

NOTE: CHANGES MADE BY THE COURT

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

EAR CHARMS, INC., a California corporation,

Plaintiff,

v.

BLING JEWELRY, INC. d/b/a BLINGJEWELRY.COM, a Delaware corporation; ELENA CASTANEDA, an individual; and DOES 1 to 10, inclusive,

Defendants.

Case No. 8:16-cv-02091-CJC-PLAx

STIPULATED PROTECTIVE ORDER

1 1 A. PURPOSES AND LIMITATIONS

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

15 B. GOOD CAUSE STATEMENT

16 This action arises from Plaintiff EAR CHARMS, INC. (“Plaintiff”)’s
17 allegations that its former customer and erstwhile competitor, Defendants BLING
18 JEWELRY, INC. and its officer ELENA CASTANEDA (“Defendants”), infringed
19 its copyright and trade dress rights in certain jewelry items by selling unauthorized
20 copies or similar designs purchased from other sources. Because Plaintiff alleges it
21 is a competitor of Defendants and because its allegations concern the marketing,
22 purchasing, sales information, methods, strategies, and other confidential business
23 information used by Defendants (from which they derive competitive advantage), and
24 the customers and revenues it acquired from allegedly infringing sales, this action is
25 likely to involve trade secrets, customer and pricing lists and other valuable
26 research, development, commercial, financial, technical and/or proprietary
27 information for which special protection from public disclosure and from use for
28 any purpose other than prosecution of this action is warranted. Such confidential

1 and proprietary materials and information consist of, among other things,
2 confidential business or financial information, information regarding confidential
3 business practices, or other confidential research, development, or commercial
4 information (including information implicating privacy rights of third parties),
5 information otherwise generally unavailable to the public, or which may be
6 privileged or otherwise protected from disclosure under state or federal statutes,
7 court rules, case decisions, or common law. Accordingly, to expedite the flow of
8 information, to facilitate the prompt resolution of disputes over confidentiality of
9 discovery materials, to adequately protect information the parties are entitled to keep
10 confidential, to ensure that the parties are permitted reasonable necessary uses of
11 such material in preparation for and in the conduct of trial, to address their handling
12 at the end of the litigation, and serve the ends of justice, a protective order for such
13 information is justified in this matter. It is the intent of the parties that information
14 will not be designated as confidential for tactical reasons and that nothing be so
15 designated without a good faith belief that it has been maintained in a confidential,
16 non-public manner, and there is good cause why it should not be part of the public
17 record of this case.

18 **2 DEFINITIONS**

19 2.1 Action: Ear Charms, Inc. v. Bling Jewelry, Inc., USDC, Central District
20 of California, Case No. 8: 16-cv-02091

21 2.2 Challenging Party: A Party or Non-Party that challenges the
22 designation of information or items under this Order.

23 2.3 “CONFIDENTIAL” Information or Items: Information (regardless of
24 how it is generated, stored or maintained) or tangible things that qualify for
25 protection under Federal Rule of Civil Procedure 26(c), and as specified
26 above in the Good Cause Statement.

27 2.4 Counsel: Counsel of Record and House Counsel (as well as their
28 support staff).

1 2.5 Designating Party: A Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”

4 2.6 Disclosure or Discovery Material: All items or information, regardless
5 of the medium or manner in which it is generated, stored, or maintained
6 (including, among other things, testimony, transcripts, and tangible things),
7 that are produced or generated in disclosures or responses to discovery in this
8 matter.

9 2.7 Expert: A person with specialized knowledge or experience in a matter
10 pertinent to the litigation who has been retained by a Party or its counsel to
11 serve as an expert witness or as a consultant in this Action.

12 2.8 “HIGHLY CONFIDENTIAL” Information or Items: Information
13 (regardless of how it is generated, stored or maintained) or tangible things that
14 qualify for protection under Federal Rule of Civil Procedure 26(c), and as
15 specified above in the Good Cause Statement which belongs to a Designating
16 Party who believes in good faith that the Disclosure of such information to
17 another Party or non-Party would create a substantial risk of serious financial
18 or other injury that cannot be avoided by less restrictive means.

