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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

JIBJAB MEDIA, INC., a Delaware Corporation,	}	CASE NO. 2:12-CV-09591 CAS (MANx)
Plaintiff,		} <b>PROTECTIVE ORDER ENTERED PURSUANT TO THE PARTIES' STIPULATION</b>
v.		
HYUNDAI MOTOR AMERICA, et al.,	}	
Defendants.		

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure and based on the parties' Stipulation to Protective Order and [Proposed] Order ("Stipulation") filed on July 2, 2013, the terms of the protective order to which the parties have agreed are adopted as a protective order of this Court (which generally shall govern the pretrial phase of this action) except to the extent, as set forth below, that those terms have been substantively modified by the Court's amendment of paragraphs 4, 8(f), 11, 12, 14, and 25 of the Stipulation.

The parties are expressly cautioned that the designation of any information, document, or thing as Confidential, Attorneys' Eyes Only, or other designation(s) used by the parties, does not, in and of itself, create any entitlement to file such information,

1 document, or thing, in whole or in part, under seal. Accordingly, reference to this  
2 Protective Order or to the parties' designation of any information, document, or thing  
3 as Confidential, Attorneys' Eyes Only, or other designation(s) used by the parties, is  
4 wholly insufficient to warrant a filing under seal.

5       There is a strong presumption that the public has a right of access to judicial  
6 proceedings and records in civil cases. In connection with non-dispositive motions,  
7 good cause must be shown to support a filing under seal. The parties' mere  
8 designation of any information, document, or thing as Confidential, Attorneys' Eyes  
9 Only, or other designation(s) used by parties, does not -- **without the submission of**  
10 **competent evidence, in the form of a declaration or declarations, establishing that**  
11 **the material sought to be filed under seal qualifies as confidential, privileged, or**  
12 **otherwise protectable** -- constitute good cause.

13       Further, if sealing is requested in connection with a dispositive motion or trial,  
14 then compelling reasons, as opposed to good cause, for the sealing must be shown, and  
15 the relief sought shall be narrowly tailored to serve the specific interest to be protected.  
16 *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each  
17 item or type of information, document, or thing sought to be filed or introduced under  
18 seal in connection with a dispositive motion or trial, the party seeking protection must  
19 articulate compelling reasons, supported by specific facts and legal justification, for the  
20 requested sealing order. **Again, competent evidence supporting the application to**  
21 **file documents under seal must be provided by declaration.**

22       Any document that is not confidential, privileged, or otherwise protectable in its  
23 entirety will not be filed under seal if the confidential portions can be redacted. If  
24 documents can be redacted, then a redacted version for public viewing, omitting only  
25 the confidential, privileged, or otherwise protectable portions of the document, shall be  
26 filed. Any application that seeks to file documents under seal in their entirety should  
27 include an explanation of why redaction is not feasible.

1 Notwithstanding any other provision of this Protective Order, in the event that  
2 this case proceeds to trial, all information, documents, and things discussed or  
3 introduced into evidence at trial will become public and available to all members of the  
4 public, including the press, unless sufficient cause is shown in advance of trial to  
5 proceed otherwise.

6  
7 **TERMS OF PROTECTIVE ORDER**

8 **DEFINITIONS**

- 9 1. As used in this Protective Order,
- 10 a. “Designating Party” means any Person who designates Material as  
11 Confidential Material.
- 12 b. “Discovering Counsel” means counsel of record for a Discovering  
13 Party.
- 14 c. “Discovering Party” means the Party to whom Material is being  
15 Provided by a Producing Party.
- 16 d. “Confidential Material” refers to those materials designated as  
17 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” as defined in Paragraph 2  
18 below.
- 19 e. “Material” means any document, testimony, or information in any  
20 form or medium whatsoever, including, without limitation, any written or printed  
21 matter, Provided in this action by a Party before or after the date of this Protective  
22 Order.
- 23 f. “Party” means the Parties to this action, their attorneys of record,  
24 and their agents.
- 25 g. “Person” means any individual, corporation, partnership,  
26 unincorporated association, governmental agency, or other business or governmental  
27 entity whether a Party or not.
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1 h. “Producing Party” means any Person who Provides Material during  
2 the course of this action.

