

1 Guy R. Gruppie (SBN 155437)
ggruppie@murchisonlaw.com
 2 Tina H. Vo (SBN 276005)
tvo@murchisonlaw.com
 3 **MURCHISON & CUMMING, LLP**
 801 South Grand Avenue, Ninth Floor
 4 Los Angeles, California 90017-4613
 Telephone: (213) 623-7400
 5 Facsimile: (213) 623-6336

6 Attorneys for Defendant **TOTO USA,**
INC., sued and served as TOTO U.S.A.,
 7 INC. doing business as TOTO KIKI
 U.S.A., INC.

8 **UNITED STATES DISTRICT COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA**

10
 11 STATE FARM GENERAL
 12 INSURANCE COMPANY,

13 Plaintiff,

14 vs.

15 TOTO U.S.A., INC., doing business
 16 as TOTO KIKI U.S.A. INC., et al.

17 Defendants.

Case No: 2:16-cv-2114-PSG(FFMx)

**STIPULATED PROTECTIVE
 ORDER**

District Judge: Philip S. Gutierrez
 Magistrate Judge: Frederick F.
 Mumm
 Courtroom: 880 - Roybal

19
 20 **1. A. PURPOSES AND LIMITATIONS**

21 Discovery in this action is likely to involve production of confidential,
 22 proprietary, or private information for which special protection from public
 23 disclosure and from use for any purpose other than prosecuting this litigation may
 24 be warranted. Accordingly, the parties hereby stipulate to and petition the Court
 25 to enter the following Stipulated Protective Order. The parties acknowledge that
 26 this Order does not confer blanket protections on all disclosures and/or responses
 27 to discovery and that the protection it affords from public disclosures and use
 28 extends only to the limited information or items that are entitled to confidential

1 treatment under the applicable legal principles. The parties further acknowledge,
2 as set forth in Section 12.3 below, that this Stipulated Protective Order does not
3 entitle them to file confidential information under seal; Civil Local Rule 79-5 sets
4 forth the procedures that must be followed and the standards that will be applied
5 when a party seeks permission from the Court to file material under seal.

6 **B. GOOD CAUSE STATEMENT**

7 This action is likely to involve trade secrets, product specifications and
8 designs, internal product standard operating/inspection procedures, customer and
9 pricing lists, and other valuable research, development, commercial, financial,
10 technical, and/or proprietary information for which special protection from public
11 disclosure and from use for any purpose other than prosecution of this action is
12 warranted. Such confidential and proprietary materials and information consist of,
13 among other things, confidential business and/or financial information, information
14 regarding confidential business practices, and/or other confidential research,
15 development, or commercial information (including information implicating privacy
16 rights of third parties), information otherwise generally unavailable to the public, or
17 which may be privileged or otherwise protected from disclosure under state or
18 federal statutes, court rules, case decisions, and/or common law. Accordingly, to
19 expedite the flow of information, to facilitate the prompt resolution of disputes over
20 confidentiality of discovery materials, to adequately protect information the parties
21 are entitled to keep confidential, to ensure that the parties are permitted
22 reasonable necessary uses of such material in preparation for and in the conduct
23 of trial, to address their handling at the end of the litigation, and serve the ends of
24 justice, a protective order for such information is justified in this matter. It is the
25 intent of the parties that information will not be designated as confidential for
26 tactical reasons and that nothing be so designated without a good faith belief that
27 it has been maintained in a confidential, non-public manner, and there is good
28 cause why it should be not be part of the public record of this case.

1 **2. DEFINITIONS**

2 2.1 Action: State Farm General Insurance Company vs. TOTO U.S.A.,
3 Inc. doing business as TOTO Kiki U.S.A., Inc.; Does 1 through 10, inclusive, case
4 number 2:16-cv-2114-PSG(FFMx).

5 2.2 Challenging Party: a Party or Non-Party that challenges the
6 designation of information or items under this Order.

7 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
8 how it is generated, stored, and/or maintained) and/or tangible things that qualify
9 for protection under Federal Rule of Civil Procedure 26(c), and as specified above
10 in the Good Cause Statement.

11 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
12 their support staff).

