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 13 TOYS ‘R’ US – DELAWARE, INC.

15 UNITED STATES DISTRICT COURT
 16 EASTERN DISTRICT OF CALIFORNIA

18 DARON HAIRABEDIAN and IVAN
 19 HERNANDEZ, and on behalf of themselves
 and the general public similarly situated,
 20 Plaintiffs,

21 vs.

22 TOYS ‘R’ US – DELAWARE, INC., a
 Delaware Corporation, CAROL MILLER, and
 23 DOES 1-50, inclusive,
 24 Defendants.

Case No.: 2:16-cv-02326-WHO
 STIPULATION AND ~~PROPOSED~~
 PROTECTIVE ORDER

Complaint Filed: 8/3/2016
 Trial Date: 12/10/2018

26 The parties to the above-captioned matter (“Action”) have and will propound discovery and take
 27 depositions throughout this Action. Certain responsive materials have and will contain private,
 28 confidential, and/or proprietary information. This information may and/or does include, but is not

1 limited to, personnel or other consumer records, business protocols, policies, and procedures, and other
2 information not otherwise available to the public or between parties (“Protected Information”). With
3 respect to personnel and other consumer records, such information implicates the privacy rights of
4 employees who are not named in the Action. With respect to business protocols, policies, and
5 procedures, such information constitutes sensitive business information which if publicly disseminated
6 can be used by competitors or members of the public to harm Defendant TOYS ‘R’ US - DELAWARE,
7 INC’s (“TRU”) business operations. To protect the confidentiality of this information, both parties
8 stipulate as follows and request the Court to issue a protective order containing the terms specified
9 herein, pursuant to Federal Rule of Civil Procedure 26 and U.S. District Court, Eastern District of
10 California, Local Rules 141, 141.1 and 143 to ensure that the terms of this agreement are enforceable by
11 the Court especially as to persons who receive Protected Information and agree to be bound pursuant to
12 sections I.B.2, I.B.4, I.B.8, and Exhibit A.

13 **I. USE OF CONFIDENTIAL INFORMATION**
14 **AND MATERIALS IN DISCOVERY**

15 **A. Designated Material:** During discovery in this Action, whether done by formal or informal
16 means, any information or materials within the scope of Federal Rules of Civil Procedure 26 through 27,
17 including but not limited to documents, deposition testimony, transcripts and exhibits, interrogatory
18 responses, responses to requests for admission, subpoenaed records and other written, recorded,
19 electronic or graphic materials, may be designated as confidential, as provided herein, by the person or
20 entity producing, submitting, filing or lodging it, or by any party to this Action (the “Designator”). A
21 Designator may only designate information and material confidential when the Designator has a good
22 faith belief that it contains Protected Information subject to protection under Federal Rule of Civil
23 Procedure 26(c) and U.S. District Court, Eastern District of California, Local Rule 141. Information
24 covered by these provisions shall be referred to in this stipulation and order (“Stipulation”) as
25 “Designated Material.” Designated Material shall be used only in connection with the litigation among
26 the parties. Should privileged material be produced inadvertently as Designated Material, it is agreed
27 that such production shall not be deemed to be a waiver of any applicable privilege.

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1 **B. Access to Designated Material:** Except with the prior written consent of both parties to this
2 Action or a prior Court order, parties may only disclose or produce copies of Designated Material to the
3 following persons or entities:

4 (1) parties to this Action and their officers, directors and/or current employees;

5 (2) persons previously employed by Defendant TOYS 'R' US - DELAWARE, INC ("TRU")
6 as of the date the material at issue was created, and who had access to the material in the course and
7 scope of their duties, provided such individuals shall, prior to any disclosure, execute a Certification to
8 be bound by this Stipulation in the form attached hereto as Exhibit A;

9 (3) the parties' counsel in this Action, including in-house counsel and such counsel's legal
10 associates, paralegals, secretaries, and office staff;

11 (4) independent experts or consultants and their staffs who are retained to assist counsel in
12 this Action, provided such experts or consultants shall, prior to any disclosure, execute a Certification to
13 be bound by this Stipulation in the form attached hereto as Exhibit A;

14 (5) third parties retained by counsel in this Action for purposes of copying, computer coding
15 or providing other document processing services;

16 (6) court personnel in this Action, including court reporters and court officers, and subject to
17 the terms set forth in section II of this Stipulation where applicable;

18 (7) any witness shown the materials during a deposition in this Action;

19 (8) any witness (other than persons described in paragraph I.B.(7)), provided they first
20 execute a Certification to be bound by this Stipulation in the form attached hereto as Exhibit A; and;

21 (9) any person who appears as an author, addressee or recipient on the face of the materials
22 at issue.

23 In addition to the foregoing, TRU may disclose materials it has designated as confidential (in the
24 manner specified in section I.C below) to its customers, vendors, affiliates, agents, and persons or
25 entities of any kind as needed for business or legal purposes.

