parties.
25 Nothing in this provision relieves a party of liability for damages caused by failure to
26 properly seek the filing of Designated Material under seal in accordance with Local
27 Rule 79-5.2.2.
28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 1. 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 March 6, 2019 in the case of *Novelty Textile, Inc. v. White Mark Universal, Inc.,*
9 *et al.*, 2:18-cv-07142-JFW-FFM. I agree to comply with and to be bound by all the
10 terms of this Stipulated Protective Order and I understand and acknowledge that
11 failure to so comply could expose me to sanctions and punishment in the nature of
12 contempt. I solemnly promise that I will not disclose in any manner any information
13 or item that is subject to this Stipulated Protective Order to any person or entity
14 except in strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for the
16 Central District of California for the purpose of enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of this
18 action. I hereby appoint _____ [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.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26
27 Signature: _____
28