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13 **UNITED STATES DISTRICT COURT**  
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 SUSAN NICHOLSON HOFHEINZ

16 Plaintiff,

17 v.

18 A.V.E.L.A., INC.; *et al.*,

19 Defendants.

Case No.: CV12-06546 SJO (RZx)  
Honorable Ralph Zarefsky Presiding

**STIPULATION AND REQUEST  
 FOR ENTRY OF A PROTECTIVE  
 ORDER; [~~PROPOSED~~] ORDER**

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 22 **NOTE: CHANGES HAVE BEEN  
 23 MADE TO THIS DOCUMENT**  
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1 Plaintiff and Defendants(collectively, the “Parties”) hereby STIPULATE and  
2 AGREE pursuant to Federal Rule of Civil Procedure 26(c), subject to approval of  
3 the Court, to the following Stipulated Protective Order (“Order”):

4 1. **STATEMENT OF GOOD CAUSE:** This action involves claims for  
5 copyright infringement under the Copyright Act of 1976, Title 17 U.S.C., § 101 *et*  
6 *seq. and other claims.* The Parties are direct and/or indirect competitors of each  
7 other. A primary element of this case is related to plaintiff’s claim that because of  
8 defendants’ alleged wrongful acts, plaintiff has lost substantial business relating to  
9 its copyrighted designs. The Parties therefore recognize that extensive discovery  
10 requesting information from the Parties, their vendors, customers and clients,  
11 including financial information, market information and other commercially and  
12 competitively sensitive information may be necessary to prove and/or disprove  
13 plaintiff’s claims and defendants’ defenses thereto. There will also potentially be  
14 multiple depositions of the Parties’ employees or agents and third party vendors,  
15 customers or clients and such persons will likely be asked to answer questions on  
16 these potentially sensitive subject areas. The Parties, as competitors, will likely be  
17 placed at a competitive or economic disadvantage if such confidential and/or  
18 proprietary information is disclosed to other Parties and/or the public at large. This  
19 Order is therefore necessary to avoid any prejudice or harm in the form of loss of  
20 competitive advantage which would likely result if such information was disclosed  
21 in the absence of the protections set forth herein. This Order is also necessary for  
22 the orderly management of this litigation. Without this Order, the exchange of Party  
23 information, as well as information needed from third parties, including most  
24 importantly the Parties’ vendors, customers or clients may become logistically very  
25 difficult, time consuming and expensive. The Parties acknowledge that this Order  
26 does not confer blanket protections on all disclosures or responses to discovery and  
27 that the protection it affords extends only to the limited information or items that  
28 are entitled under the applicable legal principles to treatment as confidential.

1           2.     In connection with discovery and the trial of this action, the Parties  
2 may designate certain documents and testimony, or other information derived  
3 therefrom, as “Confidential” under the terms of this Order.

4           3.     “Confidential” information is ~~information which has not been made~~  
5 ~~public and which concerns or relates to the Parties’ business practices and falls~~  
6 ~~within Federal Rule of Civil Procedure 26(c)(1)(G), including within the following~~  
7 ~~categories: material protected under the Uniform Trade Secrets Act, California~~  
8 ~~Civil Code section 3426, et seq., in that such information derives independent~~  
9 ~~economic value, actual or potential, from not being generally known to, and not~~  
10 ~~being readily ascertainable by proper means, by other persons, who can obtain~~  
11 ~~economic value from its disclosures or use; information that is the subject of efforts~~  
12 ~~that are reasonable under the circumstances to maintain its secrecy; material that is~~  
13 ~~regarded by a Party as being confidential, private, or proprietary in nature, customer~~  
14 ~~lists, confidential financial information of the Parties (including but not limited to~~  
15 ~~profit margins, sales data, profits, and retail sales information); vendor lists; order~~  
16 ~~summaries; confidential contracts; proprietary fabric/style specifications;~~  
17 ~~documents describing concepts, ideas, proposals, designs, inventions, devices,~~  
18 ~~methods of manufacturing, techniques, development processes, marketing~~  
19 ~~programs, and trade secrets; and customer-confidential information, agreements or~~  
20 ~~relationships with non-parties designated as confidential between the parties to such~~  
21 ~~agreements.~~

22           4.     A party receiving (“Receiving Party”) material protected under this  
23 agreement (“Protected Material”) may use Protected Material disclosed or produced  
24 by another Party or by a non-party in connection with this case only for  
25 prosecuting, defending, or attempting to settle this litigation.