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1 **C. Designating Discovery Documents and Materials:**

2 (1) Designated Material disclosed in discovery must be marked “CONFIDENTIAL” by the
3 Designator. Where a document or response consists of more than one page, all pages on which
4 confidential information appears shall be so marked.

5 (2) In the case of materials produced by a non-party, any party may obtain a written
6 stipulation from all parties, or seek a protective order, to designate such materials confidential and
7 subject to the terms of this Stipulation.

8 **D. Designating Deposition Transcripts and Exhibits:**

9 (1) Deposition transcripts or portions thereof may be designated as confidential either:

10 (a) at the deposition itself and by request of any party, or

11 (b) by captioned written notice to the reporter, and all counsel of record, given within
12 20 calendar days following notice from the reporter that the transcript is available
13 for review. Upon receipt of the captioned written notice, (1) the reporter will
14 reissue the deposition transcript with the appropriate “CONFIDENTIAL”
15 markings and (2) all noticed counsel shall be responsible for marking any un-
16 marked copies of the designated transcript or portion thereof in their possession or
17 control as “CONFIDENTIAL” and treating those copies subject to the terms of
18 this Stipulation.

19 (2) Any party may mark Designated Material as a deposition exhibit and examine any
20 witness thereon, provided the exhibit and related transcript pages receive the same confidentiality
21 designation as the original Designated Material.

22 (3) Where deposition testimony is expected to be designated confidential, the Designator
23 may exclude from the deposition all persons other than those to whom the Designated Material may be
24 disclosed under paragraph I.B of this Stipulation.

25 **E. Copies of Designated Material:** Copies of Designated Material may only be made by or for
26 persons and entities identified in paragraph I.B, provided all copies are appropriately marked
27 “CONFIDENTIAL.”

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1 persuasion in any such challenge proceeding shall be on the Designating Party. Notwithstanding any
2 challenge to the designation of material as confidential, all documents shall be treated as such and shall
3 be subject to the provisions of this Stipulation unless and until one of the following occurs:

- 4 (1) the Designator withdraws such designation in writing; or
- 5 (2) the Court rules the material is not confidential.

6 **C. No Prejudice:**

7 (1) Nothing in this Stipulation shall preclude any party from seeking and obtaining additional
8 or different protection permitted by law with respect to the confidentiality of any information or
9 material.

10 (2) This Stipulation shall not diminish any existing obligation or right with respect to
11 Designated Material.

12 (3) Nothing in this Stipulation shall preclude any party from asserting good faith objections
13 to discovery requests including, but not limited to, objections that the requested information or
14 documents are not relevant and/or are outside the permissible scope of discovery.

15 (4) Nothing in this Stipulation shall preclude any party from redacting non-responsive
16 confidential information.

17 (5) Nothing in this Stipulation shall preclude any party from requesting, seeking, or
18 stipulating to a subsequent attorneys' eyes only protective order as appropriate.

19 (3) The parties shall make best efforts to assert any claims of confidentiality prior to, or at
20 the time when, responsive discovery is disclosed. The production of materials by any party shall be
21 without prejudice to any claim by the producing party that such material should have been designated as
22 confidential.

23 (4) A party may assert a claim of confidentiality in writing and with particularity within a
24 reasonable time after learning of an inadvertent or mistaken disclosure. The materials at issue shall then
25 be treated as if the claim were made prior to disclosure. If within a reasonable time after documents are
26 inadvertently or mistakenly disclosed the producing party asserts a claim that such documents are
27 confidential, the receiving parties shall take prompt steps to ensure all known copies of the documents
28 are promptly returned to the producing party for designation. After designation, the producing party

1 shall promptly return copies to each of the receiving parties. The receiving parties may thereafter
2 contest the claim of confidentiality as set forth herein.

3 (5) The inadvertent disclosure of materials which are subject to a legitimate claim that those
4 materials are protected by privilege, including attorney-client privilege, and/or the attorney work product
5 doctrine (“Privileged Material”) shall not waive any privilege or other applicable protective doctrine for
6 that material or for the subject matter of the inadvertently disclosed information, if the producing party,
7 upon becoming aware of the disclosure, promptly requests its return. The inadvertent disclosure shall
8 also not estop that party or the privilege holder from designating the information or document as
9 attorney-client privileged or subject to the work product doctrine or any level of confidentiality at a later
10 date. There shall be no requirement for the producing party to prove that it took reasonable steps to
11 prevent disclosure, including, without limitation, proof that its efforts to review for privileged or
12 confidential information or documents were reasonable. If the requesting party receives material that it
13 knows, or reasonably should know is subject to a legally recognizable privilege or evidentiary
14 protection, then the requesting party shall: (a) refrain from reading the Privileged Material any more
15 closely than is necessary to ascertain that it is privileged; (b) promptly notify the producing party in
16 writing that it has discovered documents believed to be Privileged Material; (c) specifically identify the
17 documents, and, (d) where possible, return, sequester, or destroy all copies of such materials with any
18 notes, abstracts or compilations of the content thereof, within five (5) calendar days of discovery by the
19 requesting party. Where such Privileged Material cannot be destroyed or separated, it shall not be
20 reviewed, disclosed, or otherwise used by the requesting party. Notwithstanding, the requesting party is
21 under no obligation to search or review a producing party’s materials to identify potentially Privileged
22 Material.

