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 8 PLAYER AUCTION, LLC

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

13 ZYNGA GAME NETWORK INC., a) Case No. CV” 10-2576 CBM (JCx)
 14 Delaware Corporation,) First Amended Complaint Filed:
 15) September 8, 2010
 16 Plaintiff,) Honorable Jacqueline Chooljian

17 v.) **PROTECTIVE ORDER**

18 PLAYER AUCTIONS LLC, a limited) **[CHANGE MADE BY COURT TO**
 19 liability company) **PARAGRAPH 14]**

20 Defendant.)
 21 _____)

23 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

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 25 **BASED UPON THE STIPULATION OF THE PARTIES, AND GOOD**
 26 **CAUSE APPEARING, IT IS HEREBY ORDERED** that any person or party subject to
 27 this Order – including without limitation the parties to this action, their representatives,
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1 agents, experts and consultants, all third parties providing discovery in this action, and
2 all other interested persons with actual or constructive notice of this Order – shall
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4 adhere to the following terms:

5 1. **Overview:** Any person or party subject to this Order who receives from
6 any other person or party any information of any kind provided in the course of
7 discovery in the action (hereinafter “Discovery Material”) that is designated as
8 “Confidential” and/or “Confidential/Attorneys’ Eyes Only” pursuant to the terms of this
9 Order (hereinafter, the “Confidential Information” or “Confidential Discovery
10 Material”) shall not disclose such Confidential Information to anyone else except as
11 expressly permitted hereunder.
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15 2. **Material Designated As “Confidential”:** The person or party disclosing
16 or producing any given Discovery Material may designate as “Confidential” such
17 portion of such material as consists of any trade secret, commercially sensitive and/or
18 confidential financial or business information. Information designated as “Confidential”
19 by any party or third party may include, but shall not be limited to:
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22 (a) Non-public financial information, including, without limitation,
23 information regarding actual or projected revenues, sales, expenses, profits,
24 losses, or compensation;
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26 (b) Non-public business plan and strategies, including, without limitation,
27 marketing strategies, research or product information;
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1 (c) Personnel files;

2 (d) Proprietary technical information, including, without limitation,
3 software code or specifications, manuals, documentation, flow charts,
4 programming, work notes, technical practices and methods, and/or other
5 technical know-how;
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7 (e) Corporate trade secrets, meaning information, including, a formula,
8 pattern, compilation, program, device, method, technique, or process, that;
9 (1) derives independent economic value, actual or potential, from not being
10 generally known to the public or other persons who can obtain economic
11 value from its disclosures or use; and (2) is the subject of efforts that are
12 reasonably under the circumstances to maintain its secrecy; and
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14 (f) Private or personal information, including without limitation, personal
15 financial information.
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19 The parties request protection of such information on the grounds that said information
20 is not ordinarily available to the public, that said information, if disclosed, could be
21 harmful to the parties, or any of them, that said information, if disclosed, could be
22 helpful to the competitors of the parties, or any of them, and that said information
23 therefore requires special protection from disclosure pursuant to F.R.C.P. 26(c).
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26 3. **Disclosure Of “Confidential” Materials:** No person or party subject to
27 the Order other than the producing person or party shall disclose any of the Discovery
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1 Material designated by the producing person or party as “Confidential” to any other
2 person whomsoever, except to:

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4 (a) the parties to this action and Protective Order;

5 (b) the employees and former employees of the parties to this action in
6 their capacity as witnesses in this action, provided any such former employee has first
7 executed a Non-Disclosure Agreement in the form annexed as an exhibit hereto;

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9 (c) in-house (or corporate) legal counsel, and outside attorneys retained
10 specifically for this action, and fellow employees of each such attorneys’ law firms to
11 whom it is reasonably necessary to disclose such Confidential Discovery Material;
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13 (d) its author, its addressee, and any other person indicated on the face
14 of the document as having received a copy;

