

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

NOTE: CHANGES MADE BY THE COURT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

Lanard Toys Limited,	}	Case No.: 2:17-cv-04472 - AB (JPRx)
Plaintiff,		ORDER RE STIPULATED
vs.		PROTECTIVE ORDER
Target Corporation,		
Defendant		

Whereas Plaintiff Lanard Toys Limited and Defendant Target Corporation have stipulated to the following terms and the entrance of a Protective Order in the above captioned matter,

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which the parties believe special protection from public disclosure and from use for any purpose other than prosecuting this

1 litigation may be warranted. Accordingly, the parties hereby stipulate to and
2 petition the Court to enter the following Stipulated Protective Order. The parties
3 acknowledge that this Order does not confer blanket protections on all disclosures
4 or responses to discovery and that the protection it affords from public disclosure
5 and use extends only to the limited information or items that the parties believe
6 are entitled to confidential treatment under the applicable legal principles.

7
8 **B. GOOD CAUSE STATEMENT**

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

1
2 **C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER**
3 **SEAL**

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

9
10 **2. DEFINITIONS**

11 2.1 Action: *Lanard Toys Limited v. Target Corporation*, Case No.: 2:17-cv-
12 04472 - AB (JPRx)

13 2.2 Challenging Party: a Party or Non-Party that challenges the designation
14 of information or items under this Order.

15 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
16 how it is generated, stored or maintained) or tangible things that qualify for
17 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
18 the Good Cause Statement.

19 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
20 their support staff).

21 2.5 Designating Party: a Party or Non-Party that designates information or
22 items that it produces in disclosures or in responses to discovery as
23 “CONFIDENTIAL.”

24 2.6 Disclosure or Discovery Material: all items or information, regardless of
25 the medium or manner in which it is generated, stored, or maintained (including,
26 among other things, testimony, transcripts, and tangible things), that are produced
27 or generated in disclosures or responses to discovery in this matter.

28 2.7 Expert: a person with specialized knowledge or experience in a matter
pertinent to the litigation who has been retained by a Party or its counsel to serve
as an expert witness or as a consultant in this Action.

1 2.8 House Counsel: attorneys who are employees of a party to this Action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.

4 2.9 Non-Party: any natural person, partnership, corporation, association or
5 other legal entity not named as a Party to this action.

6 2.10 Outside Counsel of Record: attorneys who are not employees of a
7 party to this Action but are retained to represent or advise a party to this Action
8 and have appeared in this Action on behalf of that party or are affiliated with a
9 law firm that has appeared on behalf of that party, and includes support staff.

10 2.11 Party: any party to this Action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and
12 their support staffs).

13 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this Action.

15 2.13 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or
18 medium) and their employees and subcontractors.

19 2.14 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL.”

21 2.15 Receiving Party: a Party that receives Disclosure or Discovery
22 Material from a Producing Party.

23 **3. SCOPE**

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

1 Any use of Protected Material at trial shall be governed by the orders of the
2 trial judge. This Order does not govern the use of Protected Material at trial.
3

4 **4. DURATION**

5 Once a case proceeds to trial, information that was designated as
6 CONFIDENTIAL or maintained pursuant to this protective order used or
7 introduced as an exhibit at trial becomes public and will be presumptively
8 available to all members of the public, including the press, unless compelling
9 reasons supported by specific factual findings to proceed otherwise are made to the
10 trial judge in advance of the trial. Accordingly, the terms of this protective order
11 do not extend beyond the commencement of the trial.

12 **5. DESIGNATING PROTECTED MATERIAL**

13 5.1 Exercise of Restraint and Care in Designating Material for Protection.

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

28 5.2 Manner and Timing of Designations.

1 Except as otherwise provided in this Order (see, e.g., second paragraph of
2 section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
3 Discovery Material that qualifies for protection under this Order must be clearly so
4 designated before the material is disclosed or produced.

5 Designation in conformity with this Order requires:

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

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

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

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

1 “CONFIDENTIAL.” If only a portion or portions 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 5.4 Attorneys’ Eyes Only

11 Any document produced before issuance of this Order with the designation
12 “Confidential” or “Confidential - Outside Attorneys’ Eyes Only” shall receive the
13 same treatment as if designated “RESTRICTED - ATTORNEYS’ EYES ONLY”
14 under this Order, unless and until such document is redesignated to have a different
15 classification under this Order.

