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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ESC-TOY LTD., a Nevada corporation,
Plaintiff,
v.
INSOMNIAC GAMES, INC., a
California corporation,
Defendant.

Case No. 2:21-CV-02139-JVS-GJS
**STIPULATED PROTECTIVE
ORDER¹**

¹ This Stipulated Protective Order is substantially based on the model protective order provided under Magistrate Judge Gail J. Standish’s Procedures.

1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles.

11 B. GOOD CAUSE STATEMENT

12 This action is likely to involve commercial, financial, and/or proprietary
13 information for which special protection from public disclosure and from use for
14 any purpose other than prosecution of this action is warranted. Such confidential
15 and proprietary materials and information consist of, among other things,
16 confidential business or financial information, information regarding confidential
17 business practices, or other confidential commercial information (including
18 information implicating privacy rights of third parties), information otherwise
19 generally unavailable to the public, or which may be privileged or otherwise
20 protected from disclosure under state or federal statutes, court rules, case decisions,
21 or common law. Accordingly, to expedite the flow of information, to facilitate the
22 prompt resolution of disputes over confidentiality of discovery materials, to
23 adequately protect information the parties are entitled to keep confidential, to ensure
24 that the parties are permitted reasonable necessary uses of such material in
25 preparation for and in the conduct of trial, to address their handling at the end of the
26 litigation, and serve the ends of justice, a protective order for such information is
27 justified in this matter. It is the intent of the parties that information will not be
28 designated as confidential for tactical reasons and that nothing be so designated

1 without a good faith belief that it has been maintained in a confidential, non-public
2 manner, and there is good cause why it should not be part of the public record of this
3 case.

4 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

5 The parties further acknowledge, as set forth in Section 12.3, below, that this
6 Stipulated Protective Order does not entitle them to file confidential information
7 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed
8 and the standards that will be applied when a party seeks permission from the court
9 to file material under seal.

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

23 Further, if a party requests sealing related to a dispositive motion or trial, then
24 compelling reasons, not only good cause, for the sealing must be shown, and the
25 relief sought shall be narrowly tailored to serve the specific interest to be protected.
26 *See Pintos v. Pacific Creditors Ass'n*, 605 F.3d 665, 677-79 (9th Cir. 2010). For
27 each item or type of information, document, or thing sought to be filed or introduced
28 under seal in connection with a dispositive motion or trial, the party seeking

1 protection must articulate compelling reasons, supported by specific facts and legal
2 justification, for the requested sealing order. Again, competent evidence supporting
3 the application to file documents under seal must be provided by declaration.

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

10 2. DEFINITIONS

11 2.1 Action: The above captioned pending federal lawsuit.

12 2.2 Challenging Party: a Party or Non-Party that challenges the
13 designation of information or items under this Order.

14 2.3 “CONFIDENTIAL” Information or Items: information (regardless of
15 how it is generated, stored or maintained) or tangible things that qualify for
16 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
17 the Good Cause Statement.

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
19 their support staff).

20 2.5 Designating Party: a Party or Non-Party that designates information or
21 items that it produces in disclosures or in responses to discovery as
22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
23 ONLY.”

24 2.6 Disclosure or Discovery Material: all items or information, regardless
25 of the medium or manner in which it is generated, stored, or maintained (including,
26 among other things, testimony, transcripts, and tangible things), that are produced or
27 generated in disclosures or responses to discovery in this matter.

28 2.7 Expert: a person with specialized knowledge or experience in a matter

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

5 2.8 House Counsel: attorneys who are employees of a Party to this Action,
6 or employees of a Party's corporate parent. House Counsel does not include
7 Outside Counsel of Record or any other outside counsel.

8 2.9 Non-Party: any natural person, partnership, corporation, association or
9 other legal entity not named as a Party to this action.

10 2.10 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
11 Information or Items: extremely sensitive "Confidential Information or Items,"
12 disclosure of which to another Party or Non-Party would create a substantial risk of
13 serious harm that could not be avoided by less restrictive means.

14 2.11 Outside Counsel of Record: attorneys who are not employees of a
15 party to this Action but are retained to represent or advise a party to this Action and
16 have appeared in this Action on behalf of that party or are affiliated with a law firm
17 that has appeared on behalf of that party, and includes support staff.

18 2.12 Party: any party to this Action, including all of its current officers,
19 directors, employees, consultants, retained experts, and Outside Counsel of Record
20 (and their support staffs).