19 2.9 Highly Confidential Materials means any Documents, Testimony, or
20 Information, as defined below, designated as “Highly Confidential” pursuant
21 to the provisions of this Stipulation and Protective Order.

22 2.10 House Counsel: Attorneys who are employees of a party to this Action.
23 House Counsel does not include Counsel of Record or any other outside
24 counsel.

25 2.11 Non-Party: Any natural person, partnership, corporation, association,
26 or other legal entity not named as a Party to this action.

27 2.12 Counsel of Record: Attorneys who are not employees of a party to this
28 Action but are retained to represent or advise a party to this Action and have

1 appeared in this Action on behalf of that party or are affiliated with a law firm
2 which has appeared on behalf of that party, and includes support staff.

3 2.13 Party: Any party to this Action, including all of its officers, directors,
4 employees, consultants, retained experts, and Outside Counsel of Record (and
5 their support staffs).

6 2.14 Producing Party: A Party or Non-Party that produces Disclosure or
7 Discovery Material in this Action.

8 2.15 Professional Vendors: Persons or entities that provide litigation
9 support services (e.g., photocopying, videotaping, translating, preparing
10 exhibits or demonstrations, and organizing, storing, or retrieving data in any
11 form or medium) and their employees and subcontractors.

12 2.16 Protected Material: Any Disclosure or Discovery Material that is
13 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”

14 2.17 Receiving Party: A Party that receives Disclosure or Discovery
15 Material from a Producing Party.

16
17 3 SCOPE

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

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

25 4 SCOPE

26 Even after final disposition of this litigation, the confidentiality obligations
27 imposed by this Order shall remain in effect until a Designating Party agrees
28 otherwise in writing or a court order otherwise directs. Final disposition shall be

1 deemed to be the later of (1) dismissal of all claims and defenses in this Action, with
2 or without prejudice; and (2) final judgment herein after the completion and
3 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
4 including the time limits for filing any motions or applications for extension of time
5 pursuant to applicable law.

6 **5 DESIGNATING PROTECTED MATERIAL**

7 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

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

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

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

23 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
24 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
25 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
26 under this Order must be clearly so designated before the material is disclosed or
27 produced.

28 Designation in conformity with this Order requires:

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

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

22 (b) for testimony given in depositions that the Designating Party
23 identify the Disclosure or Discovery Material on the record, before the close
24 of the deposition all protected testimony.

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

1 only a portion or portions of the information warrants protection, the
2 Producing Party, to the extent practicable, shall identify the protected
3 portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected within 30 days from
5 the date of disclosure, an inadvertent failure to designate qualified information or
6 items does not, standing alone, waive the Designating Party's right to secure
7 protection under this Order for such material. Upon timely correction of a
8 designation, the Receiving Party must make reasonable efforts to assure that the
9 material is treated in accordance with the provisions of this Order.

10 6 CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
12 designation of confidentiality at any time that is consistent with the Court's
13 Scheduling Order.

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process under Local Rule 37.1 *et seq.*

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

24 6.4 Exercise of Restraint and Care in Designating Material for Protection.
25 Each Party or Non-Party that designates information or items for protection under
26 this Order must take care to limit any such designation to specific material that
27 qualifies under the appropriate standards. The Designating Party must designate for
28 protection only those parts of material, documents, items, or oral or written

1 communications that qualify so that other portions of the material, documents,
2 items, or communications for which protection is not warranted are not swept
3 unjustifiably within the ambit of this Order.

4 7 ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

15 7.2 Disclosure of “HIGHLY CONFIDENTIAL” Information or Items.
16 Unless otherwise ordered by the court or permitted in writing by the Designating
17 Party, a Receiving Party may disclose any information or item designated
18 “HIGHLY CONFIDENTIAL” only to:

- 19 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
20 employees of said Outside Counsel of Record to whom it is reasonably
21 necessary to disclose the information for this Action;
- 22 (b) Experts (as defined in this Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this Action and who have signed the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A);
- 25 (c) professional jury or trial consultants, mock jurors, and Professional
26 Vendors to whom disclosure is reasonably necessary for this Action and
27 who have signed the “Acknowledgment and Agreement to Be Bound”
28 (Exhibit A);

