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11 Attorneys for Plaintiff  
 12 JibJab Media Inc.

13 **UNITED STATES DISTRICT COURT**  
 14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
 15 **WESTERN DIVISION**

16 JIBJAB MEDIA, INC.,  
 17 Plaintiff  
 18 v.  
 19 WHITE CASTLE MANAGEMENT  
 CO. and DOES 1-10,  
 20 Defendant.

CASE NO. CV 12-04178 MMM (JEMx)  
 STIPULATED PROTECTIVE ORDER  
 REGARDING CONFIDENTIAL  
 INFORMATION PROVIDED DURING  
 DISCOVERY  
 Fact Discovery Cutoff Date: December 6, 2013  
 Pretrial Conference Date: March 17, 2014  
 Trial Date: April 15, 2014  
 Magistrate Judge: Hon. John E. McDermott

22 WHEREAS, the parties in the above captioned lawsuit believe that in the  
 23 course of discovery in this lawsuit it likely will become necessary to disclose or  
 24 produce certain documents, information (regardless of how generated, stored or  
 25 maintained) or tangible things, including financial information, invoices,  
 26 commercial invoices, purchase orders, packing lists, bills of lading, customer lists,  
 27 customer lists, marketing plans, product development information, product  
 28 development plans, third party agreements and similar documents that qualify for

1 protection under standards developed under Rule 26(c) of the Federal Rules of  
2 Civil Procedure that a Producing Party in good faith believes contain information  
3 of a confidential, proprietary, and/or private nature;

4 WHEREAS, the parties to this lawsuit assert that public dissemination and  
5 disclosure of such Confidential Information could severely injure or damage the  
6 party disclosing or producing the Confidential Information and could place that  
7 party at a competitive disadvantage;

8 WHEREAS, counsel for the party or parties receiving Confidential  
9 Information may not presently have sufficient information to accept the  
10 representation(s) made by the party or parties producing Confidential Information  
11 as to the confidential, proprietary, and/or trade secret nature of such Confidential  
12 Information; and

13 WHEREAS, upon agreement of the parties, to protect the respective  
14 interests of the parties and to facilitate the progress of disclosure and discovery in  
15 this case, the following Order is issued:

16  
17 THE PARTIES HEREBY STIPULATE that a Confidential Protective Order  
18 embodying the following terms should be entered. Good cause exists to grant this  
19 stipulation to facilitate discovery in this lawsuit without jeopardizing the  
20 confidential and/or proprietary nature of information to be produced during  
21 discovery.

22 The terms of the Confidential Protective Order as stipulated to by the parties  
23 are a follows:

24 1. "Confidential Information" is defined as financial information,  
25 invoices, commercial invoices, purchase orders, packing lists, bills of lading,  
26 customer lists, customer lists, marketing plans, product development information,  
27 product development plans, third party agreements, and similar information insofar  
28 as they qualify for protection under standards developed under Rule 26(c) of the

1 Federal Rules of Civil Procedure (specifically excluding documents, information  
2 or tangible things that are available to the public). Except as otherwise indicated  
3 below, all documents, discovery responses or depositions containing Confidential  
4 Information disclosed, produced or provided by any party during discovery in this  
5 litigation may be designated by the producing party as “Confidential” or  
6 “Confidential - Attorneys’ Eyes Only”, as described below, are entitled to  
7 confidential treatment as described herein.

8 2. The “Confidential -- Attorneys’ Eyes Only” designation shall be  
9 limited to documents, discovery responses or depositions containing Confidential  
10 Information that the Producing Party reasonably and in good faith believes is  
11 competitively sensitive and the disclosure of which to another Party or non-party  
12 would create a substantial risk of serious injury that could not be avoided by less  
13 restrictive means. A Producing Party shall only designate as "Confidential -  
14 Attorneys' Eyes Only" such information or material the disclosures of which the  
15 Producing Party in good faith reasonably considers would be detrimental to its  
16 business if known by a competitor of the Producing Party. It includes, without  
17 limitation, information that the Producing Party reasonably and in good faith  
18 believes constitutes or relates to: (1) trade secrets or other confidential proprietary  
19 information; (2) current business/strategic plans; (3) technical product  
20 specifications and information; (4) sales, cost and price information, including  
21 future sales/financial projections; (5) nonpublic marketing information, including  
22 future marketing plans; (6) detailed sales and financial data; (7) the identity of  
23 customers and customer lists; (8) confidential agreements or relationships with  
24 third parties; (9) licenses and licensing negotiations; (10) materials that a party is  
25 under a pre-existing obligation to a third party to treat as confidential; or (11) other  
26 information of competitive, technical, financial or commercial significance  
27 comparable to the items listed in this paragraph.

