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10 Attorneys for Defendant
THE NEIMAN MARCUS GROUP LLC
11

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14

15 HOLLY ATTIA, ROSHANAK
BASTI, NILOOFAR
16 ESHAGHBEIGL, MICHELLE
17 GIRARD, ELISE KELLEY, KIM
MARCONI, ISABEL ROMERO,
18 DAVID TOLBERT, on behalf of
themselves and all others similarly
19 situated,

20 Plaintiffs,

21 v.

22 THE NEIMAN MARCUS GROUP,
INC., a Texas corporation; and
23 DOES 1 through 100, inclusive,

24 Defendants.
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Case No. 8:16-CV-00504 DOC (FFM)

Assigned for all purposes to
The Honorable David O. Carter

**NOTICE OF MOTION AND
MOTION TO COMPEL
ARBITRATION AND REQUEST
TO STAY PROCEEDINGS**

Date: June 6, 2016
Time: 8:30 a.m.
Courtroom: 9D

1 **TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on June 6, 2016 at 8:30 a.m., or as soon
3 thereafter as the parties may be heard, in Courtroom 9D of the Southern Division of
4 the above-entitled Court, located at 411 West Fourth Street, Room 1053, Santa
5 Ana, CA 92701, Defendant The Neiman Marcus Group LLC (“NMG” or
6 “Defendant”) will, and hereby does, move the Court to compel arbitrations of the
7 individual claims of Plaintiffs Holly Attia, Roshanak Basti, Niloofar Eshaghbeigi,
8 Michelle Girard, Elise Kelley, Kim Marconi, Isabel Romero, and David Tolbert
9 (“Plaintiffs”) in counts one through seven of the First Amended Complaint,
10 pursuant to the arbitration agreement (the “Arbitration Agreement”) between NMG
11 and Plaintiffs, the terms of which dictate that each of these claims against
12 Defendant are subject to mandatory binding arbitration on an individual basis.

13 NMG is expressly not moving to compel arbitration of Plaintiffs’ Labor Code
14 Private Attorneys General Act (“PAGA”) claim, but rather moves for an order
15 staying this civil action, including Plaintiffs’ PAGA claim until the conclusion of
16 the individual arbitrations. 9 U.S.C. §§ 3-4. This Motion is made on the grounds
17 that a valid arbitration agreement exists between the parties requiring Plaintiffs to
18 arbitrate all of their individual claims, and on the ground that a stay of this entire
19 action is the most efficient course because the individual claims should precede the
20 representative action.

21 This Motion is based upon this Notice of Motion and Motion, the
22 accompanying Memorandum of Points and Authorities, the concurrently-filed
23 declarations of Nina Kern and Cindi Ritchey, the pleadings, papers, and other
24 documents on file herein, and such further evidence or argument as the Court
25 properly may consider at or before the hearing on this motion.

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1 This motion is made following the conference of counsel pursuant to L.R. 7-
2 3 which took place on March 3, March 14, and April 11, 2016.

3 Dated: April 20, 2016 Respectfully submitted,
4 JONES DAY

5
6 By: /s/ Cindi Ritchey
7 Aaron L. Agenbroad
8 Cindi Ritchey
9 Koree Blyleven

10 Attorneys for Defendant
11 THE NEIMAN MARCUS GROUP LLC

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EXHIBIT A

**THE NEIMAN MARCUS GROUP, INC.
MANDATORY ARBITRATION AGREEMENT**

THIS AGREEMENT FOR MANDATORY ARBITRATION IS NOT OPTIONAL. IT IS MANDATORY AND A CONDITION AND TERM OF YOUR EMPLOYMENT IF YOU ARE OR CONTINUE TO BE AN EMPLOYEE ON OR AFTER MARCH 1, 2013, WHICH IS THE EFFECTIVE DATE OF THIS AGREEMENT (THE "EFFECTIVE DATE"), YOU ARE DEEMED TO HAVE ACCEPTED AND AGREED TO THE MANDATORY ARBITRATION AGREEMENT BY COMING TO WORK AFTER THAT DATE. IF YOU ACCEPT EMPLOYMENT WITH THE COMPANY AFTER THE EFFECTIVE DATE, YOU ARE DEEMED TO HAVE ACCEPTED AND AGREED TO THIS MANDATORY ARBITRATION AGREEMENT BY ACCEPTING A JOB AT THE COMPANY.

NOTHING IN THE MANDATORY ARBITRATION AGREEMENT KEEPS YOU FROM FILING A CHARGE OR COMPLAINT WITH THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, THE NATIONAL LABOR RELATIONS BOARD, OR LIKE STATE AGENCIES.