13 2.5 Designating Party: a Party or Non-Party that designates information
14 or items that it produces in disclosures or in responses to discovery as
15 “CONFIDENTIAL.”

16 2.6 Disclosure or Discovery Material: all items or information, regardless
17 of the medium or manner in which it is generated, stored, and/or maintained
18 (including, among other things, testimony, transcripts, and tangible things), that
19 are produced and/or generated in disclosures and/or responses to discovery in
20 this matter.

21 2.7 Expert: a person with specialized knowledge and/or experience in a
22 matter pertinent to the litigation who has been retained by a Party or its Counsel
23 to serve as an expert witness or as a consultant in this Action.

24 2.8 House Counsel: attorneys who are employees of a party to this
25 Action. House Counsel does not include Outside Counsel of Record or any other
26 outside counsel.

27 2.9 Non-Party: any natural person, partnership, corporation, association,
28 and/or other legal entity not named as a Party to this action.

1 2.10 Outside Counsel of Record: attorneys who are not employees of a
2 party this Action but are retained to represent or advise a party to this Action and
3 have appeared in this Action on behalf of that party or are affiliated with a law firm
4 that has appeared on behalf of that party, and includes support staff.

5 2.11 Party: any party to this Action, including all of its officers, directors,
6 employees, consultants, retained experts, and Outside Counsel of Record (and
7 their support staff).

8 2.12 Producing Party: a Party or Non-Party that produces Disclosure of
9 Discovery Material in this Action.

10 2.13 Professional Vendors: persons or entities that provide litigation
11 support services (e.g., photocopying, videotaping, translating, preparing exhibits
12 or demonstrations, and organizing, storing, or retrieving data in any form or
13 medium) and their employees and subcontractors.

14 2.14 Protected Material: any Disclosure or Discovery Material that is
15 designated as “CONFIDENTIAL.”

16 2.15 Receiving Party: a Party that receives Disclosure or Discovery
17 Material from a Producing Party.

18 **3. SCOPE**

19 The protections conferred by this Stipulation and Order cover not only
20 Protected Material (as defined above), but also (1) any information copied and/or
21 extracted from Protected Material; (2) all copies, excerpts, summaries, and/or
22 compilations of Protected Material; and (3) any testimony, conversations, and/or
23 presentations by Parties and/or their Counsel that might reveal Protected
24 Material.

25 Any use of Protected Material at trial shall be governed by the orders of the
26 trial judge. This Order does not govern the use of Protected Material at trial.

27 **4. DURATION**

28 Even after final disposition of this Action, the confidentiality obligations

1 imposed by this Order shall remain in effect until a Designating Party agrees
2 otherwise in writing or a court order otherwise directs. Final disposition shall be
3 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
4 with or without prejudice; and (2) final judgment herein after the completion and
5 exhaustion of all appeals, rehearings, remands, trials, and/or reviews of this
6 Action, including the time limits for filing any motions or applications for extension
7 of time pursuant to applicable law.

8 **5. DESIGNATING PROTECTED MATERIAL**

9 5.1 Exercise of Restraint and Care in Designating Material for Protection.

10 Each Party or Non-Party that designates information or items for protection
11 under this Order must take care to limit any such designation to specific material
12 that qualifies under the appropriate standards. The Designating Party must
13 designate for protection only those parts of material, documents, items, and/or
14 oral or written communications that qualify so that other portions of the material,
15 documents, items, and/or communications for which protection is not warranted
16 are not swept unjustifiably within the ambit of this Order.

17 Mass, indiscriminate, or routinized designations are prohibited.
18 Designations that are shown to be clearly unjustified, or that have been made for
19 an improper purposes (*e.g.*, to unnecessarily encumber the case development
20 process or to impose unnecessary expenses and burdens on other parties), may
21 expose the Designating Party to sanctions.

22 If it comes to a Designating Party's attention that information and/or items
23 that it designated for protection do not qualify for protection, that Designating
24 Party must promptly notify all other parties that it is withdrawing that inapplicable
25 designation.

26 5.2 Manner and Timing of Designations.