1           3. Confidential Information shall not include: (a) published advertising  
2 materials; or (b) materials that on their face show that they have been published to  
3 the general public.

4           4. At any time after the delivery of Confidential Information, counsel for  
5 the party or parties receiving the Confidential Information may challenge the  
6 “Confidential” or “Confidential — Attorneys’ Eyes Only” designation of all or any  
7 portion thereof by providing written notice thereof to counsel for the party  
8 disclosing or producing the Confidential Information. If the parties are unable to  
9 agree as to whether the confidential designation (including the level of confidential  
10 treatment) of discovery material is appropriate, the party or parties challenging the  
11 designation may file a motion with the Court, seeking such relief with regard to  
12 any Confidential Information in dispute as appropriate pursuant to Local Rule 37.  
13 The party or parties producing the Confidential Information shall have the burden  
14 of establishing that the disputed Confidential Information is entitled to confidential  
15 treatment and the level of confidential treatment, i.e., “Confidential” or  
16 “Confidential — Attorneys’ Eyes Only.” All Confidential Information is entitled  
17 to confidential treatment pursuant to the terms of this Order unless and until the  
18 producing party formally agrees in writing to the contrary or a contrary  
19 determination is made by the Court as to whether all or a portion of the  
20 Confidential Information is entitled to confidential treatment.

21           5. Confidential Information shall not be used or shown, disseminated,  
22 copied, or in any way communicated to anyone for any purpose whatsoever, except  
23 as provided for below.

24           6. Confidential Information shall be used solely for the prosecution  
25 and/or defense of this litigation. Confidential Information shall be disclosed only  
26 to the following persons (“Qualified Persons”):

27                   (a) Confidential Information marked “Confidential —  
28 Attorneys’ Eyes Only” shall be disclosed only to: (1) outside counsel

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who are counsel of record in this action and subject to the jurisdiction of this Court and associates, employees and support personnel (e.g. paralegals, secretaries and assistants) of such outside counsel assigned to and necessary to assist such outside counsel in the preparation and trial of this action, persons or entities providing litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstratives, organizing, storing, retrieving data in any form or medium) and jury consultants, retained by a party in connection with this action, and their employees and subcontractors; (2) the Court and its personnel; (3) court reporters, their staff, and professional vendors to whom disclosure is reasonably necessary for the litigation; (4) the author or recipient of the Confidential Information; and (5) actual or potential independent technical experts or consultants and their support staff who are retained by a party or its outside trial counsel for purposes of this action and who are not currently employed by any of the parties or their competitors. Such retained persons shall include technical experts, damages experts, accountants, statisticians, economists or other experts who have signed an acknowledgment in the form of Exhibit A attached hereto (“Retained Expert”). At least ten (10) days prior to such access, the original of such acknowledgment shall be provided to counsel for the party which designated the information confidential along with the curriculum vitae of the proposed retained expert. Unless counsel for the party whose Confidential Information is sought to be disclosed shall notify proposing counsel of its objections to disclosure of Confidential Information to any person proposed hereunder and the reasons therefor within ten (10) business days after receipt of the acknowledgment of Exhibit A for that person, such proposed

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disclosure of Confidential Information may be made, subject to the conditions set forth herein. Should counsel for the party whose Confidential Information is sought to be disclosed notify proposing counsel of its objection to disclosure to any person proposed hereunder, Confidential Information shall not be disclosed to such person. The parties shall first attempt in good faith to resolve such request by negotiation and, if such efforts are unsuccessful, then proposing counsel may thereafter seek leave of Court to permit the requested disclosure of Confidential Information. Any Retained Expert who has executed Exhibit A shall be treated as subject to this Protective Order. A willful violation of any material term of this Protective Order by any such Retained Expert may be punishable as contempt of court. The signed acknowledgment of any testifying expert shall be served on all parties at the time such expert is designated in accordance with the Docket Control Order in this case. The party in receipt of the notice agrees that it will not depose or interview such expert or consultant until and unless the expert is identified as a declarant or designated as a testifying expert by the party proposing the disclosure, and that such identification or designation must be timely made in accordance with the applicable rules of procedure; provided, however, nothing herein shall prevent a party from seeking leave of Court to depose or interview such expert or consultant.

