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6 Attorneys for Plaintiffs:
 7 **TSG ADVERTISING, INC. and**
HOOTERS OF AMERICA, LLC

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

LAW OFFICES OF SEPEHR DAGHIGHIAN, P.C.
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10 TSG ADVERTISING, INC., a
 11 California Corporation, d/b/a
 12 SKIVER ADVERTISING, and
 13 HOOTERS OF AMERICA, INC., a
 14 Georgia Limited Liability Company,

15 Plaintiffs,

16 v.

17 MARMOSET, LLC, an Oregon
 Limited Liability Company, HENRY
 18 JININGS, an individual, and DOES
 19 1 to 10

20 Defendants.

21 MARMOSET, LLC, an Oregon
 Limited Liability Company and
 22 HENRY JININGS,

23 Counterclaimants,

24 v.

25 TSG ADVERTISING, INC., a
 California Corporation, d/b/a
 26 SKIVER ADVERTISING, and
 HOOTERS OF AMERICA, INC., a
 27 Georgia Limited Liability Company,

28 Counterclaim-Defendants.

Case No. 8:14-CV-01014-JLS-RNB

*Assigned for all reasonable purposes to the
 Honorable Josephine L. Staton, Courtroom
 10A*

**~~[PROPOSED]~~ STIPULATED
 PROTECTIVE ORDER**

Complaint filed: July 2, 2014 (dkt. 1)
 Counterclaim filed: October 7, 2014 (dkt. 24)

1 WHEREAS, Plaintiffs/Counterclaim-Defendants TSG Advertising, Inc., a
2 California Corporation, doing business as Skiver Advertising (hereinafter, “**TSG**”),
3 and Hooters of America, LLC, a Georgia Limited Liability Company (hereinafter,
4 “**Hooters**”) (TSG and Hooters shall hereinafter be collectively referred to as
5 “**Plaintiffs**”), and Defendants/Counterclaimants Marmoset, LLC, an Oregon
6 Limited Liability Company (hereinafter, “**Marmoset**”), and Henry Jinings, an
7 individual (hereinafter, “**Mr. Jinings**”) (Marmoset and Mr. Jinings shall hereinafter
8 be referred to as a “**Defendants**”) (Plaintiffs and Defendants shall hereinafter each
9 be referred to as a “**Party**” and collectively as the “**Parties**”) recognize that,
10 pursuant to discovery or otherwise during the course of the above-captioned lawsuit
11 between the Parties (hereinafter, the “**Lawsuit**”), the Parties may be required to
12 disclose trade secrets and other private information, confidential research,
13 development, marketing, financial or proprietary commercial and technical
14 information within the meaning of Rule 26(c) of the Federal Rules of Civil
15 Procedure (hereinafter “**Confidential Information**”);

16 AND WHEREAS, the Parties have, by and through counsel, stipulated to
17 entry of this Stipulated Protective Order pursuant to Fed. R. Civ. P. 26(c) to prevent
18 unnecessary disclosure or dissemination of such confidential information;

19 THEREFORE, IT IS HEREBY ORDERED that the following provisions of
20 this Stipulated Protective Order (hereinafter “**Order**”) shall control the disclosure,
21 dissemination, and use of Confidential Information in the Lawsuit:

22 1. This Order shall govern the production, use and disclosure of
23 confidential documents, things and information produced, used or disclosed in
24 connection with the Lawsuit and designated in accordance with this Order. A Party
25 may designate information, documents or things produced, used or disclosed in
26 connection with the Lawsuit as “CONFIDENTIAL” or “CONFIDENTIAL -
27 ATTORNEYS’ EYES ONLY” and subject to the protections and requirements of
28 this Order, if so designated in writing to the other Parties, or orally if recorded as

1 part of a deposition or court proceeding, pursuant to the terms of this Order.
2 Information, documents and things that a Party believes contain or refer to
3 information that is not generally available to or accessible by the general public, or
4 that is to be kept confidential due to preexisting obligations, or that if disclosed
5 would tend to damage the Party's competitive position, may be designated as
6 "CONFIDENTIAL." Information, documents and things that a Party believes
7 contain or refer to trade secrets or other confidential research, development,
8 technical, business or financial information, or other confidential commercial
9 information, and that, if disclosed to a business competitor, would tend to damage
10 the Party's competitive position may be designated as "CONFIDENTIAL -
11 ATTORNEYS' EYES ONLY."

