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20 UNITED STATES DISTRICT COURT
 21 CENTRAL DISTRICT OF CALIFORNIA
 22 WESTERN DIVISION

23 **VRtoysone, LLC**, a Wyoming company,
 24 Plaintiff,
 25 v.
 26 **Disney Interactive Studios, Inc.**, a
 27 California corporation,
 28 Defendant.

Case No. 2:19-cv-00742-CBM-AS

~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER GOVERNING
 THE DESIGNATION AND
 HANDLING OF CONFIDENTIAL
 MATERIALS

Honorable Consuelo B. Marshall

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**ORDER GOVERNING THE DESIGNATION AND HANDLING OF
CONFIDENTIAL MATERIALS**

The Court hereby enters the following Stipulated Protective Order Governing the Designation and Handling of Confidential Materials (“Protective Order”).

1. A. **PURPOSES AND LIMITATIONS**

Discovery in this Action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, each of the Parties hereto hereby stipulate to and petition the Court to enter the following Protective Order. The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The Parties further acknowledge, as set forth in Section 13.3 below, that this Protective Order does not entitle them to file confidential information under seal, and that Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a Party seeks permission from the Court to file material under seal.

B. **GOOD CAUSE STATEMENT**

This Action is likely to involve trade secrets, customer and pricing lists and other valuable research, development, commercial, financial, technical and/or proprietary information for which special protection from public disclosure, from disclosure directly to the other Party’s officers/directors/employees rather than to their Counsel, and from use for any purpose other than prosecution of this Action is warranted. Fed. R. Civ. P. 26(c)(1) does not limit its reach to “trade secrets,” but also allows for protection of “confidential commercial information.” Each Party believes that the disclosure to the public and to their competitors of, among other things, all or some of the information listed below might result in their suffering competitive harm, result in

1 an unfair competitive advantage to their competitors, result in harm to privacy and
2 personal rights of their officers/directors/employees, and result in the unauthorized
3 disclosure of the confidential commercial information of third parties:

4 (a) confidential business information, confidential product information,
5 confidential financial information including profit margins, and sales data, confidential
6 client lists and information, and other confidential and proprietary information, data,
7 processes, forecasts, analyses, intellectual property, techniques, and research and
8 development,

9 (b) information regarding confidential business practices, including marketing
10 strategies, analyses, forecasts, plans and ideas,

11 (c) other confidential research such as consumer and market research, expressly
12 including non-public personal information of consumers, whether produced
13 inadvertently or otherwise,

14 (d) any commercial information implicating privacy rights of third parties,

15 (e) agreements with third parties, including confidentiality provisions, and

16 (f) information otherwise generally unavailable to the public, or which may be
17 privileged or otherwise protected from disclosure under state or federal statutes, court
18 rules, case decisions, or common law.

19 Information shall not be protected by this Protective Order if the information (i)
20 was publicly available or was properly possessed in substantive, material detail by the
21 Receiving Party prior to such Party's receipt thereof; (ii) became known, prior to the
22 disclosure, to the Receiving Party from a source that had access to the subject materials
23 or information, who had a lawful right to disclose the information, and such disclosure
24 was made without breach of any agreement, including, without limitation, this
25 Protective Order; or (iii) becomes publicly available in significant detail through no
26 fault of the Receiving Party or any attorney or person associated with the Receiving
27 Party.
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1 Accordingly, to expedite the flow of information, to facilitate the prompt
2 resolution of disputes over confidentiality of discovery materials, to adequately protect
3 information the Parties are entitled to keep confidential, to ensure that the Parties are
4 permitted reasonably necessary uses of such materials in preparation for and in the
5 conduct of trial, to address their handling at the end of the litigation, and serve the ends
6 of justice, to conduct discovery of Non-Parties, including competitors and employees
7 of competitors, this Protective Order for such information is justified in this matter. It
8 is the intent of the Parties that information will not be designated as confidential for
9 tactical reasons and that nothing be so designated without a good faith belief that it has
10 been maintained in a confidential, non-public manner, and there is good cause why it
11 should not be part of the public record of this case.

12 **2. DEFINITIONS**

13 2.1 **Action:** This pending lawsuit with Case No. 2:19-cv-00742-CBM-AS.