(b) In addition to the persons listed in (a) above, Confidential Information marked only as “Confidential” may be disclosed to each of the parties, the respective in-house attorneys for each of the parties and to employees of the party receiving the Confidential Information to whom it is reasonably necessary that the material be shown for

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purposes of this litigation, provided that each such person has executed an acknowledgment in the form attached hereto as Exhibit A, which executed form shall be served on all parties prior to disclosure of any Confidential Information to the person signing the acknowledgment.

(c) Confidential Information marked “Confidential” or “Confidential - Attorneys’ Eyes Only” may be disclosed to any person who appears as an author or addressee on the face of the document or to any officer, director, managing agent or attorney of the party producing the document.

7. A party that seeks to file under seal any Confidential Information must comply with Local Civil Rule 79-5. This Protective order creates no entitlement to file Confidential Information under seal. The parties agree that any pleading, affidavit, brief or other document or thing referring to, containing or embodying Confidential Information or any portion thereof that is to be filed in this action shall be filed in sealed envelopes or other sealed containers only with leave of Court. When the only document to be filed under seal that refers to, contains or embodies Confidential Information or any portion thereof is an exhibit, only the exhibit will be filed under seal. Such sealed envelope or container shall bear the caption of the case, identify the contents for docketing purposes and bear a statement substantially in the following form:

CONFIDENTIAL

Filed under Protective Order.  
This envelope is not to be opened  
nor the contents thereof displayed or revealed  
except by order of the Court or by agreement of the parties.

If the Court does not grant leave to file certain Confidential Information under seal, a party may file and/or lodge the Confidential Information in the public record after providing the Producing Party with the opportunity to seek a protective

1 order. Outside attorneys of record for the respective parties are hereby authorized  
2 to be the persons who may retrieve confidential exhibits and/or other Confidential  
3 Information filed with the Court upon termination of this litigation. No  
4 Confidential Information or copies thereof so filed shall be released except by  
5 order of this Court or in accordance with applicable rules.

6 8. Documents, things or information produced at or during a deposition  
7 may be designated as “Confidential” or “Confidential - Attorney’s Eyes Only” by  
8 stating on the record during the deposition that the document(s), thing(s) (for  
9 example, an exhibit) or information (for example, testimony) is “Confidential” or  
10 “Confidential - Attorney’s Eyes Only” in whole or in part. Documents, things or  
11 information not designated on the record of the deposition as “Confidential” or  
12 “Confidential - Attorney’s Eyes Only” may thereafter be designated as  
13 “Confidential” or “Confidential - Attorney’s Eyes Only” by notifying the other  
14 party in writing, within thirty (30) days of the taking of the deposition or within  
15 thirty (30) days of the receipt of the transcript of such deposition, that the  
16 document(s), thing(s) or information is “Confidential” or “Confidential -  
17 Attorney’s Eyes Only” or that specific part(s) of the document(s), thing(s) or  
18 information is (are) “Confidential” or “Confidential - Attorney’s Eyes Only”. In  
19 the case of depositions, designation of the portion of the transcript shall be made  
20 by separately listing the numbers of the lines and pages of the transcript containing  
21 the Confidential Information and delivering copies of the list to all counsel subject  
22 to this Order. Each party shall attach a copy of any such written notification to the  
23 face of the deposition transcript and each copy thereof in its possession, custody or  
24 control. All documents, things and information not previously designated as  
25 “Confidential” or “Confidential - Attorney’s Eyes Only” during the deposition  
26 shall be treated as “Confidential - Attorney’s Eyes Only” up through and including  
27 the period of thirty (30) days after a transcript of said deposition is received.  
28 Unless designated as “Confidential” or “Confidential - Attorney’s Eyes Only”



1 under the procedures set forth above, the documents, things and information not  
2 previously designated as “Confidential” or “Confidential - Attorney’s Eyes Only”  
3 but produced or disclosed at or during a deposition, shall not be treated as  
4 “Confidential” or “Confidential - Attorney’s Eyes Only” under this Protective  
5 Order.

6 9. When the producing party gives notice to the receiving party that,  
7 during an oral deposition, “Confidential -Attorneys Eyes Only ” documents, things  
8 or information are expected to be produced, used or discussed during the  
9 deposition, then only Qualified Persons (as defined in paragraph 6(a)) of the  
10 receiving party will be allowed to attend that portion of the deposition.

11 10. When the producing party gives notice to the receiving party that,  
12 during an oral deposition, “Confidential” documents, things or information are  
13 expected to be produced, used or discussed during the deposition, then only  
14 Qualified Persons (as defined in paragraph 6(b)) of the receiving party will be  
15 allowed to attend that portion of the deposition.

