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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CJ PRODUCTS, INC.,)	Case No.: 17-CV-1747 JM JLB
Plaintiff,)	
vs.)	ORDER GRANTING JOINT MOTION AND ENTERING PARTIES' STIPULATED PROTECTIVE ORDER
FUNTASTIC LIMITED,)	
Defendant.)	[ECF No. 17]

The Court **GRANTS** the parties' Joint Motion for Protective Order (ECF No. 17), but replaces the language of the parties' proposed paragraph 23 with requisite language that this Court finds was inadvertently omitted by the parties. (*See* J. Burkhardt Civ. Chambers R. § V.)

WHEREAS, it appears that the resolution of this action may require the use of or reference to documents, information and other materials which may contain information believed to be confidential or commercially sensitive information involving, for example material non-public financial information a publicly traded company; and

WHEREAS, the parties wish to protect the confidentiality of potentially material non-public information and documents containing commercially sensitive information relied upon for resolution of this action; and

WHEREAS, the parties desire to be protected against potential and unreasonable annoyance, disadvantage, financial loss, hardship and substantial prejudice which may result from the unauthorized disclosure of such documents or information to others who are not parties to this action, of matters believed to be trade secrets, proprietary or confidential; the parties agree that justice will be served by the entry of a Protective Order setting forth procedures governing the use and disclosure of such documents or information;

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1 **THE PARTIES, THEREFORE, BY AND THROUGH THEIR RESPECTIVE COUNSEL**
2 **STIPULATE, AGREE, AND JOINTLY MOVE FOR A PROTECTIVE ORDER AS FOLLOWS:**

3 1. This Protective Order applies to all documents and information produced or
4 disclosed in this Action to a party and designated as “Confidential” in the above-captioned
5 action entitled , *CJ Products, Inc. v Funtastic Limited*, United States District Court, Southern
6 District of California, Case No. 17-CV-1747 JM JLB, or any correspondence between the
7 parties to the Action which is designated as “Confidential.”

8 2. All documents, information and materials produced by any party and designated
9 as “Confidential” shall be used solely for the purposes of the Action or as otherwise allowed by
10 this Protective Order and shall not be used for any other purpose.

11 3. “Confidential Information” as used herein means any type or classification of
12 information which a party producing information pursuant to this Protective Order designates
13 as “Confidential,” by the designating party, whether revealed during testimony, in a document,
14 or otherwise. In designating information as “Confidential,” a party or non-party subject to this
15 protective order may only designate documents or other information in this action as
16 Confidential if the designating party or non-party has an articulable, good faith basis to believe
17 that each document or other information designated as confidential qualifies for protection
18 under Federal Rule of Civil Procedure 26(c).

19 4. “Document” as used herein refers to any written or graphic matter, no matter
20 how produced, recorded, stored or reproduced and includes tape recordings or other
21 electronically stored data, together with the programming instructions and other written
22 material necessary to understand such tapes and data.

23 5. “Qualified Persons” as used herein means
24 (a) in-house and outside counsel to the parties of this Action, who are directly
25 or indirectly involved in this Action, including associate attorneys,
26 paralegals, stenographic, secretarial or clerical personnel assisting such
27 counsel in this Action;

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- 1 (b) designated or non-designated experts who are assisting counsel in the
2 preparation of this Action;
- 3 (c) any litigation assistant, paralegal, stenographic, secretarial or clerical
4 personnel employed by the expert to assist such expert in this Action;
- 5 (d) any videographer, court reporter or typist recording or transcribing
6 testimony in this Action;
- 7 (e) the Court;
- 8 (f) named parties, officers, directors, and employees of named parties
9 responsible for the defense or prosecution of this Action, including
10 secretarial and clerical employees, provided they are given a copy of this
11 Protective Order and sign a copy of the Confidentiality Acknowledgment
12 prior to their review of any documents, information or materials designated
13 as “Confidential” pursuant to this Protective Order, as set forth in Exhibit
14 “A” hereto;
- 15 (g) insurance companies and insurance coverage counsel of named parties and
16 officers, directors and employees of the insurers or coverage counsel of
17 named parties who are directly responsible for the insurer’s review and
18 analysis in this action, including secretarial and clerical employees; and
- 19 (h) any other persons the parties agree upon in writing, provided they are given
20 a copy of this Protective Order and sign a copy of the Confidentiality
21 Acknowledgment prior to their review of any documents, information or
22 materials designated as “Confidential” pursuant to this Protective Order, as
23 set forth in Exhibit “A” hereto.