27 Except as otherwise provided in this Order (see, *e.g.*, second paragraph of
28 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or

1 Discovery Material that qualifies for protection under this Order must be clearly so
2 designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (*e.g.*, paper or electronic
5 documents, but excluding transcripts of depositions or other pretrial or trial
6 proceedings), that the Producing Party affix at a minimum, the legend
7 “CONFIDENTIAL” (hereinafter, “CONFIDENTIAL legend”), to each page that
8 contains protected material. If only a portion(s) of the material on a page qualifies
9 for protection, the Producing Party also must clearly identify the protected
10 portion(s) (*e.g.*, by making appropriate markings in the margins).

11 A Party or Non-Party that makes original documents available for inspection
12 need not designate them for protection until after the inspecting Party has
13 indicated which documents it would like copied and produced. During the
14 inspection and before the designation, all of the material made available for
15 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
16 identified the documents it wants copied and produced, the Producing Party must
17 determine which documents, or portions thereof, qualify for protection under this
18 Order. Then, before producing the specified documents, the Producing Party
19 must affix the “CONFIDENTIAL legend” to each page that contains the Protected
20 Material. If only a portion(s) of the material of a page qualifies for protection, the
21 Producing Party also must clearly identify the protected portion(s) (*e.g.*, by making
22 appropriate markings in the margins).

23 (b) for testimony given in depositions that the Designating Party
24 identify the Disclosure or Discovery Material on the record, before the close of the
25 deposition all protected testimony.

26 (c) for information produced in some form other than documentary
27 and for any other tangible items, that the Producing Party affix in a prominent
28 place on the exterior of the container(s) in which the information is stored the

1 legend “CONFIDENTIAL.” If only a portion(s) of the information warrants
2 protection, the Producing Party, to the extent practicable, shall identify the
3 protected portion(s).

4 5.3 Inadvertent Failures to Designate.

5 If timely corrected, an inadvertent failure to designate qualified information
6 or items does not, standing alone, waive the Designating Party’s right to secure
7 protection under this Order for such material. Upon timely correction of a
8 designation, the Receiving Party must make reasonable efforts to assure that the
9 material is treated in accordance with the provisions of this Order.

10 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

11 6.1 Timing of Challenges.

12 Any Party or Non-Party may challenge a designation of confidentiality at any
13 time that is consistent with the Court’s Scheduling Order.

14 6.2 Meet and Confer.

15 The Challenging Party shall initiate the dispute resolution process under
16 Local Rule 37.1, *et seq.*

17 6.3 The burden of persuasion in any such challenge proceeding shall be
18 on the Designating Party. Frivolous challenges, and those made for an improper
19 purposes (*e.g.*, to harass or impose unnecessary expenses and burdens on other
20 parties) may expose the Challenging Party to sanctions. Unless the Designating
21 Party has waived or withdrawn the confidentiality designation, all parties shall
22 continue to afford the material in question the level of protection to which it is
23 entitled under the Producing Party’s designation until the Court rules on the
24 challenge.

25 7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

26 7.1 Basic Principles.

27 A Receiving Party may use Protected Material that is disclosed and/or
28 produced by another Party or by a Non-Party in connection with this Action only

1 for prosecuting, defending, and/or attempting to settle this Action. Such Protected
2 Material may be disclosed only to the categories of persons and under the
3 conditions described in this Order. When the Action has been terminated, a
4 Receiving Party must comply with the provisions of Section 13 below (FINAL
5 DISPOSITION).

6 Protected Material must be stored and maintained by a Receiving Party at a
7 location and in a secure manner that ensures that access is limited to the persons
8 authorized under this Order.

9 7.2 Disclosure of "CONFIDENTIAL" Information or Items.

10 Unless otherwise ordered by the Court or permitted in writing by the
11 Designating Party, a Receiving Party may disclose any information or item
12 designated "CONFIDENTIAL" only to:

13 (a) the Receiving Party's Outside Counsel of Record in this Action,
14 as well as employees of said Outside Counsel to whom it is reasonably necessary
15 to disclose the information for this Action;

16 (b) the officers, directors, and employees (including House
17 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
18 this Action;

19 (c) Experts (as defined in this Order) of the Receiving Party to
20 whom disclosure is reasonably necessary for this Action and who have signed the
21 "Acknowledgment and Agreement to Be Bound" (attached hereto as Exhibit A);

22 (d) the Court and its personnel;

