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 7 SEGA OF AMERICA, INC., and GEARBOX
 SOFTWARE, L.L.C.

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 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN FRANCISCO DIVISION

12 JOHN LOCKE and DAMION PERRINE,
 individually and on behalf of a class of similarly
 13 situated persons,

14 Plaintiffs,

15 v.

16 SEGA OF AMERICA, INC., a California
 corporation, and GEARBOX SOFTWARE,
 17 L.L.C., a Texas limited liability company,

18 Defendants.

Case No. 3:13-cv-01962-JSW

STIPULATED PROTECTIVE ORDER
 FOR LITIGATION INVOLVING
 PATENTS, HIGHLY SENSITIVE
 CONFIDENTIAL INFORMATION
 AND/OR TRADE SECRETS

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 20 1. PURPOSES AND LIMITATIONS

21 Disclosure and discovery activity in this action are likely to involve production of
 22 confidential, proprietary, or private information for which special protection from public
 23 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
 24 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 25 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
 26 all disclosures or responses to discovery and that the protection it affords from public disclosure
 27 and use extends only to the limited information or items that are entitled to confidential treatment
 28 under applicable legal principles. The parties further acknowledge, as set forth in Section 13.3,

1 below, that this Stipulated Protective Order does not automatically entitle them to file confidential
2 information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that
3 must be followed and the standards that will be applied when a party seeks permission from the
4 court to file material under seal.

5
6 2. DEFINITIONS

7 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
8 information or items under this Order.

9 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
10 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
11 of Civil Procedure 26(c).

12 2.3 Counsel (without qualifier): Outside Counsel of Record, House Counsel and
13 licensed attorney(s) providing legal counsel to the parties (as well as their support staff).

14 2.4 Designating Party: a Party or Non-Party designating information or items that it
15 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
16 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
17 CODE.”

18 2.5 Disclosure or Discovery Material: all items or information, regardless of the
19 medium or manner in which it is generated, stored, or maintained (including, among other things,
20 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
21 responses to discovery in this matter.

22 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
23 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
24 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party’s
25 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
26 or of a Party’s competitor.

27 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or
28 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another

1 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
2 less restrictive means.

3 2.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items:
4 extremely sensitive “Confidential Information or Items” representing computer code and
5 associated comments and revision histories, formulas, engineering specifications, or schematics
6 that define or otherwise describe in detail the algorithms or structure of software or hardware
7 designs, disclosure of which to another Party or Non-Party would create a substantial risk of
8 serious harm that could not be avoided by less restrictive means.

9 2.9 House Counsel: attorneys who are employees of a party to this action. House
10 Counsel does not include Outside Counsel of Record or any other outside counsel.

11 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
12 entity not named as a Party to this action.

13 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this
14 action but represent or advise a party to this action and may appear in this action on behalf of that
15 party or are affiliated with a law firm which has appeared on behalf of that party.

16 2.13 Party: any party to this action, including all of its officers, directors, employees,
17 consultants, counsel, retained experts, and Outside Counsel of Record (and their support staffs).

18 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
19 Material in this action.

20 2.15 Professional Vendors: persons or entities providing litigation support services
21 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
22 organizing, storing, or retrieving data in any form or medium) and their employees and
23 subcontractors.

24 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
25 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as
26 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

27 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a
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1 Producing Party.

2 3. SCOPE

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

7 However, the protections conferred by this Stipulation and Order do not cover the following
8 information: (a) any information that is in the public domain at the time of disclosure to a
9 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
10 a result of publication not involving a violation of this Order, including becoming part of the
11 public record through trial or otherwise; and (b) any information known to the Receiving Party
12 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
13 obtained the information lawfully and under no obligation of confidentiality to the Designating
14 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

15 4. DURATION

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

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
25 or Non-Party designating information or items for protection under this Order must take care to
26 limit any such designation to specific material that qualifies under the appropriate standards. To
27 the extent it is practical to do so, the Designating Party must designate for protection only those
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1 parts of material, documents, items, or oral or written communications that qualify – so that other
2 portions of the material, documents, items, or communications for which protection is not
3 warranted are not swept unjustifiably within the ambit of this Order.

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

8 If it comes to a Designating Party’s attention that information or items that it designated
9 for protection do not qualify for protection at all or do not qualify for the level of protection
10 initially asserted, that Designating Party must thereafter notify all other parties that it is taking the
11 necessary corrective actions.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
13 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
14 Discovery Material qualifying for protection under this Order should be clearly designated as
15 such before the material is disclosed or produced.

