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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DAVID ETTEDGUI, an individual, on behalf of himself and on behalf of all persons similarly situated,

Plaintiff,

vs.

WB STUDIO ENTERPRISES INC., a corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 2:20-cv-08053-MCS(JDEx)

PROTECTIVE ORDER

Based on the parties' stipulation (Dkt. 57, 57-1), and for good cause shown, the Court finds and orders as follows.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than pursuing this litigation may be warranted. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or

1 items that are entitled to confidential treatment under the applicable legal
2 principles.

3 2. GOOD CAUSE STATEMENT

4 This action is likely to involve trade secrets, financial, technical and/or
5 proprietary information for which special protection from public disclosure and
6 from use for any purpose other than prosecution of this action is warranted. Such
7 confidential and proprietary materials and information consist of, among other
8 things, confidential business or financial information, information regarding
9 confidential business practices, or other confidential research, development, or
10 commercial information (including information implicating privacy rights of third
11 parties), information otherwise generally unavailable to the public, or which may
12 be privileged or otherwise protected from disclosure under state or federal statutes,
13 court rules, case decisions, or common law. Accordingly, to expedite the flow of
14 information, to facilitate the prompt resolution of disputes over confidentiality of
15 discovery materials, to adequately protect information the parties are entitled to
16 keep confidential, to ensure that the parties are permitted reasonable necessary uses
17 of such material in preparation for and in the conduct of trial, to address their
18 handling at the end of the litigation, and serve the ends of justice, a protective order
19 for such information is justified in this matter. It is the intent of the parties that
20 information will not be designated as confidential for tactical reasons and that
21 nothing be so designated without a good faith belief that it has been maintained in
22 a confidential, non-public manner, and there is good cause why it should not be
23 part of the public record of this case.
24

25 3. ACKNOWLEDGMENT OF UNDER SEAL PROCEDURE

26 As set forth below, this Protective Order does not entitle parties to file
27 confidential information under seal; Local Civil Rule 79-5 sets forth the procedures
28 that must be followed and the standards that will be applied when a party seeks

1 permission from the court to file material under seal. There is a strong presumption
2 that the public has a right of access to judicial proceedings and records in civil
3 cases. In connection with non-dispositive motions, good cause must be shown to
4 support a filing under seal. See Kamakana v. City and County of Honolulu, 447
5 F.3d 1172, 1176 (9th Cir. 2006), Phillips v. Gen. Motors Corp., 307 F.3d 1206,
6 1210-11 (9th Cir. 2002), Makar-Welbon v. Sony Electrics, Inc., 187 F.R.D. 576,
7 577 (E.D. Wis. 1999) (even stipulated protective orders require good cause
8 showing), and a specific showing of good cause or compelling reasons with proper
9 evidentiary support and legal justification, must be made with respect to Protected
10 Material that a party seeks to file under seal. The parties' mere designation of
11 Disclosure or Discovery Material as confidential does not— without the
12 submission of competent evidence by declaration establishing that the material
13 sought to be filed under seal qualifies as confidential, privileged, or otherwise
14 protectable—constitute good cause.

15 Further, if a party requests sealing related to a dispositive motion or trial,
16 then compelling reasons, not only good cause, for the sealing must be shown, and
17 the relief sought shall be narrowly tailored to serve the specific interest to be
18 protected. See Pintos v. Pacific Creditors Ass'n., 605 F.3d 665, 677-79 (9th Cir.
19 2010). For each item or type of information, document, or thing sought to be filed
20 or introduced under seal, the party seeking protection must articulate compelling
21 reasons, supported by specific facts and legal justification, for the requested sealing
22 order. Again, competent evidence supporting the application to file documents
23 under seal must be provided by declaration.

24 Any document that is not confidential, privileged, or otherwise protectable
25 in its entirety will not be filed under seal if the confidential portions can be
26 redacted. If documents can be redacted, then a redacted version for public viewing,
27 omitting only the confidential, privileged, or otherwise protectable portions of the
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1 document, shall be filed. Any application that seeks to file documents under seal in
2 their entirety should include an explanation of why redaction is not feasible.

3 4. DEFINITIONS

4 4.1 Action: *David Etedgui v. WB Studio Enterprises Inc.*, pending before
5 the United States District Court for the Central District, Case Number 2:20-cv-
6 08053-MCS (JDEx).

7 4.2 Challenging Party: a Party or Non-Party that challenges the
8 designation of information or items under this Order.

