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14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA

16 JUVENAL ROBLES,
 17
 18 Plaintiff,
 19 v.
 20 LUCKY BRAND DUNGAREES, INC.,
 21 Defendant.
 22

Case No. 10-cv-04846 JF (HRL)

STIPULATED PROTECTIVE ORDER
(MODIFIED BY THE COURT)

[Re: Docket No. 27]

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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 disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly,
5 the parties hereby stipulate to and petition the court to enter the following Stipulated Protective
6 Order. The parties acknowledge that this Order does not confer blanket protections on all
7 disclosures or responses to discovery and that the protection it affords from public disclosure and
8 use extends only to the limited information or items that are entitled to confidential treatment under
9 the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below,
10 that this Stipulated Protective Order does not entitle them to file confidential information under
11 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that
12 will be applied when a party seeks permission from the court to file material under seal.

13 **2. DEFINITIONS**

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
15 information or items under this Order.

16 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it
17 is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
18 of Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel
20 (as well as their support staff).

21 2.5 Designating Party: a Party or Non-Party that designates information or items
22 that it produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "HIGHLY
23 CONFIDENTIAL – ATTORNEYS' EYES ONLY."

24 2.6 Disclosure or Discovery Material: all items or information, regardless of the
25 medium or manner in which it is generated, stored, or maintained (including, among other things,
26 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
27 responses to discovery in this matter.
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1 2.7 Expert: a person with specialized knowledge or experience in a matter
2 pertinent to the litigation who (1) has been retained by a Party or its counsel to serve as an expert
3 witness or as a consultant in this action, (2) is not a past or current employee of a Party or of a
4 Party's competitor, and (3) at the time of retention, is not anticipated to become an employee of a
5 Party or of a Party's competitor.

6 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information
7 or Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
8 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by less
9 restrictive means.

10 2.10 House Counsel: attorneys who are employees of a party to this action. House
11 Counsel does not include Outside Counsel of Record or any other outside counsel.

12 2.11 Non-Party: any natural person, partnership, corporation, association, or other
13 legal entity not named as a Party to this action.

14 2.12 Outside Counsel of Record: attorneys who are not employees of a party to
15 this action but are retained to represent or advise a party to this action and have appeared in this
16 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of that
17 party.

18 2.13 Party: any party to this action, including all of its officers, directors,
19 employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

20 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
21 Material in this action.

22 2.15 Professional Vendors: persons or entities that provide litigation support
23 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
24 organizing, storing, or retrieving data in any form or medium) and their employees and
25 subcontractors.

26 2.16 Protected Material: any Disclosure or Discovery Material that is designated
27 as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."
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1 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from
2 a Producing Party.

3 **3. SCOPE**

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

16 **4. DURATION**

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

25 **5. DESIGNATING PROTECTED MATERIAL**

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
27 Party or Non-Party that designates information or items for protection under this Order must take
28 care to limit any such designation to specific material that qualifies under the appropriate standards.
To the extent it is practical to do so, the Designating Party must designate for protection only those

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

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

8 If it comes to a Designating Party's attention that information or items that it
9 designated for protection do not qualify for protection at all or do not qualify for the level of
10 protection initially asserted, that Designating Party must promptly notify all other parties that it is
11 withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this
13 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
14 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
15 designated before the material is disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (e.g., paper or electronic
18 documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the
19 Producing Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
20 ATTORNEYS' EYES ONLY" to each page that contains protected material. If only a portion or
21 portions of the material on a page qualifies for protection, the Producing Party also must clearly
22 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must
23 specify, for each portion, the level of protection being asserted.

24 A Party or Non-Party that makes original documents or materials available for
25 inspection need not designate them for protection until after the inspecting Party has indicated
26 which material it would like copied and produced. During the inspection and before the
27 designation, all of the material made available for inspection shall be deemed "HIGHLY
28 CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified

1 documents it wants copied and produced, the Producing Party must determine which documents, or
2 portions thereof, qualify for protection under this Order. Then, before producing the specified
3 documents, the Producing Party must affix the appropriate legend ("CONFIDENTIAL" or
4 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY") to each page that contains Protected
5 Material. If only a portion or portions of the material on a page qualifies for protection, the
6 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
7 markings in the margins) and must specify, for each portion, the level of protection being asserted.