23 (e) court reporters and their staff;

24 (f) professional jury or trial consultants, mock jurors, and
25 Professional Vendors to whom disclosure is reasonably necessary for this Action
26 and who have signed the "Acknowledgment and Agreement to Be Bound"
27 (attached hereto as Exhibit A);

28 (g) the author or recipient of a document containing the information,

1 or a custodian and/or other person who otherwise possessed and/or knew the
2 information;

3 (h) during their depositions, witnesses, and attorneys for witnesses,
4 in the Action to whom disclosure is reasonably necessary provided: (1) the
5 deposing party requests that the witness sign the form attached as Exhibit A
6 hereto; and (2) they will not be permitted to keep any confidential information
7 unless they sign the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
8 unless otherwise agreed by the Designating Party or ordered by the Court. Pages
9 of transcribed deposition testimony or exhibits to depositions that reveal Protected
10 Material may be separately bound by the court reporter and may not be disclosed
11 to anyone, except as permitted under this Stipulated Protective Order; and

12 (i) any mediator or settlement officer, and their supporting
13 personnel, mutually agreed upon by any of the parties engaged in settlement
14 discussions.

15 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
16 **OTHER LITIGATION**

17 If a Party is served with a subpoena or a court order issued in other litigation
18 that compels disclosure of any information or items designated in this Action as
19 "CONFIDENTIAL," that Party must:

20 (a) promptly notify in writing the Designating Party. Such
21 notification shall include a copy of the subpoena or court order;

22 (b) promptly notify in writing the party who caused the subpoena or
23 order to issue in the other litigation that some or all of the material covered by the
24 subpoena or order is subject to this Protective Order. Such notification shall
25 include a copy of this Stipulated Protective Order; and

26 (c) cooperate with respect to all reasonable procedures sought to
27 be pursued by the Designating Party whose Protected Material may be affected.

28 If the Designating Party timely seeks a protective order, the Party served

1 with the subpoena or court order shall not produce any information designated in
2 this action as “CONFIDENTIAL” before a determination by the court from which
3 the subpoena or order issued, unless the Party has obtained the Designating
4 Party’s permission. The Designating Party shall bear the burden and expense of
5 seeking protection in that court of its confidential material and nothing in these
6 provisions should be construed as authorizing or encouraging a Receiving Party
7 in this Action to disobey a lawful directive from another court.

8 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED**
9 **IN THIS LITIGATION**

10 (a) The terms of this Order are applicable to information produced by a
11 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
12 produced by Non-Parties in connection with this litigation is protected by the
13 remedies and relief provided by this Order. Nothing in these provisions should be
14 construed as prohibiting a Non-Party from seeking additional protections.

15 (b) In the event that a Party is required, by a valid discovery request, to
16 produce a Non-Party’s confidential information in its possession, and the Party is
17 subject to an agreement with the Non-Party not to produce the Non-Party’s
18 confidential information, then the Party shall:

19 (1) promptly notify in writing the Requesting Party and the Non-
20 Party that some or all of the information requested is subject to a confidentiality
21 agreement with a Non-Party;

22 (2) promptly provide the Non-Party with a copy of the Stipulated
23 Protective Order in this Action, the relevant discovery request(s), and a
24 reasonably specific description of the information requested; and

25 (3) make the information requested available for inspection by the
26 Non-Party, if requested.

27 (c) If the Non-Party fails to seek a protective order from this Court within
28 14 days of receiving the notice and accompanying information, the Receiving

1 Party may produce the Non-Party's confidential information responsive to the
2 discovery request. If the Non-Party timely seeks a protective order, the Receiving
3 Party shall not produce any information in its possession or control that is subject
4 to the confidentiality agreement with the Non-Party before a determination by the
5 Court. Absent a court order to the contrary, the Non-Party shall bear the burden
6 and expense of seeking protection in this Court of its Protected Material.

7 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has
9 disclosed Protective Material to any person or in any circumstance not authorized
10 under this Stipulated Protective Order, the Receiving Party must immediately (a)
11 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
12 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
13 the person(s) to whom unauthorized disclosures were made of all the terms of this
14 Order, and (d) request such person(s) to execute the "Acknowledgement and
15 Agreement to Be Bound" that is attached hereto as Exhibit A.

