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8 Attorneys for Plaintiffs

9 **UNITED STATES DISTRICT COURT**
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11 Lydia Anne Koch p/k/a Lydia Lunch,
 12 an individual; Julia Gorton, an
 13 individual,

14 Plaintiffs,

15 vs.

16 Enfants Riches Déprimés, LLC, a
 17 Delaware limited liability company;
 18 Atallah Group US, Inc. d/b/a SSENSE, a
 19 Delaware corporation; Webster USA,
 20 Inc., a Delaware corporation; Modesens,
 21 Inc., a Texas corporation and DOES 1
 22 through 10,

23 Defendants.

Case No. 2:21-cv-08696-JFW-JEM
Referred to Hon. John E. McDermott

**STIPULATED PROTECTIVE
 ORDER**

1 A. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this matter would be warranted. Accordingly, the parties have stipulated
6 to and petitioned this Court to enter the following Stipulated Protective Order. The
7 parties acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords extends only
9 to the limited information or items that are entitled under the applicable legal
10 principles to treatment as confidential. The parties have agreed that the terms of this
11 Protective Order shall also apply to any future voluntary disclosures of confidential,
12 proprietary, or private information. The parties reserve their rights to object to or
13 withhold any information, including confidential, proprietary, or private
14 information, on any other applicable grounds permitted by law, including third-party
15 rights and relevancy.

16 B. GOOD CAUSE STATEMENT

17 This action is likely to involve trade secrets, customer and pricing lists and
18 other valuable research, development, commercial, financial, technical and/or
19 proprietary information for which special protection from public disclosure during
20 discovery and from use for any purpose other than prosecution of this action may be
21 warranted. Such confidential and proprietary materials and information consist of,
22 among other things, confidential business or financial information, information
23 regarding confidential business practices, or other confidential research,
24 development, or commercial information (including information implicating privacy
25 rights of third parties), information otherwise generally unavailable to the public, or
26 which may be privileged or otherwise protected from disclosure under state or
27 federal statutes, court rules, case decisions, or common law. Accordingly, to
28

1 expedite the flow of information, to facilitate the prompt resolution of disputes over
2 confidentiality of discovery materials, to adequately protect information the parties
3 are entitled to keep confidential, to ensure that the parties are permitted reasonable
4 necessary uses of such material in preparation for and in the conduct of trial, to
5 address their handling at the end of the litigation, and serve the ends of justice, a
6 protective order for such information is justified in this matter. It is the intent of the
7 parties that information will not be designated as confidential for tactical reasons and
8 that nothing be so designated without a good faith belief that it has been maintained
9 in a confidential, non-public manner, and there is good cause why it should not be
10 part of the public record of this case. The parties understand and acknowledge that
11 this Protective Order does not govern the use of materials at trial. Any motions for
12 protective order or requests that documents be maintained under seal must be made
13 to the judicial officer handling the trial.

14
15 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

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

21 There is a strong presumption that the public has a right of access to judicial
22 proceedings and records in civil cases. In connection with non-dispositive motions,
23 good cause must be shown to support a filing under seal. See Kamakana v. City and
24 County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006), Phillips v. Gen. Motors
25 Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-Welbon v. Sony Electrics,
26 Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require
27 good cause showing), and a specific showing of good cause or compelling reasons
28 with proper evidentiary support and legal justification, must be made with respect to

1 Protected Material that a party seeks to file under seal. The parties’ mere designation
2 of Disclosure or Discovery Material as CONFIDENTIAL does not—without the
3 submission of competent evidence by declaration, establishing that the material
4 sought to be filed under seal qualifies as confidential, privileged, or otherwise
5 protectable—constitute good cause.

6 Further, if a party requests sealing related to a dispositive motion or trial, then
7 compelling reasons, not only good cause, for the sealing must be shown, and the
8 relief sought shall be narrowly tailored to serve the specific interest to be protected.
9 *See Pintos v. Pacific Creditors Ass’n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For
10 each item or type of information, document, or thing sought to be filed or introduced
11 under seal in connection with a dispositive motion or trial, the party seeking
12 protection must articulate compelling reasons, supported by specific facts and legal
13 justification, for the requested sealing order. Again, competent evidence supporting
14 the application to file documents under seal must be provided by declaration.

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

21 2. DEFINITIONS

22 2.1 Action: This pending federal lawsuit.

23 2.2 Challenging Party: a Party or Non-Party that challenges the designation
24 of information or items under this Order.

25 2.3.1 “CONFIDENTIAL” Information or Items: information (regardless of
26 how it is generated, stored or maintained) or tangible things that qualify for
27 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
28

1 Good Cause Statement.

2 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
3 their support staff).

4 2.5 Designating Party: a Party or Non-Party that designates information or
5 items that it produces in disclosures or in responses to discovery as
6 “CONFIDENTIAL.”

7 2.6 Disclosure or Discovery Material: all items or information, regardless
8 of the medium or manner in which it is generated, stored, or maintained (including,
9 among other things, testimony, transcripts, and tangible things), that are produced or
10 generated in disclosures or responses to discovery in this matter.

11 2.7 Expert: a person with specialized knowledge or experience in a matter
12 pertinent to the litigation who has been retained by a Party or its counsel to serve as
13 an expert witness or as a consultant in this Action.

14 2.8 House Counsel: attorneys who are employees of a party to this Action.
15 House Counsel does not include Outside Counsel of Record or any other outside
16 counsel.

17 2.9 Non-Party: any natural person, partnership, corporation, association or
18 other legal entity not named as a Party to this action.

19 2.10 Outside Counsel of Record: attorneys who are not employees of a party
20 to this Action but are retained to represent or advise a party to this Action and have
21 appeared in this Action on behalf of that party or are affiliated with a law firm that
22 has appeared on behalf of that party, and includes support staff.