1 (d) the author or recipient of a document containing the information or a
2 custodian or other person who otherwise possessed or knew the
3 information;

4 (e) the court and its personnel;

5 (f) court reporters and their staff;

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

9 7.3 Disclosure of “CONFIDENTIAL” Information or Items. Unless
10 otherwise ordered by the court or permitted in writing by the Designating Party, a
11 Receiving Party may disclose any information or item designated
12 “CONFIDENTIAL” only to:

13 (a) Persons to whom “HIGHLY CONFIDENTIAL” Information or Items may
14 be disclosed;

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

18 (c) during their depositions, witnesses, and attorneys for witnesses, in the
19 Action to whom disclosure is reasonably necessary provided: (1) the
20 deposing party requests that the witness sign the form attached as Exhibit
21 A hereto; and (2) they will not be permitted to keep any confidential
22 information unless they sign the “Acknowledgment and Agreement to Be
23 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
24 ordered by the court. Pages of transcribed deposition testimony or exhibits
25 to depositions that reveal Protected Material may be separately bound by
26 the court reporter and may not be disclosed to anyone except as permitted
27 under this Stipulated Protective Order.
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1 8 PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

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

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

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

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

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

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23 9 NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
24 IN THIS LITIGATION

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

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

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

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

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

15 (c) If the Non-Party fails to seek a protective order from this court within
16 14 days of receiving the notice and accompanying information, the Receiving Party
17 may produce the Non-Party's confidential information responsive to the discovery
18 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
19 not produce any information in its possession or control that is subject to the
20 confidentiality agreement with the Non-Party before a determination by the court.
21 Absent a court order to the contrary, the Non-Party shall bear the burden and
22 expense of seeking protection in this court of its Protected Material.

23
24 **10 UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

25 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
26 Protected Material to any person or in any circumstance not authorized under this
27 Stipulated Protective Order, the Receiving Party must immediately (a) notify in
28 writing the Designating Party of the unauthorized disclosures, (b) use its best efforts

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

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6 11 INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
7 PROTECTED MATERIAL

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

18
19 12 MISCELLANEOUS.

20 12.1 Any Party or Non-Party may challenge a designation of confidentiality
21 at any time that is consistent with the Court’s Scheduling Order.

22 12.2 Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the Court in the future.

24 12.3 Right to Assert Other Objections. By stipulating to the entry of this
25 Protective Order no Party waives any right it otherwise would have to object to
26 disclosing or producing any information or item on any ground not addressed in this
27 Stipulated Protective Order. Similarly, no Party waives any right to object on any
28 ground to use in evidence of any of the material covered by this Protective Order.

1 12.4 Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Civil Local 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; **good cause must be shown for the under seal**
5 **filing**. If a Party's request to file Protected Material under seal is denied by the court,
6 then the Receiving Party may file the information in the public record unless
7 otherwise instructed by the court.

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9 13 FINAL DISPOSITION.

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

1 14 Any violation of this Order may be punished by any and all appropriate
2 measures including, without limitation, contempt proceedings and/or monetary
3 sanctions.

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6 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

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DATED: September 18, 2018

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Magistrate Judge Paul L. Abrams
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],
5 of _____ [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 *Ear Charms v. Bling Jewelry Inc.* USDC, Case No.: 8:16-cv-
9 02091 CJC-(PLAx). I agree to comply with and to be bound by all the terms of this
10 Stipulated Protective Order and I understand and acknowledge that failure to so
11 comply could expose me to sanctions and punishment in the nature of contempt. I
12 solemnly promise that I will not disclose in any manner any information or item that
13 is subject to this Stipulated Protective Order to any person or entity except in strict
14 compliance with the provisions of this Order. I further agree to submit to the
15 jurisdiction of the United States District Court for the Central District of California
16 for the purpose of enforcing the terms of this Stipulated Protective Order, even if
17 such enforcement proceedings occur after termination of this action. I hereby
18 appoint _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23 Date: _____

24 City and State where sworn and signed: _____

25
26 Printed name: _____

27
28 Signature: _____