

1 Michael G. Yoder (S.B. #83059)  
 Molly J. Magnuson (S.B. #229444)  
 2 Jean-Paul Cart (S.B. #267516)  
 O'MELVENY & MYERS LLP  
 3 610 Newport Center Drive, 17th Floor  
 Newport Beach, California 92660-6429  
 4 Telephone: (949) 823-6900  
 Facsimile: (949) 823-6994  
 5 Email: myoder@omm.com  
 mmagnuson@omm.com  
 6 jcart@omm.com

7 Attorneys for Plaintiffs  
 QS Wholesale, Inc. and Quiksilver, Inc.

8 IRELL & MANELLA LLP  
 9 A. Matthew Ashley (198235)  
 mashley@irell.com  
 10 Lisa S. Glasser (223406)  
 lglasser@irell.com  
 11 840 Newport Center Drive, Suite 400  
 Newport Beach, California 92660-6324  
 12 Telephone: (949) 760-0991  
 Facsimile: (949) 760-5200

13 Attorneys for Defendants  
 14 Rox Volleyball, Inc. and 1st Place  
 Team Sales, Inc.

16 **UNITED STATES DISTRICT COURT**  
 17 **CENTRAL DISTRICT OF CALIFORNIA**  
 18 **SOUTHERN DIVISION**

20 QS WHOLESale, INC., a California  
 21 corporation; QUIKSILVER, INC., a  
 Delaware corporation,

22 Plaintiffs,

23 v.

24 ROX VOLLEYBALL, INC., a Florida  
 25 corporation; 1ST PLACE TEAM  
 SALES, INC., a Florida corporation,

26 Defendants.

Case No. SACV 13-00512-AG-JPRx

**STIPULATED PROTECTIVE  
 ORDER**

Honorable Andrew J. Guilford

1 **PROTECTIVE ORDER**

2 **1. PURPOSE AND LIMITS OF THIS ORDER**

3 Discovery in this action is likely to involve confidential, proprietary, or  
4 private information requiring special protection from public disclosure and from  
5 use for any purpose other than this litigation. Thus, the Court enters this Protective  
6 Order. This Order does not confer blanket protections on all disclosures or  
7 responses to discovery, and the protection it gives from public disclosure and use  
8 extends only to the specific material entitled to confidential treatment under the  
9 applicable legal principles. This Order does not automatically authorize the filing  
10 under seal of material designated under this Order. Instead, the parties must comply  
11 with L.R. 79-5.1 if they seek to file anything under seal. This Order does not  
12 govern the use at trial of material designated under this Order.

13  
14 **2. DESIGNATING PROTECTED MATERIAL**

15 **2.1 Over-Designation Prohibited.** Any party or non-party who designates  
16 information or items for protection under this Order as “CONFIDENTIAL” or  
17 “HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY” (a “designator”) must  
18 only designate specific material that qualifies under the appropriate standards.  
19 Designation of material as CONFIDENTIAL under this Order is allowed only if the  
20 designating party reasonably and in good faith believes that the designation is  
21 necessary to protect material that, if disclosed to persons not authorized to view it,  
22 would cause competitive or other recognized harm. Material may not be designated  
23 if it has been made public, or if designation is otherwise unnecessary to protect a  
24 secrecy interest. With respect to confidential information that will be designated as  
25 subject to the more restrictive confidentiality designation allowed herein, HIGHLY  
26 CONFIDENTIAL - ATTORNEY EYES ONLY, the Parties will use that more  
27 restrictive designation only if the disclosing party reasonably and in good faith  
28 believes that the material being designated HIGHLY CONFIDENTIAL -

1 ATTORNEY EYES ONLY contains: (a) trade secrets; or (b) highly confidential,  
2 non-public, personal or proprietary business information, the disclosure of which  
3 would be especially detrimental or harmful to the producing party if disclosed  
4 beyond the limited class of permitted recipients delineated herein. To the extent  
5 practicable, only those parts of documents, items, or oral or written  
6 communications that legitimately require protection shall be designated as  
7 CONFIDENTIAL or as HIGHLY CONFIDENTIAL - ATTORNEY EYES ONLY.  
8 Designations with a higher confidentiality level when a lower level would suffice  
9 are prohibited. Mass, indiscriminate, or routinized designations are prohibited.  
10 Unjustified designations expose the designator to sanctions, including the Court's  
11 striking all confidentiality designations made by that designator. If a designator  
12 learns that information or items that it designated for protection do not qualify for  
13 protection at all or do not qualify for the level of protection initially asserted, that  
14 designator must promptly notify all parties that it is withdrawing the mistaken  
15 designation.