24 6. Except as provided herein, before providing access or disclosing any
25 Confidential Information to any Qualified Person in paragraph 5 (b)-(h), the party providing or
26 disclosing such information shall advise such Qualified Person that the information is
27 designated as “Confidential” and can be used only in connection with this Action and in
28 accordance with the terms of this Protective Order. Furthermore, the party receiving

1 information designated as “Confidential” in this Action shall disclose such information only to
2 “Qualified Persons,” as that term is defined in paragraph 5(b)-(h), *supra*, who have read and
3 executed a Confidentiality Acknowledgment as set forth in Exhibit “A” hereto.

4 7. No “Qualified Person” shall receive or review documents, information or
5 materials designated “Confidential” unless and until they have read and agreed to be bound by
6 the terms of this Protective Order and executed a “Confidentiality Acknowledgment”
7 containing the language set forth in paragraph 8, below. Original Confidentiality
8 Acknowledgments executed by Qualified Persons as designated in paragraphs 5(b)-(h) above
9 shall be maintained by the counsel for the party obtaining the Confidentiality Acknowledgment
10 and shall be made available for inspection to the other side within five (5) days of a request for
11 review of executed Confidentiality Acknowledgments. Persons designated as “Qualified
12 Persons” under paragraph 5(h) shall execute a copy of the Confidentiality Acknowledgment
13 and provide a copy of the executed Confidentiality Acknowledgment to all parties to this action
14 six (6) days *prior* to such Qualified Person receiving and/or reviewing any document or other
15 information designated “Confidential.” Any party may object to the individual proposed to be
16 designated as a Qualified Person under paragraph 5(h) within five (5) days of receiving a copy
17 of the executed Confidentiality Acknowledgment. The designated individual is then barred
18 from reviewing documents, information or materials designated as Confidential until the
19 objection is resolved between the parties or by the Court.

20 8. All copies, reproductions, extracts and summaries of documents, answers to
21 interrogatories, responses to requests for admissions, testimony, or other materials or
22 information, as well as briefs or other pleadings quoting or referring to Confidential Information
23 shall be subject to the provisions of this Protective Order. Any interrogatories, or responses
24 thereto, requests for admissions, or responses thereto, or other court filings containing
25 documents, information or materials specifically designated as “Confidential” shall be filed
26 with the Court “Under Seal.” No document shall be filed under seal unless counsel secures a
27 Court order allowing the filing of a document under seal. An application to file a document
28 under seal shall be served on opposing counsel, and on the person or entity that has custody and

1 control of the document, if different from opposing counsel. If the application to file under seal
2 a document designated as confidential is being made by the non-designating party, then, upon
3 request, the designating party must promptly provide the applicant with a legal basis for the
4 confidential designation to include within the application. If opposing counsel, or the person
5 or entity that has custody and control of the document, wishes to oppose the application, he/she
6 must contact the chambers of the judge who will rule on the application to notify the judge's
7 staff that an opposition to the application will be filed.

8 9. Nothing contained in this Protective Order shall prevent the use of Confidential
9 Information at a hearing or in court, on the condition that any party seeking to use such
10 documents, materials, or information at a hearing or at court provides the designating party with
11 adequate notice so that a motion to seal such documents, materials, or information may be filed
12 and heard by the Court prior to such documents, materials, or information being used at a
13 hearing or at trial. Further, nothing contained in this Protective Order shall prevent the use of
14 Confidential Information in a deposition, on the condition that any such documents, information
15 or materials shall be disclosed or displayed only upon the implementation of all reasonable
16 safeguards to preserve their confidentiality. If such documents, information or materials are
17 used in a deposition, they and all portions of the transcripts and exhibits thereto which refer or
18 relate to them, shall be designated and treated as confidential pursuant to the provisions of this
19 Protective Order.

