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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

ROBERT CAPP, on behalf of himself and all
others similarly situated,

Plaintiff,

vs.

NORDSTROM, INC., a Washington
corporation; and DOES 1 through 50, inclusive,

Defendants.

) Case No. 2:13-CV-00660-MCE-AC

) **STIPULATED PROTECTIVE ORDER**

1 Plaintiff Robert Capp (“Plaintiff”) and Defendant Nordstrom, Inc. (“Nordstrom”), through
2 their respective counsel of record in the above-captioned action, hereby stipulate to entry of this
3 Stipulated Protective Order (the “Order”).

4 **I. GOOD CAUSE STATEMENT**

5 The parties acknowledge that disclosures and discovery in this litigation will include
6 production of confidential, proprietary, trade secret, or otherwise private information for which
7 special protection from public dissemination or disclosure (and from use for any purpose other than
8 prosecuting and defending this matter) is warranted. Thus, this Order is required to prevent or limit
9 disclosure of such information and documents that may be exchanged or produced in this case. The
10 parties further acknowledge that this Order does not confer blanket protections on all disclosures or
11 responses to discovery and that the protection it affords extends only to the limited information or
12 items that are entitled to treatment as “**CONFIDENTIAL.**”

13 In the course of this litigation, there may be documents produced and/or testimony given
14 which reveal confidential business information belonging to Nordstrom and personal information
15 about Plaintiff or putative class members. For example, information about Nordstrom’s strategic
16 business initiatives, business policies and procedures, training practices, and customer data and
17 demographics information may be relevant to this litigation, but would be damaging if competitors
18 or other third parties had full access and knowledge of such information. The terms of this
19 stipulated protective order ensure the confidentiality of important and proprietary business and
20 personal individual information while placing a minimal burden on the flow of discovery. The
21 parties thus believe that there is good cause supporting such an order. Furthermore, the parties
22 believe that the need for protection should be addressed by a court order, as opposed to a private
23 agreement among the parties, due to the fact that, among other reasons, the putative class consists
24 of individuals who are not currently parties, but may be in the future, and thus cannot be restrained
25 by private agreement between the current parties to this action.

26 **II. DEFINITIONS**

27 Except as otherwise expressly defined in this Order, the following definitions shall apply:
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1 **2.01 Discovery Material.** All items or information, regardless of the medium or manner
2 generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible
3 things) that are produced or generated in disclosures, responses to discovery, or other requests for
4 documentation in this matter.

5 **2.02 “CONFIDENTIAL” Information or Items.** Information (regardless of how
6 generated, stored, or maintained) or tangible things that qualify for protection under the standards
7 developed under either FRCP 26(c) or the definition of “trade secret” identified in California Civil
8 Code § 3426.1. Among other things, the parties anticipate that information designated as
9 Confidential Information will include corporate policies and procedures, training materials,
10 strategic business initiatives or tactics, sensitive financial information about the parties, documents
11 related to high-level executive meetings, proprietary technical information, and employee or
12 customer information.

13 **2.03 Receiving Party.** A party that receives Discovery Material from a Producing Party
14 in this case.

15 **2.04 Producing Party.** A party that produces Discovery Material in this case.

16 **2.05 Designating Party.** A Party that designates information or items that it produces in
17 disclosures or in responses to discovery or otherwise.

18 **2.06 Protected Material.** Any Disclosure or Discovery Material that is designated as
19 “CONFIDENTIAL.”

20 **2.07 Expert.** A person with specialized knowledge or experience in a matter pertinent to
21 the litigation who has been retained by a party or its counsel to serve as an expert witness or as a
22 consultant in this action. This definition includes a professional jury or trial consultant retained in
23 connection with this litigation. An expert for purposes of this Order shall not include anyone who
24 is a past or current employee of a party or a competitor of a party.

25 **2.08 Outside Counsel.** Attorneys who are not employees of a party, but who are retained
26 to represent a party in this action.

27 **2.09 In-House Counsel.** Attorneys who are employees of a party.
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1 **III. SCOPE**

2 The protections conferred by this Order cover not only Protected Material, but also any
3 information copied or extracted from such material, as well as all copies, excerpts, summaries, or
4 compilations, plus testimony, conversations, or presentations by parties or counsel to or in this
5 litigation that might reveal Protected Material. Nothing in the Order shall be construed as requiring
6 disclosure of documents, information, or any other materials that are privileged in nature, or subject
7 to the attorney-client privilege or the attorney work-product doctrine, and/or documents,
8 information, or other materials that are, or may be claimed to be, otherwise beyond the scope of
9 permissible discovery.

