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15 UNITED STATES DISTRICT COURT

16 EASTERN DISTRICT OF CALIFORNIA - FRESNO DIVISION

18 LAUREN MATHEIN, individually  
19 and on behalf of all others similarly  
situated,

20 Plaintiffs,

21 v.

22 PIER 1 IMPORTS, INC.; PIER 1  
23 IMPORTS (U.S.), INC.; and DOES 1  
to 100, inclusive,

24 Defendants.

Case No. 1:16-cv-00087- DAD-SAB

**STIPULATED PROTECTIVE  
ORDER**

1       1.     PURPOSES AND LIMITATIONS

2           Disclosure and discovery activity in this action are likely to involve production of  
3 confidential, proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may be  
5 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter  
6 the following Stipulated Protective Order. The parties acknowledge that this Order does  
7 not confer blanket protections on all disclosures or responses to discovery and that the  
8 protection it affords from public disclosure and use extends only to the limited  
9 information or items that are entitled to confidential treatment under the applicable legal  
10 principles. The parties further acknowledge, as set forth in Section 12.3, below, that this  
11 Stipulated Protective Order does not entitle them to file confidential information under  
12 seal; Civil Local Rule 141 sets forth the procedures that must be followed and the  
13 standards that will be applied when a party seeks permission from the court to file  
14 material under seal.

15       2.     DEFINITIONS

16           2.1    Challenging Party: a Party or Non-Party that challenges the designation of  
17 information or items under this Order.

18           2.2    “CONFIDENTIAL” Information or Items: information (regardless of how  
19 it is generated, stored or maintained) or tangible things that qualify for protection under  
20 Federal Rule of Civil Procedure 26(c).

21           2.3    Counsel (without qualifier): Outside Counsel of Record and House Counsel  
22 (as well as their support staff).

23           2.4    Designating Party: a Party or Non-Party that designates information or  
24 items that it produces in disclosures or in responses to discovery as  
25 “CONFIDENTIAL.”

26           2.5    Disclosure or Discovery Material: all items or information, regardless of  
27 the medium or manner in which it is generated, stored, or maintained (including, among  
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1 other things, testimony, transcripts, and tangible things), that are produced or generated  
2 in disclosures or responses to discovery in this matter.

3       2.6 Expert: a person with specialized knowledge or experience in a matter  
4 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
5 expert witness or as a consultant in this action.

6       2.7 House Counsel: attorneys who are employees of a party to this action.  
7 House Counsel does not include Outside Counsel of Record or any other outside  
8 counsel.

9       2.8 Non-Party: any natural person, partnership, corporation, association, or  
10 other legal entity not named as a Party to this action.

11       2.9 Outside Counsel of Record: attorneys who are not employees of a party to  
12 this action but are retained to represent or advise a party to this action and have  
13 appeared in this action on behalf of that party or are affiliated with a law firm which has  
14 appeared on behalf of that party.

15       2.10 Party: any party to this action, including all of its officers, directors,  
16 employees, consultants, retained experts, and Outside Counsel of Record (and their  
17 support staffs).

18       2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
19 Discovery Material in this action.

20       2.12 Professional Vendors: persons or entities that provide litigation support  
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
22 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
23 their employees and subcontractors.

24       2.13 Protected Material: any Disclosure or Discovery Material that is  
25 designated as “CONFIDENTIAL.”

26       2.14 Receiving Party: a Party that receives Disclosure or Discovery Material  
27 from a Producing Party.  
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1 3. SCOPE

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

16 4. DURATION

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

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

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

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

14 While the parties must exercise restraint, a Designating Party has the right to  
15 designate as “Confidential” any material that the Designating Party in good faith  
16 believes to contain non-public information that is entitled to confidential treatment  
17 under applicable law, specifically including, but not limited to, any employee payroll  
18 data, employee personnel data and/or contact information, or Pier 1 Imports (U.S.), Inc.  
19 or Pier 1 Imports, Inc.’s (collectively, “Pier 1”) internal policies, practices or strategies.

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

24 Designation in conformity with this Order requires:

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

15 (b) for testimony given in deposition or in other pretrial or trial proceedings, that  
16 the Designating Party identify within thirty days of the close of the deposition, hearing,  
17 or other proceeding, all protected testimony.

18 (c) for information produced in some form other than documentary and for any  
19 other tangible items, that the Producing Party affix in a prominent place on the exterior  
20 of the container or containers in which the information or item is stored the legend  
21 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant  
22 protection, the Producing Party, to the extent practicable, shall identify the protected  
23 portion(s).

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
25 failure to designate qualified information or items does not, standing alone, waive the  
26 Designating Party’s right to secure protection under this Order for such material. Upon  
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1 timely correction of a designation, the Receiving Party must make reasonable efforts to  
2 assure that the material is treated in accordance with the provisions of this Order.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any Party or Non-Party may challenge a  
5 designation of confidentiality at any time, with the exception of Personal Contact  
6 Information, as explained below. Unless a prompt challenge to a Designating Party's  
7 confidentiality designation is necessary to avoid foreseeable, substantial unfairness,  
8 unnecessary economic burdens, or a significant disruption or delay of the litigation, a  
9 Party does not waive its right to challenge a confidentiality designation by electing not  
10 to mount a challenge promptly after the original designation is disclosed.

11 Any contact information of Pier 1's current or former employees that Pier 1  
12 produces at any time during the course of, or in connection with this litigation  
13 ("Personal Contact Information"), shall be deemed Confidential, whether or not  
14 stamped or marked as confidential. The designation of Personal Contact Information as  
15 confidential shall not be subject to objections pursuant to Paragraph 6 (or its subparts)  
16 of this Order. Any Personal Contact Information shall be used by Lauren Mathein and  
17 her counsel solely for the purpose of investigating, prosecuting, and/or settlement of this  
18 litigation.

