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 7 *SharkNinja Management Company, SharkNinja*
 8 *Management LLC, and SharkNinja Operating LLC*

9 **UNITED STATES DISTRICT COURT**
 10 **DISTRICT OF NEVADA**

11 WENDY GREER, an individual;
 12
 Plaintiff
 13 v.
 14 KOHL’S INC., a foreign corporation;
 15 SHARKNINJA SALES COMPANY, a foreign
 16 corporation; SHARKNINJA MANAGEMENT
 COMPANY, a foreign corporation;
 17 SHARKNINJA MANAGEMENT LLC., a
 18 foreign corporation; SHARKNINJA
 OPERATION LLC., a foreign corporation DOE
 19 EMPLOYEE; DOES I through X, inclusive; and
 DOE BUSINESS ENTITIES I through X,
 20 inclusive,
 21
 Defendants.

CASE NO. 2:23-cv-00871-JCM-NJK
~~**PROPOSED**~~ **STIPULATED PROTECTIVE**
ORDER

AS AMENDED

22 ~~**PROPOSED**~~ **STIPULATED PROTECTIVE ORDER**

23 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Plaintiff Wendy Greer
 24 (“Plaintiff”), Defendant Kohl’s Inc, and Defendants SharkNinja Management LLC, SharkNinja
 25 Operating LLC, SharkNinja Sales Company, and SharkNinja Management Company (collectively
 26 “SharkNinja”) hereby request the Court enter the following Stipulated Sharing and Non-sharing
 27 Protective Order (“Order”). Disclosure and discovery in this matter may involve production of
 28 confidential, commercial and/or proprietary documents and information. In order to preserve and

1 maintain the confidentiality of certain confidential, commercial and/or proprietary documents and
2 information produced or to be produced by SharkNinja or by any party in this action, it is hereby
3 **STIPULATED** and **ORDERED** that:

4 1. Documents or information to be produced or provided by SharkNinja or any party
5 in this litigation that contain confidential, commercially sensitive, private personal information
6 and/or proprietary information may be designated as confidential by marking or placing the
7 applicable notice “Subject to Non-Sharing Protective Order,” “Subject to Protective Order,” or
8 “Confidential,” or substantially similar language on media containing the documents, on the
9 document itself, or on a copy of the document, in such a way that it does not obscure the text or
10 other content of the document.

11 2. As used in this Order, the terms “documents” or “information” mean all written
12 material, electronic data, videotapes and all other tangible items, produced in whatever format (e.g.,
13 hard copy, electronic, digital, etc.) and on whatever media (e.g., hard copy, videotape, computer
14 diskette, CD-ROM, DVD, by secure electronic transmission, hard drive or otherwise). Further, the
15 terms shall have the full meaning ascribed to them by the Federal Rules of Civil Procedure.

16 3. Documents or information designated as “Subject to Non-Sharing Protective
17 Order,” “Subject to Protective Order,” or “Confidential” or substantially similar language in
18 accordance with the provisions of this Order (“Protected Documents” or “Protected Information”)
19 shall only be used, shown or disclosed as provided in this Order. However, nothing in this Order
20 shall limit a party’s use or disclosure of his or her own information designated as a Protected
21 Document or Protected Information.

22 4. If a receiving party disagrees with the “Protected” designation of any document or
23 information, the Challenging Party shall initiate the dispute resolution process by providing written
24 notice of each designation it is challenging and describing the basis for each challenge. The Parties
25 shall attempt to resolve each challenge in good faith and must confer within 10 days of the date of
26 service of notice. In conferring, the Challenging Party must explain the basis for its belief that the
27 confidentiality designation was not proper and must give the Designating Party an opportunity to
28 review the designated material, to reconsider the circumstances, and, if no change in designation is

1 offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the
2 next stage of the challenge process only if it has engaged in this meet and confer process first or
3 establishes that the Designating Party is unwilling to participate in the meet and confer process in
4 a timely manner.

5 5. Protected Documents and any copies thereof shall be maintained confidential by the
6 persons authorized to receive the documents pursuant to paragraph 6 and shall be used only for
7 prosecuting, defending, or attempting to settle this litigation, subject to the limitations set forth
8 herein.

