



1 e. "Material" means any document, testimony or information in any  
2 form or medium whatsoever, including, without limitation, any written or printed  
3 matter, Provided in this action by a Party before or after the date of this Protective  
4 Order.

5 f. "Party" means the Parties to this action, their attorneys of record  
6 and their agents.

7 g. "Person" means any individual, corporation, partnership,  
8 unincorporated association, governmental agency, or other business or governmental  
9 entity whether a Party or not.

10 h. "Producing Party" means any Person who Provides Material during  
11 the course of this action.

12 i. "Provide" means to produce any Material, whether voluntarily or  
13 involuntarily, whether pursuant to request or process.

14 **CONFIDENTIAL DESIGNATION**

15 2. A Producing Party may designate as "CONFIDENTIAL" any material  
16 provided to a Party which contains or discloses any of the following:

17 a. Non-public insider information, personnel files, financial  
18 information, trade secrets, confidential commercial information, proprietary  
19 information, or other confidential or sensitive information which the Producing Party  
20 determines in good faith should be kept confidential; and

21 b. Information that the Party is under a duty to preserve as  
22 confidential under an agreement with or other obligation to another Person.

23 c. The Producing Party may designate as "ATTORNEYS' EYES  
24 ONLY," documents Parties contend contain or disclose materials which they in good  
25 faith believe to be of an extremely high degree of current commercial sensitivity and/or  
26 would provide a competitive advantage to its competitors if disclosed.

27 3. A Producing Party shall stamp as CONFIDENTIAL or ATTORNEYS'  
28 EYES ONLY Materials which the Producing Party in good faith believes are entitled

1 to protection pursuant to the standards set forth in Paragraph 2 of this Order. A  
2 Producing Party may designate Confidential Material for Protection under this order by  
3 either of the following methods:

4 a. By physically marking it with the following inscription prior to  
5 Providing it to a Party:

6 CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

7 or

8 ATTORNEYS' EYES ONLY SUBJECT TO PROTECTIVE ORDER

9 b. By identifying with specificity in writing to the Discovering Party  
10 any previously Provided Material which was not designated as Confidential Material  
11 prior to its having been Provided. For purposes of this method of designation, it will be  
12 a sufficiently specific identification to refer to the bates numbers or deposition page  
13 numbers of previously Provided Material. Where a Producing Party designates  
14 previously Provided Material as Confidential Material pursuant to this subparagraph,  
15 the Producing Party will follow the procedures set forth in the previous subparagraph  
16 for designating Confidential Material, and Provide to the Discovering Party additional  
17 copies of the previously Provided Material marked with the inscription described in the  
18 previous subparagraph. Upon receipt of the additional copies which comply with the  
19 procedures set forth in the previous subparagraph, the Discovering Party will  
20 immediately return to the Producing Party the previously Provided Material, or  
21 alternatively, will destroy all the previously Provided Material, at the option of the  
22 Producing Party. For previously Provided Material which was not designated as  
23 Confidential Material at the time of its being Provided, this Protective Order shall  
24 apply to such materials to the extent possible beginning on the date that the Producing  
25 Party makes such designation.

26 All costs associated with the designations of materials as "Confidential" or  
27 "Attorneys' Eyes Only" involving, for example, the cost of binding confidential  
28

1 portions of deposition transcripts, shall be solely borne by the Party making the  
2 designation.

3 The designation of documents as “Confidential” or “Attorneys’ Eyes Only” does  
4 not entitle the parties to have those documents filed under seal. An application,  
5 including a stipulated application to filed documents under seal must comply with  
6 Local Rule 79-5.

7 **RESTRICTION ON USE OF CONFIDENTIAL MATERIAL**

8 4. Confidential Material designated as CONFIDENTIAL shall not be  
9 disclosed, nor shall its contents be disclosed, to any person other than those described  
10 in Paragraph 7 of this Protective Order and other than in accordance with the terms,  
11 conditions and restrictions of this Protective Order. Confidential Material designated as  
12 ATTORNEYS’ EYES ONLY shall not be disclosed, nor shall its contents be disclosed  
13 to any person other than those described in Paragraph 8 of this Protective Order.

14 5. Confidential Material Provided by a Producing Party to a Discovering  
15 Party shall not be used by the Discovering Party or anyone other than the Producing  
16 Party, specifically including the persons identified in Paragraphs 7 or 8 as appropriate,  
17 for any purpose, including, without limitation any personal, business, governmental,  
18 commercial, publicity, public-relations, or litigation (administrative or judicial)  
19 purpose, other than the prosecution or defense of this action.

20 6. All Confidential Material shall be kept secure by Discovering Counsel  
21 and access to Confidential Material shall be limited to persons authorized pursuant to  
22 Paragraphs 7 or 8 of this Protective Order.