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

16 2.3 **“CONFIDENTIAL” Information or Items:** all information in whatever
17 form such as oral, written, documentary, tangible, intangible, electronic, or digitized
18 now or hereafter in existence that:

19 (a) is regarded by the Disclosing Party as being confidential, personal, private, or
20 proprietary in nature such that it qualifies for protection under Fed. R. Civ. P.
21 26(c)(1)(G) and/or is the subject of efforts that are reasonable under the circumstances
22 to maintain its secrecy;

23 (b) is protected under the Uniform Trade Secrets Act, California Civil Code
24 section 3426, et. seq., in that such information derives independent economic value,
25 actual or potential, from not being generally known to, and not being readily
26 ascertainable by proper means, by other persons who can obtain economic value from
27 its disclosure or use; and

28 (c) is as specified above in the Good Cause Statement.

1 2.4 **“CONFIDENTIAL - ATTORNEYS’ EYES ONLY” Information or**
2 **Items:** Confidential Information or Items that the Designating Party believes in good
3 faith has significant competitive value such that unrestricted disclosure to others would
4 create a substantial risk of serious injury.

5 2.5 **Counsel:** Outside Counsel of Record and House Counsel (as well as their
6 support staff).

7 2.6 **Designating Party:** a Party or Non-Party that designates information or
8 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”
9 or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY”.

10 2.7 **Disclosure or Discovery Material:** all items or information, regardless of
11 the medium or manner in which they are generated, stored, or maintained (including,
12 among other things, testimony, transcripts, and tangible things), that are produced or
13 generated in disclosures or responses to discovery in this matter.

14 2.8 **Expert:** a person with specialized knowledge or experience in a matter
15 pertinent to the Action who has been retained by a Party or its Counsel to serve as an
16 expert witness or as a consultant in this Action.

17 2.9 **House Counsel:** attorneys who are employees of a Party to this Action.
18 House Counsel does not include Outside Counsel of Record or any other outside
19 counsel.

20 2.10 **Non-Party:** any natural person, partnership, corporation, association, or
21 other legal entity not named as a Party to this Action.

22 2.11 **Outside Counsel of Record:** attorneys who are not employees of a Party
23 to this Action but are retained to represent or advise a Party to this Action and have
24 appeared in this Action on behalf of that Party or are affiliated with a law firm that has
25 appeared on behalf of that Party, and includes support staff.

26 2.12 **Party or Parties:** any Party to this Action, including all of its officers,
27 directors, employees, consultants, retained experts, and Outside Counsel of Record (and
28 their support staffs).

1 2.13 **Patent-in-Suit:** U.S. Patent No. 6,460,851.

2 2.14 **Producing Party:** a Party or Non-Party that produces Disclosure or
3 Discovery Material in this Action.

4 2.15 **Professional Vendors:** persons or entities that provide litigation support
5 services (e.g., photocopying, videotaping, translating, preparing exhibits or
6 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
7 their employees and subcontractors.

8 2.16 **Protected Material:** any Disclosure or Discovery Material that is
9 designated as “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES
10 ONLY”.

11 2.17 **Receiving Party:** a Party that receives Disclosure or Discovery Material
12 from a Producing Party.

13 3. **SCOPE**

14 The protections conferred by this Protective Order cover not only Protected
15 Material (as defined above), but also (1) any information copied or extracted from
16 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
17 Material; and (3) any testimony, conversations, or presentations by Parties or their
18 Counsel that might reveal Protected Material.

19 Any use of Protected Material at trial shall be governed by the orders of the trial
20 Judge. This Protective Order does not govern the use of Protected Material at trial.

21 4. **DURATION**

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

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 this
4 Protective 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, items, or
8 communications for which protection is not warranted are not swept unjustifiably
9 within the ambit of this Protective Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations that
11 are shown to be clearly unjustified or that have been made for an improper purpose
12 (e.g., to unnecessarily encumber the case development process or to impose
13 unnecessary expenses and burdens on other parties) may expose the Designating Party
14 to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection, the Designating Party must
17 promptly notify all other Parties that it is withdrawing the inapplicable designation.