8 (b) for testimony given in deposition or in other pretrial or trial
9 proceedings, that the Designating Party identify on the record, before the close of the deposition,
10 hearing, or other proceeding, all protected testimony and specify the level of protection being
11 asserted. When it is impractical to identify separately each portion of testimony that is entitled to
12 protection and it appears that substantial portions of the testimony may qualify for protection, the
13 Designating Party may invoke on the record (before the deposition, hearing, or other proceeding is
14 concluded) a right to have up to 21 days to identify the specific portions of the testimony as to
15 which protection is sought and to specify the level of protection being asserted. Only those portions
16 of the testimony that are appropriately designated for protection within the 21 days shall be covered
17 by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may
18 specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the
19 entire transcript shall be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
20 ATTORNEYS' EYES ONLY."

21 Parties shall give the other parties notice if they reasonably expect a deposition,
22 hearing or other proceeding to include Protected Material so that the other parties can ensure that
23 only authorized individuals who have signed the "Acknowledgment and Agreement to Be Bound"
24 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
25 shall not in any way affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
26 ATTORNEYS' EYES ONLY."

27 Transcripts containing Protected Material shall have an obvious legend on the title
28 page that the transcript contains Protected Material, and the title page shall be followed by a list of

1 all pages (including line numbers as appropriate) that have been designated as Protected Material
2 and the level of protection being asserted by the Designating Party. The Designating Party shall
3 inform the court reporter of these requirements. Any transcript that is prepared before the
4 expiration of a 21-day period for designation shall be treated during that period as if it had been
5 designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety unless
6 otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually
7 designated.

8 (c) for information produced in some form other than documentary and
9 for any other tangible items, that the Producing Party affix in a prominent place on the exterior of
10 the container or containers in which the information or item is stored the legend
11 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only a
12 portion or portions of the information or item warrant protection, the Producing Party, to the extent
13 practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

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

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
21 of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
22 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
23 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
24 challenge a confidentiality designation by electing not to mount a challenge promptly after the
25 original designation is disclosed.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
27 process by providing written notice of each designation it is challenging and describing the basis for
28 each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice

1 must recite that the challenge to confidentiality is being made in accordance with this specific
2 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith
3 and must begin the process by conferring directly (in voice to voice dialogue; other forms of
4 communication are not sufficient) within 14 days of the date of service of notice. In conferring, the
5 Challenging Party must explain the basis for its belief that the confidentiality designation was not
6 proper and must give the Designating Party an opportunity to review the designated material, to
7 reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the
8 chosen designation. A Challenging Party may proceed to the next stage of the challenge process
9 only if it has engaged in this meet and confer process first or establishes that the Designating Party
10 is unwilling to participate in the meet and confer process in a timely manner.

11 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
12 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil
13 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the
14 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process
15 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a
16 competent declaration affirming that the movant has complied with the meet and confer
17 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a
18 motion including the required declaration within 21 days (or 14 days, if applicable) shall
19 automatically waive the confidentiality designation for each challenged designation. In addition,
20 the Challenging Party may file a motion challenging a confidentiality designation at any time if
21 there is good cause for doing so, including a challenge to the designation of a deposition transcript
22 or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a
23 competent declaration affirming that the movant has complied with the meet and confer
24 requirements imposed by the preceding paragraph.

25 The burden of persuasion in any such challenge proceeding shall be on the
26 Designating Party and shall be by a preponderance of the evidence. Frivolous challenges and those
27 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other
28 parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived

1 the confidentiality designation by failing to file a motion to retain confidentiality as described
2 above, all parties shall continue to afford the material in question the level of protection to which it
3 is entitled under the Producing Party's designation until the court rules on the challenge.

