

HON. RICARDO S. MARTINEZ

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

CASCADE YARNS, INC., a Washington Corporation,)	Case No. 2:10-cv-00861 RSM
)	
Plaintiff,)	
)	
vs.)	
)	
KNITTING FEVER, INC., a New York Corporation, DESIGNER YARNS, LTD., a corporation of England, EMMEPIEFFE SRL, an entity organized or existing under the laws of Italy, SION ELALOUF, an individual, JAY OPPERMAN, an individual, DEBBIE BLISS, an individual, and DOES 1-50,)	
)	
Defendants.)	
)	
<hr/> AND RELATED CROSS-ACTIONS <hr/>)	

STIPULATED PROTECTIVE ORDER

The terms and conditions of this Stipulated Protective Order shall govern the handling of documents, discovery responses, depositions, pleadings, exhibits, and all other information exchanged in this action.

- 1. This Order shall govern
 - (a) all testimony at depositions;

1 (b) all documents, information, materials, or things produced by Plaintiff,
2 Defendants, or any third party (“Producing Party”) in response to discovery requests and
3 subpoenas, under the Federal Rules of Civil Procedure, or otherwise;

4 (c) all copies, abstracts, excerpts, analyses, summaries, or other materials
5 (written, electronic, or in other form) that contain, reflect, or disclose information contained in
6 such testimony, documents, or other materials.

7 The items listed in (a)-(c) above shall be referred to as “Discovery Materials.”

8 2. Any Producing Party shall have the right to designate Discovery Materials it
9 produces as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” pursuant to this Protective
10 Order and materials designated as such will be referred to as “Designated Materials.”

11 (a) Discovery Materials marked “CONFIDENTIAL” shall be those
12 Discovery Materials, including any document, file, portion of file, transcribed testimony, or
13 other material that the Producing Party in good faith reasonably believes to comprise: (i)
14 internal communications relating to sensitive and proprietary business matters such as
15 customer complaints, pricing, invoicing, advertising, or negotiations with suppliers or
16 customers; or (ii) reimbursements for business expenses.

17 (b) Discovery Materials marked “HIGHLY CONFIDENTIAL” shall be
18 those Discovery Materials that would fall within the scope of Paragraph 2.(a) but that the
19 Producing Party in good faith reasonably believes to comprise particularly sensitive
20 confidential material that warrants further restricted disclosure, specifically: (i) confidential
21 current and future business plans including financial projections, strategic plans, competitive
22 strategy, business or financial models, or documents related to future product development;
23 (ii) personal financial or investment information; (iii) financial information related to
24 nonpublic revenues, costs, expenditures, compensation and profits ; (iv) non-public details of
25 confidential business relationships such as licenses, contractual terms, proposals, and offers;
26 (v) trade secrets; and (vi) current price lists and pricing strategy. Discovery Materials may
27

1 only be designated HIGHLY CONFIDENTIAL if the Producing Party believes in good faith
2 that designation as CONFIDENTIAL will not provide adequate protection.

3 (c) The foregoing subsections 2(a) and 2(b) regarding types of Discovery
4 Materials which may be designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL”
5 are intended as a guide to designating parties, and do not constitute an admission by any party
6 concerning the confidentiality of any Designated Materials or a waiver of any right to
7 challenge the confidentiality designation of any Designated Materials.

8 3. A Producing Party shall designate Discovery Materials as follows:

9 (a) a Producing Party may designate materials by stamping the words
10 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” thereon. Any Designated Materials
11 produced in non-paper media (e.g., videotape, audiotape, computer disk) may be designated
12 as such by labeling the outside of such non-paper media, with specific identification as to
13 which portions of the media are protected, as “CONFIDENTIAL” or “HIGHLY
14 CONFIDENTIAL.”

15 (b) in the case of depositions, designation of the portion of the transcript
16 (including exhibits) that contains Designated Materials shall be made (1) by a statement on
17 the record during the course of the deposition, or (2) within ten (10) business days after
18 receipt of a final transcript from the court reporter by counsel to the Producing Party to whose
19 Designated Materials the deponent had access. Pending such designation by counsel, the
20 entire deposition transcript, including exhibits, shall be deemed “HIGHLY
21 CONFIDENTIAL.” If no designation is made within ten (10) business days after counsel for
22 the Producing Party has received a final transcript from the court reporter, the transcript shall
23 be considered not to contain Designated Materials. For the purposes of this Paragraph, a
24 “final transcript” is the first complete transcript provided by the reporter, as distinguished
25 from a preliminary “rough transcript.” The time periods referenced here run from the receipt
26 of the final transcript from the reporter, not from the date that the transcript is read and signed
27 by the witness.