THE NEIMAN MARCUS GROUP, INC.
MANDATORY ARBITRATION AGREEMENT

This is an agreement (the "Agreement") between The Neiman Marcus Group, Inc. and its subsidiaries and divisions ("NMG" or the "Company"), on the one hand, and on the other hand, each Employee of NMG. The effective date of this Agreement is March 1, 2013 (the "Effective Date"). ***Each Employee's employment or continued employment with the Company after the Effective Date constitutes assent, acceptance, consent, and consideration for this Agreement to arbitrate, both during the time of employment and after termination of employment.***

The following are the terms and conditions of this Agreement.

1. **Scope.** The parties agree that all Disputes shall be resolved exclusively through binding arbitration in accordance with the terms, conditions, and procedures of this Agreement. For purposes of this Agreement, the term "Company" includes NMG as well as its divisions, subsidiaries, and affiliated entities, all former, current, and future officers, directors, and employees of all such entities, all benefit plans and their fiduciaries and administrators related to the Company, and all successors and assigns of these individuals or entities. The term "Employee" includes the employee, as well as anyone claiming by or through the employee, including, but not limited to an employee's spouse, children, personal representatives, successors, heirs or assigns, and generally anyone else claiming by or through the employee. This Agreement does not cover employees covered by a collective bargaining agreement or who have their own separately signed employment agreement with the Company that expressly excludes employee from this Agreement.
2. **Waiver of Judicial Forum.** For all Disputes, the Company and Employee waive their right to trial by jury or before a judge in a court of law, including the right to initiate an opt-in or opt-out class, representative, or private attorney general action. All Disputes will be settled by binding arbitration on an individual basis, pursuant to the Federal Arbitration Act as administered by JAMS, a third party alternative dispute resolution provider.
3. **Disputes.** The parties agree that this Agreement covers any dispute(s) involving (i) the formation, validity, enforceability, construction or application of any of the terms, covenants, or conditions of this Agreement; (ii) an allegation that any adverse employment action was based on discrimination or harassment because of Employee's race, color, gender, sexual orientation, sexual identity, age, religion, national origin, disability, mental or physical handicap, genetic information, FMLA leave or any other legally protected status arising under any federal, state or local law or regulation; (iii) claims related to, or arising out of, the employment relationship between Employee and NMG; and/or Employee's separation from employment with NMG, including but not limited to any termination, retaliation or constructive discharge claims (including whistle blower claims, except only those arising under Section 922 of the Dodd-Frank Wall Street Reform and Consumer Protection Act or other statute specifically precluding pre-dispute arbitration agreements); (iv) any

employment-related tort or contract claims (e.g., negligence, defamation, violation of privacy rights, misappropriation, fraud, theft of trade secrets, breach of contract or misrepresentation arising from, or relating to the employment relationship); (v) claims for personal injuries; and (vi) claims for wages, overtime, meal or rest breaks, commissions or other compensation or penalties under local, state or federal law (collectively referred to herein as "Disputes"). Disputes under this Agreement do not include claims for workers' compensation benefits, claims for unemployment insurance benefits, or claims for benefits based on an Employer-sponsored benefit plan subject to ERISA. This Agreement does not prohibit Employee from filing administrative claims before the Equal Employment Opportunity Commission ("EEOC"), the Department of Labor ("DOL"), the National Labor Relations Board ("NLRB") or any parallel state or local agency. However, upon receipt of a right to sue letter or other termination of the administrative process, the claim then becomes a Dispute subject to arbitration under this Agreement.

4. **Initiating Arbitration.** To initiate the arbitration process, a party must submit a written demand for arbitration with JAMS ("Demand for Arbitration"). The JAMS Demand for Arbitration Form may be downloaded from the JAMS website at www.jamsadr.com or by calling JAMS at 214-744-5267. The Demand for Arbitration must be timely submitted within the statute of limitations applicable to the asserted Dispute.
5. **Mediation.** The Company encourages that the parties first mediate any Dispute before a neutral mediator appointed by JAMS. The mediator's fees will be paid by NMG. To initiate mediation with JAMS, the initiating party can obtain a Mediation Form from JAMS or submit a case online at www.jamsadr.com. JAMS may also be contacted at 214-744-5267.
6. **Arbitration.** If for any reason no mediation occurs, the mediation is not completed within 45 days after the mediator is selected, or if after mediation, the Dispute is still unresolved, such Dispute shall then be resolved solely and exclusively by arbitration before a single arbitrator in accordance with the JAMS Employment Arbitration Rules and Procedures, subject to the JAMS Policy on Employment Arbitration Minimum Standards of Procedural Fairness, and the JAMS Optional Arbitration Appeal Procedures then in effect ("JAMS Rules"). The arbitration hearing will be held at a location within 50 miles of the Employee's last place of employment with the Employer, unless otherwise agreed by the parties or determined in accordance with the JAMS Employment Arbitration Rules and Procedures. Judgment on an arbitration award may be entered in any court having jurisdiction. Copies of the JAMS Rules are attached hereto and available at www.jamsadr.com or a JAMS office.
7. **Arbitrator's Authority.** The Arbitrator, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any claim or Dispute relating to the interpretation, applicability, enforceability or formation of this Agreement

including, but not limited to, any claim that all or any part of this Agreement is void or voidable.