10 **IV. DURATION**

11 This order shall apply from the time it is entered, and shall remain in effect until a court
12 order directs otherwise.

13 **V. DESIGNATING PROTECTED MATERIAL**

14 **5.1 Exercise of Care in Designating Material for Protection.** Each party that
15 designates information or items for protection under this Order must take care to limit any such
16 designation to specific material that qualifies under the appropriate standards. A Designating Party
17 must take care to designate for protection only those parts of material, documents, items, or oral or
18 written communications that qualify so that other portions of the material, documents, items, or
19 communications for which protection is not warranted are not swept unjustifiably within the ambit
20 of this Order.

21 If it comes to a party's attention that information or items that it designated for protection
22 do not qualify for protection at all, or do not qualify for the level of protection initially asserted,
23 that party must promptly notify all other parties that it is withdrawing the mistaken designation.

24 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this Order,
25 or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be
26 clearly so designated before the material is disclosed or produced:

- 27 (a) For information in documentary form (apart from transcripts of depositions
28 or other pretrial or trial proceedings), that the Producing Party affix the legend

1 “CONFIDENTIAL” at the top or bottom of each page that contains Protected
2 Material.

3 (b) For testimony given in deposition or in other pre-trial or trial proceedings,
4 that the Designating Party within seven days of the deposition, hearing, or other
5 proceeding, shall designate and specify any portions of the testimony that qualify as
6 Confidential. When it is impractical to identify separately each portion of testimony
7 that is entitled to protection, the Designating Party may later identify within a
8 reasonable period the specific portions of the testimony as to which protection is
9 sought. Transcript pages containing Protected Material must be separately bound by
10 the court reporter, who must affix to the top of each such page the legend
11 “CONFIDENTIAL” as instructed by the Designating Party.

12 (c) For information produced in some form other than documentary, and for any
13 other tangible items, that the Producing Party affix in a prominent place on the
14 exterior of the container or containers in which the information or item is stored the
15 legend “CONFIDENTIAL.” If only portions of the information or item warrant
16 protection, the Producing Party, to the extent practicable, shall identify the protected
17 portions.

18 **5.3 Inadvertent Failure to Designate or Disclosure.** An inadvertent failure to
19 designate qualified information or items as “CONFIDENTIAL” does not waive the Designating
20 Party’s right to secure protection under this Order for such material. If material is designated as
21 “CONFIDENTIAL” after the material was initially produced, the Receiving Party, on timely
22 notification of the designation, must make reasonable efforts to assure that the material is treated in
23 accordance with the provisions of this Order. Additionally, the parties recognize the possibility of
24 inadvertent production of materials to which a party may make a claim of privilege or of protection
25 from discovery as trial preparation material. The inadvertent production of such material shall not
26 operate as a waiver of that privilege or protection and shall not operate as any subject matter waiver
27 of that privilege or protection. The Receiving Party, on timely notification of the inadvertent
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1 production, must make reasonable efforts to assure that the material is returned to the Producing
2 Party or treated in accordance with the provisions of this agreement.

3 **5.4 Challenging Other Party's Designation.** A party shall not be obligated to
4 challenge the propriety of any "CONFIDENTIAL" designation at the time made, and failure to do
5 so shall not preclude a subsequent challenge or constitute an admission that such designation was
6 proper. If a party contends that any material is not entitled to "CONFIDENTIAL" treatment,
7 within thirty calendar days of learning the facts giving rise to the objection such party shall request
8 a conference of counsel. A good faith effort to confer requires a face-to-face meeting or a
9 telephone conference. If an agreement cannot be reached during the conference of counsel, the
10 party challenging the "CONFIDENTIAL" designation may request an order from the Court
11 regarding the confidentiality of the material. The material shall be treated as designated (i.e.,
12 "CONFIDENTIAL") until a decision has been reached by the Court.

13 **VI. ACCESS TO AND USE OF PROTECTED MATERIAL**

14 **6.1 Basic Principles.** A Receiving Party may only use Protected Material that is
15 disclosed or produced by another party in connection with this case for prosecuting and defending
16 this litigation. Such Protected Material may be disclosed only to the Court and to the categories of
17 persons described in this Order who are permitted access to such Protected Material. No other
18 persons shall be provided with the Protected Material. Counsel for a Receiving Party which
19 provides Protected Material to a permitted person specified below shall maintain a copy of the
20 signed "Agreement to Be Bound by Protective Order" (Exhibit A).

