

E-Filed: January 3, 2014

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UNITED STATES DISTRICT COURT FOR THE
 NORTHERN DISTRICT OF CALIFORNIA

Jessie Chavez, as an individual and on
 behalf of all others similarly situated,

Plaintiff,

v.

PVH Corporation, a Delaware
 Corporation,

Defendant.

Case No. C 13-01797 LHK (HRL)

~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER
 (MODIFIED BY COURT)

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1 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiff
2 Jessie Chavez (“Plaintiff”) and Defendant PVH Corp. (“Defendant”), through their
3 counsel of record, jointly submit for the Court’s approval this Stipulated Protective
4 Order to govern the handling of information and materials produced in the course of
5 discovery or filed with the Court in this action.

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7 **GOOD CAUSE STATEMENT**
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9 It is the intent of the parties and the Court that information not be designated
10 as confidential solely for tactical reasons in this case and that nothing be so
11 designated without a good faith belief that there is good cause why it should not be
12 part of the public record of this case. That intention notwithstanding, the parties
13 anticipate that trade secrets, or confidential, proprietary, or private information
14 (including health and medical information), or other information of a sensitive
15 nature that is not generally known or readily accessible to the general public
16 belonging to the parties or third persons will be produced or exchanged during the
17 pendency of the above-captioned litigation. This confidential, proprietary or
18 private information needs protection so that it is not publicly disclosed to the
19 detriment of its owners. Examples of confidential, proprietary, or private
20 information that the parties may seek to protect from unrestricted or unprotected
21 disclosure include:

- 22 (a) Information that is the subject of a non-disclosure or confidentiality
23 agreement or obligation;
- 24 (b) Information related to internal operations and policies, including
25 personnel information;
- 26 (c) Trade secrets (as defined by the California Uniform Trade Secrets Act
27 or by the law of the jurisdiction in which the information is located), or
28 other confidential research, development or commercial information,

1 or information of a sensitive nature that is not generally known or
2 readily accessible to the general public;

3 (d) Personal identification information; and

4 (e) Personal health and medical information.

5 Unrestricted or unprotected disclosure of such confidential, proprietary, or
6 private information would result in prejudice or harm to the producing party by
7 revealing the producing party's competitive confidential information, which has
8 been developed at the expense of the producing party and which represents valuable
9 tangible and intangible assets of that party. Additionally, privacy interests
10 (including with respect to personal identification information and/or medical and
11 health information of individuals) must be safeguarded.

12 Accordingly, the parties respectfully submit that there is good cause for the
13 entry of this Protective Order.

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1 The parties agree, subject to the Court's approval, that the following terms
2 and conditions shall apply to this civil action.

3 1. This Protective Order shall govern the production and handling of
4 documents, data, communications, electronically stored information and
5 documentation associated therewith, answers or responses to interrogatories,
6 requests for documents, requests for admissions, testimony at depositions,
7 associated transcripts and exhibits, pleadings and associated exhibits, other
8 discovery taken pursuant to the Federal Rules of Civil Procedure, and all
9 information and documents, regardless of media, exchanged between the parties, or
10 produced by any third party, whether voluntarily, in response to discovery requests
11 or subpoenas, or otherwise and irrespective of whether the production, answers to
12 written discovery, pleadings or discovery were conducted before or after entry of
13 this Protective Order.

14 2. "Confidential Information" shall mean and collectively refer to
15 information designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL"
16 pursuant to the terms of this Protective Order. The designation
17 "CONFIDENTIAL" shall be limited to information, regardless of the form in which
18 such information is disclosed, that any disclosing party, including any non-party to
19 this action, in good faith, believes to contain (a) proprietary or commercially
20 sensitive information; (b) information that is the subject of a non-disclosure or
21 confidentiality agreement or obligation; (c) current or past (to the extent they reflect
22 on current) methods, procedures and processes relating to the disclosing party's
23 respective business practices and internal operations and policies; (d) Plaintiff's
24 health and medical information, including, but not limited to, information regarding
25 medical diagnosis and treatment; and (e) information, including but not limited to
26 financial information, that should otherwise be subject to confidential treatment.
27 The designation "CONFIDENTIAL" does not include information or materials
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1 available to the public through means other than disclosure by parties or non-parties
2 in violation of this Protective Order.