23 7. For purposes of the preparation of this action, and subject to the terms,  
24 conditions, and restrictions of this Protective Order, Discovering Counsel may disclose  
25 Material designated as CONFIDENTIAL and the contents of Material designated as  
26 CONFIDENTIAL only to the following persons:

27 a. Counsel of record or outside counsel working on this action on  
28 behalf of any party and counsel’s employees who are directly participating in this

1 action, including any such counsel's partners, associates, paralegals, assistants,  
2 secretaries, and clerical staff.

3 b. In-house counsel and such in-house counsel's employees who are  
4 directly participating in this action, including counsel's paralegals, assistants,  
5 secretaries, and clerical staff.

6 c. Court and deposition reporters and their staff.

7 d. The Court and any Person employed by the Court whose duties  
8 require access to Material designated as CONFIDENTIAL.

9 e. Witnesses at depositions or pre-trial proceedings, in accordance  
10 with procedures set forth in Paragraphs 11-13.

11 f. Non-party experts and consultants assisting counsel with respect to  
12 this action and their secretarial, technical and clerical employees who are actively  
13 assisting in the preparation of this action, in accordance with the procedures set forth in  
14 Paragraphs 11-13.

15 g. Officers, directors and employees of the Parties hereto who have a  
16 need to review Material designated as CONFIDENTIAL to assist in connection with  
17 this litigation, subject to the limitations set forth herein;

18 h. Photocopy service personnel who photocopied or assisted in the  
19 photocopying or delivering of documents in this litigation;

20 i. Any Person identified on the face of any such Material designated  
21 as CONFIDENTIAL as an author or recipient thereof;

22 j. Any Person who is determined to have been an author and/or  
23 previous recipient of the Material designated as CONFIDENTIAL, but is not identified  
24 on the face thereof, provided there is prior testimony of actual authorship or receipt of  
25 the Material designated as CONFIDENTIAL by such Person; and

26 k. Any Person who the Parties agree in writing may receive Material  
27 designated as CONFIDENTIAL.

28

1 The Parties shall make a good faith effort to limit dissemination of Material designated  
2 as CONFIDENTIAL within these categories to Persons who have a reasonable need  
3 for access thereto.

4 8. For purposes of the preparation of this action, and subject to the terms,  
5 conditions, and restrictions of this Protective Order, the Discovering Counsel may  
6 disclose confidential financial Material designated as ATTORNEYS' EYES ONLY,  
7 and the contents of Material so designated, only to the following persons:

8 a. Counsel of record for the Parties to this action and counsel's  
9 employees who are directly participating in this action, including counsel's partners,  
10 associates, paralegals, assistants, secretarial, and clerical staff.

11 b. Court and deposition reporters and their staff.

12 c. The Court and any person employed by the Court whose duties  
13 require access to Material designated as ATTORNEYS' EYES ONLY.

14 d. Witnesses at depositions or pre-trial proceedings, in accordance  
15 with procedures set forth in paragraphs 11-13.

16 e. Experts and consultants assisting counsel with respect to this action  
17 and their secretarial, technical and clerical employees who are actively assisting in the  
18 preparation of this action, in accordance with the procedures set forth in paragraphs  
19 11-13.

20 f. Any Person identified on the face of any such Material designated  
21 as ATTORNEYS' EYES ONLY as an author or recipient thereof; and

22 g. Any Person who is determined to have been an author and/or  
23 previous recipient of the Material designated as ATTORNEYS' EYES ONLY, but is  
24 not identified on the face thereof, provided there is prior testimony of actual authorship  
25 or receipt of the Material designated as ATTORNEYS' EYES ONLY by such Person;  
26 and

27 h. Any Person who the Parties agree in writing may receive Material  
28 designated as ATTORNEYS' EYES ONLY.

1                    **UNDERTAKING TO BE BOUND BY PROTECTIVE ORDER**

2            9.        Before Discovering Counsel may disclose Confidential Material to any  
3 Person described in subparagraphs 7(f), 7(g), or 8(f) above, the Person to whom  
4 disclosure is to be made shall receive a copy of this Protective Order, shall read  
5 Paragraphs 1, 4, 5, 6, 7, 8, 9 and 10 (including the subparagraphs where applicable) of  
6 the Protective Order, shall evidence his or her agreement to be bound by the terms,  
7 conditions, and restrictions of the Protective Order by signing an undertaking in the  
8 form attached hereto as **Exhibit A** (the “Undertaking”), and shall retain the copy of  
9 this Protective Order, with a copy of his or her signed Undertaking attached.  
10 Discovering Counsel shall keep a copy of the signed Undertaking for each person  
11 described in subparagraphs 7(f), 7(g), or 8(f) to whom Discovering Counsel discloses  
12 Confidential Material.

