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ALEXANDER FAH

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

ALEXANDER FAH, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

WOLVERINE WORLD WIDE, NC., a  
Delaware corporation,

Defendant.

Case No. SACV 13-0010 JVS (JPRx)

[ASSIGNED TO HON. JAMES V. SELNA  
COURTROOM 10C]

**STIPULATED PROTECTIVE  
ORDER**

1 1. PURPOSES AND LIMITATIONS

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

17 2. DEFINITIONS

18 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
19 information or items under this Order.

20 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it  
21 is generated, stored or maintained) or tangible things that qualify for protection under  
22 Federal Rule of Civil Procedure 26(c).

23 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel  
24 (as well as their support staff).

25 2.4 Designating Party: a Party or Non-Party that designates information or  
26 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

27 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
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1 medium or manner in which it is generated, stored, or maintained (including, among  
2 other things, testimony, transcripts, and tangible things), that are produced or generated in  
3 disclosures or responses to discovery in this matter.

4 2.6 Expert: a person with specialized knowledge or experience in a matter  
5 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
6 expert witness or as a consultant in this action.

7 2.7 House Counsel: attorneys who are employees of a party to this action.  
8 House Counsel does not include Outside Counsel of Record or any other outside counsel.

9 2.8 Non-Party: any natural person, partnership, corporation, association, or  
10 other legal entity not named as a Party to this action.

11 2.9 Outside Counsel of Record: attorneys who are not employees of a party to  
12 this action but are retained to represent or advise a party to this action and have appeared  
13 in this action on behalf of that party or are affiliated with a law firm which has appeared  
14 on behalf of that party.

15 2.10 Party: any party to this action, including all of its officers, directors,  
16 employees, consultants, retained experts, and Outside Counsel of Record (and their  
17 support staffs).

18 2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
19 Discovery Material in this action.

20 2.12 Professional Vendors: persons or entities that provide litigation support  
21 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
22 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
23 their employees and subcontractors.

24 2.13 Protected Material: any Disclosure or Discovery Material that is designated  
25 as "CONFIDENTIAL."

26 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material  
27 from a Producing Party.

1 3. SCOPE

2 The protections conferred by this Stipulation and Order cover not only Protected  
3 Material (as defined above), but also (1) any information copied or extracted from  
4 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected  
5 Material; and (3) any testimony, conversations, or presentations by Parties or their  
6 Counsel that might reveal Protected Material. However, the protections conferred by this  
7 Stipulation and Order do not cover the following information: (a) any information that is  
8 in the public domain at the time of disclosure to a Receiving Party or becomes part of the  
9 public domain after its disclosure to a Receiving Party as a result of publication not  
10 involving a violation of this Order, including becoming part of the public record through  
11 trial or otherwise; and (b) any information known to the Receiving Party prior to the  
12 disclosure or obtained by the Receiving Party after the disclosure from a source who  
13 obtained the information lawfully and under no obligation of confidentiality to the  
14 Designating Party. Any use of Protected Material at trial shall be governed by a separate  
15 agreement or order.

16 4. DURATION

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

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
26 Party or Non-Party that designates information or items for protection under this Order  
27 must take care to limit any such designation to specific material that qualifies under the  
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1 appropriate standards. The Designating Party must designate for protection only those  
2 parts of material, documents, items, or oral or written communications that qualify as  
3 “CONFIDENTIAL” – so that other portions of the material, documents, items, or  
4 communications for which protection is not warranted are not swept unjustifiably within  
5 the ambit of this Order.

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

11 If it comes to a Designating Party’s attention that information or items that it  
12 designated for protection do not qualify for protection, that Designating Party must  
13 promptly notify all other Parties that it is withdrawing the mistaken designation.

14 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this  
15 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or  
16 ordered, Disclosure or Discovery Material that qualifies for protection under this Order  
17 must be clearly so designated before the material is disclosed or produced.

18 Designation in conformity with this Order requires:

19 (a) for information in documentary form (e.g., paper or electronic  
20 documents, but excluding transcripts of depositions or other pretrial or trial proceedings),  
21 that the Producing Party affix the legend “CONFIDENTIAL” to each page that contains  
22 protected material. If only a portion or portions of the material on a page qualifies for  
23 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,  
24 by making appropriate markings in the margins). A Party or Non-Party that makes  
25 original documents or materials available for inspection need not designate them for  
26 protection until after the inspecting Party has indicated which material it would like  
27 copied and produced. During the inspection and before the designation, all of the material  
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1 made available for inspection shall be deemed “CONFIDENTIAL.” After the inspecting  
2 Party has identified the documents it wants copied and produced, the Producing Party  
3 must determine which documents, or portions thereof, qualify for protection under this  
4 Order. Then, before producing the specified documents, the Producing Party must affix  
5 the “CONFIDENTIAL” legend to each page that contains Protected Material. If only a  
6 portion or portions of the material on a page qualifies for protection, the Producing Party  
7 also must clearly identify the protected portion(s) (e.g., by making appropriate markings  
8 in the margins).