21 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
22 Discovery Material in this Action.

23 2.14 Professional Vendors: persons or entities that provide litigation
24 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
25 demonstrations, and organizing, storing, or retrieving data in any form or medium)
26 and their employees and subcontractors.

27 2.15 Protected Material: any Disclosure or Discovery Material that is
28 designated as "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL—

1 ATTORNEYS' EYES ONLY.”

2 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
3 from a Producing Party.

4 3. SCOPE

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

10 Any use of Protected Material at trial shall be governed by the orders of the
11 trial judge. This Order does not govern the use of Protected Material at trial.

12 4. DURATION

13 FINAL DISPOSITION of the action is defined as the conclusion of any
14 appellate proceedings, or, if no appeal is taken, when the time for filing of an appeal
15 has run. Except as set forth below, the terms of this protective order apply through
16 FINAL DISPOSITION of the action. The parties may stipulate that they will be
17 contractually bound by the terms of this agreement beyond FINAL DISPOSITION,
18 but will have to file a separate action for enforcement of the agreement once all
19 proceedings in this case are complete.

20 Once a case proceeds to trial, information that was designated as
21 CONFIDENTIAL or maintained pursuant to this protective order used or introduced
22 as an exhibit at trial becomes public and will be presumptively available to all
23 members of the public, including the press, unless compelling reasons supported by
24 specific factual findings to proceed otherwise are made to the trial judge in advance
25 of the trial. *See Kamakana*, 447 f.3d at 1180-81 (distinguishing “good cause”
26 showing for sealing documents produced in discovery from “compelling reasons”
27 standard when merits-related documents are part of court record). accordingly, for
28 such materials, the terms of this protective order do not extend beyond the

1 commencement of the trial.

2 5. DESIGNATING PROTECTED MATERIAL

3 5.1 Exercise of Restraint and Care in Designating Material for Protection.

4 Each Party or Non-Party that designates information or items for protection under
5 this Order must take care to limit any such designation to specific material that
6 qualifies under the appropriate standards. Unless in good faith it is not feasible or
7 would otherwise be an undue burden, the Designating Party must designate for
8 protection only those parts of material, documents, items or oral or written
9 communications that qualify so that other portions of the material, documents, items
10 or communications for which protection is not warranted are not swept unjustifiably
11 within the ambit of this Order.

12 Mass, indiscriminate or routinized designations are prohibited. Designations
13 that are shown to be clearly unjustified or that have been made for an improper
14 purpose (e.g., to unnecessarily encumber the case development process or to impose
15 unnecessary expenses and burdens on other parties) may expose the Designating
16 Party to sanctions.

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

20 5.2 Manner and Timing of Designations. Except as otherwise provided in
21 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
22 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
23 under this Order must be clearly so designated before the material is disclosed or
24 produced.

25 Designation in conformity with this Order requires:

26 (a) for information in documentary form (e.g., paper or electronic documents,
27 but excluding transcripts of depositions or other pretrial or trial proceedings), that
28 the Producing Party affix at a minimum, the legend "CONFIDENTIAL" or

1 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” to each page that
2 contains protected material. If only a portion of the material on a page qualifies for
3 protection, the Producing Party also must clearly identify the protected portion(s)
4 (e.g., by making appropriate markings in the margins).

5 A Party or Non-Party that makes original documents available for inspection
6 need not designate them for protection until after the inspecting Party has indicated
7 which documents it would like copied and produced. During the inspection and
8 before the designation, all of the material made available for inspection shall be
9 deemed “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.” After the
10 inspecting Party has identified the documents it wants copied and produced, the
11 Producing Party must determine which documents, or portions thereof, qualify for
12 protection under this Order. Then, before producing the specified documents, the
13 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or
14 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”) 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 (b) for testimony given in depositions that the Designating Party identifies
19 the Disclosure or Discovery Material on the record, before the close of the
20 deposition all protected testimony.

21 (c) for information produced in some form other than documentary and for
22 any other tangible items, that the Producing Party affix in a prominent place on the
23 exterior of the container or containers in which the information is stored the legend
24 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
25 ONLY.” If only a portion or portions of the information warrants protection, the
26 Producing Party, to the extent practicable, shall identify the protected portion(s).