16 **2.2 Manner and Timing of Designations.** Designation under this Order  
17 requires the designator to affix the applicable legend ("CONFIDENTIAL" or  
18 "HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY") to each page that  
19 contains protected material. For testimony given in deposition or other proceeding,  
20 the designator shall specify all protected testimony and the level of protection being  
21 asserted. It may make that designation during the deposition or proceeding itself, or,  
22 alternatively, may do so within 21 days from receipt of the final transcript of the  
23 deposition or proceeding.

24 **2.2.1** A party or non-party that makes original documents or materials  
25 available for inspection need not designate them for protection until after the  
26 inspecting party has identified which material it would like copied and  
27 produced. During the inspection and before the designation, all material shall  
28 be treated as HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY.

1 After the inspecting party has identified the documents it wants copied and  
2 produced, the producing party must designate the documents, or portions  
3 thereof, that qualify for protection under this Order.

4 **2.2.2** Parties shall give advance notice if they expect a deposition or  
5 other proceeding to include designated material so that the other parties can  
6 ensure that only authorized individuals are present at those proceedings when  
7 such material is disclosed or used. The use of a document as an exhibit at a  
8 deposition shall not in any way affect its designation. Transcripts containing  
9 designated material shall have a legend on the title page noting the presence  
10 of designated material, and the title page shall be followed by a list of all  
11 pages (including line numbers as appropriate) that have been designated, and  
12 the level of protection being asserted. The designator shall inform the court  
13 reporter of these requirements. Prior to the expiration of the 21-day period  
14 for designation, a transcript shall be treated during that period as if it had  
15 been designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY  
16 unless otherwise agreed. After the expiration of the 21-day period, the  
17 transcript shall be treated only as actually designated.

18 **2.3 Inadvertent Failures to Designate.** An inadvertent failure to  
19 designate does not, standing alone, waive protection under this Order. Upon timely  
20 assertion or correction of a designation, all recipients must make reasonable efforts  
21 to ensure that the material is treated according to this Order.

22  
23 **3. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

24 All challenges to confidentiality designations shall proceed under L.R. 37-1  
25 through L.R. 37-4.

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27 **4. ACCESS TO DESIGNATED MATERIAL**

28 **4.1 Basic Principles.** A receiving party may use designated material only

1 for this litigation. Designated material may be disclosed only to the categories of  
2 persons and under the conditions described in this Order.

3 **4.2 Disclosure of CONFIDENTIAL Material Without Further**

4 **Approval.** Unless otherwise ordered by the Court or permitted in writing by the  
5 designator, a receiving party may disclose any material designated  
6 CONFIDENTIAL only to:

7 **4.2.1** The receiving party's outside counsel of record in this action  
8 and employees of outside counsel of record to whom disclosure is reasonably  
9 necessary;

10 **4.2.2** The officers, directors, and employees of the receiving party to  
11 whom disclosure is reasonably necessary, and who have signed the  
12 Agreement to Be Bound (Exhibit A);

13 **4.2.3** Experts retained by the receiving party's outside counsel of  
14 record to whom disclosure is reasonably necessary, and who have signed the  
15 Agreement to Be Bound (Exhibit A);

16 **4.2.4** The Court and its personnel;

17 **4.2.5** Outside court reporters and their staff, professional jury or trial  
18 consultants, and professional vendors to whom disclosure is reasonably  
19 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

20 **4.2.6** During their depositions, witnesses in the action to whom  
21 disclosure is reasonably necessary and who have signed the Agreement to Be  
22 Bound (Exhibit A);

23 **4.2.7** The author or recipient of a document containing the material, or  
24 a custodian or other person who otherwise possessed or knew the  
25 information; and