16 11. Depositions or portions thereof which contain Confidential  
17 Information designated as “Confidential” or “Confidential - Attorneys’ Eyes Only”  
18 as set forth above shall be separately bound in a confidential volume and shall, if  
19 required, be separately filed as provided herein so as to distinguish such  
20 confidential deposition or confidential portions thereof from non-confidential  
21 public depositions or public portions thereof.

22 12. Any discovery documents produced in this litigation may be later  
23 designated as “Attorney-Client Privileged” or “Attorney Work Product” promptly  
24 upon discovery by the producing party that any such privileged or immune  
25 document was produced through inadvertence, mistake, or other error, and no  
26 waiver of privilege or immunity shall be deemed to have occurred. Upon such  
27 designation, the receiving attorney promptly shall make best efforts to collect all  
28 copies of the documents and return them to the producing party. In the event that

1 the receiving attorney believes in good faith that the producing party cannot  
2 properly assert any privilege or immunity with respect to the documents, the  
3 receiving attorney must notify the designating attorney in writing. The designating  
4 party shall, within ten (10) days of such notice, initiate the procedures set forth in  
5 Local Rule 37 for filing discovery motions and file a motion to establish that the  
6 material is attorney-client privileged; otherwise, the claim of privilege shall be  
7 deemed waived.

8 13. The term “copy” as used herein means any photographic, mechanical  
9 or computerized copy or reproduction of any document or thing, or any verbatim  
10 transcript, in whole or in part, of such document or thing.

11 14. In the event that the case proceeds to trial, the parties shall include  
12 with their proposed pretrial order a proposed order, for the Court's approval, for the  
13 handling of Confidential Information during and after trial.

14 15. Any court reporter or transcriber who reports or transcribes testimony  
15 in this action shall agree that all Confidential Information designated as such under  
16 this Order shall remain confidential and shall not be disclosed by them, except  
17 pursuant to the terms of this Order, and that any notes or transcriptions of such  
18 testimony (and any accompanying exhibits) will be retained by the reporter or  
19 delivered to counsel of record.

20 16. If timely corrected, an inadvertent or unintentional production of  
21 documents or information containing Confidential Information which is not  
22 designated “Confidential” or “Confidential - Attorneys’ Eyes Only” shall not be  
23 deemed a waiver in whole or in part of a claim for confidential treatment. If  
24 Confidential Information is appropriately designated as “Confidential” or  
25 “Confidential - Attorneys’ Eyes Only” after it is initially produced, the receiving  
26 party, on timely notification of the designation, must make reasonable efforts to  
27 assure that the material is treated in accordance with this Order.

1           17. If a Receiving Party learns that, by inadvertence or otherwise, it has  
2 disclosed Confidential Information to any person or in any circumstance not  
3 authorized under this Order, the Receiving Party must immediately (a) notify in  
4 writing the party which designated the information confidential of the unauthorized  
5 disclosures, (b) use its best efforts to retrieve all copies of the Confidential  
6 Information, (c) inform the person or persons to whom unauthorized disclosures  
7 were made of all the terms of this Order, and (d) request such person or persons to  
8 execute the “Agreement to Be Bound” that is attached hereto as Exhibit A.

9           18. If during the course of this litigation, a Receiving Party is served with  
10 a subpoena or an order issued in other litigation that would compel disclosure of  
11 any information or items designated in this action as “Confidential” or  
12 “Confidential – Attorneys’ Eyes Only,” the Receiving Party must so notify the  
13 party which designated the information confidential, in writing (by fax, if possible)  
14 immediately and in no event more than three court days after receiving the  
15 subpoena or order. Such notification must include a copy of the subpoena or court  
16 order. The Receiving Party also must immediately inform in writing the Party who  
17 caused the subpoena or order to issue in the other litigation that some or all the  
18 material covered by the subpoena or order is the subject of this Order. In addition,  
19 the Receiving Party must deliver a copy of this Order promptly to the Party in the  
20 other action that caused the subpoena or order to issue. The purpose of imposing  
21 these duties is to alert the interested parties to the existence of this Order and to  
22 afford the party which designated the Confidential Information in this case an  
23 opportunity to try to protect its confidentiality interests in the court from which the  
24 subpoena or order issued. The party which designated the Confidential Information  
25 shall bear the burden and expense of seeking protection in that court of its  
26 Confidential Information – and nothing in these provisions should be construed as  
27 authorizing or encouraging a Receiving Party in this action to disobey a lawful  
28 directive from another court.