16 With respect to documents, information or material designated
17 “CONFIDENTIAL” or “RESTRICTED - ATTORNEYS’ EYES ONLY”
18 (“DESIGNATED MATERIAL”), subject to the provisions herein and unless
19 otherwise stated, this Order governs, without limitation: (a) all documents,
20 electronically stored information, and/or things as defined by the Federal Rules of
21 Civil Procedure; (b) all pretrial, hearing or deposition testimony, or documents
22 marked as exhibits or for identification in depositions and hearings; (c) pretrial
23 pleadings, exhibits to pleadings and other court filings; (d) affidavits; and (e)
24 stipulations. All copies, reproductions, extracts, digests and complete or partial
25 summaries prepared from any DESIGNATED MATERIALS shall also be
26 considered DESIGNATED MATERIAL and treated as such under this Order.

27 A designation of Protected Material (i.e., “CONFIDENTIAL” or
28 “RESTRICTED -ATTORNEYS’ EYES ONLY”) may be made at any time.
Inadvertent or unintentional production of documents, information or material that
has not been designated as DESIGNATED MATERIAL shall not be deemed a

1 waiver in whole or in part of a claim for confidential treatment. Any party that
2 inadvertently or unintentionally produces Protected Material without designating it
3 as DESIGNATED MATERIAL may request destruction of that Protected Material
4 by notifying the recipient(s), as soon as reasonably possible after the producing
5 Party becomes aware of the inadvertent or unintentional disclosure, and providing
6 replacement Protected Material that is properly designated. The recipient(s) shall
7 then destroy all copies of the inadvertently or unintentionally produced Protected
8 Materials and any documents, information or material derived from or based
9 thereon.

10 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

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

14 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
15 resolution process under Local Rule 37-1 et seq.

16 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
17 joint stipulation pursuant to Local Rule 37-2.

18 6.4 The burden of persuasion in any such challenge proceeding shall be on
19 the Designating Party. Frivolous challenges, and those made for an improper
20 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
21 parties) may expose the Challenging Party to sanctions. Unless the Designating
22 Party has waived or withdrawn the confidentiality designation, all parties shall
23 continue to afford the material in question the level of protection to which it is
24 entitled under the Producing Party's designation until the Court rules on the
25 challenge.

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

27 7.1 Basic Principles. A Receiving Party may use Protected Material that is
28 disclosed or produced by another Party or by a Non-Party in connection with this
Action only for prosecuting, defending or attempting to settle this Action. Such
Protected Material may be disclosed only to the categories of persons and under

1 the conditions described in this Order. When the Action has been terminated, a
2 Receiving Party must comply with the provisions of section 13 below (FINAL
3 DISPOSITION). Protected Material must be stored and maintained by a Receiving
4 Party at a location and in a secure manner that ensures that access is limited to the
5 persons authorized under this Order.

6 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
7 otherwise ordered by the court or permitted in writing by the Designating Party, a
8 Receiving Party may disclose any information or item designated
9 “CONFIDENTIAL” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
11 as employees of said Outside Counsel of Record to whom it is reasonably
12 necessary to disclose the information for this Action;

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

15 (c) Experts (as defined in this Order) of the Receiving Party to whom
16 disclosure is reasonably necessary for this Action and who have signed the
17 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

18 (d) the court and its personnel;

19 (e) court reporters and their staff;

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

23 (g) the author or recipient of a document containing the information or a
24 custodian or other person who otherwise possessed or knew the information;

25 (h) during their depositions, witnesses, and attorneys for witnesses, in the
26 Action to whom disclosure is reasonably necessary provided: (1) the deposing
27 party requests that the witness sign the form attached as Exhibit A hereto; and (2)
28 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

1 deposition testimony or exhibits to depositions that reveal Protected Material may
2 be separately bound by the court reporter and may not be disclosed to anyone
3 except as permitted under this Stipulated Protective Order; and

4 (i) any mediator or settlement officer, and their supporting personnel,
5 mutually agreed upon by any of the parties engaged in settlement discussions or
6 appointed by the Court.