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

23 Designation in conformity with this Protective Order requires:

24 (a) for information in documentary form (e.g., paper or electronic documents, but
25 excluding transcripts of depositions or other pretrial or trial proceedings), that the
26 Producing Party affix at a minimum, the legend "CONFIDENTIAL" or
27 "CONFIDENTIAL—ATTORNEYS' EYES ONLY", to each page that contains
28 protected material. A Party or Non-Party that makes original documents available for

1 inspection need not designate them for protection until after the inspecting Party has
2 indicated which documents it would like copied and produced. During the inspection
3 and before the designation, all of the material made available for inspection shall be
4 deemed “CONFIDENTIAL—ATTORNEYS’ EYES ONLY”. After the inspecting
5 Party has identified the documents it wants copied and produced, the Producing Party
6 must determine which documents, or portions thereof, qualify for protection under this
7 Order. Then, before producing the specified documents, the Producing Party must affix
8 the legend “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES
9 ONLY” to each page that contains Protected Material.

10 (b) for testimony given in depositions, that the Designating Party identify the
11 Disclosure or Discovery Material as “CONFIDENTIAL” or “CONFIDENTIAL—
12 ATTORNEYS’ EYES ONLY” either (1) on the record, at any point before the close of
13 the deposition, by so stating on the record and identifying the level of protection desired,
14 or (2) within thirty (30) calendar days after receiving the deposition transcript, by
15 identifying the applicable page and line numbers and identifying the corresponding
16 level of protection. The parties shall presumptively treat all deposition testimony as
17 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” until this thirty (30) day period
18 has elapsed.

19 (c) for information produced in some form other than documentary and for any
20 other tangible items, that the Producing Party affix in a prominent place on the exterior
21 of the container or containers in which the information is stored the legend
22 “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” If only a
23 portion or portions of the information warrants protection, the Producing Party, to the
24 extent practicable, shall identify the protected portion(s).

25 (d) for discovery responses, responses to requests for admission, briefs,
26 memoranda and all other papers sent to the court or to opposing counsel, a Producing
27 Party shall designate such materials as containing “CONFIDENTIAL” information or
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1 “CONFIDENTIAL” – ATTORNEYS’ EYES ONLY” information when such papers
2 are served or sent.

3 (e) for information disclosed at a hearing or trial as “CONFIDENTIAL” or as
4 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, a Party shall designate such
5 information by requesting the Court, at the time the information is proffered or adduced,
6 to receive the information only in the presence of those persons designated to receive
7 such information and court personnel, and to designate the transcript appropriately.

8 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent
9 failure to designate qualified information or items does not, standing alone, waive the
10 Designating Party’s right to secure protection under this Protective Order for such
11 material. Upon timely correction of a designation, the Receiving Party must make
12 reasonable efforts to assure that the material is treated in accordance with the provisions
13 of this Protective Order.

14 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

15 **6.1 Timing of Challenges.** Any Party or Non-Party may challenge a
16 designation of confidentiality at any time that is consistent with the Court’s Scheduling
17 Order.

18 **6.2 Meet and Confer.** The Challenging Party shall initiate the dispute
19 resolution process under Local Rule 37.1 et seq.

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

1 **7. LEVELS OF CONFIDENTIALITY**

2 7.1 Any information designated as “CONFIDENTIAL” or
3 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” shall be restricted in accordance
4 with the following levels of confidentiality:

5 7.2 Information designated as “CONFIDENTIAL—ATTORNEYS’ EYES
6 ONLY” shall be restricted to viewing, copying by, and disclosure to:

7 (a) Outside Counsel of Record, including colleagues, staff, outside copying
8 services, document management services and graphic services acting on behalf of the
9 Parties in this matter;

10 (b) The Court, including all personnel of the Court;

11 (c) Witnesses during depositions, so long as the witness to whom a Party is
12 seeking to disclose the document was either a recipient or otherwise involved in the
13 creation or transmission of the document. Where it is not stated on the face of the
14 confidential document being disclosed that the witness to whom a Party is seeking to
15 disclose the document was either an author, recipient, or otherwise involved in the
16 creation or transmission of the document, the Party seeking disclosure may nonetheless
17 disclose the confidential document to the witness, provided that: (i) the Party seeking
18 disclosure has a reasonable basis for believing that the witness in fact received or
19 reviewed the document, (ii) the Party seeking disclosure provides advance notice to the
20 Party that produced the document, and (iii) the Party that produced the document does
21 not inform the Party seeking disclosure that the person to whom the Party intends to
22 disclose the document did not in fact receive or lawfully review the document. Nothing
23 herein shall prevent disclosure at a deposition of a document designated
24 “CONFIDENTIAL ATTORNEYS’ EYES ONLY” to the officers or directors, of the
25 Producing Party of such “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
26 information, or to any employee of such Party who has access to such
27 “CONFIDENTIAL ATTORNEYS’ EYES ONLY” information in the ordinary course
28 of such employee’s employment;