3 3. Information to be treated under this Protective Order as Confidential
4 Information shall include:

5 (a) information furnished voluntarily or set forth in response to
6 discovery requests, provided that the information or responses are plainly marked
7 or otherwise identified by the producing party as “CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL,” including Confidential Information retroactively designated as
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” information as permitted by
10 Sections 19 through 22 of this Protective Order;

11 (b) information derived from or set forth in documents made
12 available for inspection by the producing party voluntarily or under Rules 26, 33,
13 34 or 36 of the Federal Rules of Civil Procedure, or pursuant to subpoena, and that
14 are identified, at the time of inspection, as comprising Confidential Information;

15 (c) information derived from or set forth in any copies of
16 documents produced to the discovering party, voluntarily or under Rules 26, 33, 34
17 or 36 of the Federal Rules of Civil Procedure, provided that the copies are marked
18 by the producing party, preferably at the lower edge of each page, as
19 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”, including Confidential
20 Information retroactively designated as “CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL” information as permitted by Sections 19 through 22 of this
22 Protective Order;

23 (d) information revealed by inspection of things or premises,
24 voluntarily or under Rule 34 of the Federal Rules of Civil Procedure provided that,
25 prior to the inspection, the party permitting inspection states in writing that its
26 Confidential Information will be disclosed by the inspection and specifies, in
27 writing, the general nature, categories, or parts of the things, or those general areas
28 of the premises, in which its Confidential Information will be revealed;

1 (e) information revealed during depositions upon oral examination
2 under Rule 30 of the Federal Rules of Civil Procedure or pursuant to subpoena,
3 except that the information revealed during any particular deposition shall cease to
4 be Confidential Information thirty (30) days after the deposition transcript becomes
5 available, unless before the thirty (30) day period has expired, the witness, his
6 employer or his counsel designates either on the record or in writing that
7 Confidential Information of the witness, or his employer, which is set forth in the
8 transcript, or identifies either on the record or in writing the portions of the
9 transcript that set forth that Confidential Information. In the case of non-party
10 witnesses, either a party or the non-party witness may designate information
11 revealed as Confidential Information within thirty (30) days after the deposition
12 transcript becomes available. Information contained in deposition transcripts that
13 became available before the date of entry of this Protective Order may be
14 designated as Confidential Information within thirty (30) days after entry of this
15 Protective Order; and

16 (f) any summary, digest, analysis or comment on any information
17 identified in categories (a) - (e).

18 4. Information designated as "CONFIDENTIAL" may be disclosed only to
19 the following persons:

20 (a) a party, or officer, or current employee of a party, who has
21 executed a Certification attached hereto as Exhibit A;

22 (b) in-house counsel of a named party;

23 (c) outside counsel representing a named party, including all
24 paralegal assistants, and stenographic and clerical employees working under the
25 supervision of such counsel;

26 (d) court reporters, videographers, interpreters, translators, copy
27 services, graphic support services, document imaging services and database/coding
28 services retained by counsel to assist with this action;

1 (e) actual or potential experts or consultants who are retained by
2 any attorney described in Paragraphs 4(b) or (c) to assist with this action, and who
3 execute a Certification attached hereto as Exhibit A;

4 (f) a person who prepared, received or reviewed the
5 “CONFIDENTIAL” information prior to its production in the above-captioned
6 action;

7 (g) during depositions and preparation for depositions, a deposition
8 witness who is a current or former employee of the party that produced the
9 applicable document(s), or who appears, based upon the document itself or
10 testimony in a deposition, to have knowledge of the contents of the document
11 designated “CONFIDENTIAL”, or the specific events, transactions, discussions or
12 date reflected in the document, provided such witness executes a Certification
13 attached hereto as Exhibit A;

14 (h) Non-party witnesses or persons to be interviewed in the
15 investigation of the above-captioned matter, to the extent deemed reasonably
16 necessary by counsel to aid in the prosecution, defense or settlement of the above-
17 captioned matter, and provided such witnesses or persons execute a Certification
18 attached hereto as Exhibit A;

19 (i) any private mediators used in this action; and

20 (j) the Court, and any Special Masters and/or Mediators appointed
21 by the Court.

