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17 Attorneys for Defendant  
 18 GAGS AND GAMES, INC., doing business as Halloween City

19 UNITED STATES DISTRICT COURT

20 Eastern District of California – Sacramento Division

21 JOAN WILKENING, TARA MISSEL, and  
 22 CHRISTOPHER HUGHES, individually, and  
 on behalf of all others similarly situated,

23 Plaintiffs,

24 v.

25 GAGS AND GAMES, INC. doing business  
 26 as HALLOWEEN CITY, a Michigan  
 corporation,

27 Defendant.  
 28

Case No. 2:11-CV-01802-JAM-DAD

**STIPULATED PROTECTIVE ORDER**

Complaint Filed: July 8, 2011

1           1.       PURPOSES AND LIMITATIONS

2                   Disclosure and discovery activity in this action will involve the production of  
3           personal contact information of potential class members comprised of past and current employees  
4           of Defendant, for which special protection from public disclosure and from use for any purpose  
5           other than prosecuting this litigation may be warranted. *See Putnam v. Eli Lilly & Co.*, 508 F.  
6           Supp. 2d 812, 814 (C.D. Cal. 2007). The parties assert that this confidential information should  
7           be protected by a Court order rather than by a private agreement because the entry of a protective  
8           order would carry the weight of the Court’s imprimatur and authorize the exercise of its contempt  
9           power over any potential violations of this protective order. A private agreement between the  
10          parties would not serve to fully protect the confidential nature of the protected information from  
11          unwarranted disclosure, would not be as strong of a deterrent against such disclosure, and would  
12          not provide sufficient remedies in the event of disclosure.

13                   Accordingly, the parties hereby stipulate to and petition the court to enter the  
14          following Stipulated Protective Order. The parties acknowledge that this Order does not confer  
15          blanket protections on all disclosures or responses to discovery and that the protection it affords  
16          from public disclosure and use extends only to the limited information or items that are entitled to  
17          confidential treatment under the applicable legal principles. The parties further acknowledge, as  
18          set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file  
19          confidential information under seal; Civil Local Rule 141 sets forth the procedures that must be  
20          followed and the standards that will be applied when a party seeks permission from the court to  
21          file material under seal.

22           2.       DEFINITIONS

23                   2.1       Challenging Party: a Party or Non-Party that challenges the designation of  
24          information or items under this Order.

25                   2.2       “CONFIDENTIAL” Information or Items: information (regardless of how  
26          it is generated, stored or maintained) or tangible things that qualify for protection under Federal  
27          Rule of Civil Procedure 26(c).

28          ///

- 1                   2.3    Counsel (without qualifier): Outside Counsel of Record and House  
2 Counsel (as well as their support staff).
- 3                   2.4    Designating Party: a Party or Non-Party that designates information or  
4 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”
- 5                   2.5    Disclosure or Discovery Material: all items or information, regardless of  
6 the medium or manner in which it is generated, stored, or maintained (including, among other  
7 things, testimony, transcripts, and tangible things), that are produced or generated in disclosures  
8 or responses to discovery in this matter.
- 9                   2.6    Expert: a person with specialized knowledge or experience in a matter  
10 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
11 witness or as a consultant in this action.
- 12                  2.7    House Counsel: attorneys who are employees of a party to this action.  
13 House Counsel does not include Outside Counsel of Record or any other outside counsel.
- 14                  2.8    Non-Party: any natural person, partnership, corporation, association, or  
15 other legal entity not named as a Party to this action.
- 16                  2.9    Outside Counsel of Record: attorneys who are not employees of a party to  
17 this action but are retained to represent or advise a party to this action and have appeared in this  
18 action on behalf of that party or are affiliated with a law firm which has appeared on behalf of  
19 that party.
- 20                  2.10 Party: any party to this action, including all of its officers, directors,  
21 employees, consultants, retained experts, and Outside Counsel of Record (and their support  
22 staffs).
- 23                  2.11 Producing Party: a Party or Non-Party that produces Disclosure or  
24 Discovery Material in this action.
- 25                  2.12 Professional Vendors: persons or entities that provide litigation support  
26 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
27 organizing, storing, or retrieving data in any form or medium) and their employees and  
28 subcontractors.

1                   2.13    Protected Material: personal contact information of potential class  
2 members comprised of past and current employees of Defendant.

3                   2.14    Receiving Party: a Party that receives Disclosure or Discovery Material  
4 from a Producing Party.

