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23 Attorneys for Defendant  
 24 TOYS 'R' US - DELAWARE, INC.

25 UNITED STATES DISTRICT COURT CALIFORNIA  
 26 NORTHERN DISTRICT OF CALIFORNIA

27 MARINA SALVAN, as an individual and on  
 28 behalf of all others similarly situated,

Plaintiffs,

v.

TOYS 'R' US-DELAWARE, INC., a  
 Delaware corporation; and DOES 1 through  
 50, inclusive,

Defendants.

Case No. 3:16-cv-04138-JST

**STIPULATION AND ~~PROPOSED~~  
 PROTECTIVE ORDER**

Complaint Filed: 06/17/2016  
 Removal filed: 07/22/2016  
**Trial Date: None Set**

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1           The parties to the above-captioned matter (“Action”) have and will propound discovery and  
2 take depositions throughout this Action. Certain responsive materials have and will contain private,  
3 confidential, and/or proprietary information. This information may and/or does include, but is not  
4 limited to, personnel or other consumer records, business protocols and procedures, and other  
5 information not otherwise available to the public or between parties (“Protected Information”). To  
6 protect the confidentiality of this information, both parties stipulate as follows and request the Court  
7 to issue a protective order containing the terms specified herein, pursuant to Federal Rule of Civil  
8 Procedure 26 and U.S. District Court, Northern District of California, Local Rules 79-5 and 7-12.  
9 The parties agree this stipulation is effective immediately and agree to abide by the terms of this  
10 stipulation whether or not the Court issues the protective order requested herein.

11                           **I.       USE OF CONFIDENTIAL INFORMATION**  
12   **AND MATERIALS IN DISCOVERY**

13       **A.    Designated Material:** During discovery in this Action, whether done by formal or  
14 informal means, any information or materials within the scope of Federal Rules of Civil Procedure  
15 26 through 27, including but not limited to documents, deposition testimony, transcripts and  
16 exhibits, interrogatory responses, responses to requests for admission, subpoenaed records and  
17 other written, recorded, electronic or graphic materials, may be designated as confidential, as  
18 provided herein, by the person or entity producing, submitting, filing or lodging it, or by any party  
19 to this Action (the “Designator”). A Designator may only designate information and material  
20 confidential when the Designator has a good faith belief that it contains Protected Information  
21 subject to protection under Federal Rule of Civil Procedure 26(c) and U.S. District Court, Northern  
22 District of California, Local Rule 79-5. Information covered by these provisions shall be referred  
23 to in this stipulation and order (“Stipulation”) as “Designated Material.” Designated Material shall  
24 be used only in connection with the litigation among the parties. Should privileged material be  
25 produced inadvertently as Designated Material, it is agreed that such production shall not be  
26 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  
2 this Action or a prior Court order, parties may only disclose or produce copies of Designated  
3 Material to the 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  
6 ("TRU") as of the date the material at issue was created, and who had access to the material in the  
7 course and scope of their duties, provided such individuals shall, prior to any disclosure, execute a  
8 Certification to 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  
10 legal associates, paralegals, secretaries, and office staff;

11 (4) independent experts or consultants and their staffs who are retained to assist counsel  
12 in this Action, provided such experts or consultants shall, prior to any disclosure, execute a  
13 Certification to 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  
15 coding or providing other document processing services;

16 (6) court personnel in this Action, including court reporters and court officers, and  
17 subject to 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;  
21 and;

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

24 In addition to the foregoing, TRU may disclose materials it has designated as confidential  
25 (in the manner specified in section I.C below) to its customers, vendors, affiliates, agents, and  
26 persons or 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  
3 the Designator. Where a document or response consists of more than one page, the first page and  
4 each page or the portion thereof on which 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  
12 within 20 calendar days following notice from the reporter that the transcript  
13 is available for review. When such notice is served, all noticed counsel shall  
14 be responsible for marking the copies of the designated transcript or portion  
15 thereof in their possession or control as  
16 “CONFIDENTIAL.” Until the 20 calendar days provided for in this  
17 paragraph expire, the entire deposition transcript shall be treated as if it had  
18 been designated “CONFIDENTIAL.”

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  
23 Designator may exclude from the deposition all persons other than those to whom the Designated  
24 Material may be disclosed under paragraph I.B of this Stipulation.

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

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1 protective order is pending; or (3) until the last day allowed for production where no motion for  
2 protective order is filed.

3 **B. Objections:** A party may challenge the propriety of any designation under this Stipulation  
4 within 60 calendar days of the designation. A challenge may be made by serving on all other parties  
5 a captioned notice of objection, which shall identify with particularity the Designated Material at  
6 issue, state the basis for each challenge and propose a new designation for each item. The parties  
7 shall have seven calendar days after service of an objection to meet and confer and attempt  
8 resolution of the challenged designation (“Meet and Confer Period”). The material at issue shall  
9 be deemed re-designated as proposed by the challenging party unless, within 10 court days after  
10 expiration of the Meet and Confer Period, the Designator has filed and served a motion for a  
11 protective order to maintain the original designation, or to establish other confidentiality  
12 protections. In any objection or challenge, the Designator shall always bear the burden to establish  
13 that the Designated Material is confidential. Notwithstanding any challenge to the designation of  
14 material as confidential, all documents shall be treated as such and shall be subject to the provisions  
15 of this Stipulation unless and until one of the following occurs:

16 (1) the party or non-party who claims the material is confidential withdraws such  
17 designation in writing; or

18 (2) the party or non-party who claims the material is confidential fails to timely apply  
19 to the Court for an order designating it as such as provided in this paragraph above; or

20 (3) the Court rules the material is not confidential.