12 2. In the case of a document or thing, a designation of
13 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" shall
14 be accomplished by marking each page of the document or thing (or in the case of
15 computer medium on the medium and its label and/or cover) with the appropriate
16 legend "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES
17 ONLY." Documents printed out from any electronic medium marked
18 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" shall
19 be marked by the Printing Party with the same designation as the electronic
20 medium from which they are printed.

21 3. Information conveyed or discussed in testimony at a deposition shall
22 be subject to this Order, provided that it is designated as "CONFIDENTIAL" or
23 "CONFIDENTIAL - ATTORNEYS' EYES ONLY" orally or in writing either at
24 the time of the deposition or after receipt by the Parties of the deposition transcript.
25 For such time as any information, documents or things designated as
26 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" are
27 disclosed in a deposition, the Party whose information, documents or things are to
28 be disclosed shall have the right to exclude from attendance at the deposition any

1 person who is not entitled to receive such information, documents or things
2 pursuant to this Order. In the event that a Party believes that “CONFIDENTIAL”
3 or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” information will be
4 disclosed during a deposition, counsel for the Party may designate on the record
5 that all or specific portions of the deposition transcript, and the information
6 contained therein, is to be treated as “CONFIDENTIAL” or “CONFIDENTIAL -
7 ATTORNEYS’ EYES ONLY.” In addition, a Party shall have thirty (30) days
8 after receiving a copy of the deposition transcript in which to designate all or
9 specific portions of the transcript as “CONFIDENTIAL” or “CONFIDENTIAL -
10 ATTORNEYS’ EYES ONLY,” as appropriate. If, within such thirty (30) days, no
11 Party designates in writing certain portions of the deposition transcript as
12 “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” all
13 Parties shall be permitted to use such portions of the transcript and the information
14 contained therein with no restrictions of confidentiality, subject to the provisions of
15 Paragraph 4 below.

16 4. The failure of a Party to designate information, documents or things as
17 “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” in
18 accordance with this Order, and the failure to object to such a designation, shall not
19 preclude a Party at a later time from subsequently designating or objecting to the
20 designation of such information, documents or things as “CONFIDENTIAL” or
21 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” The Parties understand and
22 acknowledge that a Party’s failure to designate information, documents or things as
23 either “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY”
24 at or within the time specified in this Order relieves the other Parties of any
25 obligation of confidentiality until the designation is actually made.

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1 5. Any information, document or thing designated as
2 “CONFIDENTIAL” shall be used by the Receiving Party solely in connection with
3 the Lawsuit and shall not be disclosed to anyone other than:

- 4 a. The Court and Court personnel;
- 5 b. employees of the Parties, provided that:
- 6 i. such disclosure is needed to assist in the prosecution or
7 defense of this action;
- 8 ii. such information is maintained in separate and
9 identifiable files, access to which is restricted to the
10 foregoing persons; and
- 11 iii. before any such employee is shown or receives any
12 information, document or thing designated as
13 “CONFIDENTIAL,” he or she must execute a
14 Declaration in the form of Exhibit A (attached hereto) and
15 the procedures of Paragraph 7 below must be followed.
- 16 c. Outside counsel of record, and their employees;
- 17 d. Testifying experts, translators, interpreters, investigators,
18 consulting experts and advisors who are independent of and not
19 employed by a competitor of the Producing Party (including, but
20 not limited to, a competitor’s suppliers, contractors and
21 operators) who are retained for purposes of the Lawsuit,
22 provided, however, that before any such person is shown or
23 receives any information, document or thing designated as
24 “CONFIDENTIAL,” he or she must execute a Declaration in the
25 form of Exhibit A attached hereto and the procedures of
26 Paragraph 7 below must be followed; and
- 27 e. Persons testifying in depositions to the extent the
28 “CONFIDENTIAL” document, thing or information was

1 authored by, addressed to or received by the person testifying, or
2 such person is established as knowledgeable of such information
3 or thing, or contents of the document, prior to disclosing the
4 information, document or thing.