1 4. Designated Materials will not be filed with the Court unless it is necessary to
2 do so for purposes of trial, motions for summary judgment, or other matters. A party that files
3 Designated Materials with the Court, or seeks to use Designated Materials at trial, shall
4 submit to the Court a motion to seal pursuant to Local Rule CR 5(g).

5 To the extent practicable, Designated Materials to be filed with the Court shall be filed
6 separately or in severable portions of filed papers, so that the non-designated portions may
7 freely be disseminated.

8 5. An inadvertent failure to designate Discovery Materials as
9 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” does not, standing alone, waive the
10 Producing Party’s right to secure protection under this Order for such materials. If Discovery
11 Materials are designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” after it is
12 initially produced, the receiving party, on timely notification of the designation, must make
13 reasonable efforts to assure that the Designated Materials are treated in accordance with the
14 provisions of this Order.

15 6. Discovery Materials designated as “CONFIDENTIAL” shall be used by the
16 receiving party solely for the purposes of this litigation, and may be disclosed only to the
17 following persons:

18 (a) any current employee of a party to whom it is deemed necessary that
19 the Designated Materials be shown for purpose of the litigation, including but not limited to
20 any current employee disclosed pursuant to Fed. R. Civ. P. 26(a)(2)(A) who may provide
21 expert testimony at trial, provided that any such employee shall be advised that he or she is
22 subject to the terms of this Order before being provided Designated Materials;

23 (b) outside counsel (defined as the attorneys and their firms who have
24 entered an appearance in this case) for the respective parties, and employees and independent
25 contractors for outside counsel that are engaged in work necessary to assist in this litigation;

26 (c) experts or consultants retained for purposes of this litigation who are
27 not employed by a party and who qualify as an Approved Expert or Approved Consultant as

1 described in Paragraphs 8 and 9, but solely for the purposes of this litigation and only after
2 such experts or consultants execute a written acknowledgment, in the form attached as Exhibit
3 A hereto, that the expert or consultant is bound by this Order;

4 (d) a witness in the course of deposition, hearing, or trial testimony where
5 counsel has a reasonable and good faith belief that examination with respect to the Designated
6 Materials is necessary; provided that the witness agrees to be bound by the terms of this
7 Order;

8 (e) the author of the document and anyone shown on the document as
9 having received it in the ordinary course of business;

10 (f) court reporters and persons preparing transcripts of depositions;

11 (g) in-house lawyers for the respective parties and their staff;

12 (h) the Court, Court personnel, and jurors or potential jurors; and

13 (i) any other person only upon order of the Court or upon stipulation of the
14 Producing Party, in writing or on the record of a deposition, hearing, or trial.

15 7. Discovery Materials designated as “HIGHLY CONFIDENTIAL” shall be used
16 by the receiving party solely for the purposes of this litigation, shall not be disclosed by any
17 means, including orally or in writing, to any employee of the receiving party except upon
18 Court Order, and may be disclosed only to the following persons:

19 (a) outside counsel (defined as the attorneys and their firms who have
20 entered an appearance in this case) for the respective parties, employees, and independent
21 contractors for outside counsel that are engaged in work necessary to assist in this litigation;

22 (b) experts or consultants retained for purposes of this litigation who are
23 not employed by a party, and only after such experts or consultants execute a written
24 acknowledgment, in the form attached as Exhibit A hereto, that the expert or consultant is
25 bound by this Order;

26 (c) the author of the document and anyone shown on the document as
27 having received it in the ordinary course of business;

- (d) court reporters and persons preparing transcripts of depositions;
- (e) the Court, Court personnel, and jurors or potential jurors; and
- (f) any other person only upon order of the Court or upon stipulation of the

Producing Party, in writing or on the record of a deposition, hearing, or trial.

8. Persons who are authorized to review Designated Materials shall hold such materials in confidence and shall not disclose their contents, either verbally or in writing, to any person not otherwise authorized to receive such information under this Order, except as otherwise required by law.