21 **C. No Prejudice:**

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

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

27 (3) Nothing in this Stipulation shall preclude any party from asserting good faith  
28 objections to discovery requests including, but not limited to, objections that the requested

1 information or documents are not relevant and/or are outside the permissible scope of discovery.

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

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

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

10 (4) A party may assert a claim of confidentiality in writing and with particularity within  
11 a reasonable time after learning of an inadvertent or mistaken disclosure. The materials at issue  
12 shall then be treated as if the claim were made prior to disclosure. If within a reasonable time after  
13 documents are inadvertently or mistakenly disclosed the producing party asserts a claim that such  
14 documents are confidential, the receiving parties shall take prompt steps to ensure all known copies  
15 of the documents are promptly returned to the producing party for designation. After designation,  
16 the producing party shall promptly return copies to each of the receiving parties. The receiving  
17 parties may thereafter contest the claim of confidentiality as set forth herein.

18 (5) The inadvertent disclosure of materials which are subject to a legitimate claim that  
19 those materials are protected by privilege, including attorney-client privilege, and/or the attorney  
20 work product doctrine ("Privileged Material") shall not waive any privilege or other applicable  
21 protective doctrine for that material or for the subject matter of the inadvertently disclosed  
22 information, if the producing party, upon becoming aware of the disclosure, promptly requests its  
23 return. The inadvertent disclosure shall also not estop that party or the privilege holder from  
24 designating the information or document as attorney-client privileged or subject to the work product  
25 doctrine or any level of confidentiality at a later date. There shall be no requirement for the  
26 producing party to prove that it took reasonable steps to prevent disclosure, including, without  
27 limitation, proof that its efforts to review for privileged or confidential information or documents  
28 were reasonable. If the requesting party receives material that it knows, or reasonably should know

1 is subject to a legally recognizable privilege or evidentiary protection, then the requesting party  
2 shall: (a) refrain from reading the Privileged Material any more closely than is necessary to  
3 ascertain that it is privileged; (b) promptly notify the producing party in writing that it has  
4 discovered documents believed to be Privileged Material; (c) specifically identify the documents,  
5 and, (d) where possible, return, sequester, or destroy all copies of such materials with any notes,  
6 abstracts or compilations of the content thereof, within five (5) calendar days of discovery by the  
7 requesting party. Where such Privileged Material cannot be destroyed or separated, it shall not be  
8 reviewed, disclosed, or otherwise used by the requesting party. Notwithstanding, the requesting  
9 party is under no obligation to search or review a producing party's materials to identify potentially  
10 Privileged Material.

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

14 **E. Final Disposition:** Upon final termination of this Action, and at the written request of  
15 the Designator, all Designated Material and all copies thereof shall, within 30 calendar days of  
16 such request be: (1) returned to counsel for the party or non-party that produced the material; or  
17 (2) destroyed. Notwithstanding this paragraph, counsel for the parties may retain pleadings,  
18 correspondence, attorney and consultant work product, and deposition transcripts and exhibits for  
19 archival purposes.

20 **E. Improper Disclosure:**

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

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1 the information was disclosed.

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

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

13  
14 Dated: December 5, 2016

DIVERSITY LAW GROUP, P.C.

15 See attached signature page

16 By: \_\_\_\_\_

Larry W. Lee  
Kristen M. Agnew  
Nicholas Rosenthal

17  
18 Attorneys for Plaintiff  
19 MARINA SALVAN

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21 Dated: December 5, 2016

POLARIS LAW GROUP LLP

22 See attached signature page

23 By: \_\_\_\_\_

24 William L. Marder

25 Attorneys for Plaintiff  
26 MARINA SALVAN

27 Dated: December 5, 2016

JACKSON LEWIS P.C.

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By: s/ Sander van der Heide  
Mia Farber  
Adam Y. Siegel  
Sander van der Heide

Attorneys for Defendant  
TOYS 'R' US-DELAWARE, INC.

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Nicholas Rosenthal

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19 Attorneys for Plaintiff  
MARINA SALVAN

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21 Dated: December 5, 2016

POLARIS LAW GROUP LLP

22  
23 By: 

William L. Marder

24  
25 Attorneys for Plaintiff  
MARINA SALVAN

26  
27 Dated: December \_\_, 2016

JACKSON LEWIS P.C.

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**PROPOSED ORDER**

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

**IT IS SO ORDERED.**

Dated: March 23, 2017

  
\_\_\_\_\_  
Judge of the United States District Court