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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TOY VAULT, LLC, a California
Limited Liability Company,

Plaintiff,

v.

PEACHSTATE HOBBY
DISTRIBUTION, LLC, a Delaware
Limited Liability Company, and
DOES 1-25, Inclusive,

Defendant.

Case No. 8:17-cv-02046-JVS-DFM

Hon. James V. Selna

Hon. Douglas F. McCormick

~~PROPOSED~~ PROTECTIVE ORDER
PURSUANT TO STIPULATION

TO ALL INTERESTED PARTIES AND THEIR ATTORNEYS OF
RECORD HEREIN:

The Court has reviewed the [PROPOSED] PROTECTIVE ORDER
PURSUANT TO STIPULATION signed by attorneys for Plaintiff and
Counterdefendant TOY VAULT, LLC (“Plaintiff”), and Defendant and
Counterclaimant PEACHSTATE HOBBY DISTRIBUTION, LLC (“Defendant”),
and hereby approves its terms and ORDERS as follows:

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are 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, the parties hereby stipulate to and petition the court
to enter the following Stipulated Protective Order. The parties acknowledge that this

1 Order does not confer blanket protections on all disclosures or responses to discovery
2 and that the protection it affords from public disclosure and use extends only to the
3 limited information or items that are entitled to confidential treatment under the
4 applicable legal principles. The parties further acknowledge, as set forth in Section
5 12.3, below, that this Stipulated Protective Order does not entitle them to file
6 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures
7 that must be followed and the standards that will be applied when a party seeks
8 permission from the court to file material under seal.

9 2. DEFINITIONS

10 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
11 information or items under this Order.

12 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
13 how it is generated, stored or maintained) or tangible things that qualify for protection
14 under Federal Rule of Civil Procedure 26(c).

15 2.3 Counsel (without qualifier): Outside Counsel of Record and House
16 Counsel (as well as their support staff).

17 2.4 Designating Party: a Party or Non-Party that designates information or
18 items that it produces in disclosures or in responses to discovery as
19 “CONFIDENTIAL.”

20 2.5 Disclosure or Discovery Material: all items or information, regardless of
21 the medium or manner in which it is generated, stored, or maintained (including,
22 among other things, testimony, transcripts, and tangible things), that are produced or
23 generated in disclosures or responses to discovery in this matter.

24 2.6 Expert: a person with specialized knowledge or experience in a matter
25 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
26 expert witness or as a consultant in this action.

1 2.7 House Counsel: attorneys who are employees of a party to this action.
2 House Counsel does not include Outside Counsel of Record or any other outside
3 counsel.

4 2.8 Non-Party: any natural person, partnership, corporation, association, or
5 other legal entity not named as a Party to this action.

6 2.9 Outside Counsel of Record: attorneys who are not employees of a party
7 to this action but are retained to represent or advise a party to this action and have
8 appeared in this action on behalf of that party or are affiliated with a law firm which
9 has appeared on behalf of that party.

10 2.10 Party: any party to this action, including all of its officers, directors,
11 employees, consultants, retained experts, and Outside Counsel of Record (and their
12 support staffs).

13 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
14 Discovery Material in this action.

15 2.12 Professional Vendors: persons or entities that provide litigation support
16 services (e.g., photocopying, videotaping, translating, preparing exhibits or
17 demonstrations, and organizing, storing, or retrieving data in any form or medium)
18 and their employees and subcontractors.

19 2.13 Protected Material: any Disclosure or Discovery Material that is
20 designated as “CONFIDENTIAL.”

21 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material
22 from a Producing Party.

23 3. SCOPE

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

12 4. DURATION

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

21 5. DESIGNATING PROTECTED MATERIAL

22 5.1 Exercise of Restraint and Care in Designating Material for Protection.

23 Each Party or Non-Party that designates information or items for protection under this
24 Order must take care to limit any such designation to specific material that qualifies
25 under the appropriate standards. The Designating Party must designate for protection
26 only those parts of material, documents, items, or oral or written communications that
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1 qualify – so that other portions of the material, documents, items, or communications
2 for which protection is not warranted are not swept unjustifiably within the ambit of
3 this Order.

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

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

12 5.2 Manner and Timing of Designations. Except as otherwise provided in
13 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
14 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
15 under this Order must be clearly so designated before the material is disclosed or
16 produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic
19 documents, but excluding transcripts of depositions or other pretrial or trial
20 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” to each
21 page that contains protected material. If only a portion or portions of the material on a
22 page qualifies for protection, the Producing Party also must clearly identify the
23 protected portion(s) (e.g., by making appropriate markings in the margins).

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

10 (b) for testimony given in deposition or in other pretrial or trial proceedings,
11 that the Designating Party identify on the record, before the close of the deposition,
12 hearing, or other proceeding, all protected testimony.