1 (d) Experts and their colleagues, advisors, and secretarial and clerical
2 assistants who are actively assisting in the preparation, evaluation, and trial of this
3 Action (subject to Sections 7.3 and 7.4 below);

4 (e) professional jury or trial consultants, mock jurors, and Professional
5 Vendors to whom disclosure is reasonably necessary for this Action and who have
6 signed the “Acknowledgment and Agreement to be Bound” attached hereto as Exhibit
7 A;

8 (f) Court reporters and other persons involved in recording testimony in this
9 Action;

10 (g) any mediator or settlement officer, and their supporting personnel mutually
11 agreed upon by any of the Parties engaged in settlement discussions; and

12 (h) Two House Counsel for Defendant Disney Interactive Studios, Inc. having
13 a legitimate need to receive the information in order to assist Outside Counsel of Record
14 in representing Defendant and who have signed the “Acknowledgment and Agreement
15 to be Bound” attached hereto as Exhibit A.

16 7.3 Before information designated as “CONFIDENTIAL—ATTORNEYS’
17 EYES ONLY,” or contents thereof, are disclosed to any Expert (see Section 7.2(d)
18 above), counsel for the Party disclosing such information shall provide to the Expert
19 with a copy of this Protective Order, and such Expert must agree (i) to be bound by the
20 terms hereof by signing the “Acknowledgment and Agreement to be Bound” attached
21 hereto as Exhibit A. No disclosure of information designated as “CONFIDENTIAL—
22 ATTORNEYS’ EYES ONLY” shall be made to an Expert until expiration of the
23 opportunity to seek an order of the Court, or ruling thereon, as contemplated in
24 subdivision (a) below, ten (10) business days after the disclosure agreement is provided
25 to the other Party.

26 7.4 Before information designated as “CONFIDENTIAL—ATTORNEYS’
27 EYES ONLY,” or contents thereof, are disclosed to any Expert (see Section 7.2(d)
28 above), the following information must be provided in writing to the Producing Party

1 and received no less than ten (10) business days before the intended date of disclosure
2 to that Expert: (a) the Expert’s name, business title, business address, business or
3 profession, and current employer (if any); (b) the Expert’s current CV; (c) a list of other
4 cases in which the Expert has testified (at trial or by deposition) or submitted sworn
5 written testimony (e.g., by affidavit or declaration) within the last three years; (d) a list
6 of all companies with which the Expert has consulted or by which the Expert has been
7 employed within the last three years; (e) an identification of any past relationship
8 between the Expert and either Party or any of the inventors listed on the face of any of
9 the patents asserted in this action or any of the persons identified by name in paragraphs
10 10-12 of the Complaint (Dkt. No. 1); and (f) a signed copy of the “Acknowledgement
11 and Agreement To Be Bound” (Exhibit A).

12 If the Producing Party objects to disclosure of information designated as
13 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” to an Expert, the Producing Party
14 shall within ten (10) business days of receipt serve written objections identifying the
15 specific basis for the objection, and particularly identifying all information to which
16 disclosure is objected. Failure to object within ten (10) business days shall authorize
17 the disclosure of information designated as “CONFIDENTIAL—ATTORNEYS’
18 EYES ONLY” to the Expert.

19 As to any objections, the Parties shall attempt in good faith to promptly resolve
20 any objections informally. If the objections cannot be resolved, the Party seeking to
21 make the disclosure to the Expert of the information designated as
22 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” shall provide written notice to the
23 Party seeking to prevent such disclosure that the Parties have reached an impasse. The
24 Party seeking to prevent disclosure of the information designated as
25 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” to the Expert shall then have ten
26 (10) business days to move for an order of the Court preventing the disclosure.