27 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
28 failure to designate qualified information or items does not, standing alone, waive

1 the Designating Party's right to secure protection under this Order for such material.
2 Upon timely correction of a designation, the Receiving Party must make reasonable
3 efforts to assure that the material is treated in accordance with the provisions of this
4 Order.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
7 designation of confidentiality at any time that is consistent with the Court's
8 Scheduling Order.

9 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
10 resolution process under Local Rule 37.1 et seq.

11 6.3 The burden of persuasion in any such challenge proceeding shall be on
12 the Designating Party. Frivolous challenges, and those made for an improper
13 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
14 parties) may expose the Challenging Party to sanctions. Unless the Designating
15 Party has waived or withdrawn the confidentiality designation, all parties shall
16 continue to afford the material in question the level of protection to which it is
17 entitled under the Producing Party's designation until the Court rules on the
18 challenge.

19 7. ACCESS TO AND USE OF PROTECTED MATERIAL

20 7.1 Basic Principles. A Receiving Party may use Protected Material that is
21 disclosed or produced by another Party or by a Non-Party in connection with this
22 Action only for prosecuting, defending or attempting to settle this Action. Such
23 Protected Material may be disclosed only to the categories of persons and under the
24 conditions described in this Order. When the Action has been terminated, a
25 Receiving Party must comply with the provisions of section 13 below (FINAL
26 DISPOSITION).

27 Protected Material must be stored and maintained by a Receiving Party at a
28 location and in a secure manner that ensures that access is limited to the persons

1 authorized under this Order.

2 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
3 otherwise ordered by the court or permitted in writing by the Designating Party, a
4 Receiving Party may disclose any information or item designated
5 “CONFIDENTIAL” only to:

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

9 (b) the officers, directors, and employees (including House Counsel) of the
10 Receiving Party to whom disclosure is reasonably necessary for this Action; and
11 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (c) Experts (as defined in this Order) of the Receiving Party to whom
13 disclosure is reasonably necessary for this Action and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) the court and its personnel;

16 (e) court reporters and their staff;

17 (f) professional jury or trial consultants, mock jurors, and Professional
18 Vendors to whom disclosure is reasonably necessary for this Action and who have
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

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

22 (h) during their depositions, witnesses, and attorneys for witnesses, in the
23 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
24 requests that the witness sign the form attached as Exhibit A hereto; and (2) they
25 will not be permitted to keep any confidential information unless they sign the
26 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
27 agreed by the Designating Party or ordered by the court. Pages of transcribed
28 deposition testimony or exhibits to depositions that reveal Protected Material may

1 be separately bound by the court reporter and may not be disclosed to anyone except
2 as permitted under this Stipulated Protective Order.

3 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
4 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in
5 writing by the Designating Party, a Receiving Party may disclose any information or
6 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only
7 to:

8 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
9 employees of said Outside Counsel of Record to whom it is reasonably necessary to
10 disclose the information for this litigation. Outside Counsel of Record and
11 employees of Outside Counsel of Record in this action hereby agree to abide by the
12 terms of this Protective Order;

13 (b) House Counsel of the Receiving Party to whom disclosure is reasonably
14 necessary for this litigation and who has signed the “Acknowledgment and
15 Agreement to Be Bound” (Exhibit A).

16 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably
17 necessary for this litigation, (2) who have signed the “Acknowledgment and
18 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in
19 paragraph 7.4(a)(1), below, have been followed;

20 (d) the court and its personnel, mutually;

21 (e) court reporters and their staff, professional jury or trial consultants, mock
22 jurors, and Professional Vendors to whom disclosure is reasonably necessary for this
23 litigation and who have signed the “Acknowledgment and Agreement to Be Bound”
24 (Exhibit A); and

25 (g) Persons who appear on the face of the Protected Material as an author,
26 addressee, or recipient of the document, and who have signed the “Acknowledgment
27 and Agreement to Be Bound” (Exhibit A).

28 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to
2 Experts.

3 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
4 Designating Party, a Party that seeks to disclose to an Expert (as defined in this
5 Order) any information or item that has been designated “HIGHLY
6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(c)
7 first must make a written request to the Designating Party that (1) sets forth the full
8 name of the Expert and the city and state of his or her primary residence, (2)
9 attaches a copy of the Expert’s current resume, (3) identifies the Expert’s current
10 employer(s), (4) identifies each person or entity from whom the Expert has received
11 compensation or funding for work in his or her areas of expertise or to whom the
12 expert has provided professional services, including in connection with a litigation,
13 at any time during the preceding five years, and (5) identifies (by name and number
14 of the case, filing date, and location of court) any litigation in connection with which
15 the Expert has offered expert testimony, including through a declaration, report, or
16 testimony at a deposition or trial, during the preceding five years.

