

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

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

GREG YOUNG PUBLISHING, INC.,

Plaintiff,

v.

ZAZZLE INC.,

Defendant.

Case No. 2:16-cv-04587-SVW-KS

**[PROPOSED] STIPULATED  
PROTECTIVE ORDER**

1           **1.     PURPOSES AND LIMITATIONS**

2           1.1.   Discovery in this action is likely to involve production of confidential,  
3 proprietary, or private information for which special protection from public  
4 disclosure and from use for any purpose other than prosecuting this litigation may  
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to  
6 enter the following Stipulated Protective Order. The parties acknowledge that this  
7 Order does not confer blanket protections on all disclosures or responses to  
8 discovery and that the protection it affords from public disclosure and use extends  
9 only to the limited information or items that are entitled to confidential treatment  
10 under the applicable legal principles. The parties further acknowledge, as set forth  
11 in Section 12.3, below, that this Stipulated Protective Order does not entitle them  
12 to file confidential information under seal; Civil Local Rule 79-5 sets forth the  
13 procedures that must be followed and the standards that will be applied when a  
14 party seeks permission from the court to file material under seal.

15           1.2.   This action is likely to involve trade secrets, customer and pricing lists  
16 and other valuable research, development, commercial, financial, technical and/or  
17 proprietary information for which special protection from public disclosure and  
18 from use for any purpose other than prosecution of this action is warranted. Such  
19 confidential and proprietary materials and information consist of, among other  
20 things, confidential business or financial information, information regarding  
21 confidential business practices, or other confidential research, development, or  
22 commercial information (including information implicating privacy rights of third  
23 parties), information otherwise generally unavailable to the public, or which may  
24 be privileged or otherwise protected from disclosure under state or federal statutes,

1 court rules, case decisions, or common law. Accordingly, to expedite the flow of  
2 information, to facilitate the prompt resolution of disputes over confidentiality of  
3 discovery materials, to adequately protect information the parties are entitled to  
4 keep confidential, to ensure that the parties are permitted reasonable necessary uses  
5 of such material in preparation for and in the conduct of trial, to address their  
6 handling at the end of the litigation, and serve the ends of justice, a protective order  
7 for such information is justified in this matter. It is the intent of the parties that  
8 information will not be designated as confidential for tactical reasons and that  
9 nothing be so designated without a good faith belief that it has been maintained in  
10 a confidential, non-public manner, and there is good cause why it should not be  
11 part of the public record of this case.

## 12 **2. DEFINITIONS**

13 2.1. Action: this pending federal lawsuit.

14 2.2. Challenging Party: a Party or Non-Party that challenges the  
15 designation of information or items under this Order.

16 2.3. “CONFIDENTIAL” Information or Items: information (regardless of  
17 how it is generated, stored or maintained) or tangible things that qualify for  
18 protection under Federal Rule of Civil Procedure 26(c), and as specified above in  
19 the Good Cause Statement.

20 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as  
21 their support staff).

22 2.5. Designating Party: a Party or Non-Party that designates information or  
23 items that it produces in disclosures or in responses to discovery as  
24 “CONFIDENTIAL.”

1           2.6. Disclosure or Discovery Material: all items or information, regardless  
2 of the medium or manner in which it is generated, stored, or maintained (including,  
3 among other things, testimony, transcripts, and tangible things), that are produced  
4 or generated in disclosures or responses to discovery in this matter.

5           2.7. Expert: a person with specialized knowledge or experience in a matter  
6 pertinent to the litigation who has been retained by a Party or its counsel to serve  
7 as an expert witness or as a consultant in this Action.

8           2.8. House Counsel: attorneys who are employees of a party to this Action.  
9 House Counsel does not include Outside Counsel of Record or any other outside  
10 counsel.

11           2.9. Non-Party: any natural person, partnership, corporation, association,  
12 or other legal entity not named as a Party to this action.

13           2.10. Outside Counsel of Record: attorneys who are not employees of a  
14 party to this Action but are retained to represent or advise a party to this Action  
15 and have appeared in this Action on behalf of that party or are affiliated with a law  
16 firm which has appeared on behalf of that party, and includes support staff.

17           2.11. Party: any party to this Action, including all of its officers, directors,  
18 employees, consultants, retained experts, and Outside Counsel of Record (and their  
19 support staffs).

