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 22 LIMITED

23 [additional counsel listed on next page]

24 **UNITED STATES DISTRICT COURT**  
 25 **CENTRAL DISTRICT OF CALIFORNIA**

26 CATHERINE ANN GALLAGHER, an  
 27 individual,  
 28  
 29 Plaintiff,  
 30  
 31 v.  
 32 SWAROVSKI NORTH AMERICA  
 33 LIMITED, a Rode Island Corporation;  
 34 and DOES 1 to 50, inclusive,  
 35  
 36 Defendants.

Case No. 2:19-cv-06052-JFW-JEM  
 Assigned to: Hon. John F. Walter  
 Magistrate Judge John E. McDermott  
**DISCOVERY MATTER**  
**JOINTLY STIPULATED**  
**PROTECTIVE ORDER; AND**  
**ORDER**

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9 CATHERINE ANN GALLAGHER  
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1                   **TO THE HONORABLE COURT, ALL PARTIES AND THEIR**  
2 **ATTORNEYS OF RECORD:**

3                   In order to facilitate discovery in the above-caption matter, Plaintiff  
4 Catherine Ann Gallagher (“Plaintiff”) and Defendant Swarovski North America  
5 Limited (“Defendant”) hereby agree to the following Jointly Stipulated Protective  
6 Order concerning the CONFIDENTIAL treatment of certain documents and  
7 information.

8 1.     PURPOSES AND LIMITATIONS

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

22                   It is the intent of the parties that information will not be designated as  
23 confidential for tactical reasons and that nothing be so designated without a good  
24 faith belief that it has been maintained in a confidential, non-public manner, and  
25 there is good cause why it should not be part of the public record of this case.

26 2.     DEFINITIONS

27                   2.1 Challenging Party: a Party or Non-Party that challenges the  
28 designation of information or items under this Order.

1           2.2    “CONFIDENTIAL” Information or Items: information (regardless of  
2 how it is generated, stored or maintained) or tangible things that qualify for  
3 protection under Federal Rule of Civil Procedure 26(c).

4           2.3    Counsel (without qualifier): Outside Counsel of Record and House  
5 Counsel (as well as their support staff).

6           2.4    Designating Party: a Party or Non-Party that designates information or  
7 items that it produces in disclosures or in responses to discovery as  
8 “CONFIDENTIAL.”

9           2.5    Disclosure or Discovery Material: all items or information, regardless  
10 of the medium or manner in which it is generated, stored, or maintained (including,  
11 among other things, testimony, transcripts, and tangible things), that are produced  
12 or generated in disclosures or responses to discovery in this matter.

13          2.6    Expert: a person with specialized knowledge or experience in a matter  
14 pertinent to the litigation who has been retained by a Party or its counsel to serve as  
15 an expert witness or as a consultant in this action.

16          2.7    House Counsel: attorneys who are employees of a party to this action.  
17 House Counsel does not include Outside Counsel of Record or any other outside  
18 counsel.

19          2.8    Non-Party: any natural person, partnership, corporation, association,  
20 or other legal entity not named as a Party to this action.

21          2.9    Outside Counsel of Record: attorneys who are not employees of a party  
22 to this action but are retained to represent or advise a party to this action and have  
23 appeared in this action on behalf of that party or are affiliated with a law firm which  
24 has appeared on behalf of that party.

25          2.10 Party: any party to this action, including all of its officers, directors,  
26 employees, consultants, retained experts, and Outside Counsel of Record (and their  
27 support staffs).

28          2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
Discovery Material in this action.

1           2.12 Professional Vendors: persons or entities that provide litigation  
2 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
3 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
4 and their employees and subcontractors.

5           2.13 Protected Material: any Disclosure or Discovery Material that is  
6 designated as “CONFIDENTIAL.”

7           2.14 Receiving Party: a Party that receives Disclosure or Discovery  
8 Material from a Producing Party.

9   3.   SCOPE

10           The protections conferred by this Stipulation and Order cover not only  
11 Protected Material (as defined above), but also (1) any information copied or  
12 extracted from Protected Material; (2) all copies, excerpts, summaries, or  
13 compilations of Protected Material; and (3) any testimony, conversations, or  
14 presentations by Parties or their Counsel that might reveal Protected Material.  
15 However, the protections conferred by this Stipulation and Order do not cover the  
16 following information: (a) any information that is in the public domain at the time  
17 of disclosure to a Receiving Party or becomes part of the public domain after its  
18 disclosure to a Receiving Party as a result of publication not involving a violation  
19 of this Order, including becoming part of the public record through trial or  
20 otherwise; and (b) any information known to the Receiving Party prior to the  
21 disclosure or obtained by the Receiving Party after the disclosure from a source who  
22 obtained the information lawfully and under no obligation of confidentiality to the  
23 Designating Party. Any use of Protected Material at trial shall be governed by a  
24 separate agreement or order.