16 Designation in conformity with this Order requires:

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

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

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

24 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
25 other proceeding to include Protected Material so that the other parties can ensure that only
26 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
27 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
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1 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
2 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

3 Transcripts containing Protected Material shall have an obvious legend on the title page
4 that the transcript contains Protected Material, and the title page shall be followed by a list of all
5 pages (including line numbers as appropriate) that have been designated as Protected Material and
6 the level of protection being asserted by the Designating Party. The Designating Party shall
7 inform the court reporter of these requirements. Any transcript that is prepared before the
8 expiration of a 21-day period for designation shall be treated during that period as if it had been
9 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
10 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
11 actually designated.

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

19 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
20 designate qualified information or items does not, standing alone, waive the Designating Party’s
21 right to secure protection under this Order for such material. Upon timely correction of a
22 designation, the Receiving Party must make reasonable efforts to ensure that the material is
23 treated in accordance with the provisions of this Order.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
26 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
27 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
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1 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
2 challenge a confidentiality designation by electing not to mount a challenge promptly after the
3 original designation is disclosed.

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

18 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
19 intervention, the Challenging Party shall file and serve a motion challenging confidentiality under
20 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if
21 applicable) within 21 days of the initial notice of challenge or within 14 days of the parties
22 agreeing that the meet and confer process will not resolve their dispute, whichever is later. Each
23 such motion must be accompanied by a competent declaration affirming that the movant has
24 complied with the meet and confer requirements imposed in the preceding paragraph. In addition,
25 the Designating Party may file a motion to retain a confidentiality designation at any time if good
26 cause exists for doing so. Any motion brought pursuant to this provision must be accompanied by
27 a competent declaration affirming that the movant has complied with the meet and confer
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1 requirements imposed by the preceding paragraph.

2 The burden of persuasion in any such challenge proceeding shall be on the Challenging
3 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
4 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
5 sanctions. All parties shall continue to afford the material in question the level of protection to
6 which it is entitled under the Producing Party's designation until the court rules on the challenge.

7 7. ACCESS TO AND USE OF PROTECTED MATERIAL

8 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
9 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
10 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
11 the categories of persons and under the conditions described in this Order. When the litigation has
12 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
13 DISPOSITION).

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

16 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
17 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
18 information or item designated "CONFIDENTIAL" only to:

19 (a) a Receiving Party's counsel and Outside Counsel of Record in this action, as
20 well as their employees of said counsel and Outside Counsel of Record to whom it is reasonably
21 necessary to disclose the information for this litigation and who have signed the
22 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A;

23 (b) the officers, directors, and employees (including House Counsel) of the
24 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
25 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

26 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
27 reasonably necessary for this litigation and who have signed the "Acknowledgment and
28

1 Agreement to Be Bound” (Exhibit A);

2 (d) the court and its personnel;

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

6 (f) during their depositions, witnesses in the action to whom disclosure is
7 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
8 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
9 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
10 separately bound by the court reporter and may not be disclosed to anyone except as permitted
11 under this Stipulated Protective Order.

12 (g) the author or recipient of a document containing the information or a custodian
13 or other person who otherwise possessed or knew the information.

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

19 (a) the Receiving Party’s counsel and Outside Counsel of Record in this action, as
20 well as the employees thereof to whom it is reasonably necessary to disclose the information for
21 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is
22 attached hereto as Exhibit A;

23 (b) Designated House Counsel of the Receiving Party (1) to whom disclosure is
24 reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and
25 Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph
26 7.4(a)(1), below, have been followed;

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

4 (d) the court and its personnel;

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

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

10 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
11 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
12 CODE” Information or Items to Designated House Counsel or Experts.

13 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
14 Designating Party, a Party that seeks to disclose to Designated House Counsel any information or
15 item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
16 pursuant to paragraph 7.3(b) first must make a written request to the Designating Party that (1)
17 sets forth the full name of the Designated House Counsel and the city and state of his or her
18 residence, and (2) describes the Designated House Counsel’s current and reasonably foreseeable
19 future primary job duties and responsibilities in sufficient detail to determine if House Counsel is
20 involved, or may become involved, in any competitive decision-making.

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

10 (b) A Party making a request and providing the information specified in the
11 preceding respective paragraphs may disclose the subject Protected Material to the identified
12 Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party
13 receives a written objection from the Designating Party. Any such objection must set forth in
14 detail the grounds on which it is based.

15 (c) A Party receiving a timely written objection must meet and confer with the
16 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by
17 agreement within seven days of the written objection. If no agreement is reached, the Party
18 seeking to make the disclosure to Designated House Counsel or the Expert may file a motion as
19 provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order
20 62, if applicable) seeking permission from the court to do so. Any such motion must describe the
21 circumstances with specificity, set forth in detail the reasons why the disclosure to Designated
22 House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure
23 would entail, and suggest any additional means that could be used to reduce that risk. In addition,
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25
26 ¹If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should
provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party
seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

27 ²It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the termination
28 of the litigation that could foreseeably result in an improper use of the Designating Party's "HIGHLY CONFIDENTIAL –
ATTORNEYS' EYES ONLY" information.