20           2.12. Producing Party: a Party or Non-Party that produces Disclosure or  
21 Discovery Material in this Action.

22           2.13. Professional Vendors: persons or entities that provide litigation  
23 support services (e.g., photocopying, videotaping, translating, preparing exhibits or  
24

1 demonstrations, and organizing, storing, or retrieving data in any form or medium)  
2 and their employees and subcontractors.

3 2.14. Protected Material: any Disclosure or Discovery Material that is  
4 designated as “CONFIDENTIAL.”

5 2.15. Receiving Party: a Party that receives Disclosure or Discovery  
6 Material from a Producing Party.

7 **3. SCOPE**

8 3.1. The protections conferred by this Stipulation and Order cover not only  
9 Protected Material (as defined above), but also; (1) any information copied or  
10 extracted from Protected Material, (2) all copies, excerpts, summaries, or  
11 compilations of Protected Material, and (3) any testimony, conversations, or  
12 presentations by Parties or their Counsel that might reveal Protected Material.

13 3.2. Any use of Protected Material at trial shall be governed by the orders  
14 of the trial judge. This Order does not govern the use of Protected Material at trial.

15 **4. DURATION**

16 Even after final disposition of this litigation, the confidentiality obligations  
17 imposed by this Order shall remain in effect until a Designating Party agrees  
18 otherwise in writing or a court order otherwise directs. Final disposition shall be  
19 deemed to be the later of (1) dismissal of all claims and defenses in this Action,  
20 with or without prejudice; and (2) final judgment herein after the completion and  
21 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,  
22 including the time limits for filing any motions or applications for extension of  
23 time pursuant to applicable law.

24

1           **5.     DESIGNATING PROTECTED MATERIAL**

2           5.1.   Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under  
4 this Order must take care to limit any such designation to specific material that  
5 qualifies under the appropriate standards. The Designating Party must designate for  
6 protection only those parts of material, documents, items, or oral or written  
7 communications that qualify so that other portions of the material, documents,  
8 items, or communications for which protection is not warranted are not swept  
9 unjustifiably within the ambit of this Order. Mass, indiscriminate, or routinized  
10 designations are prohibited. Designations that are shown to be clearly unjustified  
11 or that have been made for an improper purpose (e.g., to unnecessarily encumber  
12 the case development process or to impose unnecessary expenses and burdens on  
13 other parties) may expose the Designating Party to sanctions. If it comes to a  
14 Designating Party's attention that information or items that it designated for  
15 protection do not qualify for protection, that Designating Party must promptly  
16 notify all other Parties that it is withdrawing the inapplicable designation.

17           5.2.   Manner and Timing of Designations. Except as otherwise provided in  
18 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise  
19 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection  
20 under this Order must be clearly so designated before the material is disclosed or  
21 produced. Designation in conformity with this Order requires:

22                 5.2.1.   for information in documentary form (e.g., paper or  
23                 electronic documents, but excluding transcripts of depositions or other  
24                 pretrial or trial proceedings), that the Producing Party affix at a minimum,

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

18 5.2.2. for testimony given in depositions that the Designating Party  
19 identify the Disclosure or Discovery Material on the record, before the close  
20 of the deposition all protected testimony.

21 5.2.3. for information produced in some form other than  
22 documentary and for any other tangible items, that the Producing Party affix  
23 in a prominent place on the exterior of the container or containers in which  
24 the information is stored the legend “CONFIDENTIAL.” If only a portion

1 or portions of the information warrants protection, the Producing Party, to  
2 the extent practicable, shall identify the protected portion(s).

3 5.3. Inadvertent Failures to Designate. If timely corrected, an inadvertent  
4 failure to designate qualified information or items does not, standing alone, waive  
5 the Designating Party's right to secure protection under this Order for such  
6 material. Upon timely correction of a designation, the Receiving Party must make  
7 reasonable efforts to assure that the material is treated in accordance with the  
8 provisions of this Order.

9 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

10 6.1. Timing of Challenges. Any Party or Non-Party may challenge a  
11 designation of confidentiality at any time that is consistent with the Court's  
12 Scheduling Order.

13 6.2. Meet and Confer. The Challenging Party shall initiate the dispute  
14 resolution process under Local Rule 37.1 et seq.