9 4.3 “CONFIDENTIAL” Information or Items: information (regardless of
10 how it is generated, stored or maintained) or tangible things that qualify for
11 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
12 the Good Cause Statement.

13 4.4 Counsel: Outside Counsel of Record and House Counsel (as well as
14 their support staff).

15 4.5 Designating Party: a Party or Non-Party that designates information or
16 items that it produces in disclosures or in responses to discovery as
17 “CONFIDENTIAL.”

18 4.6 Disclosure or Discovery Material: all items or information, regardless
19 of the medium or manner in which it is generated, stored, or maintained (including,
20 among other things, testimony, transcripts, and tangible things), that are produced
21 or generated in disclosures or responses to discovery.

22 4.7 Expert: a person with specialized knowledge or experience in a matter
23 pertinent to the litigation who has been retained by a Party or its counsel to serve
24 as an expert witness or as a consultant in this Action.

25 4.8 House Counsel: attorneys employed by a party to this Action. House
26 Counsel does not include Outside Counsel of Record or any other outside counsel.
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1 4.9 Non-Party: any natural person, partnership, corporation, association or
2 other legal entity not named as a Party to this action.

3 4.10 Outside Counsel of Record: attorneys who are not employees of a
4 party to this Action but are retained to represent a party to this Action and have
5 appeared in this Action on behalf of that party or are affiliated with a law firm that
6 has appeared on behalf of that party, and includes support staff.

7 4.11 Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 4.12 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.

12 4.13 Professional Vendors: persons or entities that provide litigation
13 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 4.14 Protected Material: any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL.”

18 4.15 Receiving Party: a Party that receives Disclosure or Discovery
19 Material from a Producing Party.

20
21 5. SCOPE

22 The protections conferred by this Order cover not only Protected Material
23 (as defined above), but also (1) any information copied or extracted from Protected
24 Material; (2) all copies, excerpts, summaries, or compilations of Protected
25 Material; and (3) any testimony, conversations, or presentations by Parties or their
26 Counsel that might reveal Protected Material.

1 Any use of Protected Material at trial shall be governed by the orders of the
2 trial judge and other applicable authorities. This Order does not govern the use of
3 Protected Material at trial.

4 6. DURATION

5 Once a case proceeds to trial, information that was designated as
6 CONFIDENTIAL or maintained pursuant to this protective order used or
7 introduced as an exhibit at trial becomes public and will be presumptively
8 available to all members of the public, including the press, unless compelling
9 reasons supported by specific factual findings to proceed otherwise are made to the
10 trial judge in advance of the trial. See Kamakana, 447 F.3d at 1180-81
11 (distinguishing “good cause” showing for sealing documents produced in
12 discovery from “compelling reasons” standard when merits-related documents are
13 part of court record). Accordingly, the terms of this protective order do not extend
14 beyond the commencement of the trial.

15 7. DESIGNATING PROTECTED MATERIAL

16 7.1 Exercise of Restraint and Care in Designating Material for

17 Protection. Each Party or Non-Party that designates information or
18 items for protection under this Order must take care to limit any such designation
19 to specific material that qualifies under the appropriate standards. The Designating
20 Party must designate for protection only those parts of material, documents, items
21 or oral or written communications that qualify so that other portions of the
22 material, documents, items or communications for which protection is not
23 warranted are not swept unjustifiably within the ambit of this Order.
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25 Mass, indiscriminate or routinized designations are prohibited. Designations
26 that are shown to be clearly unjustified or that have been made for an improper
27 purpose (e.g., to unnecessarily encumber the case development process or to
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1 impose unnecessary expenses and burdens on other parties) may expose the
2 Designating Party to sanctions.

3 If it comes to a Designating Party's attention that information or items that it
4 designated for protection do not qualify for protection, that Designating Party must
5 promptly notify all other Parties that it is withdrawing the inapplicable designation.

6 7.2 Manner and Timing of Designations. Except as otherwise provided in
7 this Order, or as otherwise stipulated or ordered, Disclosure of Discovery Material
8 that qualifies for protection under this Order must be clearly so designated before
9 the material is disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (e.g., paper or electronic
12 documents, but excluding transcripts of depositions or other pretrial or trial
13 proceedings), that the Producing Party affix at a minimum, the legend
14 "CONFIDENTIAL" (hereinafter "CONFIDENTIAL legend"), to each page that
15 contains protected material. If only a portion of the material on a page qualifies for
16 protection, the Producing Party also must clearly identify the protected portion(s)
17 (e.g., by making appropriate markings in the margins).