9 (b) for testimony given in a deposition, that the Designating Party identify  
10 on the record, before the close of the deposition, all protected testimony.

11 (c) for information produced in some form other than documentary and for  
12 any other tangible items, that the Producing Party affix in a prominent place on the  
13 exterior of the container or containers in which the information or item is stored the  
14 legend “CONFIDENTIAL.” If only a portion or portions of the information or item  
15 warrant protection, the Producing Party, to the extent practicable, shall identify the  
16 protected portion(s).

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure  
18 to designate qualified information or items does not, standing alone, waive the  
19 Designating Party’s right to secure protection under this Order for such material. Upon  
20 timely correction of a designation, the Receiving Party must make reasonable efforts to  
21 assure that the material is treated in accordance with the provisions of this Order.

## 22 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation  
24 of confidentiality at any time, but must comply with L.R. 37-1 and 37-2 in connection  
25 with the filing of any discovery-related motion, including the Joint Stipulation  
26 requirement. Unless a prompt challenge to a Designating Party’s confidentiality  
27 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary  
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1 economic burdens, or a significant disruption or delay of the litigation, a Party does not  
2 waive its right to challenge a confidentiality designation by electing not to mount a  
3 challenge promptly after the original designation is disclosed.

4       6.2 Meet and Confer. In strict conformity with L.R. 37-1, the Challenging Party  
5 shall initiate the dispute resolution process by providing written notice of each  
6 designation it is challenging and describing the basis for each challenge. To avoid  
7 ambiguity as to whether a challenge has been made, the written notice must recite that the  
8 challenge to confidentiality is being made in accordance with this specific paragraph of  
9 the Protective Order. The parties shall attempt to resolve each challenge in good faith,  
10 pursuant to the terms of L.R. 37-1, and must begin the process by conferring directly (in  
11 voice to voice dialogue; other forms of communication are not sufficient) within 10 days  
12 of the date of service of the written notice of challenge. In conferring, the Challenging  
13 Party must explain the basis for its belief that the confidentiality designation was not  
14 proper and must give the Designating Party an opportunity to review the designated  
15 material, to reconsider the circumstances, and, if no change in designation is offered, to  
16 explain the basis for the chosen designation. A Challenging Party may proceed to the  
17 next stage of the challenge process only if it has engaged in this meet and confer process  
18 first or establishes that the Designating Party is unwilling to participate in the meet and  
19 confer process in a timely manner.

20       6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court  
21 intervention, the Parties, with the Designating Party acting as the moving party, shall  
22 formulate and prepare a written joint stipulation to be filed and served in accordance with  
23 L.R. 37-2 (and in compliance with L.R. 79-5, if applicable). Preparation of the written  
24 joint stipulation, in accordance with L.R. 37-2.2 through 37-2.3, shall commence within  
25 21 days of the initial notice of challenge or within 14 days of the parties agreeing that the  
26 meet and confer process will not resolve their dispute, whichever is later.

27       The burden of persuasion in any such challenge proceeding shall be on the  
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1 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to  
2 harass or impose unnecessary expenses and burdens on other parties) may expose the  
3 Challenging Party to sanctions. Unless the Designating Party has waived the  
4 confidentiality designation by failing to file a motion to retain confidentiality as described  
5 above, all parties shall continue to afford the material in question the level of protection  
6 to which it is entitled under the Producing Party's designation until the court rules on the  
7 challenge.

8 7. ACCESS TO AND USE OF PROTECTED MATERIAL

9 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
10 disclosed or produced by another Party or by a Non-Party in connection with this case  
11 only for prosecuting, defending, or attempting to settle this litigation. Such Protected  
12 Material may be disclosed only to the categories of persons and under the conditions  
13 described in this Order. When the litigation has been terminated, a Receiving Party must  
14 comply with the provisions of section 13 below (FINAL DISPOSITION).