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16 (e) any employee or agent, or former employee or agent, of any sender
17 or recipient of the document in their capacity as a witness in this action (e.g. where a
18 Purchase Order from Company A to Company B is produced in litigation by Company
19 A, said document may be disclosed to employees or agents of Company B under the
20 terms of this Protective Order);
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22 (f) outside experts and outside consultants (including their employees
23 or clerical assistants) who are employed, retained or otherwise consulted by a party or its
24 attorneys for the purpose of analyzing data, conducting studies or providing opinions to
25 assist, in any way, in this litigation and to whom it is reasonably necessary to disclose
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1 such Confidential Discovery Material, provided the parties have disclosed the identity of
2 the expert witness and consultant to the other party and provided the other party an
3 opportunity to object to such disclosure and provided such experts or consultants have
4 first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
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6 (g) stenographers engaged to transcribe depositions conducted in this
7 action and their support personnel;
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9 (h) the Court and its support personnel;
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11 (i) any mediator or settlement officer, whom the parties have elected or
12 consented to preside over the case; and
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14 (j) as required by law or court order upon notice to the designating
15 party sufficiently in advance of such disclosure to permit it to seek a protective order.
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17 4. **Material Designated As “Confidential/Attorneys’ Eyes Only”:** The
18 person or party disclosing or producing any given Discovery Material may designate
19 material as “Confidential/Attorneys’ Eyes Only” only if (a) the material meets the
20 definition of Confidential, pursuant to Section 2 above, and (b) an opposing party is a
21 direct competitor, or a potential direct customer of that party.
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23 5. **Disclosure Of “Confidential/Attorneys’ Eyes Only” Material:** No
24 person or party subject to this Order other than the producing person or party shall
25 disclose any of the Discovery Material designated by the producing person or party as
26 “Confidential/Attorneys’ Eyes Only” to any other person whomsoever, except to:
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1 a) outside attorneys retained specifically for this action, and fellow
2 employees of each such attorneys' law firms to whom it is reasonably necessary to
3 disclose such Confidential Discovery Material;
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5 b) outside experts and outside consultants (including their employees
6 or clerical assistants) who are employed, retained or otherwise consulted by a party or
7 its attorneys for the purpose of analyzing data, conducting studies or providing opinions
8 to assist, in any way, in this litigation and to whom it is reasonably necessary to disclose
9 such Confidential Discovery Material, provided the parties have disclosed the identity
10 of the expert witness and consultant to the other party and provided the other party an
11 opportunity to object to such disclosure and provided such experts or consultants have
12 first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
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15 c) the party producing said documents and persons affiliated with the
16 party producing said documents, including the producing party's employees and former
17 employees (provided such former employee has first executed a Non-Disclosure
18 Agreement in the form annexed as an Exhibit hereto), during the time they are testifying
19 in deposition or at trial, or in connection with written discovery requests;
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22 d) Any employee or agent of any sender or recipient of the document
23 in their capacity as a witness in this action (e.g. where a Purchase Order from Company
24 A to Company B is produced in litigation by Company A, said document may be
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1 disclosed to employees or agents of Company B under the terms of this Protective
2 Order);

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4 e) stenographers engaged to transcribe depositions conducted in this
5 action;

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7 f) the Court and its support personnel;

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9 g) any mediator or settlement officer, whom the parties have elected or
10 consented to preside over the case; and/or

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12 h) as required by law or court order upon notice to the designating
13 party sufficiently in advance of such disclosure to permit it to seek a protective order.

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15 6. **Designation of Confidentiality:** With respect to the Confidential
16 portion(s) of any Discovery material other than deposition transcripts and exhibits, the
17 producing person or party or that person's or party's counsel may designate such
18 portion(s) as "Confidential" or "Confidential /Attorneys' Eyes Only" by stamping or
19 otherwise clearly marking as "Confidential" or "Confidential/Attorneys' Eyes Only" the
20 protected portion(s) in a manner that will not interfere with legibility or audibility.