5                   3.        SCOPE

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

19                  4.        DURATION

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

27                  ///

28                  ///

1           5.     DESIGNATING PROTECTED MATERIAL

2                   5.1     Exercise of Restraint and Care in Designating Material for Protection.

3 Each party that designates information or items for protection under this Stipulated Protective  
4 Order must take care to limit any such designation to specific material that qualified under the  
5 appropriate standard. A Designating Party must take care to designate for protection only those  
6 parts of material, documents, items, or oral or written communications that qualify – so that other  
7 portions of the material, documents, items, or communications for which protection is not  
8 warranted are not swept unjustifiably within the ambit of this Stipulated Protective Order. If it  
9 comes to a Designating Party’s attention that information or items that it designated for  
10 protection do not qualify for protection, that Designating Party must promptly notify all other  
11 Parties that it is withdrawing the mistaken designation.

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

16                             Designation in conformity with this Order requires:

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

23                             A Party or Non-Party that makes original documents or materials available for  
24 inspection need not designate them for protection until after the inspecting Party has indicated  
25 which material it would like copied and produced. During the inspection and before the  
26 designation, all of the material made available for inspection shall be deemed  
27 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants copied and  
28 produced, the Producing Party must determine which documents, or portions thereof, qualify for

1 protection under this Order. Then, before producing the specified documents, the Producing  
2 Party must affix the “CONFIDENTIAL” legend to each page that contains Protected Material. If  
3 only a portion or portions of the material on a page qualifies for protection, the Producing Party  
4 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
5 margins).

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

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

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
15 failure to designate qualified information or items does not, standing alone, waive the  
16 Designating Party’s right to secure protection under this Order for such material. Upon timely  
17 correction of a designation, the Receiving Party must make reasonable efforts to assure that the  
18 material is treated in accordance with the provisions of this Order.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 A party that elects to initiate a challenge to a Designating Party’s confidentiality  
21 designation must do so in good faith and begin the process by conferring directly with counsel for  
22 the designating party. In conferring, the Challenging Party must explain the basis for its belief  
23 that the confidentiality designation was not proper and must give the designating party an  
24 opportunity to review the designated material, to reconsider the circumstances, and, if not change  
25 in designation is offered, to explain the basis for the chosen designation. A Challenging Party  
26 may proceed to the next stage of the challenge process only if it has engaged in this meet and  
27 confer process first. A party that elects to press a challenge to a confidentiality designation after  
28 considering the justification offered by the Designating Party may file and serve a motion that

1 identifies the challenged material and sets forth in detail the basis for the challenge. Each such  
2 motion must be accompanied by a competent declaration that affirms that the movant has  
3 complied with the meet and confer requirements imposed in the preceding paragraph and sets  
4 forth with specificity the justification for the confidentiality designation that was given by the  
5 Designating Party in the meet and confer dialogue.

6 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is  
8 disclosed or produced by another Party or by a Non-Party in connection with this case only for  
9 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
10 disclosed only to the categories of persons and under the conditions described in this Order.  
11 When the litigation has been terminated, a Receiving Party must comply with the provisions of  
12 section 13 below (FINAL DISPOSITION).

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

16 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
17 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
18 disclose any information or item designated “CONFIDENTIAL” only to:

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

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

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

1 (d) the court and its personnel, and any private mediator or other ADR  
2 professional retained or selected by the parties;

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

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

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

14 (h) empanelled jurors.

15 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
16 OTHER LITIGATION

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

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

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

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

28 If the Designating Party timely seeks a protective order, the Party served with the



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

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

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

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

18 1. promptly notify in writing the Requesting Party and the Non-Party  
19 that some or all of the information requested is subject to a confidentiality agreement with a Non-  
20 Party;

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

24 3. make the information requested available for inspection by the  
25 Non-Party.

26 (c) If the Non-Party fails to object or seek a protective order from this court  
27 within 14 days of receiving the notice and accompanying information, the Receiving Party may  
28 produce the Non-Party’s confidential information responsive to the discovery request. If the

1 Non-Party timely seeks a protective order, the Receiving Party shall not produce any information  
2 in its possession or control that is subject to the confidentiality agreement with the Non-Party  
3 before a determination by the court.<sup>1</sup> Absent a court order to the contrary, the Non-Party shall  
4 bear the burden and expense of seeking protection in this court of its Protected Material.

5 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

13 Willful violation by any person of any provision of this Order may be punishable  
14 as contempt of Court. Further, any party hereto may pursue any and all civil remedies available  
15 to him or it for breach of the terms of this Order.