9 6. Protected Documents shall be disclosed only to “Qualified Persons.” Qualified
10 Persons are limited to:

11 a. Counsel of Record for the parties, and the parties;

12 b. Attorneys, paralegals and staff employed by Counsel of Record’s firm and
13 involved in the preparation and trial of this action;

14 c. A vendor hired by a party to host data and maintain a database of electronic
15 data or perform other work related to the collection, review or production of documents in
16 the case;

17 d. Experts and non-attorney consultants retained by the parties for the
18 preparation and/or trial of this case, provided that no disclosure shall be made to any expert
19 or consultant who is employed by a competitor of SharkNinja;

20 e. Any deponent may be shown or examined on any information, document or
21 thing designated Confidential if it appears that the witness authored or received a copy of
22 it, the witness was involved in the subject matter described therein or the witness is
23 employed by the party who produced the information, document or thing, or if the producing
24 party consents to such disclosure, which consent cannot be unreasonably withheld;

25 f. The Court, the Court’s staff, witnesses, and the jury in this case;

26 g. Any mediator, special master or other third parties (collectively,
27 “Mediators”) appointed by the Court or retained by the parties for settlement purposes or
28 resolution of discovery or other disputes and their staff; and

1 h. With respect to documents designated as “Sharing” or “Subject to Protective
2 Order,” attorneys representing plaintiff(s) and the experts and non-attorney consultants
3 retained by such attorneys, in other cases pending against SharkNinja involving grills with
4 claims that they or their packaging are defective, provided no disclosure shall be made to
5 any expert or consultant who is employed by a competitor of SharkNinja.

6 7. The receiving party must make reasonable efforts to ensure the individuals described
7 in paragraphs 6(b), 6(c), 6(d), 6(e), 6(g), and 6(h) above are Qualified Persons.

8 8. Before receiving access to any Protected Document or the information contained
9 therein, each person described in paragraphs 6(d) and 6(h) above shall execute a “Written
10 Assurance” in the form contained in Exhibit A, attached hereto. The receiving party shall retain
11 each such executed Written Assurance. Each such executed Written Assurance shall be submitted
12 to counsel for SharkNinja upon order of the Court requiring production. However, for consulting
13 experts who were not designated as testifying experts, the receiving party may redact the name,
14 address, and signature of the consultant before disclosing the executed Exhibit A.

15 9. As the Protected Documents may only be distributed to Qualified Persons, Qualified
16 Persons may not post Protected Documents on any website or internet accessible document
17 repository, excepting a vendor hosted review platform for the sole purpose of reviewing the
18 information for the subject case and not for any other purpose, and shall not under any circumstance
19 sell, offer for sale, advertise, or publicize either the Protected Documents and the Confidential
20 information contained therein or the fact that such persons have obtained SharkNinja’s (or the
21 producing party’s) Protected Documents and confidential information.

22 10. To the extent that Protected Documents or information obtained therefrom are used
23 in the taking of depositions (including exhibits) or other pretrial testimony and/or used as exhibits
24 at trial, such documents or information shall remain subject to the provisions of this Order, along
25 with the transcript pages of the deposition testimony and/or trial testimony dealing with, referring
26 to or referencing the Protected Documents or information. Designation of the portion of the
27 transcript (including exhibits) which contains references to Protected Documents or information
28 shall be made (i) by a statement to such effect on the record during the proceeding in which the

Nonetheless, the Court may, in appropriate circumstances, order disclosure of informaiton designated as confidential.

1 testimony is received, or (ii) by written notice served on counsel of record in this Litigation within
2 thirty (30) business days after the receipt of the draft or final transcript (whichever is received
3 earlier) of such proceeding (as used herein, the term “draft transcript” does not include an ASCII
4 or rough transcript). However, before such thirty (30) day period expires, all testimony, exhibits
5 and transcripts of depositions or other testimony shall be treated as Protected Documents. All
6 portions of transcripts not designed as Confidential within the time frame provided herein shall be
7 deemed not confidential.

8 11. If any party disagrees with the designation of all or part of a deposition transcript
9 designated as “Protected” pursuant to Paragraph 10 above, the Challenging Party shall initiate the
10 dispute resolution process by providing written notice of each designation it is challenging and
11 describing the basis for each challenge. The Parties shall attempt to resolve each challenge in good
12 faith and must confer within 10 days of the date of service of notice. In conferring, the Challenging
13 Party must explain the basis for its belief that the confidentiality designation was not proper and
14 must give the Designating Party an opportunity to review the designated material, to reconsider the
15 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
16 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
17 has engaged in this meet and confer process first or establishes that the Designating Party is
18 unwilling to participate in the meet and confer process in a timely manner. If the parties are unable
19 to resolve the issue of confidentiality regarding the challenged deposition testimony, the designated
20 deposition testimony at issue, and any related exhibits, will continue to be treated as a Protected
21 Document, in accord with its respective designation, pending determination by the Court as to the
22 confidential status.

