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7
8 U.S. DISTRICT COURT, EASTERN DISTRICT OF CALIFORNIA
9

10 BARBARA BOGGS,

11 Plaintiff,

12 v.

13 VICTORIA'S SECRET STORES, LLC
AND DOES 1 TO 50, INCLUSIVE

14 Defendants.
15

CASE NO.: 2:15-CV-01920- KJM-KJN

**AMENDED STIPULATED
PROTECTIVE ORDER**

Judge: Honorable Kimberly J. Mueller

Complaint Filed: July 24, 2015
Trial Date: April 17, 2017

16 **AMENDED STIPULATION AND PROTECTIVE ORDER**

17 IT IS HEREBY STIPULATED AND AGREED that:

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19 1. (a) This Stipulation and Protective Order (the "Protective Order")
20 governs the handling of all documents, testimony and other information, including all
21 copies, excerpts, and summaries thereof (collectively "Material"), produced, given or
22 filed during discovery and all other proceedings in this action.

23
24 (b) The provisions of this Protective Order shall apply to (i) the
25 parties in this case and (ii) any other person producing or disclosing Material in this
26 action who agrees to be bound by the terms of this Protective Order. However,
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1 nothing herein shall be construed to modify the restriction set out below in Section 3
2 regarding access to confidential Material.

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4 (c) As used herein “person” includes the named parties as outlined at
5 1(b)(i) and (ii) above, and those defined in 3(b) herein who have agreed to be bound
6 by this Protective Order.

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8 2. Any person may designate as “Confidential” any Material produced in
9 the course of discovery proceedings herein only when such designating person in
10 good faith believes that such Material contains sensitive personal information, trade
11 secrets or other confidential or proprietary information that is of such a sensitive
12 nature that disclosure would result in competitive harm, or damage its business or
13 financial welfare, or cause damage to the reputation or standing in the community of
14 the parties, and such Material is not otherwise accessible to the public.

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17 3. Confidential Material shall be subject to the following restrictions:

18 (a) Confidential Material shall be used only for the purpose of this
19 litigation (including appeals) and not for any business or other purpose whatsoever
20 and shall not be given, shown, made available or communicated in any way to
21 anyone except those to whom it is necessary that such Material be given or shown for
22 the purposes permitted under this paragraph, as set forth in subparagraph (b) below;

23 (b) Confidential Material shall be disclosed, for the purposes set forth
24 above, only to:



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(i) the parties;
(ii) counsel of record for the parties and employees of counsel;
(iii) the Court (including court reporters, stenographic reporters and court personnel);

(iv) any expert to whom Confidential Material is to be disclosed shall first be advised by the person making the disclosure that, pursuant to this Protective Order, such persons shall not divulge such Material to any other person other than in accordance with this Protective Order. The attorney making the disclosure shall secure from each person a declaration in the form attached as Exhibit A, stating that such person has read the Protective Order and agrees to be bound by it. Further, each person to whom Confidential Material is disclosed must be advised that violation of this Protective Order may constitute contempt of a court order. Such declaration shall be maintained in the possession of the attorneys securing the declaration until further order of the Court or, upon conclusion of the litigation, at the request of opposing counsel, the counsel securing the declaration shall provide a copy of the designation to opposing counsel;

(v) any other person as to whom the producing person expressly agrees in writing after the name of such person has been disclosed;

(vi) any person as further ordered by the Court;

(vii) officers and directors of the parties actually assisting



1 counsel of record or in-house counsel in preparation of this case;

2 (viii) outside vendors performing clerical functions, but only for
3 so long as necessary to perform those services;

4 (ix) witnesses in preparation for and/or during their examination
5 as witnesses at trial or in a deposition, but prior to such use the Party taking the
6 deposition shall make reference to the confidentiality of the Confidential Material;
7 and
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9 (x) all persons that the Parties may agree upon in writing.