20 10. Any Confidential Information shall be labeled by the designating party as
21 "Confidential." All deposition transcripts shall be treated as Confidential Information for a
22 period of ten (10) business days after all parties have received such deposition transcript to
23 allow time for the parties to make their Confidential designation. When Confidential
24 Information is incorporated in a deposition transcript, arrangement shall be made with the
25 reporter to bind the confidential portion of the transcript and label it "Confidential." Only
26 Qualified Persons and the witness shall be present during examinations concerning
27 "Confidential" documents, information or materials.

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1 11. All Confidential Information or notes or other records regarding the contents
2 thereof, shall be maintained in the custody of counsel, and no partial or complete copies thereof
3 shall be retained by anyone else at any other location than the offices of counsel, except when
4 being used by experts in connection with this Action, or at depositions, unless otherwise
5 authorized by Agreement or Stipulation of the parties or by Order of the Court.

6 12. Documents, information or materials designated confidential pursuant to this
7 Protective Order shall not be determinative of what a trier of fact may determine to be confi-
8 dential. Absent a stipulation by and between the parties to this Protective Order, the fact of
9 such designation shall not be admissible during a hearing or the trial of this action.

10 13. In the event the non-designating party disagrees with the designation by the
11 producing party of any information as Confidential Information, the parties will try first to
12 resolve such dispute on an informal basis before presenting the dispute to the Court. Subject to
13 chambers rules, in the event the parties fail to resolve such dispute informally, the objecting
14 party may file a motion with the Court, or make other informal application to the Court on
15 notice to all parties, to determine the propriety of the designation. (*See J. Burkhardt Civ.*
16 *Chambers R.*)

17 14. The information designated as Confidential Information which is the subject of
18 such motion or informal application shall be treated in accordance with its confidential
19 designation pending the Court's decision on the motion, and any appeals or writs from the
20 Court's decision. The designating party bears the burden of proof that such information is in
21 fact confidential.

22 15. In the event a party believes it is necessary that information designated as
23 Confidential be disclosed to a person other than those persons to whom disclosure is authorized
24 by this Protective Order, the party must attempt to obtain consent from the designating party.
25 If the parties agree to any modifications, such modifications shall be made to this Protective
26 Order. Subject to chambers rules, in the event that the parties cannot agree to any requested
27 modifications, the requesting party may file a motion with the Court for an appropriate
28 modification of this Protective Order. (*See J. Burkhardt Civ. Chambers R.*) Such motion shall,

1 subject to provisions of paragraph 9, identify the particular Confidential Information proposed
2 to be disclosed, the name and address of the person to whom the party proposes to disclose the
3 Confidential Information, and the reasons why such disclosure is necessary. The party seeking
4 disclosure of Confidential Information may not disclose such information, or any part of it,
5 pending the Court's decision on the motion and any appeals or writs from the Court's decision.

6 16. The provisions of this Protective Order shall not terminate at the conclusion of
7 this Action. At the conclusion of this Action, whether by judgment including exhaustion of all
8 appeals, settlement or otherwise, any originals or reproductions of any documents (excluding
9 (i) documents which have been filed with the Court, or (ii) documents which contain notations
10 of counsel or persons in his/her employ, and (iii) all summaries and indices prepared by counsel
11 or those in his/her employ) produced by a party and designated Confidential shall be returned
12 to the designating party upon written request or destroyed with proper certification provided to
13 the designating party's counsel. Notwithstanding the foregoing, counsel of record may retain
14 in its files, subject to the ongoing obligations of this Protective Order, a file copy of all
15 documents related to the Action. Insofar as the provisions of this Protective Order restrict the
16 use of the documents produced hereunder, this Protective Order shall continue to be binding
17 after the conclusion of this Action. All documents filed with the Court in accordance with this
18 Protective Order shall remain under seal unless the Court, for good cause shown, otherwise
19 directs; provided, however, absent an *ex parte* motion made within 10 calendar days of the
20 termination of the case, the parties understand that the Court will destroy any confidential
21 documents in its possession.