23 ~~12. In the event that any receiving party desires that any Confidential materials be~~
24 ~~with, or the contents thereof be in any way disclosed, in any hearing, pleading, motion or~~
25 ~~per filed with the Clerk of this Court, in connection with a motion or otherwise, documents,~~
26 ~~depositions or other discovery materials that have been marked “CONFIDENTIAL” or to file any~~
27 ~~document which quotes or substantially summarizes the substance of such Confidential material,~~
28 ~~shall do so by filing the documents or pleadings under seal according to Local Rule 10-5. Any~~

See order issued
concurrently herewith

1 ~~motion to seal or otherwise restrict access shall be filed by the party who marked the documents~~
2 ~~CONFIDENTIAL in accordance with Local Rule 10-5. Confidential material shall not include any~~
3 ~~documents, depositions or other discovery materials which: (a) were determined by this Court to~~
4 ~~have been improperly designated as Confidential material under this Agreement; (b) have~~
5 ~~previously been filed in this case and are in the public Court file not under seal; or (c) are otherwise~~
6 ~~outside the protection of this Agreement.~~

7 13. To the extent SharkNinja (or the producing party) is requested to produce documents
8 it has determined should not be subject to the sharing provision of this Order in paragraph 6(h),
9 SharkNinja (or the producing party) will designate such documents as “Non-Sharing.” Documents
10 designated as “Non-Sharing” shall not be shared under paragraph 6(h).

11 14. With respect to Protected Documents designated as “Non-Sharing,” within one
12 hundred and twenty (120) days after the conclusion of this case, counsel for the parties who received
13 Protected Documents, including any documents that any such party disclosed to any person
14 described in paragraph 6(b) or (c) shall securely destroy the Protected Documents and certify such
15 destruction to SharkNinja (or the producing party) within one hundred and fifty (150) days after
16 the conclusion of this case.

17 15. With respect to documents designated as “Sharing” or “Subject to Protective Order,”
18 Counsel for the parties shall not be required to return the Protected Documents to SharkNinja (or
19 the producing party) after the conclusion of this case and may retain the documents pursuant to the
20 terms of this Order.

21 16. Inadvertent or unintentional production of documents or information containing
22 confidential information that should have been designated as Protected Document(s) shall not be
23 deemed a waiver in whole or in part of the party’s claims of confidentiality.

24 17. The parties may disclose and produce responsive documents to each other in this
25 litigation, and seek to do so without risking waiver of any attorney-client privilege, work product
26 or other applicable privilege or protection. As such, the parties will adhere to the following
27 procedures with regard to the production of privileged or protected material, should that occur:

By allowing the non-sharing provision, the Court has not ruled that the sharing of such discovery will be forever precluded. Instead, "collateral litigants desiring any discovery produced pursuant to [this provision] have to go through the appropriate steps to obtain that discovery." *Kelly v. Provident Life & Accident Ins. Co.*, 2008 WL 5132851, at *3 (S.D. Cal. Dec. 5, 2008) (discussing *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122 (9th Cir. 2003)).

1 a. The production of documents (including both paper documents and
2 electronically stored information or “ESI”) subject to protection by the attorney-client
3 and/or work product doctrine or by another legal privilege protecting information from
4 discovery, shall not constitute a waiver of any privilege or other protection, provided that
5 the producing party notifies the receiving party, in writing, of the production within 14 days
6 after its discovery of the same.

7 b. If the producing party notifies the receiving party within 14 days after
8 discovery that privileged materials (hereinafter referred to as the “Identified Materials”)
9 have been produced, the Identified Materials and all copies of those materials shall be
10 returned to the producing party or destroyed or deleted, on request of the producing party.
11 The producing party will provide a privilege log providing information upon request or if
12 required by the Federal Rules of Civil Procedure and applicable case law to the receiving
13 party at the time the producing party provides the receiving party notice of the Identified
14 Materials. If the receiving party has any notes or other work product reflecting the contents
15 of the Identified Materials, the receiving party will not review or use those materials unless
16 a court later designates the Identified Materials as not privileged or protected.

17 c. This Stipulation and Order does not preclude a Party from intentionally
18 waiving any claims of privilege or protection.

