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

HOLLY ATTIA, ROSHANAK BASTI, NILOOFAR ESHAGHBEIGL, MICHELLE GIRARD, ELISE KELLEY, KIM MARCONI, ISABEL ROMERO, DAVID TOLBERT, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

THE NEIMAN MARCUS GROUP, INC., a Texas corporation; and DOES 1 through 100, inclusive,

Defendant.

Case No. 8:16-CV-00504 DOC (FFM)

PROTECTIVE ORDER PURSUANT TO STIPULATION

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 not confer blanket protections on all disclosures or responses to

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

8 9 B. GOOD CAUSE STATEMENT

10 This action is likely to involve personal and private or commercial, financial,
11 technical and/or proprietary information for which special protection from public
12 disclosure and from use for any purpose other than prosecution of this action is
13 warranted. Such confidential and proprietary materials and information consist of,
14 among other things, confidential business or financial information, information
15 regarding confidential business practices, or other confidential research,
16 development, or commercial information (including information implicating privacy
17 rights of third parties), information otherwise generally unavailable to the public, or
18 which may be privileged or otherwise protected from disclosure under state or
19 federal statutes, court rules, case decisions, or common law. Accordingly, to
20 expedite the flow of information, to facilitate the prompt resolution of disputes over
21 confidentiality of discovery materials, to adequately protect information the parties
22 are entitled to keep confidential, to ensure that the parties are permitted reasonable
23 necessary uses of such material in preparation for and in the conduct of trial, to
24 address their handling at the end of the litigation, and serve the ends of justice, a
25 protective order for such information is justified in this matter. It is the intent of the
26 parties that information will not be designated as confidential for tactical reasons
27 and that nothing be so designated without a good faith belief that it has been

1 maintained in a confidential, non-public manner, and there is good cause why it
2 should not be part of the public record of this case.

3
4 2. DEFINITIONS

5 2.1 Action: this pending federal lawsuit.

6 2.2 Challenging Party: a Party or Non-Party that challenges the
7 designation of information or items under this Order.

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

12 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
13 their support staff).

14 2.5 Designating Party: a Party or Non-Party that designates information or
15 items that it produces in disclosures or in responses to discovery as
16 “CONFIDENTIAL.”

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

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

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

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

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

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

9 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
10 Discovery Material in this Action.

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

15 2.14 Protected Material: any Disclosure or Discovery Material that is
16 designated as “CONFIDENTIAL.”

17 2.15 Receiving Party: a Party that receives Disclosure or Discovery
18 Material from a 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
23 extracted from Protected Material; (2) all copies, excerpts, summaries, or
24 compilations of Protected Material; and (3) any testimony, conversations, or
25 presentations by Parties 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
14 this Order must take care to limit any such designation to specific material that
15 qualifies under the appropriate standards. The Designating Party must designate for
16 protection only those parts of material, documents, items, or oral or written
17 communications that qualify so that other portions of the material, documents,
18 items, or communications for which protection is not warranted are not swept
19 unjustifiably within the ambit of 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
24 Party 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.

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, Disclosure or Discovery Material that qualifies for protection
4 under this Order must be clearly so designated before the material is disclosed or
5 produced.

6 Designation in conformity with this Order requires:

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

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

26 (b) for testimony given or exhibits used in depositions or other
27 proceedings that the Designating Party notify opposing counsel on the record during
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1 or within 14 days of the conclusion of the proceeding that the information provided
2 in the deposition or other proceeding (both testimony and exhibits) is considered
3 CONFIDENTIAL and that the transcript (or portions thereof) shall be subject to the
4 provisions of this Order.

5 (c) for information produced in some form other than documentary and
6 for any other tangible items, that the Producing Party affix in a prominent place on
7 the exterior of the container or containers in which the information is stored the
8 legend "CONFIDENTIAL." If only a portion or portions of the information
9 warrants protection, the Producing Party, to the extent practicable, shall identify the
10 protected portion(s).

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

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18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
20 designation of confidentiality at any time that is consistent with the Court's
21 Scheduling Order.

22 6.2 Meet and Confer. The Challenging Party shall send a letter to the
23 Designating Party identifying each item, document, or category of documents in
24 dispute and shall briefly state with respect to each item, document, or category of
25 documents the Challenging Party's position (and provide an legal authority which
26 the moving party believes is dispositive of the dispute as to that item, document, or
27 category). Once a challenge is initiated by service of a letter to the Designating
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1 Party (service is deemed effective on the date sent to Counsel for the Designating
2 Party via electronic mail), the Designating Party will have five (5) days to withdraw
3 such designation. On the sixth (6th) day following service of the letter, the matters
4 may be immediately raised to the Special Master or the Court, as appropriate.

5 6.3 The burden of persuasion in any such challenge proceeding shall be on
6 the Designating Party. Frivolous challenges, and those made for an improper
7 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
8 parties) may expose the Challenging Party to sanctions. Unless the Designating
9 Party has waived or withdrawn the confidentiality designation, all parties shall
10 continue to afford the material in question the level of protection to which it is
11 entitled under the Producing Party's designation until the Court rules on the
12 challenge.