17 (b) A Party that makes a request and provides the information specified in the
18 preceding respective paragraphs may disclose the subject Protected Material to the
19 identified Expert unless, within 5 days of delivering the request, the Party receives a
20 written objection from the Designating Party. Any such objection must set forth in
21 detail the grounds on which it is based.

22 (c) A Party that receives a timely written objection must meet and confer with
23 the Designating Party (through direct voice to voice dialogue) to try to resolve the
24 matter by agreement within seven days of the written objection. If no agreement is
25 reached, the Party seeking to prohibit the disclosure to the Expert or the Party
26 seeking the disclosure may bring the matter before the Court in a manner prescribed
27 by the Court.

28 In any such proceeding, the Party opposing disclosure to the Expert shall bear

1 the burden of proving that the risk of harm that the disclosure would entail (under
2 the safeguards proposed) outweighs the Receiving Party’s need to disclose the
3 Protected Material to its Expert.

4 If during the pendency of this matter, the Expert becomes employed or
5 engaged by a competitor to the Parties to this action, the Party retaining such Expert
6 will promptly notify Outside Counsel for the Producing Party of such employment
7 or engagement. The Expert will cease reviewing any Protected Material until all
8 Parties in the action have been advised and either all Parties consent to the Expert
9 continuing to have access to any Protected Material in this matter or as otherwise
10 ordered by the Court.

11 No Party will be deemed to have waived any privilege or protection from
12 disclosure by disclosing, pursuant to section 7.4, the name of an expert or consultant
13 for whom Rule 26(a)(2)(B) disclosures are not made, and to whom the Party intends
14 to show Protected Material. No expert or consultant disclosed pursuant to section
15 7.4 for whom Rule 26(a)(2)(B) disclosures are not made shall be subject to a
16 deposition in connection with this case or any related litigation based solely on the
17 fact that he or she was the subject of such disclosure. No expert or consultant
18 disclosed pursuant to section 7.4 for whom Rule 26(a)(2)(B) disclosures are not
19 made shall be subpoenaed for testimony or for documents in connection with any
20 discovery or any hearing, proceeding, or trial of this case or of any related litigation
21 based solely on the fact that he or she was the subject of such disclosure.

22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
23 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,” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
27 ONLY” that Party must:

28 (a) promptly notify in writing the Designating Party. Such notification shall

1 include a copy of the subpoena or court order;

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

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

8 If the Designating Party timely seeks a protective order, the Party served with
9 the subpoena or court order shall not produce any information designated in this
10 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
11 EYES ONLY” before a determination by the court from which the subpoena or
12 order issued, unless the Party has obtained the Designating Party’s permission. The
13 Designating Party shall bear the burden and expense of seeking protection in that
14 court of its confidential material and nothing in these provisions should be construed
15 as authorizing or encouraging a Receiving Party in this Action to disobey a lawful
16 directive from another court.

17 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
18 PRODUCED IN THIS LITIGATION

19 (a) The terms of this Order are applicable to information produced by a Non-
20 Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Such information produced by
22 Non-Parties in connection with this litigation is protected by the remedies and relief
23 provided by this Order. Nothing in these provisions should be construed as
24 prohibiting a Non-Party from seeking additional protections.

25 (b) In the event that a Party is required, by a valid discovery request, to
26 produce a Non-Party’s confidential information in its possession, and the Party is
27 subject to an agreement with the Non-Party not to produce the Non-Party’s
28 confidential information, then the Party shall:

1 (1) promptly notify in writing the Requesting Party and the Non-Party that
2 some or all of the information requested is subject to a confidentiality agreement
3 with a Non-Party;

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

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

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

17 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

26 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
27 PROTECTED MATERIAL

28 When a Producing Party gives notice to Receiving Parties that certain

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

10 12. MISCELLANEOUS

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
12 person to seek its modification by the Court in the future.

13 12.2 Right to Assert Other Objections. By stipulating to the entry of this
14 Protective Order, no Party waives any right it otherwise would have to object to
15 disclosing or producing any information or item on any ground not addressed in this
16 Stipulated Protective Order. Similarly, no Party waives any right to object on any
17 ground to use in evidence of any of the material covered by this Protective Order.