15 6.3. The burden of persuasion in any such challenge proceeding shall be  
16 on the Designating Party. Frivolous challenges, and those made for an improper  
17 purpose (e.g., to harass or impose unnecessary expenses and burdens on other  
18 parties) may expose the Challenging Party to sanctions. Unless the Designating  
19 Party has waived or withdrawn the confidentiality designation, all parties shall  
20 continue to afford the material in question the level of protection to which it is  
21 entitled under the Producing Party's designation until the Court rules on the  
22 challenge.



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

2           7.1.   Basic Principles. A Receiving Party may use Protected Material that is  
3 disclosed or produced by another Party or by a Non-Party in connection with this  
4 Action only for prosecuting, defending, or attempting to settle this Action. Such  
5 Protected Material may be disclosed only to the categories of persons and under  
6 the conditions described in this Order. When the Action has been terminated, a  
7 Receiving Party must comply with the provisions of section 13 below (FINAL  
8 DISPOSITION). Protected Material must be stored and maintained by a Receiving  
9 Party at a location and in a secure manner that ensures that access is limited to the  
10 persons authorized under this Order.

11           7.2.   Disclosure of “CONFIDENTIAL” Information or Items. Unless  
12 otherwise ordered by the court or permitted in writing by the Designating Party, a  
13 Receiving Party may disclose any information or item designated  
14 “CONFIDENTIAL” only to:

15                   7.2.1.   the Receiving Party’s Outside Counsel of Record in this  
16 Action, as well as employees of said Outside Counsel of Record to whom it  
17 is reasonably necessary to disclose the information for this Action;

18                   7.2.2.   the officers, directors, and employees (including House  
19 Counsel) of the Receiving Party to whom disclosure is reasonably necessary  
20 for this Action;

21                   7.2.3.   Experts (as defined in this Order) of the Receiving Party to  
22 whom disclosure is reasonably necessary for this Action and who have  
23 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24                   7.2.4.   the court and its personnel;

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

7.2.5. court reporters and their staff;

7.2.6. professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

7.2.7. the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

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

7.2.9. any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

1           **8.     PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
2           **PRODUCED IN OTHER LITIGATION**

3           8.1.   If a Party is served with a subpoena or a court order issued in other  
4 litigation that compels disclosure of any information or items designated in this  
5 Action as “CONFIDENTIAL,” that Party must:

6                 8.1.1.   promptly notify in writing the Designating Party. Such  
7 notification shall include a copy of the subpoena or court order;

8                 8.1.2.   promptly notify in writing the party who caused the  
9 subpoena or order to issue in the other litigation that some or all of the  
10 material covered by the subpoena or order is subject to this Protective Order.  
11 Such notification shall include a copy of this Stipulated Protective Order;  
12 and

13                 8.1.3.   cooperate with respect to all reasonable procedures sought to  
14 be pursued by the Designating Party whose Protected Material may be  
15 affected.

16           8.2.   If the Designating Party timely seeks a protective order, the Party  
17 served with the subpoena or court order shall not produce any information  
18 designated in this action as “CONFIDENTIAL” before a determination by the  
19 court from which the subpoena or order issued, unless the Party has obtained the  
20 Designating Party’s permission. The Designating Party shall bear the burden and  
21 expense of seeking protection in that court of its confidential material and nothing  
22 in these provisions should be construed as authorizing or encouraging a Receiving  
23 Party in this Action to disobey a lawful directive from another court.  
24

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

3           9.1. The terms of this Order are applicable to information produced by a  
4 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information  
5 produced by Non-Parties in connection with this litigation is protected by the  
6 remedies and relief provided by this Order. Nothing in these provisions should be  
7 construed as prohibiting a Non-Party from seeking additional protections.

8           9.2. In the event that a Party is required, by a valid discovery request, to  
9 produce a Non-Party’s confidential information in its possession, and the Party is  
10 subject to an agreement with the Non-Party not to produce the Non-Party’s  
11 confidential information, then the Party shall:

12                   9.2.1. promptly notify in writing the Requesting Party and the  
13 Non-Party that some or all of the information requested is subject to a  
14 confidentiality agreement with a Non-Party;

15                   9.2.2. promptly provide the Non-Party with a copy of the  
16 Stipulated Protective Order in this Action, the relevant discovery request(s),  
17 and a reasonably specific description of the information requested; and

18                   9.2.3. make the information requested available for inspection by  
19 the Non-Party, if requested.