23 2.11 Party: any party to this Action, including all of its officers, directors,
24 employees, consultants, retained experts, and Outside Counsel of Record (and their
25 support staffs).

26 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
27 Discovery Material in this Action.

28 2.13 Professional Vendors: persons or entities that provide litigation support

1 services (e.g., photocopying, videotaping, translating, preparing exhibits or
2 demonstrations, and organizing, storing, or retrieving data in any form or medium)
3 and their employees and subcontractors.

4 2.14 Protected Material: any Disclosure or Discovery Material that is
5 designated as “CONFIDENTIAL.”

6 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
7 from a Producing Party.

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

17 4. DURATION

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

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1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

18 5.2 Manner and Timing of Designations. Except as otherwise provided in
19 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
20 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
21 under this Order must be clearly so designated before the material is disclosed or
22 produced.

23 Designation in conformity with this Order requires:

24 (a) for information in documentary form (e.g., paper or electronic
25 documents, but excluding transcripts of depositions or other pretrial or trial
26 proceedings), that the Producing Party affix at a minimum, the legend
27 “CONFIDENTIAL”, as may be appropriate, (hereinafter “CONFIDENTIAL
28 legend”), to each page that contains protected material. If only a portion of the

1 material on a page qualifies for protection, the Producing Party also must clearly
2 identify the protected portion(s) (e.g., by making appropriate markings in the
3 margins).

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

16 (b) for testimony given in depositions that the Designating Party identifies
17 the Disclosure or Discovery Material on the record, before the close of the
18 deposition all protected testimony.

19 (c) 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” as may be appropriate. If only a portion or portions of the
23 information warrants protection, the Producing Party, to the extent practicable, shall
24 identify the protected portion(s).

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
26 failure to designate qualified information or items does not, standing alone, waive
27 the Designating Party’s right to secure protection under this Order for such material.
28 Upon timely correction of a designation, the Receiving Party must make reasonable

1 efforts to assure that the material is treated in accordance with the provisions of this
2 Order.

3
4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
6 designation of confidentiality at any time that is consistent with the Court's
7 Scheduling Order.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
9 resolution process under Local Rule 37.1 et seq.

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

18
19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

27 Protected Material must be stored and maintained by a Receiving Party at a
28 location and in a secure manner that ensures that access is limited to the persons

1 authorized under this Order.

2 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
3 otherwise ordered by the court or permitted in writing by the Designating Party, a
4 Receiving Party may disclose any information or item designated
5 “CONFIDENTIAL” only to:

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

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

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

14 (d) the court and its personnel;

15 (e) court reporters and their staff;

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

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

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

permitted under this Stipulated Protective Order; and

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

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

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

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

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

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

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

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

1 (a) The terms of this Order are applicable to information produced by a
2 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
3 produced by Non-Parties in connection with this litigation is protected by the
4 remedies and relief provided by this Order. Nothing in these provisions should be
5 construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

26 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
28 Protected Material to any person or in any circumstance not authorized under this

1 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
2 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
3 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
4 persons to whom unauthorized disclosures were made of all the terms of this Order,
5 and (d) request such person or persons to execute the “Acknowledgment and
6 Agreement to Be Bound” that is attached hereto as Exhibit A.

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

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

20 12. MISCELLANEOUS

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

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

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

7
8 13. FINAL DISPOSITION

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

26 //

27 //

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 Dated: July 29, 2022

3 By: /s/ Scott Alan Burroughs
4 Scott Alan Burroughs, Esq.
5 Frank R. Trechsel, Esq.
6 Attorneys for Plaintiffs

7 Dated: July 29, 2022

8 By: /s/ Alan R. Kossoff
9 Alan R. Kossoff, Esq.
10 Jonathan P. Steinsapir, Esq.
11 Attorneys for Defendant

12 Dated: July 29, 2022

13 By: /s/ Jaime Bianca Herren
14 Jaime Bianca Herren, Esq.
15 Daniel J. Barsky, Esq.
16 Attorneys for Defendant

17 Dated: July 29, 2022

18 By: /s/ Cary Ames Kinkead
19 Cary Ames Kinkead, Esq.
20 Attorneys for Defendant

21 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

22 Date: 7/29/22

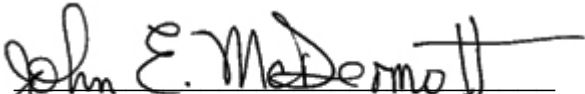
23 
24 HON. JOHN E. MCDERMOTT
25 U.S. MAGISTRATE JUDGE
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2
3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury
5 that I have read in its entirety and understand the Stipulated Protective Order that
6 was issued by the United States District Court for the Central District of California
7 on [date] in the case of *Lydia Anne Koch et al. v. Enfants Riches Déprimés, LLC et*
8 *al.*, Case No. 2:21-cv-08696-JFW-JEM. I agree to comply with and to be bound
9 by all the terms of this Stipulated Protective Order and I understand and
10 acknowledge that failure to so comply could expose me to sanctions and punishment
11 in the nature of contempt. I solemnly promise that I will not disclose in any manner
12 any information or item that is subject to this Stipulated Protective Order to any
13 person or entity except in strict compliance with the provisions of this Order.
14 I further agree to submit to the jurisdiction of the United States District Court for the
15 Central District of California for enforcing the terms of this Stipulated Protective
16 Order, even if such enforcement proceedings occur after termination of this action. I
17 hereby appoint _____ [print or type full name] of
18 _____ [print or type full address and
19 telephone number] as my California agent for service of process in connection with
20 this action or any proceedings related to enforcement of this Stipulated Protective
21 Order.

22 Date: _____

23 City and State where sworn and signed: _____

24
25 Printed name: _____

26
27 Signature: _____