21 **6.2 "CONFIDENTIAL" Information May Be Disclosed Only to the Following** 22 **Persons:**

23 Protected Material designated as "CONFIDENTIAL" may be disclosed only to the
24 following persons:

- 25 (a) The Court and its personnel;
 - 26 (b) The author of the document or the original source of the information;
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1 (c) The Receiving Party’s Outside Counsel of record in this action, as well as
2 employees of Outside Counsel to whom it is reasonably necessary to disclose the
3 information for this litigation;

4 (d) The parties, including any officers, directors, and employees (including In-
5 House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this
6 litigation.

7 (e) Court reporters, their staff, and professional vendors to whom disclosure is
8 reasonably necessary for this litigation;

9 (f) Experts (as defined in this Order) of the Receiving Party to whom disclosure
10 is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound
11 by Protective Order” (Exhibit A);

12 (g) During their depositions, witnesses in the action to whom disclosure is
13 reasonably necessary and who have signed the “Agreement to Be Bound by Protective
14 Order” (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that
15 reveal Protected Material must be separately bound by the court reporter and may not be
16 disclosed to anyone except as permitted under this Stipulated Protective Order.

17 **6.3 Provision of Confidential Information to Prospective Witnesses/Experts**

18 Unless otherwise ordered by the Court or agreed in writing by the Designating Party, a party
19 that seeks to disclose to a prospective witness any “CONFIDENTIAL” Information or Items must
20 comply with the procedures of this paragraph.

21 (a) The party first must make a written request to the Designating Party that (1)
22 identifies the specific “CONFIDENTIAL” Information or Items that the Receiving Party
23 seeks permission to disclose to the prospective witness, and (2) sets forth the full name of
24 the prospective witness or party and the address of his or her primary residence.

25 (b) A party that makes a request and provides the information specified in paragraph
26 6.3(a) above must wait seven calendar days after complying with paragraph 6.3(a) and then
27 may disclose the subject Protected Material to the identified prospective witness unless,
28 within six calendar days of receipt of the request, the party receives a written objection from

1 the Designating Party. Any such objection must set forth in detail the grounds on which it
2 is based.

3 (c) If the party that receives a timely written objection from the Designating Party
4 does not agree with the Designating Party's position, it shall request a conference of
5 counsel. If an agreement cannot be reached during the conference of counsel, the party
6 seeking to disclose "CONFIDENTIAL" Information or Items to a prospective witness may
7 request an order from the Court allowing disclosure to the prospective witness.

8 **6.4 Duty to Maintain "Protected Material" Securely.** Protected Material must be
9 stored and maintained by a Receiving Party in a secure manner that ensures that access is limited to
10 the persons authorized under this Order. Nothing in this Order shall be deemed to restrict in any
11 way any Producing Party with respect to the use of its own Protected Material.

12 **6.5 Presentation Of Protected Material To Court.** For any documents, pleadings,
13 applications, or motions submitted to the Court by any party, in connection with any proceeding
14 other than a discovery motion, that attach, quote from, or refer to the substance of documents or
15 materials containing or consisting of "CONFIDENTIAL" Information or Items, the submitting
16 party shall request the Court to seal such document(s) in accordance with Local Rule 141(b) unless
17 the Designating Party has disclosed the Protected Material in a previous public filing with the
18 Court.

19 **VII. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
20 **OTHER LITIGATION**

21 If a Receiving Party is served with a subpoena or an order issued in other litigation that
22 would compel disclosure of any information or items designated in this action as
23 "CONFIDENTIAL," the Receiving Party must notify the Designating Party in writing within a
24 reasonable time period and in no event more than five court days after receiving the subpoena or
25 order. Such notification must include a copy of the subpoena or court order. The Receiving Party
26 also must immediately inform in writing the party who caused the subpoena or order to issue in the
27 other litigation that some or all the material covered by the subpoena or order is the subject of this
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1 Order. In addition, the Receiving Party must deliver a copy of this Order promptly to the party in
2 the other action that caused the subpoena or order to issue.

3 The purpose of imposing these duties is to alert the interested parties to the existence of this
4 Order and to afford the Designating Party in this case an opportunity to protect its confidentiality
5 interests in the court from which the subpoena or order issued.