27 In the event that objections are made and not resolved informally and a motion is
28 filed within ten (10) business days: (i) the Party seeking to prevent disclosure of the

1 information designated as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” to the
2 Expert shall have the burden of proving that disclosure to the Expert is not proper; and
3 (ii) disclosure of information designated as “CONFIDENTIAL—ATTORNEYS’
4 EYES ONLY” to the Expert shall not be made except by order of the Court or
5 subsequent agreement of the Parties.

6 In the event that objections are made and not resolved informally but no motion
7 is filed within ten (10) business days, disclosure to the Expert shall be permitted.

8 7.5 No Party shall attempt to depose any Expert unless the Expert is designated
9 by the Party engaging the Expert as a testifying expert, and then only after either (a) the
10 Expert has submitted a declaration, affidavit or other sworn testimony in connection in
11 this Action that is properly the subject of examination by the non-designating Party, or
12 (b) the designating Party has made a disclosure for the Expert in accordance with the
13 timing for disclosure of expert testimony set forth in Federal Rule of Civil Procedure
14 26(a)(2)(d) or other Order of the Court. Notwithstanding the preceding sentence, any
15 Party may depose an Expert as a fact witness provided that the Party seeking such
16 deposition has a good faith, demonstrable basis independent of the disclosure of the
17 Expert made pursuant to the first paragraph of Section 7.4 above, that such Expert
18 possesses facts relevant to this Action, or facts likely to lead to the discovery of
19 admissible evidence; however, such deposition, if it precedes the designation of such
20 Expert by the engaging Party as a testifying expert, shall not include any questions
21 regarding the scope or subject matter of the engagement. In addition, if the engaging
22 Party chooses not to designate the Expert as a testifying expert, the non-engaging Party
23 shall be barred from seeking discovery or trial testimony as to the scope, subject matter
24 or work product resulting from the engagement.

25 7.6 Information designated as “CONFIDENTIAL” shall be restricted to
26 viewing, copying by, and disclosure to:

27 (a) All “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” persons (see
28 Sections 7.2-7.5 above);

1 (b) All House Counsel, employees, officers, and directors of each Party of
2 record having a legitimate need to receive the “CONFIDENTIAL” information in order
3 to assist Outside Counsel of Record in representing the Receiving Party. It is not
4 necessary for any such persons to execute the “Acknowledgment and Agreement to Be
5 Bound” that is attached hereto as Exhibit A in order to receive “CONFIDENTIAL”
6 information, provided that the Receiving Party has previously notified such persons of
7 the existence of this Protective Order, its terms, and the consequences of an
8 unauthorized disclosure; and

9 (c) Witnesses or potential witnesses in this Action, so long as the witness to
10 whom a Party is seeking to disclose the document was a recipient or otherwise involved
11 in the creation of the document. Where it is not stated on the face of the confidential
12 document being disclosed that the witness or potential witness to whom a Party is
13 seeking to disclose the document was either a recipient, author, or otherwise involved
14 in the creation or transmission of the document, the Party seeking disclosure may
15 nonetheless disclose the confidential document to the witness or potential witness,
16 provided that: (i) the Receiving Party has a reasonable basis for believing that the
17 witness or potential witness in fact received or reviewed the document, (ii) the
18 Receiving Party provides advance notice to the Party that produced the document, and
19 (iii) the Party that produced the document does not inform the Party seeking disclosure
20 that the witness or potential witness to whom the Party intends to disclose the document
21 did not in fact receive or review the documents. Nothing herein shall prevent disclosure
22 at a deposition of a document designated “CONFIDENTIAL” to the officers or directors
23 of the Producing Party such “CONFIDENTIAL” information, or to any employee of
24 such Party who has access to such “CONFIDENTIAL” information in the ordinary
25 course of such employee’s employment.

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

27 8.1 **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

1 only for prosecuting, defending, or attempting to settle this Action, and may not
2 otherwise, directly or indirectly, otherwise use, duplicate, disclose, transfer, publish or
3 in any way apply or exploit the Protected Material. Such Protected Material may be
4 disclosed only to the categories of persons and under the conditions described in this
5 Protective Order, and only on a need-to-know basis. When the Action has been
6 terminated, a Receiving Party must comply with the provisions of Section 14 below
7 (FINAL DISPOSITION).