22 5. The designation “HIGHLY CONFIDENTIAL” shall be limited to
23 information, regardless of the form in which such information is disclosed, that any
24 disclosing party, including non-parties to this action, in good faith, believes to
25 contain (a) non-public, personal or other Confidential Information relating to or
26 concerning current and/or former employees of any party, including personal
27 identification information; (b) trade secrets (as defined by the California Uniform
28 Trade Secrets Act or by the law of the jurisdiction in which the information is

1 located), or other confidential research, development or commercial information, or
2 information of a sensitive nature that is not generally known or readily accessible to
3 the general public; (c) other “CONFIDENTIAL” information (as defined in
4 Paragraph 2), the disclosure of which is likely to cause competitive or commercial
5 injury to the disclosing party; (d) financial, technological, operational, sales,
6 marketing, pricing and/or other proprietary information relating to any party’s
7 business that is not publicly available or known and that would be of benefit to a
8 competitor of the disclosing party; and (e) such other information, documents
9 and/or data within any party’s possession, custody or control as to which the
10 disclosing party believes that it has a legal obligation to protect its confidentiality.
11 See Paragraphs 5.1 and 5.2 on page 7.1.

12 6. Information designated “HIGHLY CONFIDENTIAL” may be disclosed
13 only to the following persons:

14 (a) outside counsel of record, including all paralegal assistants, and
15 stenographic and clerical employees working under the supervision of such
16 counsel;

17 (b) court reporters, videographers, translators, copy services,
18 graphic support services, document imaging services and database/coding services
19 retained by counsel to assist with this action;

20 (c) potential or actual experts or consultants who (i) are retained by
21 any attorney described in Paragraphs 4(b) and (c) to assist with this matter, and (ii)
22 who execute a Certification attached hereto as Exhibit A;

23 (d) a person who prepared, received or reviewed the “HIGHLY
24 CONFIDENTIAL” information prior to its production in the above-captioned
25 matter, with respect to such information only;

26 (e) during depositions and preparation for depositions, a deposition
27 witness who is a current or former employee of the party that produced the
28 applicable document(s) or who appears, based upon the document itself or
testimony in a deposition, to have knowledge of the contents of the document

1 designated “HIGHLY CONFIDENTIAL” or specific events, transactions,
2 discussions or date reflected in the document, provided such witness executes a
3 Certification attached hereto as Exhibit A;

4 (f) any private mediators utilized in this action;

5 (g) the Court, and any Special Masters and/or Mediators appointed
6 by the Court.

7 7. All information designated “CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL” in accordance with the terms of this Protective Order and
9 disclosed, produced or exchanged in the course of this action shall be used or
10 disclosed solely for the purpose of this action, and in accordance with the
11 provisions of this Protective Order. Such “CONFIDENTIAL” or “HIGHLY
12 CONFIDENTIAL” information shall not be used for any business purpose, or in
13 any other litigation or proceeding, or for any other purpose, except as authorized by
14 order of this court. The foregoing notwithstanding, this Protective Order has no
15 effect on, and shall not extend to, any party’s use of its own Confidential
16 Information.

17 8. If a party receiving Confidential Information, including, without
18 limitation, its employees, agents or consultants, is compelled to disclose any of a
19 disclosing party’s “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”
20 information pursuant to applicable law, rule, regulation, court order or subpoena
21 (each a “Requirement”), the receiving party shall promptly notify the disclosing
22 party of any such Requirement, and shall cooperate with the disclosing party to
23 obtain a protective order or other appropriate arrangement pursuant to which the
24 confidentiality of the disclosing party’s “CONFIDENTIAL” or “HIGHLY
25 CONFIDENTIAL” information is preserved. Provided that the
26 producing/disclosing party makes a timely motion or other application for relief
27 from the Requirement in the appropriate forum, the person or party subject to the
28 subpoena, or other request, shall not produce or disclose the requested information

1 without the consent of the disclosing/producing party, or until ordered to do so by a
2 court of competent jurisdiction. If such an order or arrangement is not obtained, the
3 receiving party shall disclose only that portion of the disclosing party's
4 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information as is required
5 pursuant to such Requirement. Any such required disclosure shall not change the
6 status of the disclosed information as the disclosing party's "CONFIDENTIAL" or
7 "HIGHLY CONFIDENTIAL" information under the terms of this Protective Order.