26 **4.2.8** To the extent reasonably necessary, any employees or attorneys  
27 of any insurance company which is or may be required to defend and/or  
28 indemnify any party in this lawsuit who have signed the Agreement to be

1 Bound (Exhibit A).

2 **4.3 Disclosure of HIGHLY CONFIDENTIAL – ATTORNEY EYES**  
3 **ONLY Material Without Further Approval.** Unless permitted in writing by the  
4 designator, a receiving party may disclose material designated HIGHLY  
5 CONFIDENTIAL – ATTORNEY EYES ONLY without further approval only to:

6 **4.3.1** The receiving party’s outside counsel of record in this action  
7 and employees of outside counsel of record to whom it is reasonably  
8 necessary to disclose the information;

9 **4.3.2** The Court and its personnel;

10 **4.3.3** Outside court reporters and their staff, professional jury or trial  
11 consultants, and professional vendors to whom disclosure is reasonably  
12 necessary, and who have signed the Agreement to Be Bound (Exhibit A);

13 **4.3.4** The author or recipient of a document containing the material, or  
14 a custodian or other person who otherwise possessed or knew the  
15 information; and

16 **4.3.5** To the extent reasonably necessary, any employees or attorneys  
17 of any insurance company which is or may be required to defend and/or  
18 indemnify any party in this lawsuit who have signed the Agreement to be  
19 Bound (Exhibit A).

20 **4.4 Procedures for Approving or Objecting to Disclosure of HIGHLY**  
21 **CONFIDENTIAL – ATTORNEY EYES ONLY Material to In-House Counsel**  
22 **or Experts.** Unless agreed to in writing by the designator:

23 **4.4.1** A party seeking to disclose to in-house counsel any material  
24 designated HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY must  
25 first make a written request to the designator providing the full name of the  
26 in-house counsel, the city and state of such counsel’s residence, and such  
27 counsel’s current and reasonably foreseeable future primary job duties and  
28 responsibilities in sufficient detail to determine present or potential

1 involvement in any competitive decision-making.

2           **4.4.2** A party seeking to disclose to an expert retained by outside  
3 counsel of record any information or item that has been designated HIGHLY  
4 CONFIDENTIAL – ATTORNEY EYES ONLY must first make a written  
5 request to the designator that (1) identifies the general categories of HIGHLY  
6 CONFIDENTIAL – ATTORNEY EYES ONLY information that the  
7 receiving party seeks permission to disclose to the expert, (2) sets forth the  
8 full name of the expert and the city and state of his or her primary residence,  
9 (3) attaches a copy of the expert’s current resume, (4) identifies the expert’s  
10 current employer(s), (5) identifies each person or entity from whom the  
11 expert has received compensation or funding for work in his or her areas of  
12 expertise (including in connection with litigation) in the past five years, and  
13 (6) identifies (by name and number of the case, filing date, and location of  
14 court) any litigation where the expert has offered expert testimony, including  
15 by declaration, report, or testimony at deposition or trial, in the past five  
16 years. If the expert believes any of this information at (4) - (6) is subject to a  
17 confidentiality obligation to a third party, then the expert should provide  
18 whatever information the expert believes can be disclosed without violating  
19 any confidentiality agreements, and the party seeking to disclose the  
20 information to the expert shall be available to meet and confer with the  
21 designator regarding any such confidentiality obligations.

22           **4.4.3** A party that makes a request and provides the information  
23 specified in paragraphs 4.4.1 or 4.4.2 may disclose the designated material to  
24 the identified in-house counsel or expert unless, within seven days of  
25 delivering the request, the party receives a written objection from the  
26 designator providing detailed grounds for the objection.

27           **4.4.4** All challenges to objections from the designator shall proceed  
28 under L.R. 37-1 through L.R. 37-4.

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**5. PROTECTED MATERIAL SUBPOENAED OR ORDERED  
PRODUCED IN OTHER LITIGATION**

**5.1 Subpoenas and Court Orders.** This Order in no way excuses non-compliance with a lawful subpoena or court order. The purpose of the duties described in this section is to alert the interested parties to the existence of this Order and to give the designator an opportunity to protect its confidentiality interests in the appropriate court.