9. A party shall not be obligated to challenge the propriety of a “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” designation at the time made and failure to do so shall not preclude a subsequent challenge thereto during the pendency of this litigation.

10. Any party may contest the designation of any document or information as CONFIDENTIAL or HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY. The challenging party shall meet and confer in good faith with the Producing Party to resolve any such disagreements. This Court shall determine any unresolved disputes using the same standards as if the Producing Party had applied for a protective order under the Federal Rules of Civil Procedure and related law. The burden of persuasion in any such challenge shall be on the Producing Party.

11. In the event a receiving party having possession, custody or control of any Designated Materials designated by anyone other than itself receives a subpoena, other process, or order to produce such materials in another legal proceeding, such receiving party shall notify counsel for the Producing Party and furnish a copy of such subpoena, process, or order and shall cooperate with respect to all reasonable procedures sought to be pursued by the Producing Party whose interests may be affected. The Producing Party shall have the

1 burden of defending against such subpoena, process, or order. Except during a pending
2 motion to quash, or to the extent the Producing Party is successful in obtaining an order
3 modifying or quashing the subpoena, other process, or order, the receiving party shall be
4 entitled to comply with the subpoena, other process, or order.

5 12. Producing, receiving Designated Materials, or otherwise complying with this
6 Order shall not be construed as waiving any right to assert a claim of privilege, relevance,
7 trade secret, overbreadth, burdensomeness, or other objection to production of materials or
8 information; or prevent the parties from agreeing to alter or waive the protections or remedies
9 provided in this Order, provided that such agreement is in writing and signed by both parties.

10 13. This Order is without prejudice to the right of any party to seek relief from the
11 Court, upon good cause shown, from any of the provisions in his Order.

12 14. At the termination of this action, the restrictions on the communication and
13 disclosure provided for herein shall continue to be binding upon the parties and all persons to
14 whom Designated Materials or information contained therein has been communicated.

15 15. Upon request by the Producing Party, all Designated Materials shall be
16 returned to the respective Producing Party upon termination of this action (or, upon written
17 permission of the Producing Party, destroyed). Termination of this action shall be taken and
18 construed as the date forty-five (45) days following (a) the filing of a stipulated dismissal or
19 the entry of a voluntary dismissal; (b) the expiration of the time for any appeal of a final order
20 disposing of this case. Counsel for the receiving party shall notify counsel for the Producing
21 Party in writing of compliance with this paragraph. Nothing in this paragraph shall preclude
22 outside counsel from retaining after termination of this action copies of: (a) pleadings,
23 motions, memoranda, and exhibits filed with the Court; and (b) deposition, hearing, and trial
24 transcripts and exhibits; provided, however, that such counsel may not disclose retained
25 materials that contain Designated Materials to any other person and shall keep such retained
26 materials in a manner reflecting their confidential nature.

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Attorneys for Defendant Emmepieffe SRL

ORDER

IT IS SO ORDERED.

Dated this 10th day of August, 2011.



RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

Presented by:

Attorneys for Defendants
Pepper Hamilton LLP

By: /s/ Joshua R. Slavitt
Joshua R. Slavitt

EXHIBIT A

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

CASCADE YARNS, INC., a Washington Corporation,) Case No. 2:10-cv-00861 RSM)

Plaintiff,) **CONFIDENTIALITY**)

vs.) **UNDERTAKING**)

KNITTING FEVER, INC., a New York Corporation,) DESIGNER YARNS, LTD., a)

corporation of England,) SION)

ELALOUF, an individual,) JAY OPPERMAN, an)

individual))

DEBBIE BLISS, and individual,) EMMEPIEFFE, srl,)

an entity organized and existing under the laws of))

Italy, an individual and) DOES 1-50,)

Defendant.)

vs.)

ROBERT A. DUNBABIN, SR., a natural person,)

JEAN A. DUNBABIN, a natural person and)

ROBERT A. DUNBABIN, JR., a natural person,)

and SHANNON M. DUNBANIN, a natural person)

Counterclaim-Defendants.)

I have read the Protective Order in this action, understand that I am bound by its terms, and submit to the jurisdiction of this Court with respect to enforcement of the Stipulated Protective Order.

DATED: _____, 20____.

Print Name: _____