18 A Party or Non-Party that makes original documents available for
19 inspection need not designate them for protection until after the inspecting Party
20 has indicated which documents it would like copied and produced. During the
21 inspection and before the designation, all of the material made available for
22 inspection shall be deemed "CONFIDENTIAL." After the inspecting Party has
23 identified the documents it wants copied and produced, the Producing Party must
24 determine which documents, or portions thereof, qualify for protection under this
25 Order. Then, before producing the specified documents, the Producing Party must
26 affix the "CONFIDENTIAL legend" to each page that contains Protected Material.
27 If only a portion of the material on a page qualifies for protection, the Producing
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1 Party also must clearly identify the protected portion(s) (e.g., by making
2 appropriate markings in the margins).

3 (b) for testimony given in depositions that the Designating Party
4 identifies the Disclosure or Discovery Material on the record, before the close of
5 the deposition all protected testimony.

6 (c) for information produced in some form other than documentary
7 and for any other tangible items, that the Producing Party affix in a prominent
8 place on the exterior of the container or containers in which the information is
9 stored the legend "CONFIDENTIAL." If only a portion or portions of the
10 information warrants protection, the Producing Party, to the extent practicable,
11 shall identify the protected portion(s).

12 7.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
13 failure to designate qualified information or items does not, standing alone, waive
14 the Designating Party's right to secure protection under this Order for such
15 material. Upon timely correction of a designation, the Receiving Party must make
16 reasonable efforts to assure that the material is treated in accordance with the
17 provisions of this Order.

18 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 8.1. Timing of Challenges. Any Party or Non-Party may challenge a
20 designation of confidentiality at any time that is consistent with the Court's
21 Scheduling Order.

22 8.2 Meet and Confer. The Challenging Party shall initiate the dispute
23 resolution process under Local Rule 37-1 et seq.

24 8.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
25 joint stipulation pursuant to Local Rule 37-2.

26 8.4 The burden of persuasion in any such challenge proceeding shall be on
27 the Designating Party. Frivolous challenges, and those made for an improper
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1 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
2 parties) may expose the Challenging Party to sanctions. Unless the Designating
3 Party has waived or withdrawn the confidentiality designation, all parties shall
4 continue to afford the material in question the level of protection to which it is
5 entitled under the Producing Party’s designation until the Court rules on the
6 challenge.

7 9. ACCESS TO AND USE OF PROTECTED MATERIAL

8 9.1 Basic Principles. A Receiving Party may use Protected Material that is
9 disclosed or produced by another Party or by a Non-Party in connection with this
10 Action only for prosecuting, defending or attempting to settle this Action. Such
11 Protected Material may be disclosed only to the categories of persons and under
12 the conditions described in this Order. When the Action has been terminated, a
13 Receiving Party must comply with the provisions of section 15 below (FINAL
14 DISPOSITION).

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

18 9.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
19 otherwise ordered by the court or permitted in writing by the Designating Party, a
20 Receiving Party may disclose any information or item designated
21 “CONFIDENTIAL” only to:

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

25 (b) the officers, directors, and employees (including House Counsel)
26 of the Receiving Party to whom disclosure is reasonably necessary for this Action;

27 (c) Experts (as defined in this Order) of the Receiving Party to whom
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1 disclosure is reasonably necessary for this Action and who have signed an
2 Acknowledgment and Agreement to Be Bound.

3 (d) the court and its personnel;

4 (e) court reporters and their staff;

5 (f) professional jury or trial consultants, mock jurors, and Professional
6 Vendors to whom disclosure is reasonably necessary for this Action and who have
7 signed an Acknowledgment and Agreement to Be Bound;

8 (g) the author or recipient of a document containing the information or
9 a custodian or other person who otherwise possessed or knew the information;

10 (h) during their depositions, witnesses, and attorneys for witnesses, in
11 the Action to whom disclosure is reasonably necessary provided: (1) the deposing
12 party requests that the witness sign an Acknowledgment and Agreement to be
13 Bound; and (2) they will not be permitted to keep any confidential information
14 unless they sign the Acknowledgment and Agreement to Be Bound, unless
15 otherwise agreed by the Designating Party or ordered by the court. Pages of
16 transcribed deposition testimony or exhibits to depositions that reveal Protected
17 Material may be separately bound by the court reporter and may not be disclosed
18 to anyone except as permitted under this Protective Order; and

19 (i) any mediators or settlement officers and their supporting personnel,
20 mutually agreed upon by any of the parties engaged in settlement discussions.