8. **Conditions Precedent.** Each Employee must comply with the applicable deadlines for filing a charge of discrimination with any federal, state, or local agency (such as the Equal Employment Opportunity Commission or other comparable state or local agency). Filing such a charge is a prerequisite to filing a claim under this Agreement for any claim in which the applicable law requires a charge to be filed with a federal, state, or local commission, body, or agency.
9. **Expenses.** NMG will pay JAMS mediation and arbitration fees and other costs directly to JAMS relating to the mediation and/or arbitration proceeding. Because the JAMS Optional Arbitration Appeal Procedures are optional, the party electing to appeal the Arbitrator's decision will be responsible for paying JAMS' arbitration fees for the appeal process, and if any other party should file a cross-appeal, that party shall equally share JAMS' arbitration fees for the appeal process.
10. **Governing Law.** This Agreement shall be governed by, construed under and enforced in accordance with the Federal Arbitration Act, 9 U.S.C. § 1 *et. seq.* ("FAA"). Any grounds, claims or defenses that may exist at law or in equity to challenge the validity or enforceability of the Agreement, including fraud, duress or unconscionability, as provided under Section 2 of the FAA shall be determined by the Arbitrator in accordance with Texas law.
11. **Interim and Equitable Relief.** The arbitrator has authority to issue all temporary injunctive relief and/or other equitable or emergency relief permissible under applicable law. Prior to the selection of an arbitrator, any party may apply for interim or equitable relief in a court of law, provided that after selection of an arbitrator, such arbitrator shall have complete authority to modify, rescind, cancel, or change, in whole or in part, any actions taken by any court, unless same is forbidden by applicable law.
12. **Not an Employment Agreement.** This Agreement is not, and shall not be construed to create, any contract of employment, express or implied, nor shall this Agreement be construed in any way to change the status of any Employee from at-will status. The parties can each end the employment relationship with the other at anytime for any reason, with or without cause. The arbitrator has no authority to alter the at-will nature of any employee's employment with the Company.
13. **Survivability.** This Agreement to arbitrate shall survive the termination of the employer-employee relationship between the Company and any Employee, and shall apply to any Dispute whether it arises or is asserted during or after termination of the Employee's employment with the Company or the expiration of any benefit plan.
14. **Modification and Revocation.** NMG reserves the right to modify or revoke this Agreement on a prospective basis only and with thirty (30) days' advance written notice to the Employee of the substance of any modification or revocation. Any

modification or revocation will have no effect on any Dispute that arose or accrued prior to the effective date of the modification or revocation.

15. **Severability.** If any provision of this Agreement is determined by the Arbitrator to be void, unconscionable, or otherwise unenforceable, in whole or in part, then the Arbitrator shall sever the offending provision from the remainder of the Agreement and the rest of the Agreement shall be effective.

16. **Sole and Entire Agreement.** This Agreement constitutes the sole and entire agreement of the parties on the subject of arbitration of disputes. This Agreement supersedes any prior or contemporaneous oral or written agreements or understandings between the parties on the subject.

**THE NEIMAN MARCUS GROUP, INC.
MANDATORY ARBITRATION AGREEMENT
ACKNOWLEDGMENT FORM**

By clicking below, I acknowledge and affirm that:

I have received and had an opportunity to review The NMG Mandatory Arbitration Agreement, which sets forth the terms and conditions of NMG's binding arbitration program which provides that arbitration is the exclusive means of resolving any and all disputes or claims I or the Company may have against each other, arising out of or connected in any way with my employment with NMG, in lieu of a judge or jury trial. THE COMPANY HAS ADVISED ME THAT IF I ACCEPT OR CONTINUE EMPLOYMENT WITH THE COMPANY, I AM DEEMED TO HAVE ACCEPTED THE MANDATORY ARBITRATION PROGRAM;

I understand that the Company reserves the right to update, amend or modify the Associate Handbook and the Dispute Resolution Plan at any time, **except that the Mandatory Arbitration Agreement may be modified or revoked on a prospective basis only and with thirty (30) days' advance written notice of the substance of any modification or revocation. Any modification or revocation to the Mandatory Arbitration Program will have no effect on any dispute that arose or accrued prior to the effective date of the modification or revocation.**

Click here to acknowledge receipt of The Neiman Marcus Group, Inc. Mandatory Arbitration Agreement.