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 case only for
7 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be
8 disclosed only to the categories of persons and under the conditions described in this Order. When
9 the litigation has been terminated, a Receiving Party must comply with the provisions of section 15
10 below (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving
11 Party at a location and in a secure manner that ensures that access is limited to the persons
12 authorized under this Order.

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
14 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
15 disclose any information or item designated "CONFIDENTIAL" only to:

16 (a) the Receiving Party's Outside Counsel of Record in this action, as
17 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose
18 the information for this litigation and who have signed the "Acknowledgment and Agreement to Be
19 Bound" that is attached as Exhibit A;

20 (b) the officers, directors, and employees (including House Counsel) of
21 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
22 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (c) Non-Parties and their counsel to whom disclosure is reasonably
24 necessary for this litigation, who have signed the "Acknowledgment and Agreement to Be Bound"
25 (Exhibit A) and to whom the Designating party has consented in writing in advance of any such
26 disclosure;

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1 (d) Experts (as defined in this Order) of the Receiving Party to whom
2 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment
3 and Agreement to Be Bound" (Exhibit A);

4 (e) the court and its personnel;

5 (f) court reporters and their staff, professional jury or trial consultants,
6 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
7 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

8 (g) during their depositions, witnesses in the action to whom disclosure is
9 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
10 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
11 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
12 separately bound by the court reporter and may not be disclosed to anyone except as permitted
13 under this Stipulated Protective Order.

14 (h) the author or recipient of a document containing the information or a
15 custodian or other person who otherwise possessed or knew the information.

16 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
17 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
18 Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY
19 CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

20 (a) the Receiving Party's Outside Counsel of Record in this action, as
21 well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose
22 the information for this litigation and who have signed the "Acknowledgment and Agreement to Be
23 Bound" that is attached as Exhibit A;

24 (b) Designated House Counsel of the Receiving Party (1) who has no
25 involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for
26 this litigation, (3) who has signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
27 and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

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1 (c) Non-Parties and their counsel to whom disclosure is reasonably
2 necessary for this litigation, who have signed the "Acknowledgment and Agreement to Be Bound"
3 (Exhibit A) and to whom the Designating party has consented in writing in advance of any such
4 disclosure;

5 (d) Experts of the Receiving Party (1) to whom disclosure is reasonably
6 necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be
7 Bound" (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have
8 been followed;

9 (e) the court and its personnel;

10 (f) court reporters and their staff, professional jury or trial consultants,
11 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
12 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

13 (g) the author or recipient of a document containing the information or a
14 custodian or other person who otherwise possessed or knew the information.

15 7.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY
16 CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items to Designated House
17 Counsel or Experts:

18 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
19 Designating Party, the parties shall exchange names of a limited number of Designated House
20 Counsel for purposes of disclosure under 7.3(b). Designated House Counsel who receives
21 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information pursuant to this Order
22 shall disclose any relevant changes in job duties or responsibilities prior to final disposition of the
23 litigation to allow the Designating Party to evaluate any later-arising competitive decision-making
24 responsibilities.

25 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the
26 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any
27 information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
28 ONLY" pursuant to paragraph 7.3(c) first must make a written request to the Designating Party that

1 (1) identifies the general categories of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
2 ONLY" information that the Receiving Party seeks permission to disclose to the Expert, and (2)
3 affirms the Expert is not a current officer, director, or employee of a competitor of a Party or
4 anticipated to become one.

5 (b) A Party that makes a request and provides the information specified in
6 paragraph (a)(2) above may disclose the subject Protected Material to the Expert unless, within 14
7 days of delivering the request, the Party receives a written objection from the Designating Party.
8 Any such objection must set forth in detail the grounds on which it is based.

9 (c) A Party that receives a timely written objection must meet and confer
10 with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
11 agreement within seven days of the written objection. If no agreement is reached, the Party seeking
12 to make the disclosure to Designated House Counsel or the Expert may file a motion as provided in
13 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission
14 from the court to do so. Any such motion must describe the circumstances with specificity, set forth
15 in detail the reasons why the disclosure to the Expert is reasonably necessary, assess the risk of
16 harm that the disclosure would entail, and suggest any additional means that could be used to reduce
17 that risk. In addition, any such motion must be accompanied by a competent declaration describing
18 the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet
19 and confer discussions) and setting forth the reasons advanced by the Designating Party for its
20 refusal to approve the disclosure. In any such proceeding, the Party opposing disclosure to the
21 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under
22 the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to
23 its Designated House Counsel or Expert.