19 d. The receiving party shall upon notice of the Identified Materials, (i)
20 immediately cease the review and use of the disclosed document or information, except to
21 the extent necessary to determine and/or contest the privilege or protection; (ii) if the
22 receiving party does not challenge the assertion, return, sequester, or destroy the disclosed
23 document or information forthwith, as well as any and all copies thereof; and (iii) if the
24 receiving party does not challenge the assertion, destroy or sequester any references to the
25 erroneously or inadvertently disclosed document or its contents, to the extent such
26 references exist in other materials prepared by the producing party.

27 e. The contents of the Identified Materials shall not be disclosed to anyone who
28 was not already aware of the contents of them before the notice was made. The receiving

1 party must take reasonable steps to retrieve the Identified Materials if the receiving party
2 disclosed the Identified Materials before being notified.

3 f. If any receiving party is in receipt of a document from a producing party
4 which the receiving party has reason to believe is privileged, the receiving party shall in
5 good faith take reasonable steps to promptly notify the producing party of the production of
6 that document so that the producing party may make a determination of whether it wishes
7 to have the documents returned or destroyed pursuant to this Stipulation and Order.

8 g. The party returning the Identified Materials may move the Court for an order
9 compelling production of some or all of the Identified Material returned or destroyed.

10 h. Pursuant to Rule 502(d) of the Federal Rules of Evidence, the disclosure of
11 Identified Materials in this action is not a waiver of the attorney-client privilege, work
12 product doctrine or any other asserted privilege in any other federal or state proceeding.

13 i. Notwithstanding the foregoing, the Parties agree that any document used by
14 any Party in a deposition, expert report, or court filing in this action that a producing party
15 does not claw back within 7 calendar days of its use, (“Used Document”) shall not be
16 eligible for clawback of that document under this Stipulated Protective Order. Such
17 ineligibility for clawback of that document under this Stipulated Protective Order shall not
18 result in a subject matter waiver in any other state or federal proceeding. The producing
19 party reserves its rights to utilize FRE 502(b) and the receiving party reserves its rights
20 under FRE 502(b), including but not limited to establishing whether and to what extent a
21 court order recognizing waiver of privilege under FRE 502(b) with respect to a document
22 effects a subject matter waiver.

23 18. No provision of this Order shall constitute a concession by any party that any
24 documents are subject to protection by the attorney-client privilege, the work product doctrine or
25 any other potentially applicable privilege or doctrine. No provision of this stipulated order is
26 intended to waive or limit in any way either party’s right to contest any privilege claims that may
27 be asserted with respect to any of the documents produced except to the extent set forth herein.
28

1 19. In the event that a party produces a document without a confidentiality designation
2 as permitted by this Order, the following procedures shall apply:

3 a. The producing party shall, within fourteen (14) days of the discovery of the
4 disclosure, notify the other party in writing. The party receiving such notice shall promptly
5 destroy the document, including any copies it has, or return the document on request of the
6 producing party. Within ten (10) days after such document is returned or its destruction
7 certified, the producing party will produce a new version of any such document that was
8 returned or destroyed, which will contain the appropriate confidentiality designation.

9 b. If the receiving party disputes the producing party's claim of confidentiality,
10 that party may move the Court to challenge the confidential designation in accordance with
11 Paragraph 4 of this Order. If the receiving party elects to file such a motion, the receiving
12 party may retain possession of the document, but shall treat it in accordance with the terms
13 of the Protective Order pending resolution of the motion. If the receiving party's motion is
14 denied, the parties shall promptly comply with Paragraph 19(a) of this Order.

15 c. The production of such document does not constitute a waiver of any claim
16 of confidentiality as set forth in this order or any other matter in any other jurisdiction,
17 unless otherwise ordered by the Court.

18 20. This Order may not be waived, modified, abandoned or terminated, in whole or part,
19 except by an instrument in writing signed by the parties. If any provision of this Order shall be held
20 invalid for any reason whatsoever, the remaining provisions shall not be affected thereby.

21 21. After termination of this litigation, the provisions of this Order shall continue to be
22 binding.

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1 22. This Order shall be binding upon the parties hereto, upon their attorneys, and upon
2 the parties' and their attorneys' successors, executors, personal representatives, administrators,
3 heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, independent
4 contractors, or other persons or organizations over which they have control

5 Dated: July 20, 2023.

6 **SO STIPULATED:**

7 **EVANS FEARS SCHUTTERT**
8 **MCNULTY MICKUS**

9 /s/ Chad R. Fears

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23 **IT IS SO ORDERED**

24 
25 **UNITED STATES MAGISTRATE JUDGE**

26 **DATED:** July 21, 2023