

JENNIFER L. KELLY (CSB No. 193416)
jkelly@fenwick.com
FENWICK & WEST LLP
555 California Street, 12th Floor
San Francisco, CA 94104
Telephone: 415.875.2300
Facsimile: 415.281.1350

JEREMY S. GOLDMAN (CSB No. 306943)
jgoldman@fkks.com
FRANKFURT KURNIT KLEIN & SELZ P.C.
2029 Century Park East, Ste. 1060
Los Angeles, CA 90067
Telephone: 310.579.9611
Facsimile: 347.438.2156

ERIC BALL (CSB No. 241327)
eball@fenwick.com
ANGEL CHIANG (CSB No. 280546)
achiang@fenwick.com
KUNYU CHING (CSB No. 292616)
kching@fenwick.com
FENWICK & WEST LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Telephone: 650.988.8500
Facsimile: 650.938.5200

Attorneys for Defendants
HASBRO, INC. and
BACKFLIP STUDIOS, LLC

Attorneys for Plaintiff
PEAK OYUN YAZILIM VE
PAZARLAMA AS d/b/a PEAK GAMES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

PEAK OYUN YAZILIM VE PAZARLAMA
AS, a Turkey corporation, d/b/a PEAK GAMES,

Plaintiff,

v.

HASBRO, INC., a Rhode Island corporation, and
BACKFLIP STUDIOS, LLC, a Delaware limited
liability company,

Defendants.

Case No.: 5:16-cv-06083 LHK

STIPULATED PROTECTIVE ORDER

Judge: Hon. Lucy Koh

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

1 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
2 Accordingly, the Parties hereby stipulate to and petition the court to enter the following Stipulated
3 Protective Order. The Parties acknowledge that this Order does not confer blanket protections on
4 all disclosures or responses to discovery and that the protection it affords from public disclosure
5 and use extends only to the limited information or items that are entitled to confidential treatment
6 under the applicable legal principles. The Parties further acknowledge, as set forth in Section
7 15.3, below, that this Stipulated Protective Order does not entitle them to file confidential
8 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
9 the standards that will be applied when a Party seeks permission from the court to file material
10 under seal.

11 **2. DEFINITIONS**

12 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
13 information or items under this Order.

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

17 2.3 Counsel (without qualifier): Outside Counsel of Record (as well as their support
18 staff).

19 2.4 Designating Party: a Party or Non-Party that designates information or items that it
20 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
22 CODE.”

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

27 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
28

1 the litigation who (1) has been retained by a Party or its Counsel to serve as an expert witness or
2 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
3 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
4 or of a Party's competitor.

5 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
6 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
7 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
8 less restrictive means.

9 2.8 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items:
10 extremely sensitive "Confidential Information or Items" representing computer code and
11 associated comments and revision histories, formulas, engineering specifications, or schematics
12 that define or otherwise describe in detail the algorithms or structure of software or hardware
13 designs, disclosure of which to another Party or Non-Party would create a substantial risk of
14 serious harm that could not be avoided by less restrictive means.

15 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
16 entity not named as a Party to this action.

17 2.10 Outside Counsel of Record: attorneys (and their support staff) who are not
18 employees of a Party to this action but are retained to represent or advise a Party to this action and
19 have appeared in this action on behalf of that Party or are affiliated with a law firm which has
20 appeared on behalf of that Party.

21 2.11 Party: any party to this action, including all of its officers, directors, employees,
22 consultants, retained experts, and Outside Counsel of Record.

23 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
24 Material in this action.

25 2.13 Professional Vendors: persons or entities that provide litigation support services
26 (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 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
2 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as
3 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

4 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
5 Producing Party.

6 **3. SCOPE**

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

19 **4. DURATION**

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

27 **5. DESIGNATING PROTECTED MATERIAL**

28 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party

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

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

11 If it comes to a Designating Party's attention that information or items that it designated
12 for protection do not qualify for protection at all or do not qualify for the level of protection
13 initially asserted, that Designating Party must promptly notify all other Parties that it is
14 withdrawing the mistaken designation.

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

19 Designation in conformity with this Order requires:

20 (a) for information in documentary form (e.g., paper or electronic documents, but
21 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
22 Party affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS'
23 EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains
24 protected material. If only a portion or portions of the material on a page qualifies for protection,
25 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
26 appropriate markings in the margins) and must specify, for each portion, the level of protection
27 being asserted.

28 A Party or Non-Party that makes original documents or materials available for inspection

1 need not designate them for protection until after the inspecting Party has indicated which
2 material it would like copied and produced. During the inspection and before the designation, all
3 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
5 copied and produced, the Producing Party must determine which documents, or portions thereof,
6 qualify for protection under this Order. Then, before producing the specified documents, the
7 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
8 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
9 CODE) to each page that contains Protected Material. If only a portion or portions of the material
10 on a page qualifies for protection, the Producing Party also must clearly identify the protected
11 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
12 portion, the level of protection being asserted.