1           19. Discovery of non-parties to this action (i.e., "third parties") may  
2 involve receipt from such third parties of materials, including but not limited to  
3 information, documents, objects or testimony which include or contain  
4 "Confidential" or "Confidential - Attorneys' Eyes Only" information. A third party  
5 providing such information in this case may designate as "Confidential" or  
6 "Confidential - Attorneys' Eyes Only" some or all of the materials it produces in  
7 the same manner as provided for in this Order with respect to materials furnished  
8 by or on behalf of the parties to this action. All documents and other materials  
9 produced by third parties shall be deemed "Confidential - Attorneys' Eyes Only"  
10 for a period of 10 business days from their production, and during that period any  
11 party may designate as "Confidential" or "Confidential - Attorneys' Eyes Only"  
12 any or all of such materials, whether or not the producing third party has also so  
13 designated. Third party materials designated as "Confidential" or "Confidential -  
14 Attorneys' Eyes Only" by a non-party or party shall be governed by the terms of  
15 this Protective Order.

16           20. This Confidential Protective Order only applies to Confidential  
17 Information exchanged in discovery and other proceedings before the Court.

18           21. Within ninety (90) days of the termination of this action by dismissal,  
19 judgment, or settlement, including all appeals, counsel for the party or parties  
20 receiving Confidential Information shall return the Confidential Information to the  
21 counsel for the party or parties disclosing or producing the Confidential  
22 Information. In lieu of returning Confidential Information, counsel for the party or  
23 parties may destroy the Confidential Information and provide to the counsel for the  
24 party or parties disclosing or producing the Confidential Information a statement  
25 that the Confidential Information was destroyed. The party or parties receiving the  
26 Confidential Information shall keep their attorney work product which refers or  
27 relates to any Confidential Information. Attorney work product may be used in  
28 subsequent litigation provided that such use does not disclose Confidential

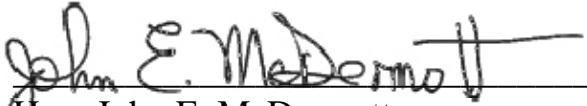
1 Information or any such information contained therein. However, outside counsel  
2 for each party may retain, for archival purposes only, one (1) set of all Court  
3 filings, discovery requests, discovery responses, deposition transcripts and exhibits  
4 thereto, trial exhibits, a copy of the record on appeal, and attorney correspondence,  
5 which may contain the other party's Confidential Information.

6 22. This Order shall be binding upon the parties and their attorneys,  
7 successors, executors, personal representatives, administrators, heirs, legal  
8 representatives, assigns, subsidiaries, divisions, employees, agents, independent  
9 contractors, or other persons or organizations over which they have control.

10 23. This Confidential Protective Order shall apply to the parties to this  
11 litigation. This Confidential Protective Order shall also apply to any non-party  
12 from whom discovery may be sought and who desires protection for the discovery  
13 sought, provided the non-party signs onto this Confidential Protective Order.  
14 Thus, any non-party requested or required to produce or disclose information in  
15 this proceeding, through subpoena or otherwise, may designate such information  
16 pursuant to the terms of this Confidential Protective Order once that non-party  
17 signs the Agreement to Be Bound by Confidential Protective Order attached hereto  
18 as Exhibit A.

19  
20 **IT IS SO ORDERED.**

21  
22 Date: AUGUST 14, 2013

  
23 Hon. John E. McDermott  
24 United States Magistrate Judge

25 Respectfully submitted,

26 *[Signatures of Counsel for the Parties Follows on Next Page]*  
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/s/Ira M. Siegel  
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White Castle Management Co.

Date: August 13, 2013

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Attorneys for Plaintiff  
JibJab Media Inc.

Date: August 13, 2013

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**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

JIBJAB MEDIA, INC.,  
  
Plaintiff  
  
v.  
  
WHITE CASTLE MANAGEMENT  
CO. and DOES 1-10,  
  
Defendant.

CASE NO. CV 12-04178 MMM (JEMx)  
  
DECLARATION AND AGREEMENT  
ACKNOWLEDGING DECLARANT'S  
BEING SUBJECT TO PROTECTIVE  
ORDER

I, \_\_\_\_\_, have read the Protective Order entered in the above-identified case and agree to be bound by the terms thereof. I further agree to submit to the jurisdiction of the United States District Court for the Central District of California in connection with any allegation of breach of the Protective Order.

Executed under penalty of perjury under the laws of the United States of America this

\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
City State

\_\_\_\_\_  
Print name: \_\_\_\_\_, Declarant

**Exhibit A to Protective Order**