8 9. Counsel shall provide each person to whom they disclose, or give access
9 to, "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information, a copy of
10 this Protective Order and shall advise each such person of his or her obligation to
11 comply with the terms of the Protective Order. Each person who has received or
12 been given access to "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL"
13 information pursuant to Paragraphs 4(a), (e), (g) and (h) or Paragraphs 6(c) or (e)
14 shall sign the Certification attached hereto as Exhibit "A." Persons receiving
15 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information are prohibited
16 from disclosing it to any person, except in conformance with this Protective Order.
17 The recipient of any "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL"
18 information agrees to subject himself or herself to the jurisdiction of this Court for
19 the purposes of any proceedings relating to the performance of, compliance with or
20 violation of this Protective Order. Counsel shall maintain a file of all executed
21 Certifications pursuant to this Protective Order. The Court will retain jurisdiction to enforce
22 the terms of this Protective Order for a period of 6 months after final disposition.

23 10. The recipient of any "CONFIDENTIAL" or "HIGHLY
24 CONFIDENTIAL" information shall maintain such information in a secure and
25 safe area, and shall exercise due and proper care with respect to the storage,
26 custody, use and/or dissemination of such information.

27 11. In designating information "CONFIDENTIAL" or "HIGHLY
28 CONFIDENTIAL," the producing or testifying party or person, including third

1 parties, will make such designation only as to that information that it, in good faith,
2 believes is “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

3 12. All or any part of a document, tangible item, discovery response or
4 pleading disclosed, produced or filed by any party or person in the above-captioned
5 matter may be designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”
6 information by the producing or disclosing party or person by marking the
7 appropriate legend on the face of the document and each page so designated. With
8 respect to tangible items, the appropriate legend shall be marked on the face of the
9 tangible item, if practicable, or by written notice at the time of disclosure,
10 production or filing to the party to which disclosure is made that such tangible item
11 is “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.” Electronically stored
12 information produced in a format that does not permit the disclosing party to affix
13 an appropriate confidentiality legend to each piece of data shall have the
14 appropriate confidentiality designation made in a transmittal letter that accompanies
15 the production of such material and, to the extent practical, the disclosing party
16 shall affix an appropriate legend on the media on which such data is produced.

17 13. Deposition testimony and exhibits (or portions thereof) of any witness
18 that have been designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”
19 shall be labeled as follows: If any portion of a videotaped deposition is so
20 designated, the videocassette, other videotape, CD ROM, DVD or other container
21 shall be labeled with the appropriate legend. For testimony or exhibits designated
22 as Confidential Information after receipt of the deposition transcript, the deponent,
23 his/her counsel or any other designating party shall serve on all counsel a list of the
24 page and line numbers of the deposition transcript containing “CONFIDENTIAL”
25 or “HIGHLY CONFIDENTIAL” information. A party may reasonably request a
26 shortening of the time period within which a confidentiality designation for a
27 deposition transcript must be made for the purpose of conducting effective
28 discovery, and consent to such a request shall not be unreasonably withheld. In the

1 event of a dispute as to a request for a shortened time period, the parties shall ~~first~~
2 ~~comply with the undersigned's Standing Order re: Civil Discovery Disputes.~~
3 ~~try to resolve the dispute in good faith on an informal basis. If the dispute cannot~~
4 ~~be resolved within five (5) business days, the party requesting the shortened time~~
5 ~~period may request appropriate relief from the Court.~~ The parties agree, subject to
6 Court approval, that such relief sought can be in the form of a telephone conference
7 to be scheduled at the Court's earliest convenience with the objective of obtaining a
8 prompt resolution of the dispute.