**5.2 Notification Requirement.** 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 or HIGHLY CONFIDENTIAL – ATTORNEY EYES ONLY, that party must:

**5.2.1** Promptly notify the designator in writing. Such notification shall include a copy of the subpoena or court order;

**5.2.2** 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 Order. Such notification shall include a copy of this Order; and

**5.2.3** Cooperate with all reasonable procedures sought by the designator whose material may be affected.

**6. UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

If a receiving party learns that, by inadvertence or otherwise, it has disclosed designated material to any person or in any circumstance not authorized under this Order, it must immediately (1) notify in writing the designator of the unauthorized disclosures, (2) use its best efforts to retrieve all unauthorized copies of the designated material, (3) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (4) use reasonable efforts



1 to have such person or persons execute the Agreement to Be Bound (Exhibit A).

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3 **7. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
4 **PROTECTED MATERIAL**

5 When a producing party gives notice that certain inadvertently produced  
6 material is subject to a claim of privilege or other protection, the obligations of the  
7 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).  
8 This provision is not intended to modify whatever procedure may be established in  
9 an e-discovery order that provides for production without prior privilege review  
10 under Federal Rule of Evidence 502(d) and (e).

11  
12 **8. FILING UNDER SEAL**

13 Without written permission from the designator or a Court order, a party may  
14 not file in the public record in this action any designated material. A party seeking  
15 to file under seal any designated material must comply with L.R. 79-5.1. Filings  
16 may be made under seal only according to a court order authorizing the sealing of  
17 the specific material at issue. The fact that a document has been designated under  
18 this Order is insufficient to justify filing under seal. Instead, parties must explain  
19 the basis for confidentiality of each document sought to be filed under seal.  
20 Because a party other than the designator will often be seeking to file designated  
21 material, cooperation between the parties in preparing, and in reducing the number  
22 and extent of, requests for under seal filing is essential. If a receiving party's  
23 request to file designated material under seal under L.R. 79-5.1 is denied by the  
24 Court, then the receiving party may file the material in the public record unless (1)  
25 the designator seeks reconsideration within four days of the denial, or (2) as  
26 otherwise instructed by the Court.

1     **9. FINAL DISPOSITION**

2             Within 60 days after the final disposition of this action, each party shall  
3 return all designated material to the designator or destroy such material, including  
4 all copies, abstracts, compilations, summaries, and any other format reproducing or  
5 capturing any designated material. The receiving party must submit a written  
6 certification to the designator by the 60-day deadline that (1) identifies (by  
7 category, where appropriate) all the designated material that was returned or  
8 destroyed, and (2) affirms that the receiving party has not retained any copies,  
9 abstracts, compilations, summaries, or any other format reproducing or capturing  
10 any of the designated material. This provision shall not prevent counsel from  
11 retaining an archival copy of all pleadings, motion papers, trial, deposition, and  
12 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,  
13 expert reports, attorney work product, and consultant and expert work product, even  
14 if such materials contain designated material. Any such archival copies remain  
15 subject to this Order.

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17     IT IS SO ORDERED.

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19     DATED: December 19, 2013



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Hon. Jean P. Rosenbluth  
United States Magistrate Judge

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EXHIBIT A  
AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare under penalty of perjury  
that I have read in its entirety and understand the Protective Order that was issued  
by the United States District Court for the Central District of California on \_\_\_\_\_  
[date] in the case of \_\_\_\_\_ [insert formal name of the case and the number  
and initials assigned to it by the court]. I agree to comply with and to be bound by  
all the terms of this Protective Order, and I understand and acknowledge that failure  
to so comply could expose me to sanctions and punishment for contempt. I  
solemnly promise that I will not disclose in any manner any information or item  
that is subject to this Protective Order to any person or entity except in strict  
compliance with this Order.

I further agree to submit to the jurisdiction of the United States District Court  
for the Central District of California for the purpose of enforcing this Order, even if  
such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and  
telephone number] as my California agent for service of process in connection with  
this action or any proceedings related to enforcement of this Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

[printed name]

Signature: \_\_\_\_\_

[signature]