8 Protected Material must be stored, safeguarded, held in confidence, withheld
9 from third parties and maintained by a Receiving Party at a location and in a secure
10 manner that ensures that access is limited to the persons authorized under this Protective
11 Order.

12 **8.2 Disclosure of “CONFIDENTIAL” and “CONFIDENTIAL—**
13 **ATTORNEYS’ EYES ONLY” Information or Items.** Unless otherwise ordered by
14 the Court or permitted in writing by the Designating Party, a Receiving Party may
15 disclose any information or item designated “CONFIDENTIAL” or
16 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” only in accordance with Section
17 7 above.

18 **8.3 Prosecution Bar.** Absent written consent from the Producing Party, any
19 individual who receives access to “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
20 information of a technical nature regarding a Party’s products or future product plans
21 produced by an opposing party in this Action shall not be involved in the prosecution
22 of patents or patent applications relating to any electronic gaming system or method,
23 including without limitation the Patent-in-Suit and any patent or application claiming
24 priority to or otherwise related to the Patent-in-Suit, before any foreign or domestic
25 agency, including the United States Patent and Trademark Office (“the Patent Office”).
26 For purposes of this paragraph, “prosecution” includes directly or indirectly drafting,
27 amending, advising, or otherwise affecting the scope of patent claims. To avoid any
28 doubt, “prosecution” as used in this paragraph does not include, and this Section 8.3

1 shall not prohibit: (1) representing a party challenging a patent before a domestic or
2 foreign agency (including, but not limited to, a reissue protest, *ex parte* reexamination
3 or *inter partes* review); (2) appearing, actively participating, taking discovery,
4 attending/taking depositions, preparing filings, supervising, assisting, and otherwise
5 representing a party in any proceeding challenging a patent before a domestic or foreign
6 agency (including, but not limited to, a reissue protest, *ex parte* reexamination or *inter*
7 *partes* review), provided that the affected individual does not participate or assist in any
8 claim drafting or amendment of claims; (3) representing a party in this Action or any
9 other litigation involving the Patent-in-Suit or any other issued patent, including without
10 limitation advising and consulting on the scope or construction of claims of the issued
11 patent, provided that the affected individual does not participate or assist in any claim
12 drafting or amendment of claims. This Prosecution Bar shall begin when access to
13 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information is first received by
14 the affected individual and shall end two (2) years after final termination of this action.
15 This Prosecution Bar shall apply only to individuals who receive “CONFIDENTIAL-
16 ATTORNEYS’ EYES ONLY” information of a technical nature regarding a Party’s
17 products or future product plans produced by an opposing Party in this Action, and shall
18 not be imputed to other members of the law firm.

19 9. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
20 **IN OTHER LITIGATION**

21 If a Party is served with a subpoena or a court order issued in other litigation or
22 with a subpoena or order in any administrative action or examination being conducted
23 by any local, state or federal agency or authority, that compels disclosure of any
24 information or items designated in this Action as “CONFIDENTIAL” or
25 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” that Party must:

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

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

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

7 If the Designating Party timely seeks a protective order, the Party served with the
8 subpoena or court order shall not produce any information designated in this Action as
9 “CONFIDENTIAL” or “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” before a
10 determination by the court from which the subpoena or order issued, unless the Party
11 has obtained the Designating Party’s permission. The Designating Party shall bear the
12 burden and expense of seeking protection in that court of its confidential material and
13 nothing in these provisions shall be construed as authorizing or encouraging a Receiving
14 Party in this Action to disobey a lawful directive from another court.

15 10. **A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
16 **PRODUCED IN THIS ACTION**

17 10.1 The terms of this Order are applicable to information produced by a Non-
18 Party in this Action and designated as “CONFIDENTIAL” or “CONFIDENTIAL—
19 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in
20 connection with this Action is protected by the remedies and relief provided by this
21 Protective Order. Nothing in these provisions should be construed as prohibiting a Non-
22 Party from seeking additional protections.

23 10.2 In the event that a Party is required, by a valid discovery request in this
24 Action, to produce a Non-Party’s confidential information in its possession, and the
25 Party is subject to an agreement with the Non-Party not to produce the Non-Party’s
26 confidential information, then the Party shall: (1) promptly notify in writing the
27 Requesting Party and the Non-Party that some or all of the information requested is
28 subject to a confidentiality agreement with a Non-Party; (2) promptly provide the Non-

1 Party with a copy of the Protective Order in this Action, the relevant discovery
2 request(s), and a reasonably specific description of the information requested; and (3)
3 make the information requested available for inspection by the Non-Party, if requested.