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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 5. DESIGNATING PROTECTED MATERIAL

11 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

27 5.2 Manner and Timing of Designations. Except as otherwise provided in  
28 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
stipulated or ordered, Disclosure or Discovery Material that qualifies for protection

1 under this Order must be clearly so designated before the material is disclosed or  
2 produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic  
5 documents, but excluding transcripts of depositions or other pretrial or trial  
6 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each  
7 page that contains protected material. If only a portion or portions of the material on  
8 a page qualifies for protection, the Producing Party also must clearly identify the  
9 protected portion(s) (e.g., by making appropriate markings in the margins).

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

22 (b) for testimony given in deposition or in other pretrial or trial  
23 proceedings, that the Designating Party identify on the record, before the close of  
24 the deposition, hearing, or other proceeding, all protected testimony.

25 (c) for information produced in some form other than documentary and  
26 for any other tangible items, that the Producing Party affix in a prominent place on  
27 the exterior of the container or containers in which the information or item is stored  
28 the legend “CONFIDENTIAL.” If only a portion or portions of the information or

1 item warrant protection, the Producing Party, to the extent practicable, shall identify  
2 the protected portion(s).

3       5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
4 failure to designate qualified information or items does not, standing alone, waive  
5 the Designating Party's right to secure protection under this Order for such material.  
6 Upon timely correction of a designation, the Receiving Party must make reasonable  
7 efforts to assure that the material is treated in accordance with the provisions of this  
8 Order.

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. Unless a prompt challenge to a Designating Party's  
13 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
14 unnecessary economic burdens, or a significant disruption or delay of the litigation,  
15 a Party does not waive its right to challenge a confidentiality designation by electing  
16 not to mount a challenge promptly after the original designation is disclosed.

17       6.2 Meet and Confer. The Challenging Party shall initiate the dispute  
18 resolution process by providing written notice of each designation it is challenging  
19 and describing the basis for each challenge. To avoid ambiguity as to whether a  
20 challenge has been made, the written notice must recite that the challenge to  
21 confidentiality is being made in accordance with this specific paragraph of the  
22 Protective Order. The parties shall attempt to resolve each challenge in good faith  
23 and must begin the process by conferring directly (in voice to voice dialogue; other  
24 forms of communication are not sufficient) within 14 days of the date of service of  
25 notice. In conferring, the Challenging Party must explain the basis for its belief that  
26 the confidentiality designation was not proper and must give the Designating Party  
27 an opportunity to review the designated material, to reconsider the circumstances,  
28 and, if no change in designation is offered, to explain the basis for the chosen  
designation. A Challenging Party may proceed to the next stage of the challenge



1 process only if it has engaged in this meet and confer process first or establishes  
2 that the Designating Party is unwilling to participate in the meet and confer process  
3 in a timely manner.

4           6.3     Judicial Intervention. If the Parties cannot resolve a challenge  
5 without court intervention, the Designating Party shall file and serve a motion to  
6 retain confidentiality under Civil Local Rules 7-4 through 7-8 (and in compliance  
7 with Civil Local Rule 79-5, if applicable) within 21 days of the initial notice of  
8 challenge or within 14 days of the parties agreeing that the meet and confer process  
9 will not resolve their dispute, whichever is earlier. Each such motion must be  
10 accompanied by a competent declaration affirming that the movant has complied  
11 with the meet and confer requirements imposed in the preceding paragraph. Failure  
12 by the Designating Party to make such a motion including the required declaration  
13 within 21 days (or 14 days, if applicable) shall automatically waive the  
14 confidentiality designation for each challenged designation. In addition, the  
15 Challenging Party may file a motion challenging a confidentiality designation at  
16 any time if there is good cause for doing so, including a challenge to the designation  
17 of a deposition transcript or any portions thereof. Any motion brought pursuant to  
18 this provision must be accompanied by a competent declaration affirming that the  
19 movant has complied with the meet and confer requirements imposed by the  
20 preceding paragraph.

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

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
3 disclosed or produced by another Party or by a Non-Party in connection with this  
4 case only for prosecuting, defending, or attempting to settle this litigation. Such  
5 Protected Material may be disclosed only to the categories of persons and under the  
6 conditions described in this Order. When the litigation has been terminated, a  
7 Receiving Party must comply with the provisions of section 13 below (FINAL  
8 DISPOSITION).

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

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items.