9 14. If a party wishes to file with the Court any documents or pleadings that
10 constitute or contain information designated as "CONFIDENTIAL" or "HIGHLY
11 CONFIDENTIAL" pursuant to this Protective Order, then that party must, prior to
12 filing such documents or pleadings, move the Court for an order sealing such
13 documents or pleadings in compliance with the requirements of Local Rule 79-5,
14 which is hereby fully incorporated by reference.

15 15. At the request of a disclosing party, the Court may limit or restrict any
16 person(s) not permitted access to "CONFIDENTIAL" or "HIGHLY
17 CONFIDENTIAL" information from attending any hearing or deposition at which
18 such information is revealed. ~~Any such request by a disclosing party must comply with the~~
19 ~~undersigned's Standing Order re: Civil Discovery Disputes.~~

20 16. Nothing in this Order shall be construed in any way as a finding that
21 information designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL"
22 actually is Confidential Information. Any party may object, in writing, to another
23 party's or a non-party's designation by specifying the information at issue and the
24 grounds for questioning the designation. A party shall not be obligated to challenge
25 the propriety of a designation at the time made, and a failure to do so shall not
26 ~~preclude any subsequent challenge unless a prompt challenge is necessary to avoid foreseeable harm.~~
27 In the event that any party to the above-
28 captioned matter disagrees at any time with the designation by the disclosing party,
29 the parties shall try first to resolve said dispute in good faith on an informal basis.

30 If the Parties cannot resolve a challenge without court intervention, the ~~Designating~~
31 ~~Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7~~
32 ~~Parties shall comply with the undersigned's Standing Order re: Civil Discovery disputes.~~

1 ~~(and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable)~~
2 ~~within 21 days of the initial notice of challenge or within 14 days of the parties~~
3 ~~agreeing that the meet and confer process will not resolve their dispute, whichever~~
4 ~~is earlier. Each such motion must be accompanied by a competent declaration~~
5 ~~affirming that the movant has complied with the meet and confer requirements~~
6 ~~imposed in the preceding paragraph. Failure by the Designating Party to make such~~
7 ~~a motion including the required declaration within 21 days (or 14 days, if~~
8 ~~applicable) shall automatically waive the confidentiality designation for each~~
9 ~~challenged designation. In addition, the Challenging Party may~~ ~~file a motion~~ ~~respect to~~ ~~challenging~~ ~~a confidentiality designation at any time if there is good cause for doing~~
10 ~~so, including a challenge to the designation of a deposition transcript or any~~
11 ~~portions thereof. Any motion brought pursuant to this provision must be~~
12 ~~accompanied by a competent declaration affirming that the movant has complied~~
13 ~~with the meet and confer requirements imposed by the preceding paragraph. The~~
14 ~~burden of persuasion in any such challenge proceeding shall be on the Designating~~
15 ~~Party. Unless the Designating Party has waived the confidentiality designation by~~
16 ~~failing to~~ ~~file a motion~~ ~~to retain confidentiality as described above, all parties shall~~
17 ~~continue to afford the material in question the level of protection to which it is~~
18 ~~entitled under the Producing Party's designation until the court rules on the~~
19 ~~challenge.~~

21 17. Nothing herein shall be construed to be an admission of relevance or to
22 affect, in any way, the admissibility of any documents, testimony or other evidence
23 in the above-captioned matter. This Protective Order is without prejudice to the
24 right of any party to bring before the Court at any time the question of whether any
25 particular information is or is not discoverable or admissible.

26 18. Nothing in this Protective Order shall bar or otherwise restrict any
27 attorney from advising his or her clients with respect to the above-captioned matter
28 and in the course thereof, referring to or relying upon the attorney's examination of

1 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” information so long as the
2 attorney does not disclose “HIGHLY CONFIDENTIAL” information or its
3 contents in the course of such advice – except as and to the extent permitted by this
4 Protective Order.