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22 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED
23 PRODUCED IN OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation
25 that compels disclosure of any information or items designated in this Action as
26 “CONFIDENTIAL,” that Party must:

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

1 (b) promptly notify in writing the party who caused the subpoena or
2 order to issue in the other litigation that some or all of the material covered by the
3 subpoena or order is subject to this Protective Order. Such notification shall
4 include a copy of this Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be
6 pursued by the Designating Party whose Protected Material may be affected. If the
7 Designating Party timely seeks a protective order, the Party served with the
8 subpoena or court order shall not produce any information designated in this action
9 as “CONFIDENTIAL” before a determination by the court from which the
10 subpoena or order issued, unless the Party has obtained the Designating Party’s
11 permission. The Designating Party shall bear the burden and expense of seeking
12 protection in that court of its confidential material and nothing in these provisions
13 should be construed as authorizing or encouraging a Receiving Party in this Action
14 to disobey a lawful directive from another court.

15 **11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO**
16 **BE PRODUCED IN THIS LITIGATION**

17 (a) The terms of this Order are applicable to information produced by
18 a Non-Party in this Action and designated as “CONFIDENTIAL.” Such
19 information produced by Non-Parties in connection with this litigation is protected
20 by the remedies and relief provided by this Order. Nothing in these provisions
21 should be construed as prohibiting a Non-Party from seeking additional
22 protections.
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24 (b) In the event that a Party is required, by a valid discovery request,
25 to produce a Non-Party’s confidential information in its possession, and the Party
26 is subject to an agreement with the Non-Party not to produce the Non-Party’s
27 confidential information, then the Party shall:
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1 (1) promptly notify in writing the Requesting Party and the
2 Non-Party that some or all of the information requested is subject to a
3 confidentiality agreement with a Non-Party;

4 (2) promptly provide the Non-Party with a copy of the
5 Protective Order in this Action, the relevant discovery request(s), and a reasonably
6 specific description of the information requested; and

7 (3) make the information requested available for inspection by
8 the Non-Party, if requested.

9 (c) If the Non-Party fails to seek a protective order from this court
10 within 14 days of receiving the notice and accompanying information, the
11 Receiving Party may produce the Non-Party's confidential information responsive
12 to the discovery request. If the Non-Party timely seeks a protective order, the
13 Receiving Party shall not produce any information in its possession or control that
14 is subject to the confidentiality agreement with the Non-Party before a
15 determination by the court. Absent a court order to the contrary, the Non-Party
16 shall bear the burden and expense of seeking protection in this court of its
17 Protected Material.

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19 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a Receiving Party learns that, by inadvertence or otherwise, it has
21 disclosed Protected Material to any person or in any circumstance not authorized
22 under this Protective Order, the Receiving Party must immediately (a) notify in
23 writing the Designating Party of the unauthorized disclosures, (b) use its best
24 efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the
25 person or persons to whom unauthorized disclosures were made of all the terms of
26 this Order, and (d) request such person or persons to execute an Acknowledgment
27 an Agreement to Be Bound.
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1 13. INADVERTENT PRODUCTION OF PRIVILEGED OR
2 OTHERWISE PROTECTED MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain
4 inadvertently produced material is subject to a claim of privilege or other
5 protection, the obligations of the Receiving Parties are those set forth in Federal
6 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
7 whatever procedure may be established in an e-discovery order that provides for
8 production without prior privilege review. Pursuant to Federal Rule of Evidence
9 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
10 of a communication or information covered by the attorney-client privilege or
11 work product protection, the parties may incorporate their agreement in the
12 stipulated protective order submitted to the court.

13 14. MISCELLANEOUS

14 14.1 Right to Further Relief. Nothing in this Order abridges the right of any
15 person to seek its modification by the Court in the future.

16 14.2 Right to Assert Other Objections. By stipulating to the entry of this
17 Protective Order, no Party waives any right it otherwise would have to object to
18 disclosing or producing any information or item on any ground not addressed in
19 this Protective Order. Similarly, no Party waives any right to object on any ground
20 to use in evidence of any of the material covered by this Protective Order.

21 14.3 Filing Protected Material. A Party that seeks to file under seal any
22 Protected Material must comply with Local Civil Rule 79-5. Protected Material
23 may only be filed under seal pursuant to a court order authorizing the sealing of the
24 specific Protected Material. If a Party's request to file Protected Material under
25 seal is denied by the court, then the Receiving Party may file the information in the
26 public record unless otherwise instructed by the court.
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