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22 With respect to deposition transcripts and exhibits, a producing person or party or that
23 person or party's counsel may indicate on the record that a question calls for
24 Confidential Information, in which case the transcript of the designated testimony shall
25 be bound in a separate volume and marked "Confidential Information Governed by
26 Protective Order" by the reporter.
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1 7. **Documents Under Seal:** If Confidential Material, including any portion
2 of a deposition transcript designated as Confidential or Attorney's Eyes Only, is
3 included in any papers to be filed with the Court, such papers shall be accompanied by
4 an application to (a) file the confidential portions thereof under seal (if such portions are
5 segregable), or (b) file the papers in their entirety under seal (if the confidential portions
6 are not segregable). The application shall be directed to the judge or magistrate judge
7 to whom the papers are directed. Pending the ruling on the application, the papers or
8 portions thereof subject to the sealing application shall be lodged under seal. The
9 designation of documents or information as “Confidential” or “Confidential/Attorneys’
10 Eyes Only” creates no entitlement to file such documents or information under seal.
11 Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the
12 standards that will be applied when a party seeks permission from the court to file
13 materials under seal.
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15 8. **Separate Non-Disclosure Agreements:** Prior to any disclosure of any
16 Confidential Discovery Material to any person referred to in paragraph 3e, 3f, 3g, 5b,
17 5d, and/or 5e above, such person shall be provided by counsel with a copy of this
18 Protective Order and if said person has not already signed this Protective Order, said
19 person shall sign a Non-Disclosure Agreement in the form agreed to by the Parties,
20 stating that that person has read this Order and agrees to be bound by its terms. Said
21 counsel shall retain each signed Non-Disclosure Agreement, hold it in escrow, and upon
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1 request produce it to opposing counsel either prior to such person being permitted to
2 testify (at deposition or trial) or at the conclusion of the case, whichever comes first.
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4 **9. Failure To Designate:** If at any time within 60 days after production, a
5 producing person or party realizes that some portion(s) of Discovery Material that that
6 person or party previously produced without limitation should be designated as
7 “Confidential” and/or “Confidential /Attorneys’ Eyes Only”, they may so designate by
8 so apprising all parties in writing, and providing said parties with appropriately marked
9 copies of said Discovery Material, where possible, and such designated portion(s) of the
10 Discovery Material will thereafter be treated as “Confidential” and/or
11 “Confidential/Attorneys’ Eyes Only” under the terms of this Order. If at any time prior
12 to trial, and after 60 days after production, a producing person or party realizes that
13 some portion(s) of Discovery Material that that person or party previously produced
14 without limitation should be designated as “Confidential” and/or “Confidential
15 /Attorneys’ Eyes Only”, the producing person or party shall apprise all parties in
16 writing of the proposed designation and the parties shall meet and confer regarding the
17 proposed designation. If agreement cannot be reached promptly, counsel for the
18 producing party may seek appropriate relief from the Court in accordance with Local
19 Rule 37 and the party asserting confidentiality shall have the burden of providing same.
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1 good faith, the objecting party shall be entitled to recovery of reasonable attorneys fees
2 and costs in connection with the motion regarding the designation of confidentiality.
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4 **10. Designations In Good Faith:** “Confidential” and/or
5 “Confidential/Attorneys’ Eyes Only” material shall only include information which the
6 designating party in good faith believes will, if disclosed, have the effect of causing
7 harm to its competitive position. “Confidential” and/or “Confidential/Attorneys’ Eyes
8 Only” material shall not include information that (a) was, is or becomes public
9 knowledge, not in violation of this Protective Order or any other obligation of
10 confidentiality, or (b) was or is acquired from a third party having no direct or indirect
11 obligation of confidentiality to the designating party.
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15 **11. Objections To Designations:** Any party who either objects to any
16 designation of confidentiality, or who, by contrast, requests still further limits on
17 disclosure (such as in camera review in extraordinary circumstances), may at any time
18 prior to the trial of this action serve upon counsel for the designating person or party a
19 written notice stating with particularity the grounds of the objection or request. If
20 agreement cannot be reached promptly, counsel for the objecting party may seek
21 appropriate relief from the Court in accordance with Local Rule 37 and the party
22 asserting confidentiality shall have the burden of providing same. Should the Court
23 determine a designation of confidentiality was not made in good faith, the objecting
24 party shall be entitled to recovery of reasonable attorneys fees and costs in connection
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1 with bringing the Motion to object to any designation of confidentiality. If a party
2 disagrees with or challenges the grounds or basis for the designation of any document
3 or information as Confidential Material, that party nevertheless shall treat and protect
4 such material as Confidential Material in accordance with this Protective Order unless
5 and until all parties shall have agreed in writing, or an order of the Court shall have
6 been entered, that provides that such challenged Confidential Material may be used or
7 disclosed in a manner different from that specified for Confidential Material in this
8 Protective Order.
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12 **12. Use At Trial:** Documents designated “Confidential” and/or
13 “Confidential/Attorneys’ Eyes Only” may be used by any party without limitation at
14 trial. However, any party who wishes to have such documents treated as “Confidential”
15 and/or “Confidential/Attorneys’ Eyes Only” may renew their request for confidentiality
16 before the trial judge at the status conference and/or through a motion in limine.
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19 **13. Continuing Jurisdiction:** This Court shall retain jurisdiction over all
20 persons subject to this Order to the extent necessary to enforce any obligations arising
21 hereunder or to impose sanctions for any contempt thereof.
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23 **14. Obligations Upon Termination Of Litigation:** This Protective Order
24 shall survive the termination of the litigation. Within 30 days of the final disposition of
25 this action, including all appeals, the producing party may require that all Discovery
26 Materials designated as “Confidential,” and/or “Confidential/Attorneys’ Eyes Only”
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1 and all copies thereof, that have not been annotated, illuminated or otherwise “marked-
2 up” to be promptly returned to the producing person or party (at the producing person’s
3 expense), or shall be destroyed. All documents marked “Confidential,” and/or
4 “Confidential/Attorneys’ Eyes Only” that have been annotated, illuminated or otherwise
5 “marked-up” shall not be returned, but shall be destroyed. Counsel, however, shall be
6 entitled to maintain an archival copy of all pleadings, discovery and work product in
7 this action. This paragraph does not require the Court or Court personnel to return or
8 destroy documents fitting the foregoing description which have been filed/lodged with
9 the Court.
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13 15. **Further Modifications:** Any party to this action may, at any time, request
14 the modification of this Protective Order, upon a noticed motion, unless emergency
15 relief is appropriate, and upon a showing of good cause.
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18 16. **No waiver:** This Order is entered solely for the purpose of facilitating the
19 exchange of documents and information between the parties to this action without
20 involving the Court unnecessarily in the process. Nothing in this Order nor the
21 production of any information or document under the terms of this Order nor any
22 proceedings pursuant to this Order shall be deemed to have the effect of an admission or
23 waiver by either party or of altering the confidentiality or non-confidentiality of any
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1 such document or information or altering any existing obligation of any party or the
2 absence thereof
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5 Dated: April 11, 2011