5 19. The inadvertent or mistaken disclosure by a disclosing party of
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” information that is
7 unmarked or incorrectly designated shall not constitute a waiver of any claim of
8 confidentiality where: (a) the disclosing party notifies a receiving party in writing
9 of such inadvertent or mistaken disclosure within ten (10) business days of
10 becoming aware of such disclosure, and (b) within thirty (30) days of such notice,
11 the disclosing party provides properly re-designated documents to the receiving
12 party. During the thirty (30)-day period after notice, the materials shall be treated
13 as designated in the disclosing party’s notice. Upon receipt of properly re-
14 designated documents, the receiving party shall return all unmarked or incorrectly
15 designated documents and other materials to the disclosing party within five (5)
16 business days, including any copies thereof. The receiving party shall not retain
17 originals or copies of unmarked or incorrectly designated materials and shall treat
18 information contained in said documents and materials and any summaries or notes
19 thereof as appropriately marked pursuant to the disclosing party’s notice. All such
20 unmarked or incorrectly designated information that is maintained or reflected in
21 computer databases, backup tapes, or any other electronic form shall be erased by
22 the receiving party in a manner that renders the information irretrievable by the
23 receiving party and any other person or entity.

24 20. Should any “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”
25 information be disclosed, through inadvertence or otherwise, by a receiving party to
26 any person or party not authorized to receive it under this Protective Order, then the
27 receiving party shall:
28

1 (a) use its best efforts to obtain the return of any such
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” information, and to bind
3 such person or party to the terms of this Protective Order;

4 (b) immediately upon the discovery of such disclosure, but no later
5 than one (1) day therefrom, inform such person who received such information of
6 all provisions of this Protective Order and identify such person or party to the
7 disclosing party; and

8 (c) request that such person or party sign the Certification attached
9 hereto as Exhibit A. The executed Certification shall be served upon counsel for
10 the disclosing party within ten (10) business days of its execution by the party to
11 whom the “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” information was
12 inadvertently disclosed. Nothing in this Paragraph is intended to limit the remedies
13 that the disclosing party may pursue for breach of this Protective Order.

14 21. Federal Rule of Evidence 502 applies to this Protective Order. The
15 inadvertent or erroneous disclosure and/or production of documents claimed to be
16 subject to either the attorney-client privilege or work product doctrine does not
17 waive the applicability of such privilege or doctrine, either generally or relative to
18 the inadvertently or erroneously disclosed and/or produced documents. If any such
19 documents are inadvertently or erroneously disclosed to the receiving party by the
20 producing party, and the requirements of Federal Rule of Evidence 502(b) have
21 been satisfied, the producing party may request that the receiving party return such
22 documents to the producing party, and the receiving party must immediately
23 comply by, to the extent reasonably practicable and consistent with the technology
24 used by the producing party to produce the documents, returning such documents
25 and destroying any copies, notes or memoranda concerning the privileged
26 information. If, however, the receiving party disagrees with the claim that the
27 documents were inadvertently or erroneously produced, with the claim of privilege
28 or work-product protection, or with the claim that otherwise privileged or work-

1 product documents are entitled to privilege or protection, as to each allegedly
2 inadvertently or erroneously disclosed and/or produced document, the receiving
3 party may object to the return of the document by giving written notice to the party
4 claiming the privilege and inadvertent production. The written notice shall identify
5 the document to which the objection is made. If the parties cannot resolve the
6 objection within ten (10) business days after the time the notice is received, it shall
7 be the obligation of the party claiming the privilege, protection or inadvertent /
8 erroneous production to ~~file an appropriate motion~~ ^{seek judicial relief per the undersigned's Standing Order re: Civil Discovery Disputes} requesting that the Court
9 determine the validity of the privilege, protection or inadvertent / erroneous
10 production claim within five (5) court days after the expiration of the ten (10) day
11 meet and confer period. If the party claiming the privilege, protection or
12 inadvertent / erroneous production fails to file such a motion within the prescribed
13 time, the receiving party may retain the disputed document, which shall not
14 thereafter be treated as privileged or protected. In connection with a ~~motion~~ ^{DDJR} filed
15 under this provision, the party claiming the privilege, protection or inadvertent /
16 erroneous production shall bear the burden of establishing that good cause exists for
17 the disputed document to be treated as privileged or protected and inadvertently or
18 erroneously produced. The parties agree that steps taken by a producing party to
19 prevent any inadvertent or erroneous disclosure shall not be grounds to claim that
20 such disclosure creates a waiver of privilege. The parties further agree that any
21 delay in the discovery of inadvertently or erroneously disclosed privileged
22 information by the producing party shall not be grounds to claim that the privilege
23 is waived. The disputed document shall be treated as privileged or protected and
24 inadvertently or erroneously produced until either the Court rules on the ~~motion~~ ^{DDJR}
25 filed under this provision, or the time for ~~filing such a motion~~ ^{seeking judicial relief} has expired. The
26 parties acknowledge that issues of privilege may also arise under foreign law and/or
27 may be litigated in the foreign proceedings. Nothing in this agreement is intended
28 to affect any party's right to claim privilege or work product protection in the