13 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
14 Designating Party identify on the record, before the close of the deposition, hearing, or other
15 proceeding, all protected testimony and specify the level of protection being asserted. When it is
16 impractical to identify separately each portion of testimony that is entitled to protection and it
17 appears that substantial portions of the testimony may qualify for protection, the Designating
18 Party may invoke on the record (before the deposition, hearing, or other proceeding is concluded)
19 a right to have up to 30 days to identify the specific portions of the testimony as to which
20 protection is sought and to specify the level of protection being asserted. Only those portions of
21 the testimony that are appropriately designated for protection within the 30 days shall be covered
22 by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may
23 specify, at the deposition or up to 30 days afterwards if that period is properly invoked, that the
24 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
25 ATTORNEYS’ EYES ONLY.”

26 Parties shall give the other Parties notice if they reasonably expect a deposition, hearing or
27 other proceeding to include Protected Material so that the other Parties can ensure that only
28 authorized individuals and those who have signed the “Acknowledgment and Agreement to Be

1 Bound” (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a
2 deposition shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
3 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

4 Transcripts containing Protected Material shall have an obvious legend on the title page
5 that the transcript contains Protected Material, and the title page shall be followed by a list of all
6 pages (including line numbers as appropriate) that have been designated as Protected Material and
7 the level of protection being asserted by the Designating Party. The Designating Party shall
8 inform the court reporter of these requirements. Any transcript that is prepared before the
9 expiration of a 30-day period for designation shall be treated during that period as if it had been
10 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
11 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
12 actually designated.

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

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

25 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

26 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
27 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
28 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic

1 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
2 challenge a confidentiality designation by electing not to mount a challenge promptly after the
3 original designation is disclosed.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
5 process by providing written notice of each designation it is challenging and describing the basis
6 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
7 notice must recite that the challenge to confidentiality is being made in accordance with this
8 specific paragraph of the Protective Order. The Parties shall attempt to resolve each challenge in
9 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
10 forms of communication are not sufficient) within 14 days of the date of service of notice. In
11 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
12 designation was not proper and must give the Designating Party an opportunity to review the
13 designated material, to reconsider the circumstances, and, if no change in designation is offered,
14 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
15 stage of the challenge process only if it has engaged in this meet and confer process first or
16 establishes that the Designating Party is unwilling to participate in the meet and confer process in
17 a timely manner.

18 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
19 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
20 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days
21 of the initial notice of challenge or within 14 days of the Parties agreeing that the meet and confer
22 process will not resolve their dispute, whichever is later. Each such motion must be accompanied
23 by a competent declaration affirming that the movant has complied with the meet and confer
24 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such
25 a motion including the required declaration within 21 days (or 14 days, if applicable) shall
26 automatically waive the confidentiality designation for each challenged designation. In addition,
27 the Challenging Party may file a motion challenging a confidentiality designation at any time if
28 there is good cause for doing so, including a challenge to the designation of a deposition

1 transcript or any portions thereof. Any motion brought pursuant to this provision must be
2 accompanied by a competent declaration affirming that the movant has complied with the meet
3 and confer requirements imposed by the preceding paragraph.

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

11 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

12 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
13 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
14 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
15 the categories of persons and under the conditions described in this Order. When the litigation has
16 been terminated, a Receiving Party must comply with the provisions of section 16 below (FINAL
17 DISPOSITION).

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

20 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
21 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
22 information or item designated "CONFIDENTIAL" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees
24 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information
25 for this litigation;

26 (b) the officers, directors, and employees of the Receiving Party to whom disclosure is
27 reasonably necessary for this litigation;

28 (c) the court and its personnel;

1 (d) court reporters and their staff, ADR professionals and their staff, professional jury or
2 trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably
3 necessary for this litigation;

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

7 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
8 necessary, 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 custodian or
13 other person who otherwise possessed or knew the information.

14 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
15 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise
16 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
17 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
18 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

19 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
20 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information
21 for this litigation;

22 (b) Experts of the Receiving Party to whom disclosure is reasonably necessary for this
23 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (c) the court and its personnel;

25 (d) court reporters and their staff, ADR professionals and their staff, professional jury or
26 trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this
27 litigation; and

28 (e) the author or recipient of a document containing the information or a custodian or

1 other person who otherwise possessed or knew the information.

2 **8. SOURCE CODE**

3 (a) To the extent production of source code becomes necessary in this case, a
4 Producing Party may designate source code as “HIGHLY CONFIDENTIAL - SOURCE CODE”
5 if it comprises or includes confidential, proprietary or trade secret source code.