DYKEMA GOSSETT LLP

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8 By: /s/ Brian H. Newman
9 Brian H. Newman
10 Attorney for Defendant
11 PLAYER AUCTIONS, LLC

12 Dated: April 11, 2011

KEATS, MCFARLAND & WILSON, LLP

13 By: /s/ David K. Caplan (with permission)
14 David K. Caplan
15 Attorney for Plaintiff
16 ZYNGA INC., formerly known as
17 ZYNGA GAME NETWORK INC.

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19 **ORDER**

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21 IT IS SO ORDERED.

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23 DATED: April 13, 2011

24 _____ /s/
25 Hon. Jacqueline Chooljian
26 United States Magistrate Judge
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EXHIBIT A
NON-DISCLOSURE AGREEMENT

I understand that access to information designated as CONFIDENTIAL or CONFIDENTIAL – ATTORNEYS EYES ONLY is provided to me under the terms and restrictions of a Stipulation and Protective Order. I have received a copy of the Stipulation and Protective Order, have read it, and agree to be bound by its terms. I will not mention, disclose, or use information designated as CONFIDENTIAL INFORMATION or CONFIDENTIAL – ATTORNEYS EYES ONLY that is provided to me in connection with this action except as permitted by the Stipulation and Protective Order.

Dated: _____

Signature: _____

Print Name: _____

Title: _____

Company: _____

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