3 i. “Provide” means to produce any Material, whether voluntarily or  
4 involuntarily, whether pursuant to request or process.

5 **CONFIDENTIAL DESIGNATION**

6 2. A Producing Party may designate as “CONFIDENTIAL” any material  
7 **Provided** to a Party which contains or discloses any of the following:

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

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

14 c. The Producing Party may designate as “ATTORNEYS’ EYES  
15 ONLY,” documents the Producing Party contends contain or disclose materials which  
16 they in good faith believe to be of an extremely high degree of current commercial  
17 sensitivity, personal privacy, and/or would provide a competitive advantage to its  
18 competitors if disclosed.

19 3. A Producing Party shall stamp as CONFIDENTIAL or ATTORNEYS’  
20 EYES ONLY Materials which the Producing Party in good faith believes are entitled  
21 to protection pursuant to the standards set forth in Paragraph 2 of this **Protective**  
22 Order. A Producing Party may designate Confidential Material for Protection under  
23 this **Protective Order** by either of the following methods:

24 a. By physically marking it with the following inscriptions (or  
25 substantially similar inscriptions) prior to Providing it to a Party:

26 “CONFIDENTIAL” OR “CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER”

27 or

1 “ATTORNEYS’ EYES ONLY” OR “ATTORNEYS’ EYES ONLY SUBJECT TO  
2 PROTECTIVE ORDER”

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

20 All costs associated with the designations of materials as “Confidential” or  
21 “Attorneys’ Eyes Only” involving, for example, the cost of binding confidential  
22 portions of deposition transcripts, shall be initially borne by the Party making the  
23 designation **without** prejudice **to** the Designating Party’s ability to recover its costs  
24 upon completion of the litigation.

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

1                                    **RESTRICTION ON USE OF CONFIDENTIAL MATERIAL**

2           4.       Confidential Material designated as CONFIDENTIAL shall not be  
3 disclosed, nor shall its contents be disclosed, to any person other than those described  
4 in Paragraph 7 of this Protective Order and other than in accordance with the terms,  
5 conditions, and restrictions of this Protective Order. Confidential Material designated  
6 as ATTORNEYS' EYES ONLY shall not be disclosed, nor shall its contents be  
7 disclosed to any person other than those described in Paragraph 8 of this Protective  
8 Order **and other than in accordance with the terms, conditions, and restrictions of**  
9 **this Protective Order.**

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

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

19           7.       For purposes of the preparation of this action, and subject to the terms,  
20 conditions, and restrictions of this Protective Order, Discovering Counsel may disclose  
21 Material designated as CONFIDENTIAL and the contents of Material designated as  
22 CONFIDENTIAL only to the following persons:

23               a.       Counsel of record working on this action on behalf of any Party and  
24 counsel's employees who are directly participating in this action, including counsel's  
25 partners, associates, paralegals, assistants, secretaries, and clerical staff.

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

- 1 c. Court and deposition reporters and their staff(s).
- 2 d. The Court and any Person employed by the Court whose duties  
3 require access to Material designated as CONFIDENTIAL.
- 4 e. Witnesses at depositions or pre-trial proceedings, in accordance  
5 with procedures set forth in Paragraphs 11-13.
- 6 f. Non-party experts and consultants assisting counsel with respect to  
7 this action and their secretarial, technical, and clerical employees who are actively  
8 assisting in the preparation of this action, in accordance with the procedures set forth in  
9 Paragraphs 11-13.
- 10 g. Officers, directors, and employees of the Parties hereto who have a  
11 need to review Material designated as CONFIDENTIAL to assist in connection with  
12 this litigation, subject to the limitations set forth herein;
- 13 h. Photocopy service personnel who photocopied or assisted in the  
14 photocopying or delivering of documents in this litigation;
- 15 i. Any Person identified on the face of any such Material designated  
16 as CONFIDENTIAL as an author or recipient thereof;
- 17 j. Any Person who is determined to have been an author and/or  
18 previous recipient of the Material designated as CONFIDENTIAL, but is not identified  
19 on the face thereof, provided there is prior testimony of actual authorship or receipt of  
20 the Material designated as CONFIDENTIAL by such Person; and
- 21 k. Any Person who the Parties agree in writing may receive Material  
22 designated as CONFIDENTIAL.