16 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
17 PROTECTED MATERIAL

18 When a Producing Party gives notice to Receiving Parties that certain  
19 inadvertently produced material is subject to a claim of privilege or other protection, the  
20 obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure  
21 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in  
22 an e-discovery order that provides for production without prior privilege review. Pursuant to  
23 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect  
24 of disclosure of a communication or information covered by the attorney-client privilege or work  
25

26 \_\_\_\_\_  
27 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality  
interests in this court.

1 product protection, the parties may incorporate their agreement in the stipulated protective order  
2 submitted to the court.

3 12. MISCELLANEOUS

4 12.1 Right to Further Relief. Nothing in this Order abridges the right of any  
5 person to seek its modification by the court in the future.

6 12.2 Right to Assert Other Objections. By stipulating to the entry of this  
7 Protective Order no Party waives any right it otherwise would have to object to disclosing or  
8 producing any information or item on any ground not addressed in this Stipulated Protective  
9 Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of  
10 the material covered by this Protective Order.

11 12.3 Filing Protected Material. Without written permission from the  
12 Designating Party or a court order secured after appropriate notice to all interested persons, a  
13 Party may not file in the public record in this action any Protected Material. A Party that seeks to  
14 file under seal any Protected Material must comply with Civil Local Rule 141. Protected  
15 Material may only be filed under seal pursuant to a court order authorizing the sealing of the  
16 specific Protected Material at issue. Pursuant to Civil Local Rule 141, a sealing order will issue  
17 only upon a request establishing that the Protected Material at issue is privileged, protectable as a  
18 trade secret, or otherwise entitled to protection under the law.

19 13. FINAL DISPOSITION. Within 60 days after the final disposition of this action,  
20 as defined in paragraph 4, each Receiving Party must return all Protected Material to the  
21 Producing Party or destroy such material. As used in this subdivision, “all Protected Material”  
22 includes all copies, abstracts, compilations, summaries, and any other format reproducing or  
23 capturing any of the Protected Material. Whether the Protected Material is returned or destroyed,  
24 the Receiving Party must submit a written certification to the Producing Party (and, if not the  
25 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by  
26 category, where appropriate) all the Protected Material that was returned or destroyed and (2)  
27 affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries  
28 or any other format reproducing or capturing any of the Protected Material. Notwithstanding this

1 provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial,  
2 deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial  
3 exhibits, expert reports, attorney work product, and consultant and expert work product, even if  
4 such materials contain Protected Material. Any such archival copies that contain or constitute  
5 Protected Material remain subject to this Protective Order as set forth in Section 4  
6 (DURATION).

7  
8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9  
10 Dated: September 28, 2011

LAW OFFICE OF MARY-ALICE COLEMAN

11  
12 /s/ Michael S. Ahmad

MICHAEL S. AHMAD

13 Attorneys for Plaintiffs JOAN WILKENING,  
14 TARA MISSEL, and CHRISTOPHER HUGHES,  
15 individually, and on behalf of all others similarly  
situated.

16  
17 Dated: September 28, 2011

FOX ROTHSCHILD LLP

18  
19 /s/ Tyreen Torner

TYREEN TORNER

20 Attorneys for Defendant  
21 GAGS AND GAMES, INC., doing business as  
Halloween City

22 IT IS SO ORDERED.

23  
24  
25 DATED: 10/3/2011

/s/ John A. Mendez

Hon. John A. Mendez

United States District Court Judge

26  
27  
28

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 have read  
5 in its entirety and understand the Stipulated Protective Order that was issued by the United States  
6 District Court for the Eastern District of California on \_\_\_\_\_ [date]  
7 in the case of *Joan Wilkening, Tara Missel, and Christopher Hughes, individually, and on behalf*  
8 *of all others similarly situated, v. Gags and Games, Inc., doing business as Halloween City, a*  
9 *Michigan corporation*, Case No. 2:11-cv-01802-JAM-DAD. I agree to comply with and to be  
10 bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that  
11 failure to so comply could expose me to sanctions and punishment in the nature of contempt. I  
12 solemnly promise that I will not disclose in any manner any information or item that is subject to  
13 this Stipulated Protective Order to any person or entity except in strict compliance with the  
14 provisions of this Order.

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

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

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

25 Printed name: \_\_\_\_\_  
26 [printed name]

27 Signature: \_\_\_\_\_  
28 [signature]