4 10.3 If the Non-Party fails to seek a protective order from this Court within 14
5 days of receiving the notice and accompanying information, the Receiving Party may
6 produce the Non-Party's confidential information responsive to the discovery request.
7 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
8 any information in its possession or control that is subject to the confidentiality
9 agreement with the Non-Party before a determination by the Court. Absent a court order
10 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
11 in this Court of its Protected Material.

12 11. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

21 12. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
22 **PROTECTED MATERIAL**

23 Pursuant to Federal Rules of Evidence 502(d) and 502(e), and Federal Rule of
24 Civil Procedure 26(b)(5)(B):

25 12.1 The unintentional or inadvertent production of any privileged or work
26 product protected document (including without limitation any Electronically Stored
27 Information ("ESI")) in this Action shall not constitute a waiver in the pending case or
28 in any other federal or state proceeding.

1 12.2 The Receiving Party shall not use documents that the Producing Party
2 asserts is privileged or work product protected (“Privileged Information”) to challenge
3 the privilege or protection.

4 12.3 Upon written notice of an unintentional production of Privileged
5 Information by the Producing Party, the Receiving Party must promptly return or
6 destroy the specified materials and any copies thereof, and may not use or disclose the
7 information. The Producing Party need not prove the elements of any applicable rule
8 in order to establish inadvertent production or disclosure, and the Receiving Party shall
9 not argue that the Producing Party needs to establish inadvertent disclosure, that the
10 Producing Party failed to take reasonable precautions to prevent disclosure, that the
11 Producing Party failed to take reasonably prompt measures to rectify the error once the
12 Producing Party knew or should have known of the disclosure, that the Producing Party
13 failed to notify the Receiving Party of the claim of privilege or protection within a
14 reasonable time; or otherwise argue that the production or disclosure of Privileged
15 Information as part of a production in this case had the effect of waiving any privilege
16 or protection.

17 12.4 To the extent that the information contained in a document subject to a
18 claim of inadvertent production has already been used in or described in other
19 documents generated or maintained by the Receiving Party, then the Receiving Party
20 will sequester such Privileged Information until the claim has been resolved. If the
21 Receiving Party discloses the specified Privileged Information before being notified of
22 its inadvertent production, then the Receiving Party must take reasonable steps to
23 retrieve the information until the claim is resolved.

24 12.5 If any Receiving Party is in receipt of a document or information from a
25 Producing Party that the Receiving Party has reason to believe was Privileged
26 Information unintentionally produced by the Producing Party, the Receiving Party shall
27 take reasonable, good faith steps to sequester the Privileged Information and to notify
28

1 the Producing Party of its production so the Producing Party can make a determination
2 of whether such materials were unintentionally produced.

3 12.6 The Party returning or destroying any unintentionally produced documents
4 or information may move for an order compelling production of some or all of the
5 documents or information to be returned or destroyed, but the fact that the documents
6 or information were produced inadvertently shall not be deemed to be a waiver of any
7 privilege or protection, and shall not be a basis for compelling production. In addition,
8 any motion to compel production of documents or information to be returned or
9 destroyed shall not include or reference the specific contents of the unintentionally
10 produced documents. Nevertheless, nothing in this Order precludes a Receiving Party
11 from challenging the assertion of privilege by motion based on the same grounds that
12 the Receiving Party could have raised if the documents had not been unintentionally
13 produced and a privilege log had been provided instead.

14 12.7 The amount of time and scrutiny the Parties devote to searching for and
15 excluding Privileged Information from their productions is within the sole discretion of
16 each of them. Nothing in this Order will be construed or interpreted to limit or reduce
17 or extend the amount of time or scrutiny that a Party should devote to the review of
18 documents prior to their production to identify and prevent Privileged Information from
19 being disclosed.

20 12.8 The mere production of documents (including without limitation ESI) in
21 this Action as part of a mass production shall not itself constitute a waiver for any
22 purpose.