1 foreign proceedings, or any counter argument or argument of waiver in respect of
2 any such claim.

3 22. If, in connection with the above-captioned matter, a party discloses
4 information subject to a claim of attorney-client privilege or attorney work product
5 protection (“Disclosed Protected Information”), the disclosure of the Disclosed
6 Protected Information shall not constitute or be deemed a waiver or forfeiture of
7 any claim of privilege or work product protection that the disclosing party would
8 otherwise be entitled to assert with respect to the Disclosed Protected Information
9 and its subject matter. A disclosing party may assert in writing attorney-client
10 privilege or work product protection with respect to Disclosed Protected
11 Information. The receiving party shall, within five business days of receipt of that
12 writing, return or destroy all copies of the Disclosed Protected Information and
13 provide a certification of counsel that all such Disclosed Protected Information has
14 been returned or destroyed. Within five business days of the notification that such
15 Disclosed Protected Information has been returned or destroyed, the disclosing
16 party shall produce a privilege log with respect to the Disclosed Protected
17 Information. The receiving party then may ~~move the Court~~ ^{seek judicial relief in compliance with the undersigned's Standing Order} for an Order
18 compelling production of the Disclosed Protected Information (a “Privilege
19 Motion”) and shall not assert as a ground for entering such an Order the fact or
20 circumstances of the inadvertent production. The ~~moving party~~ ^{parties}, however, shall first
21 request, pursuant to Local Rule 79-5, the Court to order that the ~~Privilege Motion~~ ^{DDJR}
22 be filed under seal. The disclosing party retains the burden of establishing
23 privileged or protected nature of any Disclosed Protected Information. Nothing in
24 this paragraph shall limit the right of any party to petition the Court for an in
25 camera review of the Disclosed Protected Information. If, at trial, at a hearing, at a
26 deposition or on a motion, a disclosing party marks for identification or offers into
27 evidence Disclosed Protected Information — or proffers or elicits testimonial or
28 other evidence that incorporates or relies on Disclosed Protected Information,

1 including evidence within Federal Rule of Evidence 703 — that act shall be deemed
2 to effect a waiver and forfeiture by the disclosing party of attorney-client privilege
3 and work product protection that would otherwise apply to undisclosed information
4 concerning the same subject matter, within Federal Rule of Evidence 502(a). The
5 preceding sentence shall not apply to (i) proceedings to determine whether the
6 Disclosed Protected Information is privileged or protected or subject to discovery or
7 disclosure, or (ii) Disclosed Protected Information that is marked for identification,
8 offered into evidence or incorporated in evidence proffered or elicited by an
9 adverse party, or relied on by a witness proffered by an adverse party. The parties
10 expressly agree, in order to save the significant expense and burden of pre-
11 production privilege review, that a party may produce its information, including
12 without limitation hard copy and electronic documents and electronic data without
13 first reviewing such materials for work product or attorney client privilege and that
14 such a production will not in any manner constitute a waiver of privilege or work
15 product protections.

16 23. A disclosing person or entity who is not a party in the above-captioned
17 matter may invoke and take advantage of and thereupon shall be entitled to the
18 protections afforded herein by signing a copy of this Protective Order and serving
19 same on all counsel of record. Thereafter, a disclosing person or entity may
20 designate as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” testimony,
21 information, documents or things that such disclosing person or entity has produced
22 or provided in the above-captioned matter. Any non-party electing to invoke and
23 take advantage of the provisions of this Protective Order by doing so irrevocably
24 consents to the personal jurisdiction of this Court to exclusively adjudicate any
25 dispute arising under or in connection with this Protective Order. **The Court will retain**
26 **jurisdiction to enforce the terms of this Protective Order for six months after final disposition.**

27 24. The parties agree that after final termination of this action, including the
28 resolution of all appellate proceedings, outside counsel for each named party may
each retain one copy of deposition transcripts and exhibits, court transcripts and

1 exhibits, and documents and other materials submitted to the Court. Such materials
2 shall continue to be treated as designated under this Protective Order. Nothing
3 herein shall require the return or destruction of attorney work product.