13 14 7. ACCESS TO AND USE OF PROTECTED MATERIAL

15 7.1 Basic Principles. A Receiving Party may use Protected Material that is
16 disclosed or produced by another Party or by a Non-Party in connection with this
17 Action only for prosecuting, defending, or attempting to settle this Action. Such
18 Protected Material may be disclosed only to the categories of persons and under the
19 conditions described in this Order. When the Action has been terminated, a
20 Receiving Party must comply with the provisions of section 13 below (FINAL
21 DISPOSITION).

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

25 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
26 otherwise ordered by the court or permitted in writing by the Designating Party, a
27 Receiving Party may disclose any information or item designated
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1 “CONFIDENTIAL” only to:

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

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

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

10 (d) the court and its personnel;

11 (e) court reporters and their staff;

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

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

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

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

1 7.3 Use of Putative Class Member Contact Information. Plaintiffs have
2 requested, and Defendant has agreed to produce, subject to the entry of this Order,
3 name and address information of putative class members (“Contact Information”).
4 Plaintiffs’ counsel may use the Contact Information solely for purposes of
5 contacting potential class action members for discovery and investigation purposes
6 in this Action only, subject to applicable limitations imposed by law, court order
7 and/or ethical rules. Prior to Plaintiffs’ counsel making any initial written
8 communication with potential class action members, Plaintiffs’ counsel shall confer
9 with Defendant regarding the content of such communication. Plaintiffs’ counsel
10 shall not disclose the Contact Information to anyone other than employees of
11 Plaintiffs’ counsel to whom it is reasonably necessary to disclose the Contact
12 Information for purposes of prosecuting this case and in accordance with this Order;
13 and shall return the Contact Information (including all copies or reproductions) to
14 Defendant’s counsel within 60 days after final termination of this action.

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17 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
18 **IN OTHER LITIGATION**

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

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

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

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

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

11
12 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
13 PRODUCED IN THIS LITIGATION

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

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

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

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

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

4 (c) If the Non-Party fails to seek a protective order from this court within
5 14 days of receiving the notice and accompanying information, the Receiving Party
6 may produce the Non-Party's confidential information responsive to the discovery
7 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
8 not produce any information in its possession or control that is subject to the
9 confidentiality agreement with the Non-Party before a determination by the court.
10 Absent a court order to the contrary, the Non-Party shall bear the burden and
11 expense of seeking protection in this court of its Protected Material.

12
13 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
15 Protected Material to any person or in any circumstance not authorized under this
16 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
17 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts
18 to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
19 persons to whom unauthorized disclosures were made of all the terms of this Order,
20 and (d) request such person or persons to execute the "Acknowledgment and
21 Agreement to Be Bound" that is attached hereto as Exhibit A.

22
23 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
24 PROTECTED MATERIAL

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

8
9 **12. MISCELLANEOUS**

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
11 person to seek its modification by the Court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this
13 Protective Order no Party waives any right it otherwise would have to object to
14 disclosing or producing any information or item on any ground not addressed in this
15 Stipulated Protective Order. Similarly, no Party waives any right to object on any
16 ground to use in evidence of any of the material covered by this Protective Order.

17 12.3 Filing Protected Material. A Party that seeks to file under seal any
18 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
19 only be filed under seal pursuant to a court order authorizing the sealing of the
20 specific Protected Material at issue. If a Party's request to file Protected Material
21 under seal is denied by the court, then the Receiving Party may file the information
22 in the public record unless otherwise instructed by the court.

23
24 **13. FINAL DISPOSITION**

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

16 14. Any violation of this Order may be punished by any and all appropriate
17 measures including, without limitation, contempt proceedings and/or monetary
18 sanctions.

19
20 IT IS SO ORDERED.

21
22 DATED: January 19, 2017

23
24 /S/ Frederick F. Mumm
25 Hon. Frederick F. Mumm
26 United States Magistrate Judge
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1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 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 _____ [date] in the case of *Holly Attia et al. v. The Neiman Marcus Group,*
9 *Inc., et al.*, Case No. 8:16-cv-00504-DOC-FFM. I agree to comply with and to be
10 bound by all the terms of this Stipulated Protective Order and I understand and
11 acknowledge that failure to so comply could expose me to sanctions and punishment
12 in the nature of contempt. I solemnly promise that I will not disclose in any manner
13 any information or item that is subject to this Stipulated Protective Order to any
14 person or entity 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
17 Stipulated Protective Order, even if such enforcement proceedings occur after
18 termination of this action. I hereby appoint _____ [print
19 or type full name] of _____ [print or type
20 full address and telephone number] as my California agent for service of process in
21 connection with this action or any proceedings related to enforcement of this
22 Stipulated Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27 Signature: _____