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

7       6.3 Judicial Intervention. If the Parties cannot resolve a challenge without  
8 court intervention, any party may file and serve a that identifies the challenged material  
9 and sets forth in detail the basis for the challenge within 21 days of the parties agreeing  
10 that the meet and confer process will not resolve their dispute. Any motion brought  
11 pursuant to this provision must be accompanied by a competent declaration affirming  
12 that the movant has complied with the meet and confer requirements imposed by the  
13 preceding paragraph.

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

20 7. ACCESS TO AND USE OF PROTECTED MATERIAL

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

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

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

7 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
8 employees of said Outside Counsel of Record to whom it is reasonably necessary to  
9 disclose the information for this litigation and who have signed the “Acknowledgment  
10 and Agreement to Be Bound” that is attached hereto as Exhibit A;

11 (b) the officers, directors, and employees (including House Counsel) of the  
12 Receiving Party to whom disclosure is reasonably necessary for this litigation and who  
13 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

17 (d) the court and its personnel;

18 (e) court reporters and their staff, professional jury or trial consultants, mock  
19 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this  
20 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
21 (Exhibit A);

22 (f) during their depositions, witnesses in the action to whom disclosure is  
23 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
24 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the  
25 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
26 Protected Material must be separately bound by the court reporter and may not be  
27 disclosed to anyone except as permitted under this Stipulated Protective Order.  
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1 (g) the author or recipient of a document containing the information or a  
2 custodian or other person who otherwise possessed or knew the information.

3 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
4 OTHER LITIGATION

5 If a Party is served with a subpoena or a court order issued in other litigation that  
6 compels disclosure of any information or items designated in this action as

7 “CONFIDENTIAL,” that Party must:

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

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

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

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

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

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

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

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

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

14 (3) Make the information requested available for inspection by the Non-  
15 Party.

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

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

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, the  
10 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 prior  
13 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the  
14 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 to  
17 the court.

18 12. MISCELLANEOUS

19 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
20 person to seek its modification by the court in the future.

21 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
22 Protective Order no Party waives any right it otherwise would have to object to disclosing  
23 or producing any information or item on any ground not addressed in this Stipulated  
24 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
25 evidence of any of the material covered by this Protective Order.

26 12.3 Filing Protected Material. Without written permission from the  
27 Designating Party or a court order secured after appropriate notice to all interested  
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1 persons, a Party may not file in the public record in this action any Protected Material.  
2 A Party that seeks to file under seal any Protected Material must comply with Civil  
3 Local Rule 141. Protected Material may only be filed under seal pursuant to a court  
4 order authorizing the sealing of the specific Protected Material at issue. If a Receiving  
5 Party's request to file Protected Material under seal pursuant to Civil Local Rule 141 is  
6 denied by the court, then the Receiving Party may file the information in the public  
7 record pursuant to Civil Local Rule 141 unless otherwise instructed by the court.

8 13. FINAL DISPOSITION

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

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.  
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3 Dated: September 2, 2016

4 AKIN GUMP STRAUSS HAUER & FELD LLP  
5 GREGORY W. KNOPP  
6 GALIT A. KNOTZ

7 By /s/ Gregory W. Knopp\*\*  
8 Gregory W. Knopp  
9 Attorneys for Defendants  
10 PIER 1 IMPORTS, INC. &  
11 PIER 1 IMPORTS (U.S.), INC.

12 Dated: September 2, 2016

13 **MARLIN & SALTZMAN, LLP**

14 By /s/ David Leimbach (as authorized on 8/26/16)  
15 David Leimbach  
16 Attorneys for Plaintiff  
17 LAUREN MATHEIN

18 \*\*Pursuant to L.R. 131(e), I attest that concurrence in the filing of this document has  
19 been obtained from each of the above other signatories.

20 **ORDER**

21 Pursuant to the stipulation of the parties, IT IS HEREBY ORDERED that:

- 22 1. The protective order is entered in this action;
- 23 2. The parties are advised that pursuant to the Local Rules of the United  
24 States District Court, Eastern District of California, any documents which  
25 are to be filed under seal will require a written request which complies with  
26 Local Rule 141; and
- 27 3. The party making a request to file documents under seal shall be required  
28 to show good cause for documents attached to a nondispositive motion or

1 compelling reasons for documents attached to a dispositive motion. Pintos  
2 v. Pacific Creditors Ass'n, 605 F.3d 665, 677-78 (9th Cir. 2009).  
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5 IT IS SO ORDERED.

6 Dated: September 2, 2016

  
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UNITED STATES MAGISTRATE JUDGE

**EXHIBIT A**

**ACKNOWLEDGMENT AND 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 Stipulated Protective Order that was issued by the United States  
District Court for the Eastern District of California on [date] in the case of *Lauren  
Mathein v. Pier 1 Imports, Inc.*, Case No. 1:16-cv-0087-DAD-SAB, currently pending in  
the Eastern District of California. I agree to comply with and to be bound by all the terms  
of this Stipulated Protective Order and I understand and acknowledge that failure to so  
comply could expose me to sanctions and punishment in the nature of contempt. I  
solemnly promise that I will not disclose in any manner any information or item that is  
subject to this Stipulated Protective Order to any person or entity except in strict  
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for  
the Eastern District of California for the purpose of enforcing the terms of this Stipulated  
Protective 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 Stipulated Protective Order.

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

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

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

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

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