24 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
25 **OTHER LITIGATION**

26 If a Party is served with a subpoena or a court order issued in other litigation that
27 compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or
28 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

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

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

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

8 If the Designating Party timely seeks a protective order, the Party served with the
9 subpoena or court order shall not produce any information designated in this action as
10 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a
11 determination by the court from which the subpoena or order issued, unless the Party has obtained
12 the Designating Party's permission. The Designating Party shall bear the burden and expense of
13 seeking protection in that court of its confidential material – and nothing in these provisions should
14 be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
15 directive from another court.

16 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED**
17 **IN THIS LITIGATION**

18 9.1 The terms of this Order are applicable to information produced by a Non-
19 Party in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
20 ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with this
21 litigation is protected by the remedies and relief provided by this Order. Nothing in these
22 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

23 9.2 In the event that a Party is required, by a valid discovery request, to produce a
24 Non-Party's confidential information in its possession, other than confidential information provided
25 in discovery in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-
26 ATTORNEYS' EYES ONLY," and the Party is subject to an agreement with the Non-Party not to
27 produce the Non-Party's confidential information, then the Party shall:
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1 (a) promptly notify in writing the Requesting Party and the Non-Party
2 that some or all of the information requested is subject to a confidentiality agreement with a Non-
3 Party;

4 (b) promptly provide the Non-Party with a copy of the Stipulated
5 Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific
6 description of the information requested; and

7 (c) make the information requested available for inspection by the Non-
8 Party.

9 9.3 If the Non-Party fails to object or seek a protective order from this court
10 within 14 days of receiving the notice and accompanying information, the Receiving Party may
11 produce the Non-Party's confidential information responsive to the discovery request. If the Non-
12 Party timely objects or seeks a protective order, the Receiving Party shall not produce any
13 information in its possession or control that is subject to the confidentiality agreement with the Non-
14 Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall
15 bear the burden and expense of seeking protection in this court of its Protected Material.

16 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

24 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
25 **PROTECTED MATERIAL**

26 If information is inadvertently produced in discovery that is subject to a claim of
27 privilege or of protection as trial-preparation material, the party making the claim may notify any
28 party that received the information of the claim and the basis for it. After being notified, a party

1 must promptly return or destroy the specified information and any copies it has and may not
2 sequester, use or disclose the information until the claim is resolved. This includes a restriction
3 against presenting the information to the court for a determination of the claim.

4 **12. MISCELLANEOUS**

5 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
6 person to seek its modification by the court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry of this
8 Protective Order no Party waives any right it otherwise would have to object to disclosing or
9 producing any information or item on any ground not addressed in this Stipulated Protective Order.
10 Similarly, no Party waives any right to object on any ground to use in evidence of any of the
11 material covered by this Protective Order.

12 12.3 Filing Protected Material. Without written permission from the Designating
13 Party or a court order secured after appropriate notice to all interested persons, a Party may not file
14 in the public record in this action any Protected Material. A Party that seeks to file under seal any
15 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
16 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
17 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
18 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
19 to protection under the law. If a Receiving Party's request to file Protected Material under seal
20 pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving Party may file the
21 Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise
22 instructed by the court.

23 **13. FINAL DISPOSITION**

24 Within 60 days after the final disposition of this action, as defined in paragraph 4,
25 each Receiving Party must return all Protected Material to the Producing Party or destroy such
26 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
27 compilations, summaries, and any other format reproducing or capturing any of the Protected
28 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit

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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 Northern District of California on February __, 2011 in the case of *Juvenal Robles v. Lucky Brand Dungarees, Inc.*, Case No. 10-cv-04846 JF. 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 Northern 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: _____

[printed name]

Signature: _____