13            10.        The individuals designated in subparagraph 8(a) above, are specifically  
14 prohibited from publishing, releasing, or otherwise disclosing Material designated as  
15 ATTORNEYS’ EYES ONLY, or the contents thereof, to any directors, officers, in-  
16 house counsel, or employees of the company for which the individual is employed, or  
17 to any other persons not authorized under this Protective Order to receive such  
18 information. The designated individuals in subparagraph 8(a) shall retain all  
19 ATTORNEYS’ EYES ONLY material in a secure manner under separate and  
20 confidential file, so as to avoid inadvertent access by, or disclosure to, unauthorized  
21 persons.

22                    **DEPOSITIONS**

23            11.        Those portions of depositions taken by any Party at which any Material  
24 designated as CONFIDENTIAL is used or inquired into, may not be conducted in the  
25 presence of any Person(s) other than (a) the deposition witness, (b) his or her counsel,  
26 and (c) Persons authorized under Paragraph 7 of this Protective Order to view such  
27 Confidential Material. During those portions of depositions in which Material  
28

1 designated ATTORNEYS' EYES ONLY is used or inquired into, only those persons  
2 authorized under Paragraph 8 to view such Materials may be present.

3       12. Counsel for any deponent may designate testimony or exhibits as  
4 Confidential Material by indicating on the record at the deposition that the testimony  
5 of the deponent or any exhibits to his or her testimony are to be treated as Confidential  
6 Material. Counsel for any Party may designate exhibits in which that Party has a  
7 cognizable interest as Confidential Material by indicating on the record at the  
8 deposition that such exhibit(s) are to be treated as Confidential Material. Failure of  
9 counsel to designate testimony or exhibits as confidential at deposition, however, shall  
10 not constitute a waiver of the protected status of the testimony or exhibits. Within  
11 thirty calendar days of receipt of the transcript of the deposition, or thirty days of the  
12 date on which this Protective Order becomes effective, whichever occurs last, counsel  
13 shall be entitled to designate specific testimony or exhibits as Confidential Material. If  
14 counsel for the deponent or Party fails to designate the transcript or exhibits as  
15 Confidential within the above-described thirty day period, any other Party shall be  
16 entitled to treat the transcript or exhibits as non-confidential material. For purposes of  
17 this Paragraph 12, this Protective Order shall be deemed "effective" on the date on  
18 which it has been executed by all counsel for the Parties.

19       13. Inadvertent disclosures of material protected by the attorney-client  
20 privilege or the work product doctrine shall be handled in accordance with Federal  
21 Rule of Evidence 502. Further, the parties agree that conducting an inspection of  
22 documents for a selection of documents to be produced by an electronic means or by  
23 electronic keyword searches or by a physical inspection of documents prior to formal  
24 production of such materials, is a reasonable way of preserving confidentiality or for  
25 preserving privilege claims for later designation when such selected materials are  
26 formally produced or for the clawback mechanism, if necessary, or appropriate, of  
27 Federal Rule of Civil Procedure 26(b)(5).



1 **USE OF CONFIDENTIAL MATERIAL IN PLEADINGS AND OTHER COURT**  
2 **PAPERS**

3 14. If any Party or non-party seeks to file or lodge with the Court any  
4 Confidential Material, such materials shall be submitted to the Court in accordance  
5 with the procedures set forth in Local Rule 79-5.1. No documents may be filed or  
6 lodged under seal absent a court order pertinent to the specific document(s). If a Party  
7 wishes to file or lodge documents under seal, the other Party shall not unreasonably  
8 withhold agreement to such procedure. If an agreement is reached, the Parties shall  
9 submit to the Court a Stipulation and Proposed Order for such filing or lodging under  
10 seal. If no such agreement is reached, then the proponent of lodging or filing under seal  
11 shall submit an Application and Proposed Order pursuant to Local Rule 79-5.1.

12 **OBJECTIONS TO DESIGNATION**

13 15. Any Party may at any time notify the Designating Party in writing of its  
14 contention that specified Material designated as Confidential Material is not properly  
15 so designated because such Material does not warrant protection under applicable law.  
16 The Designating Party shall within ten (10) calendar days from the receipt of notice to  
17 meet and confer, meet and confer in good faith with the Party challenging the  
18 designation in an attempt to resolve such dispute. The Designating Party shall have ten  
19 (10) Court days from the initial meet and confer to file a motion to uphold the  
20 designation of the material in question. Any such motion shall be set for hearing on the  
21 first available calendar date. If no motion is filed within 10 days, or any mutually  
22 agreed to extension of time, all Parties may treat the Material as non-confidential. To  
23 maintain the designation as Confidential Material and to prevail on such a motion, the  
24 Designating Party must show by a preponderance of the evidence that there is good  
25 cause for the designation as Confidential Material. Pending resolution of any motion  
26 filed pursuant to this Paragraph, all Persons bound by this Protective Order shall  
27 continue to treat the Material which is the subject of the motion as Confidential  
28 Material.