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

16 (a) the Receiving Party’s Outside Counsel of Record in this action, as  
17 well as employees of said Outside Counsel of Record to whom it is reasonably  
18 necessary to disclose the information for this litigation;

19 (b) the officers, directors, and employees (including House Counsel) of  
20 the Receiving Party with a need to know;

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

24 (d) the court and its personnel;

25 (e) court reporters and their staff, professional jury or trial consultants,  
26 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary  
27 for this litigation and who have signed the “Acknowledgment and Agreement to Be  
28 Bound” (Exhibit A); during their depositions, witnesses in the action to whom  
disclosure is reasonably necessary and who have signed the “Acknowledgment and

1 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating  
2 Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to  
3 depositions that reveal Protected Material must be separately bound by the court  
4 reporter and may not be disclosed to anyone except as permitted under this  
5 Stipulated Protective Order.

6 (f) the author or recipient of a document containing the information or  
7 a custodian or other person who otherwise possessed or knew the information.

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

10 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
11 IN OTHER LITIGATION

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

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

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

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

23 If the Designating Party timely seeks a protective order, the Party served with  
24 the subpoena or court order shall not produce any information designated in this  
25 action as “CONFIDENTIAL” before a determination by the court from which the  
26 subpoena or order issued, unless the Party has obtained the Designating Party’s  
27 permission. The Designating Party shall bear the burden and expense of seeking  
28 protection in that court of its confidential material – and nothing in these provisions

1 should be construed as authorizing or encouraging a Receiving Party in this action  
2 to disobey a lawful directive from another court.

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

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

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

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

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

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

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

1 bear the burden and expense of seeking protection in this court of its Protected  
2 Material.

3 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

12 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
13 PROTECTED MATERIAL

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

24 12. MISCELLANEOUS

25 12.1 Right to Further Relief. Nothing in this Order abridges the right of  
26 any person to seek its modification by the court in the future.

27 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
28 Protective Order no Party waives any right it otherwise would have to object to  
disclosing or producing any information or item on any ground not addressed in this

1 Stipulated Protective Order. Similarly, no Party waives any right to object on any  
2 ground to use in evidence of any of the material covered by this Protective Order.

3 12.3 Filing Protected Material. Without written permission from the  
4 Designating Party or a court order secured after appropriate notice to all interested  
5 persons, a Party may not file in the public record in this action any Protected Material.  
6 A Party that seeks to file under seal any Protected Material must comply with Civil  
7 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court  
8 order authorizing the sealing of the specific Protected Material at issue. Pursuant to  
9 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that  
10 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise  
11 entitled to protection under the law. If a Receiving Party's request to file Protected  
12 Material under seal pursuant to Civil Local Rule 79-5.2.2 is denied by the court, then  
13 the Receiving Party may file the information in the public record pursuant to Civil  
14 Local Rule 79-5.2.2(b)(ii) unless otherwise instructed by the Court.

15 13. FINAL DISPOSITION

16 Within 60 days after the final disposition of this action, as defined in  
17 paragraph 4, each Receiving Party must return all Protected Material to the  
18 Producing Party or destroy such material. As used in this subdivision, "all Protected  
19 Material" includes all copies, abstracts, compilations, summaries, and any other  
20 format reproducing or capturing any of the Protected Material. Whether the  
21 Protected Material is returned or destroyed, the Receiving Party must submit a  
22 written certification to the Producing Party (and, if not the same person or entity, to  
23 the Designating Party) by the 60 day deadline that (1) identifies (by category, where  
24 appropriate) all the Protected Material that was returned or destroyed and (2)  
25 affirms that the Receiving Party has not retained any copies, abstracts, compilations,  
26 summaries or any other format reproducing or capturing any of the Protected  
27 Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
28 copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal  
memoranda, correspondence, deposition and trial exhibits, expert reports, attorney



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**EXHIBIT A**  
**CONFIDENTIALITY AGREEMENT**

I, \_\_\_\_\_, hereby declare:

1. My address is

\_\_\_\_\_. My telephone number is  
(\_\_\_\_) \_\_\_\_\_-\_\_\_\_\_.

2. I have read in its entirety and understand the Stipulation and Protective Order that was issued by the United States District Court for the Central District of California in the case of *Catherine Ann Gallagher v. Swarovski North America*, United States District Court, Central District of California, Case No. 2:19-cv-06052-JFW-JEM. I hereby agree to comply with and to be bound by all the terms of this Stipulation and Protective Order.

3. I understand that the Stipulation and Protective Order requires that I not disclose in any manner any information or item that is subject to this Stipulation and Protective Order to any person or entity except in strict compliance with the provisions of this Stipulation and Protective Order.

4. I consent to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulation and Protective Order, even if such enforcement proceedings occur after termination of this action.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 2019 at \_\_\_\_\_.

\_\_\_\_\_  
Signature



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**[PROPOSED] ORDER**

**GOOD CAUSE APPEARING**, the Court hereby approves this Stipulation and Protective Order.

**IT IS SO ORDERED.**

Dated: October 9, 2019

By: John E. McDermott \_\_\_\_\_

THE HONORABLE JOHN E. MCDERMOTT  
UNITED STATES DISTRICT COURT JUDGE