6 **VIII. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

7 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
8 Material to any person or in any circumstance not authorized under this Order, the Receiving Party
9 must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b)
10 use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons
11 to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such
12 person or persons to execute the “Agreement to Be Bound By Protective Order” that is attached as
13 Exhibit A to this Order. The Designating Party reserves all rights against the Receiving Party for
14 its violations. In the event any party or person violates or threatens to violate any term of this
15 Order, any party may seek immediate injunctive relief against any such party or person violating or
16 threatening to violate any term of this Order.

17 **IX. FINAL DISPOSITION**

18 Unless otherwise ordered or agreed in writing by the Producing Party, within thirty calendar
19 days after the final termination of this litigation (including any appeals or court review), each
20 Receiving Party, upon written request by opposing counsel, must return all Protected Material to
21 the Producing Party. As used in this subdivision, all Protected Material includes all copies,
22 abstracts, compilations, summaries, or any other form of reproducing or capturing any of the
23 Protected Material. With express permission in writing from the Producing Party, the Receiving
24 Party may destroy some or all of the Protected Material instead of returning it. Whether the
25 Protected Material is returned or destroyed, the Receiving Party must submit a written certification
26 under penalty of perjury to the Producing Party (and, if not the same person or entity, to the
27 Designating Party) by the thirty calendar day deadline that affirms that the Receiving Party has not
28 retained any copies, abstracts, compilations, summaries, or other forms of reproducing or capturing

1 any of the Protected Material. Notwithstanding this provision, counsel are entitled to retain one
2 archival copy of all pleadings, exhibits used in the litigation, motion papers, transcripts, legal
3 memoranda, correspondence, or attorney work-product, even if such materials contain Protected
4 Material. Any such archival copies that contain or constitute Protected Material remain subject to
5 this Order.

6 **X. MISCELLANEOUS**

7 **11.1 Right to Further Relief.** Nothing in this Order abridges the right of any person to
8 seek its modification by the Court in the future. Each party expressly acknowledges that such
9 modifications may become necessary.

10 **11.2 Enforcement.** Each party and person bound by this Order, including all those who
11 have executed Exhibit A, agrees that the United States District Court for the Eastern District of
12 California has jurisdiction to enforce the terms of this Order, and that such jurisdiction continues
13 beyond the date this matter is concluded. The Court shall retain jurisdiction over all parties and
14 persons who have received Protected Material for the purpose of enforcing the provisions of the
15 Order after the action is otherwise terminated, making such rulings and entering such orders as may
16 be necessary to compel compliance and impose sanctions as the Court shall determine. Should a
17 dispute materialize concerning whether a person was improperly provided Protected Material, the
18 party in possession of Exhibit A for that person shall provide it to the complaining party upon five
19 court days' written notice.

20 **11.3 Right to Assert Other Objections.** By stipulating to the entry of this Order, no
21 party waives any right it otherwise would have to object to disclosing or producing any information
22 or item on any ground not addressed in this Order. The parties specifically agree that they shall not
23 use this Order to support a waiver argument in any discovery motion, or to argue that any party
24 waived its objections to produce any particular documents or information.

25 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

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Dated: September 25, 2014

LINDSAY LAW CORPORATION

By: /s/ James M. Lindsay
James M. Lindsay

Attorney for Plaintiff
ROBERT CAPP

Dated: September 25, 2014

DAVIS WRIGHT TREMAINE LLP

By: /s/ James D. Nguyen
James D. Nguyen

Attorneys for Defendant
NORDSTROM, INC.

ORDER

1
2 Upon good cause shown, the Court orders that all documents and testimony designated
3 CONFIDENTIAL are to be protected under the terms of this Protective Order.
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5 Dated: September 26, 2014

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7 ALLISON CLAIRE
8 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT A

AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____, of _____ have read in its entirety and understand the Stipulated Protective Order (“Order”) in the litigation of *Capp. v. Nordstrom, Inc.*, United States District Court for the Eastern District of California Case Number 2:13-cv-00660-MCE-AC. I agree to comply with and to be bound by all the terms of this Order. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Order to any person or entity except in strict compliance with the provisions of this Order. I fully understand that if I violate any provision of the Order, I will be subject to sanctions by the Court, in addition to any other remedies that a party may have. If I am not a party to this dispute, I agree that the Court may enforce this agreement at any time, including following the conclusion of this matter, and that an action may be brought in the United States District Court for the Eastern District of California to enforce the terms of this Order, and I submit to the jurisdiction of this Court.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: _____

Signature: _____

Full Name: _____

Address: _____

Phone Number: _____