26           5.     By designating a document, testimony or other information derived  
27 therefrom as Protected Material labeled “Confidential” under the terms of this  
28 Order, the Parties are certifying that there is a good faith basis both in law and in

1 fact for the designation. Such “Confidential” materials shall be used solely in  
2 connection with this lawsuit, and not for any business, competitive, or  
3 governmental purpose or function, and such information shall not be disclosed to  
4 anyone except as provided herein.

5 6. Except as otherwise provided in this Order, or as otherwise stipulated  
6 or ordered, material that qualifies for protection under this Order should be clearly  
7 so designated before the material is disclosed or produced. Designation in  
8 conformity with this Order requires:

9 (a) for information in documentary form (apart from transcripts of  
10 depositions or other pretrial or trial proceedings), that the party producing Protected  
11 Material (“Producing Party”) affix the legend “Confidential” on each page that  
12 contains protected material, or prominently on each electronic media that contains  
13 protected material.

14 (b) for testimony given in deposition or in other pretrial  
15 proceedings, testimony taken at a deposition may be designated as “Confidential”  
16 by making a statement to that effect on the record at the deposition or other  
17 proceeding. Following the deposition, the party wishing to designate certain  
18 testimony as Protected Material (“Designating Party”) shall have 30 days, after the  
19 transcript becomes available, to identify the specific portions of the testimony as to  
20 which protection is sought. Only those portions of the testimony that are  
21 appropriately designated for protection within the 30 days shall be covered by the  
22 provisions of this Order.

23 (c) for information produced in any other form, including any  
24 tangible items, that the Producing Party affix in a prominent place on the exterior of  
25 the container or containers in which the information or item is stored the legend  
26 “Confidential.” If only portions of the information or item warrant protection, the  
27 Producing Party, to the extent practicable, shall identify the protected portions.

28 7. Information or material produced which is designated as

1 “Confidential” may be disclosed or made available only to the Court, to counsel for  
2 a party (including the paralegal, clerical, and secretarial staff employed by such  
3 counsel), and to the “qualified persons” designated below:

- 4 a. in-house counsel of a party, or an officer, director, or employee of a party  
5 deemed necessary by counsel to aid in the prosecution, defense, or  
6 settlement of this action;
- 7 b. experts or consultants (together with their clerical staff) retained to assist  
8 in the prosecution, defense, or settlement of this action who sign an  
9 undertaking, in the form of Exhibit A hereto, confirming that they have  
10 reviewed and agree to be bound by the terms of this Order;
- 11 c. court reporter(s) employed in this action;
- 12 d. a witness at any proceeding in this action; and,
- 13 e. any other person as to whom the Disclosing Party agrees in writing.

14 8. Nothing herein shall impose any restrictions on the use or disclosure  
15 by a party of material obtained by such party independent of discovery in this  
16 action, whether or not such material is also obtained through discovery in this  
17 action, or from disclosing its own Protected Material as it deems appropriate.

18 9. In the event that any Protected Material is used in any proceeding in  
19 this action, it shall not lose its confidential status through such use, and the party  
20 using such shall take all reasonable steps to maintain its confidentiality during such  
21 use; however, this Paragraph does not apply where the Protected Material appears  
22 in the public record.

23 10. Without written permission from the Designating Party or a court  
24 order secured after appropriate notice to all interested persons, a Party may not file  
25 in the public record in this action any Protected Material. If any Protected Material  
26 are to be filed with the Court, such papers shall be accompanied by an application  
27 to file the papers, or the confidential portions thereof, under seal. The application  
28 must show good cause for the under seal filing. The application shall be directed to

1 the judge to whom the papers are directed. Pending the ruling on the application,  
2 the papers or portions thereof subject to the sealing application shall be lodged  
3 under seal. A Party that seeks to file under seal any Protected Material must  
4 comply with Local Rule 79-5 and this Court's published procedures requiring an  
5 application to the Court for an order to seal documents.