6 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE
7 CODE” shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL –
8 ATTORNEYS’ EYES ONLY” information, and may be disclosed only to the individuals to
9 whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may be
10 disclosed, as set forth in Paragraphs 7.3.

11 (c) Any source code produced in discovery shall be made available for inspection, in a
12 format allowing it to be reasonably reviewed and searched, during normal business hours or at
13 other mutually agreeable times, at an office of the Producing Party’s counsel or another mutually
14 agreed upon location. The source code shall be made available for inspection on a secured
15 computer in a secured room without Internet access or network access to other computers, and the
16 Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto
17 any recordable media or recordable device. The Producing Party may visually monitor the
18 activities of the Receiving Party’s representatives during any source code review, but only to
19 ensure that there is no unauthorized recording, copying, or transmission of the source code.

20 (d) The Receiving Party may request paper copies of limited portions of source code
21 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or
22 other papers, or for deposition or trial, but shall not request paper copies for the purposes of
23 reviewing the source code other than electronically as set forth in paragraph (c) in the first
24 instance. The Producing Party shall provide all such source code in paper form including bates
25 numbers and the label “HIGHLY CONFIDENTIAL - SOURCE CODE.” The Producing Party
26 may challenge the amount of source code requested in hard copy form pursuant to the dispute
27 resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the
28 “Challenging Party” and the Receiving Party is the “Designating Party” for purposes of dispute

1 resolution.

2 (e) The Receiving Party shall maintain a record of any individual who has inspected
3 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all
4 paper copies of any printed portions of the source code in a secured, locked area. The Receiving
5 Party shall not create any electronic or other images of the paper copies and shall not convert any
6 of the information contained in the paper copies into any electronic format. The Receiving Party
7 shall only make additional paper copies if such additional copies are (1) necessary to prepare
8 court filings, pleadings, or other papers (including a testifying expert's expert report), (2)
9 necessary for deposition, or (3) otherwise necessary for the preparation of its case. Any paper
10 copies used during a deposition shall be retrieved by the Producing Party at the end of each day
11 and must not be given to or left with a court reporter or any other individual.

12 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
13 **OTHER LITIGATION**

14 If a Party is served with a subpoena or a court order issued in other litigation that compels
15 disclosure of any information or items designated in this action as "CONFIDENTIAL" or
16 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
17 SOURCE CODE" that Party must:

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

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

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

25 If the Designating Party timely seeks a protective order, the Party served with the
26 subpoena or court order shall not produce any information designated in this action as
27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or
28 "HIGHLY CONFIDENTIAL – SOURCE CODE" before a determination by the court from

1 which the subpoena issued, unless the Party has obtained the Designating Party's permission. The
2 Designating Party shall bear the burden and expense of seeking protection in that court of its
3 confidential material – and nothing in these provisions should be construed as authorizing or
4 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

5 **10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
6 **THIS LITIGATION**

7 (a) The terms of this Order are applicable to information produced by a Non-Party in
8 this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
9 ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE." Such
10 information produced by Non-Parties in connection with this litigation is protected by the
11 remedies and relief provided by this Order. Nothing in these provisions should be construed as
12 prohibiting a Non-Party from seeking additional protections.

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

- 16 1. promptly notify in writing the Requesting Party and the Non-Party that
17 some or all of the information requested is subject to a confidentiality agreement with a Non-
18 Party;
- 19 2. promptly provide the Non-Party with a copy of the Stipulated Protective
20 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
21 the information requested; and
- 22 3. make the information requested available for inspection by the Non-Party.

23 (c) If the Non-Party fails to object or seek a protective order from this court within 14
24 days of receiving the notice and accompanying information, the Receiving Party may produce the
25 Non-Party's confidential information responsive to the discovery request. If the Non-Party timely
26 seeks a protective order, the Receiving Party shall not produce any information in its possession
27 or control that is subject to the confidentiality agreement with the Non-Party before a
28 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the

1 burden and expense of seeking protection in this court of its Protected Material.

2 **11. EXPERT COMMUNICATIONS**

3 A Party's Expert is not required to disclose or produce, and the Parties shall not conduct
4 discovery concerning or seek to introduce evidence of (1) communications between the Parties'
5 Counsel and the Expert, or (2) drafts of Expert declarations or reports.