7
8 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
9 **PRODUCED IN OTHER LITIGATION**

10 If a Party is served with a subpoena or a court order issued in other litigation
11 that compels disclosure of any information or items designated in this Action as
12 “CONFIDENTIAL,” that Party must:

13 (a) promptly notify in writing the Designating Party. Such notification shall
14 include a copy of the subpoena or court order unless prohibited by law;

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

19 (c) cooperate with respect to all reasonable procedures sought to be pursued
20 by the Designating Party whose Protected Material may be affected. If the
21 Designating Party timely seeks a protective order, the Party served with the
22 subpoena or court order shall not produce any information designated in this action
23 as “CONFIDENTIAL” before a determination by the court from which the
24 subpoena or order issued, unless the Party has obtained the Designating Party’s
25 permission or a Court so orders. The Designating Party shall bear the burden and
26 expense of seeking protection in that court of its confidential material and nothing
27 in these provisions should be construed as authorizing or encouraging a Receiving
28 Party in this Action to disobey a lawful directive from another court.

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

3 (a) 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 (b) 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: (1) promptly notify in writing the
12 Requesting Party and the Non-Party that some or all of the information requested is
13 subject to a confidentiality agreement with a Non-Party; (2) promptly provide the
14 Non-Party with a copy of the Stipulated Protective Order in this Action, the
15 relevant discovery request(s), and a reasonably specific description of the
16 information requested; and (3) make the information requested available for
17 inspection by the Non-Party, if requested.

18 (c) If the Non-Party fails to seek a protective order from this court within 14
19 days of receiving the notice and accompanying information, the Receiving Party
20 may produce the Non-Party’s confidential information responsive to the discovery
21 request. If the Non-Party timely seeks a protective order, the Receiving Party shall
22 not produce any information in its possession or control that is subject to the
23 confidentiality agreement with the Non-Party before a determination by the court.
24 Absent a court order to the contrary, the Non-Party shall bear the burden and
25 expense of seeking protection in this court of its Protected Material.

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

27 If a Receiving Party learns that, by inadvertence or otherwise, it has
28 disclosed Protected Material to any person or in any circumstance not authorized
under this Stipulated Protective Order, the Receiving Party must immediately (a)

1 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
2 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
3 the person or persons to whom unauthorized disclosures were made of all the terms
4 of this Order, and (d) request such person or persons to execute the
5 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
6 A.

7
8 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
9 **OTHERWISE PROTECTED MATERIAL**

10 When a Producing Party gives notice to Receiving Parties that certain
11 inadvertently produced material is subject to a claim of privilege or other
12 protection, the obligations of the Receiving Parties are those set forth in Federal
13 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
14 whatever procedure may be established in an e-discovery order that provides for
15 production without prior privilege review. Pursuant to Federal Rule of Evidence
16 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
17 of a communication or information covered by the attorney-client privilege or
18 work product protection, the parties may incorporate their agreement in the
19 stipulated protective order submitted to the court provided the Court so allows.

20 **12. MISCELLANEOUS**

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
22 person to seek its modification by the Court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this
24 Protective Order, no Party waives any right it otherwise would have to object to
25 disclosing or producing any information or item on any ground not addressed in
26 this Stipulated Protective Order. Similarly, no Party waives any right to object on
27 any ground to use in evidence of any of the material covered by this Protective
28 Order.

1 12.3 Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Local Civil Rule 79-5. Protected Material
3 may only be filed under seal pursuant to a court order authorizing the sealing of the
4 specific Protected Material at issue. If a Party’s request to file Protected Material
5 under seal is denied by the court, then the Receiving Party may file the information
6 in the public record unless otherwise instructed by the court.

7
8 **13. FINAL DISPOSITION**

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

27
28 **14. VIOLATION**

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

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

ORDER

The parties have stipulated to the terms of the protective order and good cause appearing, IT IS SO ORDERED.

Dated: February 12, 2018



Hon. Jean P. Rosenbluth
United States Magistrate Judge

Respectfully submitted by:

MCQUAID LAW, APLC
/s/ Carrie McQuaid
Carrie A. McQuaid
Attorneys for Defendant
Target Corporation