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

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

25 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
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1 designation of confidentiality at any time. Unless a prompt challenge to a Designating
2 Party's confidentiality designation is necessary to avoid foreseeable, substantial
3 unfairness, unnecessary economic burdens, or a significant disruption or delay of the
4 litigation, a Party does not waive its right to challenge a confidentiality designation by
5 electing not to mount a challenge promptly after the original designation is disclosed.

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

21 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without
22 court intervention, the Designating Party shall file and serve a motion to retain
23 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-
24 5, if applicable) within 21 days of the initial notice of challenge or within 14 days of
25 the parties agreeing that the meet and confer process will not resolve their dispute,
26 whichever is earlier. Each such motion must be accompanied by a competent
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1 declaration affirming that the movant has complied with the meet and confer
2 requirements imposed in the preceding paragraph. Failure by the Designating Party to
3 make such a motion including the required declaration within 21 days (or 14 days, if
4 applicable) shall automatically waive the confidentiality designation for each
5 challenged designation. In addition, the Challenging Party may file a motion
6 challenging a confidentiality designation at any time if there is good cause for doing
7 so, including a challenge to the designation of a deposition transcript or any portions
8 thereof. Any motion brought pursuant to this provision must be accompanied by a
9 competent declaration affirming that the movant has complied with the meet and
10 confer requirements imposed by the preceding paragraph.

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

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is
21 disclosed or produced by another Party or by a Non-Party in connection with this case
22 only for prosecuting, defending, or attempting to settle this litigation. Such Protected
23 Material may be disclosed only to the categories of persons and under the conditions
24 described in this Order. When the litigation has been terminated, a Receiving Party
25 must comply with the provisions of section 13 below (FINAL DISPOSITION).

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

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
4 otherwise ordered by the court or permitted in writing by the Designating Party, a
5 Receiving Party may disclose any information or item designated “CONFIDENTIAL”
6 only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
8 as employees of said Outside Counsel of Record to whom it is reasonably necessary to
9 disclose the information for this litigation and who have signed the “Acknowledgment
10 and Agreement to Be Bound” that is attached hereto as Exhibit A;

11 (b) the officers, directors, and employees (including House Counsel) of the
12 Receiving Party to whom disclosure is reasonably necessary for this litigation and
13 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

17 (d) the court and its personnel;

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

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

2 (g) the author or recipient of a document containing the information or a
3 custodian or other person who otherwise possessed or knew the information.

4 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
5 OTHER LITIGATION

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

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

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

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

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

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

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

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

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

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

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

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

26 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

9 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
10 PROTECTED MATERIAL

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

21 12. MISCELLANEOUS

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

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

3 12.3 Filing Protected Material. Without written permission from the
4 Designating Party or a court order secured after appropriate notice to all interested
5 persons, a Party may not file in the public record in this action any Protected Material.
6 A Party that seeks to file under seal any Protected Material must comply with Civil
7 Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court
8 order authorizing the sealing of the specific Protected Material at issue. Pursuant to
9 Civil Local Rule 79-5, a sealing order will issue only upon a request establishing that
10 the Protected Material at issue is privileged, protectable as a trade secret, or otherwise
11 entitled to protection under the law. If a Receiving Party's request to file Protected
12 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then
13 the Receiving Party may file the information in the public record pursuant to Civil
14 Local Rule 79-5(e) unless otherwise instructed by the court.

15 13. FINAL DISPOSITION

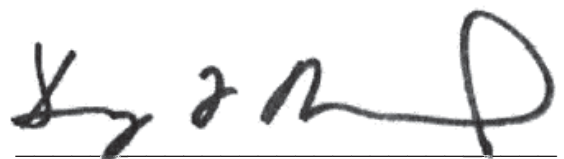
16 Within 60 days after the final disposition of this action, as defined in paragraph
17 4, each Receiving Party must return all Protected Material to the Producing Party or
18 destroy such material. As used in this subdivision, "all Protected Material" includes
19 all copies, abstracts, compilations,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

SO ORDERED.

DATED: June 19, 2018



Hon. Douglas F. McCormick
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
5 I have read in its entirety and understand the Stipulated Protective Order that was
6 issued by the United States District Court for the Central District of California on
7 _____ in the case of TOY VAULT, LLC v. PEACHSTATE HOBBY
8 DISTRIBUTION, INC., Case No. . 8:17-cv-02046-JVS-DFM. I agree to comply with
9 and to be bound by all the terms of this Stipulated Protective Order and I understand
10 and acknowledge that failure to so comply could expose me to sanctions and
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in
12 any manner any information or item that is subject to this Stipulated Protective Order
13 to any person or 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
15 for the Central District of California for the purpose of enforcing the terms of this
16 Stipulated Protective Order, even if such enforcement proceedings occur after
17 termination of this action.

18
19 Date: _____

20 City and State where sworn and signed: _____

21
22 Printed name: _____

23
24 Signature: _____