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

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

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

6 b. Court and deposition reporters and their staff(s).

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

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

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

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

17 g. Any Person who is determined to have been an author of the  
18 Material designated as ATTORNEYS' EYES ONLY but is not identified on the face  
19 thereof, provided there is prior testimony of actual authorship of the Material  
20 designated as ATTORNEYS' EYES ONLY by such Person; and

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

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

24 9. Before Discovering Counsel may disclose Confidential Material to any  
25 Person described in subparagraphs 7(f), 7(g), or 8(e) above, the Person to whom  
26 disclosure is to be made shall receive a copy of this Protective Order, shall read  
27 Paragraphs 1, 4, 5, 6, 7, 8, 9 and 10 (including the subparagraphs where applicable) of  
28 the Protective Order, shall evidence his or her agreement to be bound by the terms,



1 conditions, and restrictions of the Protective Order by signing an undertaking in the  
2 form attached hereto as **Exhibit A** (the “Undertaking”), and shall retain the copy of  
3 this Protective Order, with a copy of his or her signed Undertaking attached.  
4 Discovering Counsel shall keep a copy of the signed Undertaking for each person  
5 described in subparagraphs 7(f), 7(g), or 8(e) to whom Discovering Counsel discloses  
6 Confidential Material.

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

### 15 DEPOSITIONS

16 11. Those portions of depositions taken by any Party at which any Material  
17 designated as CONFIDENTIAL is used or inquired into, may not be conducted in the  
18 presence of any Person(s) other than (a) the deposition witness, (b) his or her counsel,  
19 and (c) Persons authorized under Paragraph 7 of this Protective Order to view such  
20 Confidential Material. During those portions of depositions in which Material  
21 designated ATTORNEYS’ EYES ONLY is **referenced**, used, or inquired into, only  
22 those persons authorized under Paragraph 8 to view such Materials may be present.

23 12. Counsel for any deponent may designate testimony or exhibits as  
24 Confidential Material by indicating on the record at the deposition that the testimony  
25 of the deponent or any exhibits to his or her testimony are to be treated as Confidential  
26 Material. Counsel for any Party may designate exhibits in which that Party has a  
27 cognizable interest as Confidential Material by indicating on the record at the  
28 deposition that such exhibit(s) are to be treated as Confidential Material. Failure of

1 counsel to designate testimony or exhibits as **Confidential Material** at deposition,  
2 however, shall not constitute a waiver of the protected status of the testimony or  
3 exhibits. Within thirty calendar days of receipt of the transcript of the deposition, or  
4 thirty days of the date on which this Protective Order becomes effective, whichever  
5 occurs last, counsel shall be entitled to designate specific testimony or exhibits as  
6 Confidential Material. If counsel for the deponent or Party fails to designate the  
7 transcript or exhibits as Confidential **Material** within the above-described thirty day  
8 period, any other Party shall be entitled to treat the transcript or exhibits as non-  
9 confidential material.

10 13. When Material disclosed during a deposition is designated as Confidential  
11 Material at the time testimony is given, the reporter shall separately transcribe those  
12 portions of the testimony so designated, shall mark the face of the transcript in  
13 accordance with Paragraph 3 above, and shall maintain that portion of the transcript or  
14 exhibits in separate files marked to designate the confidentiality of their contents. The  
15 reporter shall not file or lodge with the Court any Confidential Material without  
16 obtaining written consent from the Party who designated the Material as Confidential  
17 Material. For convenience, if a deposition transcript or exhibit contains repeated  
18 references to Confidential Material which cannot conveniently be segregated from  
19 non-confidential material, any Party may request that the entire transcript or exhibit be  
20 maintained by the reporter as Confidential Material.