18 12.3 Filing Protected Material. A Party that seeks to file under seal any
19 Protected Material must comply with Local Civil Rule 79-5. Protected Material
20 may only be filed under seal pursuant to a court order authorizing the sealing of the
21 specific Protected Material at issue. If a Party's request to file Protected Material
22 under seal is denied by the court, then the Receiving Party may file the information
23 in the public record unless otherwise instructed by the court.

24 13. FINAL DISPOSITION

25 After the final disposition of this Action, as defined in paragraph 4, within 60
26 days of a written request by the Designating Party, each Receiving Party (including
27 experts) must return all Protected Material to the Producing Party or destroy such
28 material. As used in this subdivision, "all Protected Material" includes all copies,

1 abstracts, compilations, summaries, and any other format reproducing or capturing
2 any of the Protected Material. Whether the Protected Material is returned or
3 destroyed, the Receiving Party must submit a written certification to the Producing
4 Party (and, if not the same person or entity, to the Designating Party) by the 60 day
5 deadline that (1) identifies (by category, where appropriate) all the Protected
6 Material that was returned or destroyed; (2) affirms that the Receiving Party has not
7 retained any copies, abstracts, compilations, summaries or any other format
8 reproducing or capturing any of the Protected Material; and (3) affirms that the
9 Receiving Party's outside counsel has not retained any copies of the Producing
10 Party's designated document production. Notwithstanding this provision, Counsel
11 are entitled to retain an archival copy of all pleadings, motion papers, trial,
12 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
13 and trial exhibits, expert reports, attorney work product, and consultant and expert
14 work product, even if such materials contain Protected Material. Any such archival
15 copies that contain or constitute Protected Material remain subject to this Protective
16 Order as set forth in Section 4 (DURATION).

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1 14. VIOLATION

2 Any violation of this Order may be punished by appropriate measures including,
3 without limitation, contempt proceedings and/or monetary sanctions.

4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

5

6 Dated: September 15, 2022

KXT Law, LLP

7

By: /s/ Karineh Khachatourian*

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Karineh Khachatourian

9

Oren J. Torten

10

Attorneys for Defendant Insomniac Games,
11 Inc.

11

12 Dated: September 15, 2022

MASCHOFF BRENNAN GILMORE &
13 ISRAELSEN

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By: /s/Charles J. Veverka

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Charles J. Veverka

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Attorney for Plaintiff ESC-Toy Ltd.

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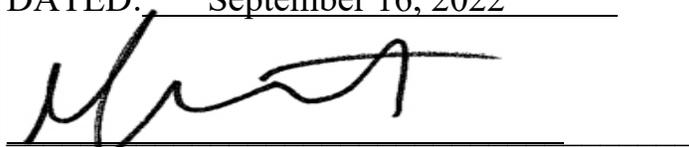
18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19

20 DATED: September 16, 2022

21

22



23

HON. GAIL J. STANDISH
United States Magistrate Judge

24

25 *Pursuant to Local Rule 5-4.3.4(a)(2)(i), the filer of this Stipulation attests that all
26 other signatories listed, and on whose behalf the filing is submitted, concur in the
27 filing's content and have authorized the filing.

28

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3
4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare under penalty of perjury
6 that I have read in its entirety and understand the Stipulated Protective Order that
7 was issued by the United States District Court for the Central District of California
8 on [date] in the case of ESC-Toy Ltd v. Insomniac Games, Inc.; Case No. 2:21-CV-
9 02139-JVS-GJS. I agree to comply with and to be bound by all the terms of this
10 Stipulated Protective Order and I understand and acknowledge that failure to so
11 comply could expose me to sanctions and punishment in the nature of contempt. I
12 solemnly promise that I will not disclose in any manner any information or item that
13 is subject to this Stipulated Protective Order to any person or entity except in strict
14 compliance with the provisions of this Order. I further agree to submit to the
15 jurisdiction of the United States District Court for the Central District of California
16 for enforcing the terms of this Stipulated Protective Order, even if such enforcement
17 proceedings occur after termination of this action. I hereby appoint
18 _____ [print or type full name] of
19 _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with
21 this action or any proceedings related to enforcement of this Stipulated Protective
22 Order.

23
24 Date: _____

25 City and State where sworn and signed: _____

26
27 Printed name: _____

28 Signature: _____