5 6. Any information, document or thing designated as “CONFIDENTIAL
6 - ATTORNEYS’ EYES ONLY” shall be used by the Receiving Party solely in
7 connection with the Lawsuit and shall not be disclosed to anyone other than:

- 8 a. The Court and Court personnel;
- 9 b. Outside counsel of record, and their employees;
- 10 c. Testifying experts, translators, interpreters, investigators,
11 consulting experts and advisors who are independent of and not
12 employed by a competitor of the Producing Party (including, but
13 not limited to, a competitor’s suppliers, contractors and
14 operators) who are retained for purposes of the Lawsuit,
15 provided, however, that before any such person is shown or
16 receives any information, document or thing designated as
17 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” he or she
18 must execute a Declaration in the form of Exhibit A and the
19 procedures of Paragraph 7 below must be followed; and
- 20 d. Persons testifying in depositions to the extent the
21 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” document,
22 thing or information was authored by, addressed to or received
23 by the person testifying, or such person is established as
24 knowledgeable of such information or thing, or contents of the
25 document, prior to disclosing the information, document or
26 thing.

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1 7. Each Party specifically reserves the right, on a case by case basis, to
2 request permission to allow a designated employee() to have access to information
3 designated by the other Party as “CONFIDENTIAL - ATTORNEYS’ EYES
4 ONLY” upon a showing that such access by the designated employees is necessary
5 for the Requesting Party to address a specific relevant issue in the litigation, and
6 that the issue cannot otherwise be meaningfully addressed by the Requesting Party
7 (e.g., through the employment of an independent expert) without such access by the
8 designated employee(s). The Parties shall make reasonable efforts among
9 themselves to resolve any issues relating to any such requests. If an agreement
10 cannot be reached, the Requesting Party may file a motion with the Court seeking
11 to allow access by the designated employee(s) to the other Party’s
12 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” information upon the showing
13 as set forth above.

14 8. The attorneys of record for the Receiving Party shall retain the
15 original, executed Declarations (in the form of Exhibit A) that have been executed
16 by that Party’s employees, testifying experts, translators, interpreters, investigators,
17 consulting experts and advisors.

18 9. Upon request of the Producing Party, within sixty (60) days after the
19 final disposition of the Lawsuit, including all appeals therefrom, all documents and
20 things designated as “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’
21 EYES ONLY,” all copies of such documents and all papers containing
22 “CONFIDENTIAL” or “CONFIDENTIAL - ATTORNEYS’ EYES ONLY”
23 information in the possession, custody or control of the Parties and their attorneys,
24 employees, experts, translators, interpreters, investigators, advisors or consultants
25 shall be destroyed or returned to counsel for the Producing Party. Upon request, a
26 Party and his/her/its counsel shall separately provide written certification to the
27 Producing Party that the actions required by this Paragraph 9 have been completed.

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1 10. The Court shall retain jurisdiction over the Parties for the purpose of
2 ensuring compliance with this Order and granting such amendments, modifications
3 and additions to this Order and such other and further relief as may be necessary,
4 and any Party may apply to the Court at any time for an amendment, modification
5 or addition to this Order. This Order shall survive the final disposition of the
6 Lawsuit, by judgment, dismissal, settlement or otherwise.

7 11. Notwithstanding anything in this Order to the contrary, the
8 confidentiality obligations of this Order shall not prohibit the use by any Party of
9 any information, documents or things that are currently in the Party's lawful
10 possession, custody or control, that later come into the possession of the Party from
11 the public domain or from others lawfully in possession of such information,
12 documents or things who are not parties to the Lawsuit or bound by this Order or a
13 comparable order or obligation, or that are required to be disclosed by any law,
14 regulation, order or rule of any governmental authority; provided, however, that if a
15 Party is required to disclose a document, thing or information designated as
16 confidential pursuant to any law, regulation, order or rule of any governmental
17 authority, the Party shall give immediate advance notice, to the extent possible, of
18 any such requested disclosure in writing to the counsel of the other Parties to afford
19 those Parties the opportunity to seek legal protection from the disclosure of such
20 information, documents or things. However, nothing contained in this Order is
21 intended to be construed as authorizing a Party to disobey a lawful subpoena issued
22 in another action.