16 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
17 **PROTECTED MATERIAL**

18 When a Producing Party gives notice to Receiving Parties that certain
19 inadvertently produced material is subject to a claim of privilege or other
20 protection, the obligations of the Receiving Parties are those set forth in Federal
21 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
22 whatever procedure may be established in an e-discovery order that provides for
23 production without prior privilege review. Pursuant to Federal Rule of Evidence
24 502(d) and (e), insofar as the parties reach an agreement on the effect of
25 disclosure of a communication or information covered by the attorney-client
26 privilege or work product protection, the parties may incorporate their agreement
27 in the Stipulated Protective Order submitted to the Court.

28 ///

1 **12. MISCELLANEOUS**

2 12.1 Right to Further Relief.

3 Nothing in this Order abridges the right of any person to seek its
4 modification by the Court in the future.

5 12.2 Right to Assert Other Objections.

6 By stipulating to the entry of this Protective Order, no Party waives any right
7 it otherwise would have to object to disclosing or producing any information and/or
8 item on any ground not addressed in this Stipulated Protective Order. Similarly,
9 no Party waives any right to any object on any ground to use in evidence of any of
10 the material covered by this Protective Order.

11 12.3 Filing Protected Material.

12 A Party that seeks to file under seal any Protected Material must comply
13 with Civil Local Rules 79-5. Protected Material may only be filed under seal
14 pursuant to a court order authorizing the sealing or the specific Protected Material
15 at issue. If a Party's request to file Protected Material under seal is denied by the
16 Court, then the Receiving Party may file the information in the public record,
17 unless otherwise instructed by the Court.

18 **13. FINAL DISPOSITION**

19 After the final disposition of this Action, as defined in paragraph 4, within 60
20 days of a written request by the Designating Party, each Receiving Party must
21 return all Protected Material to the Producing Party or destroy such material. As
22 used in this subdivision, "all Protected Material" includes all copies, abstracts,
23 compilations, summaries, and any other format reproducing or capturing any of
24 the Protected Material. Whether the Protected Material is returned or destroyed,
25 the Receiving Party must submit a written certification to the Producing Party
26 (and, if not the same person or entity, to the Designating Party) by the 60-day
27 deadline that (1) identifies (by category, where appropriate) all the Protected
28 Material that was returned or destroyed and (2) affirms that the Receiving Party

1 has not retained any copies, abstracts, compilations, summaries, or any other
2 format reproducing or capturing any of the Protected Material. Notwithstanding
3 this provision, Counsel are entitled to retain any archival copy of all pleadings,
4 motion papers, trial, deposition, and hearing transcripts, legal memoranda,
5 correspondence, deposition and trial exhibits, expert reports, attorney work
6 product, and consultant and expert work product, even if such materials contain
7 Protected Material. Any such archival copies that contain or constitute Protected
8 Material remain subject to this Protective Order as set forth in Section 4.

9 ///

10 ///

11 ///

12 ///

13 ///

14 ///

15 ///

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 14. Any violation of this Order may be punished by any and all appropriate
2 measures, including, without limitation, contempt proceedings and/or monetary
3 sanctions.

4
5 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

6
7 DATED: November 29, 2016

8
9 /S/FREDERICK F. MUMM
10 FREDERICK F. MUMM
11 United States District/Magistrate Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Stipulated
Protective Order that was issued by the United States District Court for the
Central District of California on _____ [date] in the
case of State Farm General Insurance Company v. TOTO U.S.A., INC. doing
business as TOTO KIKI U.S.A., Inc., Does 1 through 10, inclusive, case number
2:16-cv-2114-PSG(FFMx). I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order, and I understand and acknowledge that
failure to so comply could expose me to sanctions and punishment in the nature
of contempt. I solemnly promise that I will not disclose in any manner any
information or item that is subject to this Stipulated Protective Order to any person
or entity, except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this Action. I hereby appoint _____
[print name] of _____ [print or type full address
and telephone number] as my California agent for service of process in
connection with this action or any proceedings related to enforcement of this
Stipulated Protective Order.

DATED _____
City and State where sworn and signed _____
Printed name _____
Signature _____