6 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

14 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
15 **PROTECTED MATERIAL**

16 When a Producing Party gives notice to Receiving Parties that certain inadvertently
17 produced material is subject to a claim of privilege or other protection, the obligations of the
18 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B), except that
19 after being notified of an inadvertently produced material, a Party must promptly return or destroy
20 the specified information and any copies it has and may not sequester, use, or disclose the
21 information until the claim is resolved. This includes a restriction against presenting the
22 information to the court for a determination of the claim. The Parties further agree that under
23 FRE 502 if a Party inadvertently produces a document that is otherwise subject to a claim of
24 privilege or other protection, the inadvertent production shall not constitute any waiver of
25 privilege or protection. Finally, the Parties agree that neither Party must log or produce any
26 privileged or work-product documents after the release of *My Little Pony: Puzzle Party* on
27 October 13, 2016.
28

1 **14. PRODUCTION FORMAT**

2 The Parties all agree to produce Excel spreadsheets, PowerPoint presentations or similar
3 documents, and audio-visual files in native format, with all original metadata intact. All other
4 electronically stored information will be exchanged in either (a) native format or (b) single-page
5 image TIFF format, with OCR, and Concordance and Opticon load files. For files produced in
6 native format, the Parties agree to include slip sheets in their respective load files indicating that
7 the Bates number in question was produced in native format and providing information sufficient
8 to identify which native file is associated with that Bates number. To the extent reasonably
9 possible, the Parties agree not to degrade the searchability of documents as part of the document
10 production process. Notwithstanding the agreement to exchange in TIFF format, each Party
11 reserves the right, as to a particular electronic file, to a set of electronic files and/or to another
12 pertinent subset of discoverable information/data, to request that another Party produce that
13 information in native format with all original metadata intact. If a request to produce additional
14 metadata ensues and the producing Party objects to it, the Parties agree that any dispute will be
15 resolved through the Court's discovery dispute process.

16 **15. MISCELLANEOUS**

17 15.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
18 seek its modification by the court in the future.

19 15.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
20 Order no Party waives any right it otherwise would have to object to disclosing or producing any
21 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
22 Party waives any right to object on any ground to use in evidence of any of the material covered
23 by this Protective Order.

24 15.3 Filing Protected Material. Without written permission from the Designating Party
25 or a court order secured after appropriate notice to all interested persons, a Party may not file in
26 the public record in this action any Protected Material. A Party that seeks to file under seal any
27 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
28 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at

1 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
2 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
3 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
4 Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the
5 Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule
6 79-5(e)(2) unless otherwise instructed by the court.

7 15.4 Use of a Party's Own Protected Material. Nothing in this Stipulation and
8 Protective Order restricts in any way a Party's use or disclosure of its own Protected Material.

9 15.5 No Presumption as to Confidentiality. The fact that information is marked with a
10 confidentiality designation under this Protective Order shall not be deemed to be determinative of
11 what a trier of fact may determine to be confidential or proprietary or a trade secret. The fact that
12 any information is disclosed, used, or produced in any court proceeding in this action with a
13 confidentiality designation shall not be offered in any action or proceeding before any court,
14 agency, or tribunal as evidence of or concerning whether or not such information is admissible,
15 confidential, or proprietary.

16 15.6 No Modification of Existing Rights. This Protective Order shall not abrogate or
17 diminish any contractual, statutory, or other legal obligation or right of any Party or person with
18 respect to any Protected Material.

19 **16. FINAL DISPOSITION**

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

1 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
2 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
3 legal memoranda, correspondence, deposition and trial exhibits, Expert reports, attorney work
4 product, and consultant and Expert work product, even if such materials contain Protected
5 Material. Any such archival copies that contain or constitute Protected Material remain subject to
6 this Protective Order as set forth in Section 4 (DURATION). In addition, this provision does not
7 require the Receiving Party to search through or delete automatically generated computer backup
8 files that are created for disaster recovery purposes (e.g., computer backup tapes), if such files are
9 not readily accessible.

10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
11

12
13 DATED: March 17, 2017

/s/ Eric Ball

Attorneys for Plaintiff

14
15 DATED: March 17, 2017

/s/ Jeremy S. Goldman

Attorneys for Defendant

16
17
18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19
20 DATED: 3/17/2017

Susan van Kuel

United States Magistrate Judge

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

/s/ Eric Ball
ERIC BALL

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____ [print or
4 type full address], declare under penalty of perjury that I have read in its entirety and understand the
5 Stipulated Protective Order that was issued by the United States District Court for the Northern District of
6 California on [date] in the case of _____ **[insert formal name of the case and the number and**
7 **initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this
8 Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me
9 to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
10 manner any information or item that is subject to this Stipulated Protective Order to any person or entity
11 except in strict compliance with the provisions of this Order.

12 I further agree to submit to the jurisdiction of the United States District Court for the Northern
13 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if
14 such enforcement proceedings occur after termination of this action.

15 I hereby appoint _____ [print or type full name] of
16 _____ [print or type full address and telephone number] as my
17 California agent for service of process in connection with this action or any proceedings related to
18 enforcement of this Stipulated Protective Order.

19
20 Date: _____ disclose

21 City and State where sworn and signed: _____

22 Printed name: _____
23 [printed name]

24 Signature: _____
25 [signature]
26
27
28