20           9.3. If the Non-Party fails to seek a protective order from this court within  
21 14 days of receiving the notice and accompanying information, the Receiving  
22 Party may produce the Non-Party’s confidential information responsive to the  
23 discovery request. If the Non-Party timely seeks a protective order, the Receiving  
24 Party shall not produce any information in its possession or control that is subject

1 to the confidentiality agreement with the Non-Party before a determination by the  
2 court. Absent a court order to the contrary, the Non-Party shall bear the burden and  
3 expense of seeking protection in this court of its Protected Material.

4 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED**  
5 **MATERIAL**

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

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

17 11.1. When a Producing Party gives notice to Receiving Parties that certain  
18 inadvertently produced material is subject to a claim of privilege or other  
19 protection, the obligations of the Receiving Parties are those set forth in Federal  
20 Rule of Civil Procedure 26(b)(5)(B).

21 11.2. Pursuant to Fed. R. Evid. 502(d) and Fed. R. Evid. 502(e):

22 11.2.1. Disclosures among counsel for different parties and  
23 nonparties relating to issues of common interest shall not affect or be  
24 deemed a waiver of any applicable privilege or protection from disclosure.

1           11.2.2. The mere production to a Receiving Party of a privileged or  
2 work-product-protected document is not a waiver of privilege or protection  
3 from discovery in this case or in any other federal or state proceeding. For  
4 example, the mere production of privileged or work-product-protected  
5 documents in this case as part of a mass production is not itself a waiver in  
6 this case or any other federal or state proceeding.

7           11.2.3. A Producing Party may assert privilege or protection over  
8 produced documents at any time by notifying the Receiving Party in writing  
9 of the assertion of privilege or protection.

## 10       **12. MISCELLANEOUS**

11       12.1. Right to Further Relief. Nothing in this Order abridges the right of any  
12 person to seek its modification by the Court in the future.

13       12.2. Right to Assert Other Objections. By stipulating to the entry of this  
14 Protective Order no Party waives any right it otherwise would have to object to  
15 disclosing or producing any information or item on any ground not addressed in  
16 this Stipulated Protective Order. Similarly, no Party waives any right to object on  
17 any ground to use in evidence of any of the material covered by this Protective  
18 Order.

19       12.3. Filing Protected Material. A Party that seeks to file under seal any  
20 Protected Material must comply with Civil Local Rule 79-5. Protected Material  
21 may only be filed under seal pursuant to a court order authorizing the sealing of the  
22 specific Protected Material at issue. If a Party's request to file Protected Material  
23 under seal is denied by the court, then the Receiving Party may file the information  
24 in the public record unless otherwise instructed by the court.

1           **13. FINAL DISPOSITION**

2           After the final disposition of this Action, as defined in paragraph 4, within  
3 60 days of a written request by the Designating Party, each Receiving Party must  
4 return all Protected Material to the Producing Party or destroy such material. As  
5 used in this subdivision, “all Protected Material” includes all copies, abstracts,  
6 compilations, summaries, and any other format reproducing or capturing any of the  
7 Protected Material. Whether the Protected Material is returned or destroyed, the  
8 Receiving Party must submit a written certification to the Producing Party (and, if  
9 not the same person or entity, to the Designating Party) by the 60 day deadline that  
10 (1) identifies (by category, where appropriate) all the Protected Material that was  
11 returned or destroyed and (2) affirms that the Receiving Party has not retained any  
12 copies, abstracts, compilations, summaries or any other format reproducing or  
13 capturing any of the Protected Material. Notwithstanding this provision, Counsel  
14 are entitled to retain an archival copy of all pleadings, motion papers, trial,  
15 deposition, and hearing transcripts, legal memoranda, correspondence, deposition  
16 and trial exhibits, expert reports, attorney work product, and consultant and expert  
17 work product, even if such materials contain Protected Material. Any such archival  
18 copies that contain or constitute Protected Material remain subject to this  
19 Protective Order as set forth in Section 4 (DURATION).

20 \\  
21 \\  
22 \\  
23 \\  
24 \\

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

**14. VIOLATIONS**

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

**FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

DATED: January 31, 2017



KAREN L. STEVENSON  
UNITED STATES 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

**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 January 31,  
2017 in the case of Greg Young Publishing, Inc. v. Zazzle, Inc., No. 2:16-cv-  
04587-SVW-KS. 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 or type  
full 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.

Date: \_\_\_\_\_

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

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_