6 11. This Stipulation is entered solely for the purpose of facilitating the  
7 exchange of documents and information between the Parties to this action without  
8 involving the Court unnecessarily in the process. Nothing in this Stipulation nor  
9 the production of any information or document under the terms of this Stipulation  
10 nor any proceedings pursuant to this Stipulation shall be deemed to have the effect  
11 of an admission or waiver by any party or of altering the confidentiality or non-  
12 confidentiality of any such document or information or altering any existing  
13 obligation of any party or the absence thereof. Neither the stipulation nor its  
14 contents, nor designation of a document as "Confidential", nor any party's  
15 objection or failure to object to such a designation is admissible as evidence for the  
16 purpose of proving or disproving any matter at issue in the litigation. Further, the  
17 Parties agree that the "Confidential" designations provided on documents for  
18 purposes of production under this Order are not admissible for any purpose. In  
19 addition, the parties agree that the "Confidential" designations added pursuant to  
20 this Order shall not appear on any trial exhibit or any other document shown to the  
21 jury.

22 12. Inadvertent production of privileged material, or the inadvertent failure  
23 to designation material as "Confidential", does not waive the privileged or  
24 confidential status of the document or information.

25  
26 13. If timely corrected, an inadvertent failure to designate qualified  
27 information or items as "Confidential" does not, standing alone, waive the  
28 Designating Party's right to secure protection under this Order for such material. If

1 material is appropriately designated as “Confidential” after the material was  
2 initially produced, the Receiving Party, on timely notification of the designation,  
3 must make reasonable efforts to assure that the material is treated in accordance  
4 with the provisions of this Order, and must immediately (a) notify in writing the  
5 Designating Party of any disclosures of such Protected Material, (b) use its best  
6 efforts to retrieve all copies of the Protected Material, and (c) inform the person or  
7 persons to whom disclosures were made of all the terms of this Order. If the  
8 undesignated documents have already been filed with the Court without the  
9 confidential designation, the Designating Party may move the court for filing of the  
10 document under seal.

11 14. Any party may challenge the confidentiality designation of the other  
12 party, but shall be required to maintain the confidentiality of the information unless  
13 and until a ruling issues designating that the information ought not be deemed  
14 “Confidential”, or the Designating Party fails to seek a ruling on the confidentiality  
15 of the designated material.

16 15. A party that elects to initiate a challenge to a Designating Party’s  
17 confidentiality designation must begin the process by conferring directly with  
18 counsel for the Designating Party, pursuant to the Local Rules. In conferring, the  
19 challenging Party must explain the basis for its belief that the confidentiality  
20 designation was not proper and must give the Designating Party an opportunity to  
21 review the designated material, to reconsider the circumstances, and, if no change  
22 in designation is offered, to explain the basis for the chosen designation.

23 16. If the parties are unable to resolve their dispute regarding the  
24 confidentiality of the designated material following the meet and confer process set  
25 forth herein, the Designating Party must, pursuant to Federal Rule of Civil  
26 Procedure 26, and the rules of this Court, file and serve a motion for a protective  
27 order that identifies the material designated as confidential and affirms that the  
28 movant has complied with the meet and confer requirements imposed in the

1 preceding paragraph. The Designating Party bears the burden of persuading the  
2 Court that the information is Confidential within the definition of that term set forth  
3 above. In the event a motion for protective order is filed, the Parties will comply  
4 with the requirements and procedures set forth in Local Rule 37 and will file the  
5 motion in the form of a Joint Stipulation. If the Parties, or a Party, wishes to file  
6 the Joint Stipulation under seal, the Parties may file a stipulation to that effect, or  
7 the moving party may file an ex parte application making the appropriate request.  
8 The Parties must set forth good cause in the stipulation or ex parte application as to  
9 why the Joint Stipulation or portions thereof should be filed under seal.