23 **D. Timing:** If the last day to perform an action provided for in this Stipulation falls on a Saturday,
24 Sunday, or a legal holiday then the time to perform that act is extended to the next business day.

25 **E. Final Disposition:** Upon final termination of this Action, and at the written request of the
26 Designator, all Designated Material and all copies thereof shall, within 30 calendar days of such request
27 be: (1) returned to counsel for the party or non-party that produced the material; or (2) destroyed.

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1 Notwithstanding this paragraph, counsel for the parties may retain pleadings, correspondence, attorney
2 and consultant work product, and deposition transcripts and exhibits for archival purposes.

3 **E. Improper Disclosure:**

4 (1) The parties and their counsel are required to use reasonable care and precaution to protect
5 the confidentiality of material covered by this Stipulation. If Designated Material submitted in
6 accordance with the terms of this Stipulation is disclosed to any person or entity other than in the
7 manner authorized by the terms herein, the party and/or person responsible for the disclosure must
8 immediately bring all pertinent facts relating to such disclosure to the attention of all uninvolved parties
9 and, without prejudice to any other rights under this Stipulation, make every effort to prevent further
10 disclosures by the persons or entities to whom the information was disclosed.

11 (2) The parties agree that the unauthorized disclosure of Designated Material may cause
12 irreparable injury to the non-breaching party. Therefore, in the event of any breach or threatened breach
13 of the provisions herein, the non-breaching party shall be entitled to seek immediate injunctive relief by
14 way of *ex parte* hearing or as otherwise allowed by law or equity. The decision by a non-breaching
15 party to seek such injunctive relief will be without prejudice to any other rights or remedies, legal or
16 equitable, which the non-breaching party might have in the event of such a breach or threatened breach.
17 A non-breaching party seeking or obtaining relief under this provision shall not constitute a waiver or
18 release of any other rights or remedies available to such party.

19 **F. Survival:** The binding effect of this Stipulation shall survive termination of this Action, and the
20 Court shall retain jurisdiction to enforce the Stipulation.

21 **G. Immediate Obligation:** The Parties' duties described in this Stipulation to maintain the
22 confidentiality of Designated Material and only use such material and information for purposes of this
23 litigation is effective immediately upon execution of this document by their counsel regardless of when
24 or if the terms herein become an order of the Court.

25 DATED: April 27, 2017

THE VELEZ LAW FIRM

By: 


Mark P. Velez

Kelsey A. Webber

Attorneys for Plaintiffs

1 DATED: ^{May 9} ~~April~~ ____, 2017

JACKSON LEWIS P.C.

2
3 By: 
4 Mia Farber
5 Adam Y. Siegel
6 Sander van der Heide
7 Attorneys for Defendant
8 Toys 'R' Us – Delaware, Inc.

9 ~~PROPOSED~~ ORDER

10 The terms of this Stipulation and Protective Order are hereby approved and adopted.

11 IT IS SO ORDERED.

12 Dated: May 12, 2017

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14 Judge of the United States District Court
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15 UNITED STATES DISTRICT COURT
16 EASTERN DISTRICT OF CALIFORNIA

18 DARON HAIRABEDIAN and IVAN) Case No.: 2:16-cv-02326-WHO
HERNANDEZ, and on behalf of themselves)
19 and the general public similarly situated,) **STIPULATION AND [PROPOSED]**
20 Plaintiffs,) **PROTECTIVE ORDER - EXHIBIT A**
21 vs.)
22 TOYS 'R' US – DELAWARE, INC., a) Complaint Filed: 8/3/2016
Delaware Corporation, CAROL MILLER, and) Trial Date: 12/10/2018
23 DOES 1-50, inclusive,)
24 Defendants.)
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26 1. My name is _____ . My current work or home (circle one)
27 address is _____ .
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2. I have received and read a copy of the Stipulation and Protective Order (“Order”) entered in this action. I understand the provisions of the Order and agree to comply with and be bound by its provisions. I submit to the jurisdiction of this Court for purposes of enforcing any of the terms of the Order.

I declare under penalty of perjury under the laws of the United States and California that the foregoing is true and correct.

Executed this ____ day of _____, 20____, at _____,
(City)

(State)

(Signature)