21 **USE OF CONFIDENTIAL MATERIAL IN PLEADINGS AND OTHER COURT**  
22 **PAPERS**

23 14. If any Party or non-party seeks to file or lodge with the Court any  
24 Confidential Material, such materials shall be submitted to the Court in accordance  
25 with the procedures set forth in Local Rule 79-5.1. No documents may be filed or  
26 lodged under seal absent a court order pertinent to the specific document(s). If a Party  
27 wishes to file or lodge documents under seal, the other Party shall not unreasonably  
28 withhold agreement to such procedure. If an agreement is reached, the Parties shall

1 submit to the Court **an Application** and Proposed Order for such filing or lodging  
2 under seal **pursuant to Local Rule 79-5.1, along with a Stipulation, supported by**  
3 **competent evidence, in which the parties set forth the factual and legal bases upon**  
4 **which they assert that filing under seal is warranted.** If no such agreement is  
5 reached, then the proponent of lodging or filing under seal shall submit an Application  
6 and Proposed Order pursuant to Local Rule 79-5.1, **which is supported by competent**  
7 **evidence, and in which the Party presenting the Application sets forth the factual**  
8 **and legal bases upon which it asserts filing under seal is warranted.**

9 **OBJECTIONS TO DESIGNATION**

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

24 16. Any discovery disputes concerning the designation of materials or  
25 disclosure of documents or information under this Protective Order shall be brought in  
26 compliance with Local Rule 37 and a proposed stipulated protective order should **be**  
27 **provided.**

28 ///

1 **RETURN OF MATERIAL**

2 17. Within ninety (90) calendar days after the final settlement or termination  
3 of this action, Discovering Counsel shall return or destroy (at the option and expense  
4 of Discovering Counsel) all Materials provided by a Producing Party and all copies  
5 thereof except to the extent that any of the foregoing includes or reflects Discovering  
6 Counsel’s work product, and except to the extent that such Material has been filed with  
7 a court in which proceedings related to this action are being conducted. In addition,  
8 with respect to any such retained work product and unless otherwise agreed to, at the  
9 conclusion of this action, counsel for each Party shall store in a secure area all work  
10 product which embodies Confidential Material together with all of the signed  
11 undertakings they are required to preserve pursuant to Paragraph 9 above, and shall not  
12 make use of such Material except in connection with any action arising directly out of  
13 these actions, or pursuant to a court order for good cause shown. The obligation of this  
14 Protective Order shall survive the termination of this action. To the extent that  
15 Confidential Materials are or become known to the public through no fault of the  
16 Discovering Party, such Confidential Materials shall no longer be subject to the terms  
17 of this Protective Order. Upon request, counsel for each Party shall verify in writing  
18 that they have complied with the provisions of this paragraph.

19 **SCOPE OF THIS ORDER**

20 18. Except for the provisions regarding post-trial or post-settlement return and  
21 destruction of Material, or segregation of work product which embodies Confidential  
22 Material, this **Protective Order** is strictly a pretrial order; it does not govern the trial  
23 in this action.

24 19. Not later than seven days before trial in the action, Counsel agree to meet  
25 and confer concerning the use at trial of Confidential Material.

26 20. Nothing in this Protective Order shall be deemed to limit, prejudice, or  
27 waive any right of any Party or Person: (a) to resist or compel discovery with respect  
28 to, or to seek to obtain additional or different protection for, Material claimed to be

1 protected work product or privileged under California or federal law, Material as to  
2 which the Producing Party claims a legal obligation not to disclose, or Material not  
3 required to be provided pursuant to California law; (b) to seek to modify or obtain  
4 relief from any aspect of this Protective Order; (c) to object to the use, relevance, or  
5 admissibility at trial or otherwise of any Material, whether or not designated in whole  
6 or in part as Confidential Material governed by this Protective Order; or (d) to require  
7 that discovery be conducted according to governing laws and rules.

8         21. Designation of Material as Confidential Material on the face of such  
9 Material shall have no effect on the authenticity or admissibility of such Material at  
10 trial.

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

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

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

- 21             a. At the time it is Provided is available to the public;
- 22             b. After it is Provided, becomes available to the public through no act,  
23 or failure to act, of the Discovering Party; or
- 24             c. The Discovering Party can show
  - 25                 i. Was already known to the Discovering Party independently  
26 of receipt of the Confidential Material in this or prior litigation; or



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 *JibJab Media, Inc. v.*  
9 *Hyundai Motor America, et al.*, No. 2:12-CV-09591 CAS (MANx). I agree to comply  
10 with, 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 Protective 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 Protective Order, even if such enforcement proceedings occur after termination of this  
18 action.

19  
20 Date: \_\_\_\_\_, 2013

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

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