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

18 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
19 ordered by the court or permitted in writing by the Designating Party, a Receiving Party  
20 may disclose any information or item designated "CONFIDENTIAL" only to:

21 (a) the Receiving Party's Outside Counsel of Record in this action, as well  
22 as employees of said Outside Counsel of Record to whom it is reasonably necessary to  
23 disclose the information for this litigation and who have signed the "Acknowledgment  
24 and Agreement to Be Bound" that is attached hereto as Exhibit A;

25 (b) the officers, directors, and employees (including House Counsel) of the  
26 Receiving Party to whom disclosure is reasonably necessary for this litigation and who  
27 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);  
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1 (c) Experts (as defined in this Order) of the Receiving Party to whom  
2 disclosure is reasonably necessary for this litigation and who have signed the  
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants,  
6 mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for  
7 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
8 (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom disclosure is  
10 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be  
11 Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the  
12 court. Pages of transcribed deposition testimony or exhibits to depositions that reveal  
13 Protected Material must be separately bound by the court reporter and may not be  
14 disclosed to anyone except as permitted under this Stipulated Protective Order.

15 (g) the author or recipient of a document containing the information or a  
16 custodian or other person who otherwise possessed or knew the information who has  
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

18 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
19 OTHER LITIGATION

20 If a Party is served with a subpoena or a court order issued in other litigation that  
21 compels disclosure of any information or items designated in this action as  
22 “CONFIDENTIAL,” that Party must:

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

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

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

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

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

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

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

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

26 (2) promptly provide the Non-Party with a copy of the Stipulated  
27 Protective Order in this litigation, the relevant discovery request(s), and a reasonably  
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1 specific description of the information requested; and

2 (3) make the information requested available for inspection by the  
3 Non-Party.

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

13 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

22 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
23 PROTECTED MATERIAL

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

6 12. MISCELLANEOUS

7 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
8 person to seek its modification by the court in the future. No amendment or modification  
9 agreed to by the parties will have the force or effect of a Court order unless the Court  
10 approves the amendment or modification.

11 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
12 Protective Order no Party waives any right it otherwise would have to object to disclosing  
13 or producing any information or item on any ground not addressed in this Stipulated  
14 Protective Order. Similarly, no Party waives any right to object on any ground to use in  
15 evidence of any of the material covered by this Protective Order.

16 12.3 Filing Protected Material. Without written permission from the Designating  
17 Party or a court order secured after appropriate notice to all interested persons, a Party  
18 may not file in the public record in this action any Protected Material. A Party that seeks  
19 to file under seal any Protected Material must comply with L.R. 79-5. Protected Material  
20 may only be filed under seal pursuant to a court order authorizing the sealing of the  
21 specific Protected Material at issue. Pursuant to L.R. 79-5, a sealing order will issue only  
22 upon a request establishing that the Protected Material at issue is privileged, protectable  
23 as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's  
24 request to file Protected Material under seal pursuant to L.R. 79-5 is denied by the court,  
25 then the Receiving Party may file the information in the public record pursuant to L.R.  
26 79-5 unless otherwise instructed by the court.

1 13. FINAL DISPOSITION

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

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

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3  
4 DATED: July 3, 2012

Respectfully submitted,  
KIESEL + LARSON LLP

7 By: / s/ Paul R. Kiesel  
Paul R. Kiesel

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Attorneys for Plaintiff  
Alexander Fah

17 DATED: July 3, 2012

Respectfully submitted,  
SEYFARTH SHAW LLP

19 By: / s/ Eugene S. Suh

20 Michael J. Burns  
21 Eric R. McDonough  
22 Eugene S. Suh  
23 Attorneys for Defendant  
24 WOLVERINE WORLD WIDE, INC.

25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

26 DATED: July 08, 2013



27 Honorable Jean P. Rosenbluth  
28 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  
5 penalty of perjury that I have read in its entirety and understand the Stipulated Protective  
6 Order that was issued by the United States District Court for the Central District of  
7 California on \_\_\_\_\_ [date] in the case of *Alexander Fah v. Wolverine World*  
8 *Wide, Inc.*, Case Number SACV 13-0010 JVS (JPRx). I agree to comply with and to be  
9 bound by all the terms of this Stipulated Protective Order and I understand and  
10 acknowledge that failure to so comply could expose me to sanctions and punishment in  
11 the nature of contempt. I solemnly promise that I will not disclose in any manner any  
12 information or item that is subject to this Stipulated Protective Order to any person or  
13 entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for  
15 the Central District of California for the purpose of enforcing the terms of this Stipulated  
16 Protective Order, even if such enforcement proceedings occur after termination of this  
17 action.

18 I hereby appoint \_\_\_\_\_ [print or type full name] of  
19 \_\_\_\_\_ [print or type full address and telephone  
20 number] as my California agent for service of process in connection with this action or  
21 any proceedings related to enforcement of this Stipulated Protective Order.

22  
23 Date: \_\_\_\_\_

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

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

26  
27 Signature: \_\_\_\_\_