23 12. For any violation of the terms of this Order, any Party shall be free to
24 apply to the Court for any relief that the Party deems appropriate.

25 13. Neither this Order nor any stipulation therefor, nor any disclosure or
26 use of information, documents or things, in whatever form, pursuant to this Order,
27 shall be deemed an admission, waiver or agreement by any Party that any
28 information, document or thing designated as "CONFIDENTIAL" or

1 “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” hereunder is or is not a trade
2 secret or Confidential Information entitled to protection from disclosure. Further,
3 neither this Order nor any stipulation therefor shall be deemed to expand the scope
4 of discovery in the Lawsuit beyond the limits otherwise prescribed by law or to
5 enlarge the scope of discovery to matters unrelated to this Lawsuit.

6 14. Unintentional production of documents subject to work-product
7 immunity, the attorney-client privilege, or joint-defense privilege, whether through
8 inadvertence, accident, carelessness, negligence, gross negligence, recklessness or
9 otherwise, shall not, by that act alone, constitute a waiver of the immunity or
10 privilege, provided that the Producing Party notifies the Receiving Party in writing,
11 with confirmation by first-class mail, of the fact and circumstances of such an
12 alleged unintentional production promptly upon learning of it. Such alleged
13 unintentionally produced documents, and all copies thereof, shall be promptly
14 returned to the Producing Party or destroyed upon request, unless the Receiving
15 Party promptly seeks the Court’s determination that (i) the documents are not
16 privileged or protected by work product immunity or (ii) a waiver has occurred,
17 e.g., because the production was not unintentional or the claim of unintentional
18 production was not made promptly. Until the Parties or the Court resolve(s) the
19 issues raised by the Receiving Party, the Receiving Party may not use or disclose
20 the alleged unintentionally produced documents.

21 15. This Order shall not be construed to foreclose any Party from moving
22 the Court, in strict compliance with Local Rules 37-1 and 37-2 (including the Joint
23 Stipulation requirement), for an order that information, documents or things
24 designated as “CONFIDENTIAL” are not confidential or that information,
25 documents or things designated as “CONFIDENTIAL - ATTORNEYS’ EYES
26 ONLY” should be reclassified to a lower level of confidentiality or are not
27 confidential. On a motion to reclassify “CONFIDENTIAL - ATTORNEYS’ EYES
28 ONLY” information, documents or things at a lower level of confidentiality, the

1 Non-Moving Party shall have the burden of proving that the need to prevent
2 disclosure of the information, documents or things to the Opposing Party's
3 personnel outweighs the Moving Party's need to disclose the information,
4 documents or things to its personnel. On a motion to designate
5 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY"
6 information, documents or things as not confidential, the Non-Moving Party shall
7 have the burden of proving that the information, documents or things so designated
8 constitutes and/or contains trade secrets or other confidential research,
9 development, or commercial information within the meaning of Fed. R. Civ. P.
10 26(c)(1)(g). Prior to making any such motion, the Parties shall discuss the matter in
11 good faith to try to resolve or narrow the scope of the subject motion. The
12 information, documents or things shall be treated as originally designated, i.e.,
13 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" at
14 least until the Parties agree otherwise or the Court issues an order removing such
15 designation. The finding that information, documents or things designated as
16 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" are
17 actually non-confidential shall not in itself constitute a negation or waiver of the
18 confidentiality of any other information, documents or things designated as
19 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" of the
20 Producing Party.

21 16. If a third party produces documents, things or information or provides
22 deposition testimony that it believes contain(s) or refer(s) to information that is
23 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY," such
24 third party may mark such documents or things, or identify such information and
25 deposition testimony in accordance with Paragraphs 1 - 3 above, and such
26 documents, things, information and deposition testimony shall be treated by the
27 Parties in accordance with the provisions of this Order as if such documents, things,
28 information and deposition testimony were produced by a Party to this action.

1 17. In accordance with Local Rule 79-5.1, if any papers to be filed with
2 the Court contain information and/or documents that have been designated as
3 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY," the
4 proposed filing shall be accompanied by an application to file the papers or the
5 portion thereof containing the designated information or documents (if such portion
6 is segregable) and if appropriate the application itself under seal; and the
7 application shall be directed to the judge to whom the papers are directed. For
8 motions, the Parties shall publicly file a redacted version of the motion and
9 supporting papers.