10 (c) After filing a motion or submitting any request in compliance
11 with Local Rules 140 and 141 with respect to requests to seal or redact documents, as
12 well as any additional provisions related to sealing specifically outlined in the
13 assigned district judge's scheduling order and, if said motion or request to seal or
14 redact documents is granted, all pleadings or other court filings subject to said motion
15 or request which incorporate or disclose Confidential Material shall be filed with the
16 Court in a sealed envelope or other container marked on the outside with the title of
17 the action, and identification of each item within and a statement as follows:
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22 "CONFIDENTIAL MATERIAL - SUBJECT TO COURT'S
23 PROTECTIVE ORDER. This envelope contains documents or transcripts
24 which are subject to a Protective Order entered by the Court. This
25 envelope shall not be opened or the contents thereof displayed or revealed
26 except by specific further Order of Court or as is allowed by the
27 Protective Order entered in the action. Violation of this prohibition may
28 be treated as contempt of court."

(d) Any disclosure of Confidential Material at trial or in any other



1 court proceeding; and

2 (e) Notwithstanding anything in this Protective Order to the contrary,
3 nothing in this Protective Order shall limit the testimony of parties or non-parties, or
4 the use of certain documents, at any Court hearing or trial, and the Parties agree that
5 such determinations will only be made by the Court at the hearing or trial, or upon an
6 appropriate motion.
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9 4. Each person given access to Confidential Material pursuant to the terms
10 hereof (other than persons described in paragraph 3(b)(iii), above) shall be advised
11 that (i) the Confidential Material is being disclosed pursuant to and subject to the
12 terms of this Protective Order and may not be disclosed other than pursuant to the
13 terms hereof. Before any person (other than persons described in paragraphs 3(b)(ii),
14 3(b)(iii), 3(b)(viii) and 3(b)(ix), above) is given access to Confidential Material,
15 he/she must also execute the annexed certificate. The signature on this Protective
16 Order of a member of a law firm acting as litigation counsel to a party shall constitute
17 an agreement by all lawyers and employees of that firm to be so bound.
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21 5. The failure of any party, attorney or other person subject to this
22 Protective Order to abide by the terms and conditions hereof shall be referred to this
23 Court for appropriate action so long as the action remains pending so as to comply
24 with Local Rule 141.1(f).
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27 6. Confidential Material shall be designated as follows:



1 (a) In the case of documents, designation shall be made by placing
2 the legend "CONFIDENTIAL" on the first page of any such document prior to
3 production.
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5 (b) In the case of interrogatory answers, designation shall be made by
6 placing the legend "CONFIDENTIAL" on each page of any answer that contains
7 Confidential Material.
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9 (c) In the case of deposition testimony, counsel for the testifying
10 person may designate on the record at the time of the deposition those portions of
11 testimony to be treated as "Confidential." Those designated portions, if transcribed,
12 shall be prepared in a separate transcript marked as "Confidential," and, if filed with
13 the Court, shall be filed under seal pursuant to paragraph (c) above.
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16 (d) All briefs, pleadings or other filings with the Court that
17 incorporate or disclose Confidential Material shall be appropriately labeled on the
18 cover page and may be filed under seal so long as the party who intends to do so has
19 made the appropriate motion or request in compliance with Local Rules 140 and 141
20 with respect to requests to seal or redact documents, as well as any additional
21 provisions related to sealing specifically outlined in the assigned district judge's
22 scheduling order, and said motion or request has been granted.
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25 (e) The Confidential Material will be kept in the custody and care of
26 the persons authorized to receive such Confidential Material under the provisions of
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1 Section 3 of this Protective Order.

2 7. (a) No party concedes that any Material designated by any other
3 person as Confidential Material does in fact contain or reflect sensitive personal
4 information, trade secrets, proprietary or confidential information or has been
5 properly designated as such. Any party may at any time, on reasonable notice, move
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9 (i) modification of this Protective Order, or

10 (ii) relief from the provisions of this Protective Order with
11 respect to specific Material. In addition, the parties may agree in writing or on the
12 record to necessary modifications of this Protective Order.
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14 (b) A party shall not be obligated to challenge the propriety of the
15 designation of Material as Confidential Material at the time made, and failure to do
16 so shall not preclude a subsequent challenge thereof. If a party challenges such
17 designation, it shall send or give notice to the designating person, and they shall
18 attempt to resolve any challenge in good faith on an expedited and informal basis. If
19 the challenge cannot be expeditiously and informally resolved, either the designating
20 person or the challenging party may, on reasonable notice, apply for appropriate
21 ruling(s) from the Court. The Material in issue shall continue to be treated as
22 designated Confidential until the Court orders otherwise.
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26 8. This Protective Order, insofar as it restricts the communication and use
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1 of Confidential Material, shall continue to be binding throughout this litigation,
2 including any appeals, and shall terminate upon the termination of this action.