23 12.9 The Producing Party shall provide a privilege log for any inadvertently
24 produced Privileged Information within ten (10) business days of the written notice of
25 its unintentional production.

26 13. **MISCELLANEOUS**

27 13.1 **Right to Further Relief.** Nothing in this Order abridges the right of any
28 person to seek its modification by the Court in the future.

1 **13.2 Right to Assert Other Objections.** By entry of this Protective Order, no
2 Party waives any right it otherwise would have to object to disclosing or producing any
3 information or item on any ground not addressed in this Protective Order. Similarly, no
4 Party waives any right to object on any ground to use in evidence of any of the material
5 covered by this Protective Order.

6 **13.3 Filing Protected Material.** A Party that seeks to file under seal any
7 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
8 only be filed under seal pursuant to a court order authorizing the sealing of the specific
9 Protected Material at issue. If a Party's request to file Protected Material under seal is
10 denied by the Court, then the Receiving Party may file the information in the public
11 record unless otherwise instructed by the Court.

12 **14. FINAL DISPOSITION**

13 After the final disposition of this Action, as defined in Section 4, within 60 days
14 of a written request by the Designating Party, each Receiving Party must return all
15 Protected Material to the Producing Party or destroy such material. As used in this
16 Section, “all Protected Material” includes all copies, abstracts, compilations,
17 summaries, and any other format reproducing or capturing any of the Protected
18 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
19 must submit a written certification to the Producing Party (and, if not the same person,
20 to the Designating Party) by the 60 day deadline that (1) identifies (by category, where
21 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
22 that the Receiving Party has not retained any copies, abstracts, compilations, summaries
23 or any other format reproducing or capturing any of the Protected Material.
24 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all
25 pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
26 correspondence, deposition and trial exhibits, expert reports, attorney work product
27 (including without limitation excerpts or extracts of Protected Material incorporated
28 into any privileged memoranda or correspondence), and consultant and expert work

1 product, even if such materials contain Protected Material. Any such archival copies
2 that contain or constitute Protected Material remain subject to this Protective Order as
3 set forth in Section 4 (DURATION).

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

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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3
4 DATED: May 14, 2021

PILLSBURY WINTHROP SHAW
PITTMAN LLP

6 By: /s/ Evan Finkel

7 Evan Finkel
8 Evan.Finkel@pillsburylaw.com
9 **Pillsbury Winthrop Shaw Pittman LLP**
725 South Figueroa Street, Suite 2800
Los Angeles, CA 90017-5406

10 Attorneys for Plaintiff
11 DISNEY INTERACTIVE STUDIOS,
INC.

12 DATED: May 14, 2021

SML AVVOCATI P.C.

14 By: /s/ Stephen M. Lobbin (with permission)

15 Stephen M. Lobbin
16 sml@smlavvocati.com
17 **SML Avvocati P.C.**
888 Prospect Street, Suite 200
La Jolla, California 92037

18 Attorneys for Defendant
19 VRTOYSONE, LLC

20 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED

21
22 DATED: May 14, 2021

23
24 / s / Sagar

25 Honorable Alka Sagar
26 United States Magistrate Judge

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under penalty of perjury that I
5 have read in its entirety and understand the Stipulated Protective Order that was issued
6 by the United States District Court for the Central District of California on [date] in the
7 case of VRTOYSONE, LLC v. DISNEY INTERACTIVE STUDIOS, INC., USDC
8 Case No. 2:19-cv-00742-CBM-AS. I agree to comply with and to be bound by all the
9 terms of this Stipulated Protective Order and I understand and acknowledge that failure
10 to so comply could expose me to sanctions and punishment in the nature of contempt. I
11 solemnly promise that I will not disclose in any manner any information or item that is
12 subject to this Stipulated Protective Order to any person or entity except in strict
13 compliance with the provisions of this Stipulated Protective Order. I further agree to
14 submit to the jurisdiction of the United States District Court for the Central District of
15 California for the purpose of enforcing the terms of this Stipulated Protective Order,
16 even if such enforcement proceedings occur after termination of this Action. I hereby
17 appoint _____ [print or type full name] of
18 _____ [print or type full address and
19 telephone number] as my California agent for service of process in connection with this
20 action or any proceedings related to enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State where sworn and signed: _____

23 Printed name: _____

24 Signature: _____