10 18. Any Party that designates written discovery requests or responses as
11 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY," shall
12 provide upon written request, within two business days from receipt of any such
13 request, a redacted copy of same to all other Parties, to the extent feasible, which
14 removes all "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES
15 ONLY" information.

16 19. Dissemination of "CONFIDENTIAL" or "CONFIDENTIAL -
17 ATTORNEYS' EYES ONLY" information to third Parties shall be governed as
18 follows:

- 19 a. If a Receiving Party is served with a subpoena or an order
20 issued in other litigation that would compel disclosure of any
21 information or items designated in this action as
22 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -
23 ATTORNEYS' EYES ONLY," the Receiving Party must so
24 notify the Designating Party, in writing (by U.S. Mail and, if
25 possible, by facsimile) immediately and in no event more than
26 three days after receiving the subpoena or order. Such
27 notification must include a copy of the subpoena or court order.
- 28 b. The Receiving Party also must immediately inform in writing

1 the Party who caused the subpoena or order to issue in the other
2 litigation that some or all the material covered by the subpoena
3 or order is the subject of this Protective Order. In addition, the
4 Receiving Party must deliver a copy of this Stipulated Protective
5 Order promptly to the Party in the other action that caused the
6 subpoena or order to issue.

7 c. The purpose of imposing these duties is to alert the interested
8 Parties to the existence of this Protective Order and to afford the
9 Designating Party in this case an opportunity to try to protect its
10 confidentiality interests in the court from which the subpoena or
11 order issued. The Designating Party shall bear the burdens and
12 the expenses of seeking protection in that court of its
13 confidential material—and nothing in these provisions should be
14 construed as authorizing or encouraging a Receiving Party in
15 this action to disobey a lawful directive from another court.

16 20. Nothing in this Order abridges the right of any person or Party to seek
17 its modification by the Court in the future.

18 21. By stipulating to the entry of this Protective Order no Party waives any
19 right it otherwise would have to object to disclosing or producing any information
20 or item on any ground not addressed in this Stipulated Protective Order. Similarly,
21 no Party waives any right to object on any ground to use in evidence of any of the
22 material covered by this Protective Order.

23 22. Nothing in this Order shall require disclosure of materials a Party
24 contends are protected from disclosure by the attorney-client privilege or the
25 attorney work-product doctrine. This provision shall not, however, be construed to
26 preclude any Party from moving the Court for an order directing the disclosure of
27 such materials where it disputes the claim of attorney-client privilege or attorney
28 work-product doctrine.

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23. This Stipulation and Protective Order shall not prevent a Party from applying to the Court for relief therefrom, or from applying to the Court for a modification of this Protective Order or further or additional protection against or limitation upon production of documents produced in response to discovery.

24. This Stipulation and Protective Order may be executed in counterparts, which taken together shall be deemed to constitute one and the same document. Facsimile or otherwise electronically transmitted signatures shall have the same force and effect as an original.

Dated: February 26, 2015 **LAW OFFICES OF SEPEHR DAGHIGHIAN, P.C.**


/s/Sepehr Daghighian
SEPEHR DAGHIGHIAN, ESQ.
Attorney for Plaintiffs/Counterclaim Defendants

Dated: February 26, 2015 **CAPLAN & ROSS, LLP**

/s/Mark Passin
MARK PASSIN, ESQ.
Attorney for Defendants/Counterclaimants

IT IS SO ORDERED:

Date: February 26, 2015



Hon. Robert N. Block
United States Magistrate Judge

1 **ATTESTATION CLAUSE**

2 Pursuant to L.R. 5-4.3.4(a)(2)(i), I hereby attest that all other signatories
3 listed, and on whose behalf the filing is submitted, concur in the filing's content and
4 have authorized the filing.

5 Dated: February 26, 2015 **LAW OFFICES OF SEPEHR DAGHIGHIAN, P.C.**

6
7 /s/Sepehr Daghighian
8 SEPEHR DAGHIGHIAN, ESQ.
9 Attorney for Plaintiffs/Counterclaim Defendants

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