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4 9. Any Material which was possessed by a receiving party prior to its
5 disclosure by the producing party or comes within the possession of such other party
6 through means not constituting breach of this Protective Order need not be treated as
7 Confidential Material under the terms of this Protective Order.

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9 10. The parties do not waive any rights they may otherwise have by
10 execution of this Protective Order. Nothing in this Protective Order shall prevent any
11 party from seeking modification, or from objecting to discovery that it believes to be
12 improper. The Court may enter such other and further orders that it deems
13 appropriate and this Protective Order is without prejudice to the right of any party to
14 apply for another further order including, but not limited to, a protective order
15 providing greater protection for certain documents or categories of documents and
16 without prejudice to the parties agreeing to any modification thereof.

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18 11. Any non-party producing Material during discovery in the course of
19 litigation, pursuant to subpoena or otherwise may designate its Material in
20 accordance with the terms of this Protective Order.

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22 12. This Protective Order shall be submitted to the Court, with a request that
23 it be executed and filed by the Court, immediately upon execution by the Parties.
24 Prior to approval by the Court, this Protective Order shall be effective as if approved.



1 13. At the conclusion of this case, counsel for the Plaintiffs shall assemble
2 and return to counsel for Defendant, as soon as reasonably practical, all Confidential
3 Material or, in the alternative, destroy all Confidential Material. Counsel for
4 Plaintiffs shall provide to counsel for Defendant an affidavit that all Confidential
5 Material has been delivered to counsel for Defendants or destroyed by Plaintiff's
6 counsel. Until so returned or destroyed, such Confidential Material shall remain
7 subject to this Order.
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10 SO STIPULATED.

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12 Dated: June 14, 2016

SMITH DOLLAR PC

13
14 /s/ Richard R. Sutherland
15 By _____
16 Richard R. Sutherland
 Attorney for Defendant

17 Dated: June 14, 2016

QUINN & KRONLUND

18 /s/ Michael C. Kronlund
19 By _____
 Michael C. Kronlund
 Attorney for Plaintiff




1 **ORDER**

2 Upon stipulation of the Parties, and good cause appearing, IT IS HEREBY
3 ORDERED that the amended stipulated protective order (ECF No. 21) is
4 APPROVED, except that:

- 5 1. To the extent that any of the procedures outlined in this stipulated
6 protective order for seeking to redact or file under seal documents with the
7 court are inconsistent with Local Rules 140 and 141, Local Rules 140 and
8 141 shall govern.
- 9 2. Although the parties are free to reach informal agreements regarding the
10 treatment of certain documents and information exchanged in discovery, the
11 parties may not modify the terms of this stipulated protective order without
12 court approval. If the parties seek to amend the terms of this order, they
13 shall submit an appropriate stipulation and proposed order for the court's
14 consideration.

15 IT IS SO ORDERED.

16 Dated: June 14, 2016

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19 _____
KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE



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EXHIBIT A

CERTIFICATION

I certify my understanding that Confidential Material is being disclosed to me pursuant to the terms and restrictions of the Stipulated Protective Order dated _____, 2016 in *Boggs v. Victoria's Secret Stores, LLC*, United States District Court, Eastern District of California (Sacramento Division), Case No. 2:15-CV-01920- KJM-KJN; and that I have been given a copy of and have read that Order and agreed to be bound by it. I understand that all Confidential Material and copies including, but not limited to, any notes or other transcription made from such protected documents, shall be (1) returned to counsel for the party providing them to me, or (2) destroyed by the party providing them to me, no later than thirty (30) days after the termination of this proceeding. I understand that violation of the Stipulation and Protective Order by me or anyone acting under my direction may be treated as contempt of court.

_____, 2016

Signature

Print Name

Address