4 25. The parties agree that within sixty (60) days after the final termination
5 of the above-captioned matter, each party that has received, and counsel for all
6 parties (including their paralegals, assistants, and stenographic and clerical
7 employees) who have received, and experts and consultants, potential or actual, for
8 all parties who have received “CONFIDENTIAL” or “HIGHLY
9 CONFIDENTIAL” information shall either (a) return all “CONFIDENTIAL” or
10 “HIGHLY CONFIDENTIAL” information in his/her possession, custody or control
11 or in the custody of any authorized agents, outside experts and consultants retained
12 or utilized by counsel for the receiving party to counsel for the party who has
13 provided such “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” information;
14 or (b) certify destruction thereof to the disclosing party’s counsel. All
15 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” information maintained in or
16 reflected in computer databases, backup tapes, or any other electronic form shall be
17 erased by the receiving party in a manner that renders all such information
18 irretrievable by the receiving party and any other person or entity.

19 26. The Court and its personnel are not obligated to destroy or return
20 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” information, or other
21 information or documents that are filed under seal. Further, the Court and its
22 personnel are not obligated to destroy or return materials subject to the attorney-
23 client privilege and/or work product protection filed under seal. Court personnel
24 who receive such information are not required to sign this Protective Order.

25 27. Nothing in this Protective Order shall allow non-testifying experts and
26 consultants to be deposed or otherwise be the subject of discovery other than as
27 provided under the Federal Rules of Civil Procedure.

1 28. Nothing in this Protective Order shall prevent any party from applying
2 to the Court for relief therefrom, or from applying to the Court for further or
3 additional protective orders or for a modification of this Protective Order.

4 **IT IS SO ORDERED.**

5
6 DATE: January 3, ~~2013~~ 2014



~~THE HON. LUCY H. KOH~~
~~UNITED STATES DISTRICT~~
~~COURT JUDGE~~

UNITED STATES MAGISTRATE JUDGE
HOWARD R. LLOYD

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Dated: August 19, 2013

Dated: August 19, 2013

Dated: August 19, 2013 POLARIS LAW GROUP

By: /s/ William A. Marder (with authorization)
William A. Marder
Attorneys for Plaintiff
JESSIE CHAVEZ

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EXHIBIT A

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14 Attorneys for Plaintiff and the Class
15 (Additional Counsel on Next Page)

16
17 UNITED STATES DISTRICT COURT FOR THE
18 NORTHERN DISTRICT OF CALIFORNIA
19

20 Jessie Chavez, as an individual and on
behalf of all others similarly situated,

21 Plaintiff,

22 v.

23 PVH Corporation, a Delaware
24 Corporation,

25 Defendant.
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Case No. C 13-01797 LHK

**ACKNOWLEDGEMENT OF
STIPULATED PROTECTIVE
ORDER**

1 William L. Marder (State Bar No. 170131)
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1 By my signature, I hereby acknowledge that I have read the Stipulated
2 Protective Order, dated _____, 2013 (the "Protective Order") entered in Jessie
3 Chavez, individually and on behalf of all others similarly situated v. PVH
4 Corporation pending in the United States District Court for the Northern District of
5 California and hereby agree to abide by the obligations and terms thereof. I further
6 agree that to the extent that my employees are provided with "CONFIDENTIAL"
7 or "HIGHLY CONFIDENTIAL" Designated Materials, I will instruct such
8 employees regarding the terms of the Protective Order. I further agree to subject
9 myself to the jurisdiction of the United States District Court for the Northern
10 District of California with respect to all matters relating to compliance with the
11 Protective Order.

12
13 Dated: _____
14 (Signature)
15 _____
16 (Print Name)
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