1           20. Nothing in this Protective Order shall be deemed to limit, prejudice, or  
2 waive any right of any Party or Person (a) to resist or compel discovery with respect to,  
3 or to seek to obtain additional or different protection for, Material claimed to be  
4 protected work product or privileged under California or federal law, Material as to  
5 which the Producing Party claims a legal obligation not to disclose, or Material not  
6 required to be provided pursuant to California law; (b) to seek to modify or obtain  
7 relief from any aspect of this Protective Order; (c) to object to the use, relevance, or  
8 admissibility at trial or otherwise of any Material, whether or not designated in whole  
9 or in part as Confidential Material governed by this Protective Order; or (d) otherwise  
10 to require that discovery be conducted according to governing laws and rules.

11           21. Designation of Material as Confidential Material on the face of such  
12 Material shall have no effect on the authenticity or admissibility of such Material at  
13 trial.

14           22. This Protective Order shall not preclude any Person from waiving the  
15 applicability of this Protective Order with respect to any Confidential Material  
16 Provided by that Person or using any Confidential Material Provided by that Person or  
17 using any Confidential Material owned by that Person in any manner that Person  
18 deems appropriate.

19           23. This Protective Order shall not affect any contractual, statutory or other  
20 legal obligation or the rights of any Party or Person with respect to Confidential  
21 Material designated by that Party.

22           24. The restrictions set out in the Protective Order shall not apply to any  
23 Material which:

- 24           a. At the time it is Provided is available to the public;
- 25           b. After it is Provided, becomes available to the public through no act,  
26 or failure to act, of the Discovering Party; or
- 27           c. The Discovering Party can show

28

1 i. Was already known to the Discovering Party independently  
2 of receipt of the Confidential Material in this or prior litigation; or

3 ii. Was received by the Discovering Party, after the time it was  
4 designated as Confidential Material hereunder, from a third party having the right to  
5 make such disclosure.

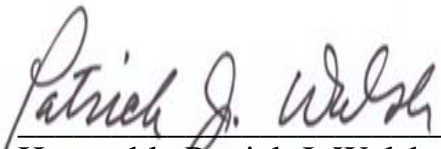
6 25. If at any time any Material protected by this Protective Order is  
7 subpoenaed from the Discovering Party by any Court, administrative or legislative  
8 body, or is requested by any other Person or entity purporting to have authority to  
9 require the production of such material, the Party to whom the subpoena or other  
10 request is directed shall immediately give written notice thereof to the Producing Party  
11 with respect to Confidential Material sought and shall afford the Producing Party  
12 reasonable opportunity to pursue formal objections to such disclosures. If the  
13 Producing Party does not prevail on its objections to such disclosure, the Discovering  
14 Party may produce the Confidential Material without violating this Protective Order.

15 **SUBMISSION TO COURT**

16 26. The Parties agree to submit this Protective Order to the Court for adoption  
17 as an order of the Court. The Parties reserve the right to seek, upon good cause,  
18 modification of this Protective Order by the Court.

19  
20 **IT IS SO ORDERED.**

21  
22 Date: February 15, 2011

  
\_\_\_\_\_  
Honorable Patrick J. Walsh  
United States Magistrate Judge

1 **EXHIBIT A**

2  
3 **UNDERTAKING TO BE BOUND BY THE PRETRIAL PROTECTIVE ORDER**  
4 **REGARDING CONFIDENTIALITY OF DOCUMENTS**

5 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
6 [print or type full address], declare under penalty of perjury that I have read in its  
7 entirety and understand the Protective Order that was issued by the United States  
8 District Court for the Central District of California in the case of *Chrome Hearts, LLC*  
9 *v. Thomas Sabo Company*, No. CV 10-3393 MMM (PJWx). I agree to comply with  
10 and to be bound by all the terms of this Protective Order and I understand and  
11 acknowledge that failure to so comply could expose me to sanctions and punishment in  
12 the nature of contempt. I solemnly promise that I will not disclose in any manner any  
13 information or item that is subject to this Protective Order to any person or entity  
14 except in strict compliance with the provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for  
16 the Central District of California for the purpose of enforcing the terms of this  
17 Stipulated Protective Order, even if such enforcement proceedings occur after  
18 termination of this action.

19  
20 Date: \_\_\_\_\_, 2011

21  
22 City and State where sworn and signed: \_\_\_\_\_

23  
24 Signed: \_\_\_\_\_  
25 [Print Name] [Signature]