22 17. Any third party to this Action may avail itself of the protection of this Protective
23 Order.

24 18. Nothing in this Agreement shall prejudice any party from seeking amendments
25 thereto broadening or restricting the rights of access to and use of Confidential Information, or
26 other modifications. Nothing in this Protective Order shall limit or preclude any party or third
27 party from applying to the Court for relief from its terms, or for such other Protective Orders as
28 they may deem appropriate.

1 19. Neither the taking of any action in accordance with the provisions of this
2 Protective Order, nor the failure to object to such action, shall be construed as a waiver of any
3 claim or defense in this action. Moreover, neither the failure to designate information as
4 Confidential in accordance with this Protective Order, nor the failure to object to a designation
5 of confidentiality at a given time, shall preclude the filing of a motion at a later time seeking to
6 impose such designation or challenging the propriety thereof. Further, this Protective Order,
7 except as expressly provided herein, shall not relieve any party, person or entity of the
8 obligation of producing information in the course of the Action. Without modifying the
9 foregoing, each party shall have ten (10) business days from the date of this order to designate
10 previously produced information as “Confidential” and any other party in possession of such
11 information shall clearly mark the information as “Confidential.”

12 20. This Protective Order may be executed in any number of counterparts, each of
13 which shall be deemed to be an original and all of which together shall be deemed to be one
14 and the same document.

15 21. A facsimile signature shall be the same as an original for purposes of this
16 Stipulated Protective Order and shall be binding on the parties as an original signature.

17 22. The Court may modify the terms and conditions of the Order for good cause, or
18 in the interest of justice, or on its own order at any time in these proceedings.

19 23. Without separate court order, the Order does not change, amend, or circumvent
20 any court rule or local rule.

21 24. If this Protective Order is for any reason not signed by the Court, the parties
22 agree that it shall nevertheless constitute a confidentiality agreement by and between the parties
23 executing it, and the parties shall maintain the confidentiality of documents designated
24 “Confidential.” If a party believes it is necessary to file a document with the Court that has
25 been designated as “Confidential,” that party shall use its best efforts to obtain an Order from
26 the Court authorizing such confidential document to be filed under seal.

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1 As to any depositions taken prior to the date of this order, each party shall have ten (10)
2 business days from the date of this order to designate all or part of the transcripts of these
3 depositions as "Confidential."

4 THE CABRERA FIRM, A.P.C.

5 By: /s/ Guillermo Cabrera
Guillermo Cabrera

6 Attorney for Defendant Funtastic Limited

7 SCOTT+SCOTT, LLP

8 By: /s/ John T. Jasnoch
John T. Jasnoch, Esq.
9 Attorneys for Plaintiff

10 **IT IS SO ORDERED:**

11 Dated: May 24, 2018

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13 Hon. Jill L. Burkhardt
14 United States Magistrate Judge

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CJ PRODUCTS, INC.,
Plaintiff,
vs.
FUNTASTIC LIMITED,
Defendant.

Case No. 17-CV-1747 JM JLB

EXHIBIT "A"
CONFIDENTIALITY ACKNOWLEDGEMENT

I hereby acknowledge that I, (_____) (print name) am about to
or may receive Confidential Information. I certify to my understanding that such information is to
be provided to me pursuant to the terms of the Protective Order in *CJ PRODUCTS, INC. v.*
FUNTASTIC LIMITED, United States District Court Case No. 17-CV-1747 JM JLB and that I
have been given a copy of and have read said Order and understand its terms.

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1 I understand that such information, and any copies I make of documentary material
2 containing Confidential Information, or any notes or other records that may be made regarding any
3 such information, shall not be disclosed to others except those persons specifically named and
4 defined in paragraphs 5(a) –(h) of the Protective Order in this litigation.

5
6 Dated: _____

7
8 _____
Signature

9 _____
Address

10 _____
11 (_____) _____
12 Phone Number