10 17. In the case of a dispute, the material designated as confidential will be  
11 deemed confidential until thirty (30) days following the start of the meet and confer  
12 process set forth herein. If the Designating Party files a motion for a protective  
13 order, the designated material maintains its confidentiality designation until the  
14 court orders otherwise. If the Designating Party fails to file a motion for a  
15 protective order following the meet and confer process, after thirty days from the  
16 start of the meet and confer process, the material is no longer considered  
17 confidential.

18 18. Upon written request, at the conclusion of this matter, the Parties  
19 hereby agree to promptly return all copies of all Protected Material received; or, in  
20 the alternative, such parties may shred all copies of all such Protected Material and  
21 promptly send written confirmation from the other Party that it has complied with  
22 the terms of this Stipulation. Notwithstanding, Counsel shall be able to retain a  
23 copy of confidential information that has been submitted in a pleading or marked as  
24 an exhibit in a deposition.  
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26 19. In the event this action proceeds to trial, if a Party wishes to maintain  
27 the confidential nature of any Protected Material, that Party must apply to the  
28 district judge in advance of the trial to seal any exhibits or testimony of a



1 confidential nature, or any other Protected Material. Good cause must be shown in  
2 order to secure such an order. If this litigation is terminated prior to the  
3 commencement of trial, the confidentiality obligations imposed by this Order shall  
4 remain in effect until a Designating Party agrees otherwise in writing or a court  
5 order otherwise directs, and this Court will retain and shall have jurisdiction over  
6 the Parties, their attorneys and all recipients of material designated “Confidential”  
7 for the enforcement of the provisions of this Order following termination of this  
8 case prior to trial, and/or to terminate all or some of the provisions of this Order on  
9 application by any party.

10 20. This Order shall not preclude a party from exercising any rights or  
11 raising any objections otherwise available to them under the rules of discovery and  
12 evidence.

13 21. This Order shall be binding upon the Parties to this action, the  
14 attorneys for each party and upon any recipient of discovery designated as  
15 “Confidential” and upon any successor, executor, personal representative,  
16 administrator, heir, legal representative, assignee, subsidiaries, division, employee,  
17 agent, independent contractor, or other person or legal entity over which any party  
18 or attorney or recipient of documents covered by this Order may have control.

19 IT IS SO STIPULATED by counsel of record:

20  
21 Dated: April 10, 2013

By: /s/ Scott A. Burroughs  
Scott A. Burroughs, Esq.  
DONIGER /BURROUGHS APC  
Attorneys for Plaintiff  
SUSAN NICHOLSON HOFHEINZ

22  
23  
24  
25 Dated: April 10, 2013

/s/ Melissa W. Woo  
Melissa W. Woo, Esq.  
Attorney for Defendants  
A.V.E.L.A., INC., X ONE X MOVIE  
ARCHIVE, INC., AND  
ARTNOSTALGIA.COM, INC.

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Dated: April 10, 2013

/s/ Bruce McDermott  
Bruce McDermott, Esq.  
GARVEY SCHUBERT BARER  
Attorneys for Defendant  
FUNKO, LLC

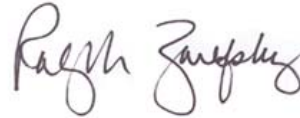
**PROPOSED] ORDER:**

~~The terms and condition set forth in this stipulation and request for entry of a protective order are hereby so ordered.~~

As modified above, IT IS SO ORDERED.

Dated: April 24, 2013

By:



\_\_\_\_\_  
United States Magistrate Judge  
Honorable Ralph Zarefsky

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**EXHIBIT A**

**AGREEMENT CONCERNING MATERIAL COVERED BY  
CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER  
ENTERED IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

The undersigned hereby acknowledges that he or she has read the attached Protective Order ("Protective Order") entered in the United States District Court for the Central District of California, in the litigation bearing Central District Case No. 2:2012-cv-06546 SJO (RZx), and understands the terms thereof and agrees to be bound by such terms. The undersigned further acknowledges and understands that a violation of the Protective Order could be punishable as a contempt of Court.

Dated: \_\_\_\_\_ [Signature]

\_\_\_\_\_ [Print Name]

Executed in \_\_\_\_\_, \_\_\_\_\_.  
[City] [State]