1 any such motion must be accompanied by a competent declaration describing the parties' efforts
2 to resolve the matter by agreement (i.e., the extent and the content of the meet and confer
3 discussions) and setting forth the reasons advanced by the Designating Party for its refusal to
4 approve the disclosure.

5 In any such proceeding, the Party opposing disclosure to Designated House
6 Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure
7 would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose
8 the Protected Material to its Designated House Counsel or the Expert. Disclosures to Designated
9 House Counsel or the Expert shall not precede a ruling on the disputed issue.

10 8. SOURCE CODE

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

14 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE
15 CODE" shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL –
16 ATTORNEYS' EYES ONLY" information, and may be disclosed only to the individuals to
17 whom "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may only be
18 disclosed as set forth in Paragraphs 7.3 and 7.4.

19 (c) Any source code produced in discovery shall be made available for
20 inspection, in a format allowing it to be reasonably reviewed and searched, during normal
21 business hours or at other mutually agreeable times, at an office of the Producing Party's counsel
22 or another mutually agreed upon location. Such source code shall be made available for
23 inspection on a secured computer in a secured room without Internet access or network access to
24 other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any
25 portion of the source code onto any recordable media or recordable device. The Producing Party
26 may visually monitor the activities of the Receiving Party's representatives during any source
27 code review, but only to ensure the absence of any unauthorized recording, copying, altering or
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1 transmission of the source code.

2 (d) The Receiving Party may request paper copies of limited portions of source
3 code that are reasonably necessary for the preparation of court filings, pleadings, expert reports,
4 or other papers, or for deposition or trial, but shall not request paper copies for the purposes of
5 reviewing the source code other than electronically as set forth in paragraph (c) in the first
6 instance. The Producing Party shall provide all such source code in paper form including bates
7 numbers and the label "HIGHLY CONFIDENTIAL - SOURCE CODE." The Producing Party
8 may challenge the amount of source code requested in hard copy form pursuant to the dispute
9 resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the
10 "Challenging Party" and the Receiving Party is the "Designating Party" for purposes of dispute
11 resolution.

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

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

24 If a Party is served with a subpoena or a court order issued in other litigation compelling
25 disclosure of any information or items designated in this action as "CONFIDENTIAL" or
26 _____

27 ³The nature of the source code at issue in a particular case may warrant additional protections or restrictions. For example, it may
28 be appropriate under certain circumstances to require the Receiving Party to provide notice to the Producing Party before
including "HIGHLY CONFIDENTIAL – SOURCE CODE" information in a court filing, pleading, or expert report.

1 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL –
2 SOURCE CODE”] that Party must:

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

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

9 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
10 Designating Party whose Protected Material may be affected.⁴

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

20 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS**
21 **LITIGATION**

22 (a) The terms of this Order are applicable to information produced by a Non-
23 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
24 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE.” Such
25 information produced by Non-Parties in connection with this litigation is protected by, *inter alia*,
26

27 ⁴The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the
28 Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or
order issued.

1 the remedies and relief provided by this Order. Nothing in these provisions should be construed
2 as prohibiting a Non-Party from seeking additional protections.

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

7 1. promptly notify in writing the Requesting Party and the Non-Party that
8 some or all of the information requested is subject to a confidentiality agreement with a Non-
9 Party;

10 2. promptly provide the Non-Party with a copy of the Stipulated Protective
11 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
12 the information requested; and

13 3. thereafter make the information requested available for inspection by the
14 Non-Party.

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

22 11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

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

3
4 12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

5 If information produced in discovery is subject to a claim of privilege or of protection as
6 trial-preparation material, the party making the claim may notify any party that received the
7 information of the claim and the basis for it. After being notified, a party must promptly return or
8 destroy the specified information and any copies it has; must not use or disclose the information
9 to another; and must take reasonable steps to promptly retrieve the information if the party
10 disclosed it before being notified. The producing party must preserve the information pending the
11 claim’s resolution, protecting it from further disclosure(s).

12
13 This provision is not intended to modify whatever procedure may be established in an e-
14 discovery order that provides for production without prior privilege review. Pursuant to Federal
15 Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of
16 disclosure of a communication or information covered by the attorney-client privilege or work
17 product protection, the parties may incorporate their agreement in the stipulated protective order
18 submitted to the court.

19
20 13. MISCELLANEOUS

21
22 13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
23 seek its modification by the court in the future.

24
25 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
26 Order no Party waives any right it otherwise would have to object to disclosing or producing any
27 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
28 Party waives any right to object on any ground to use in evidence of any of the material covered

1 by this Protective Order.

2 13.3. Filing Protected Material. Without written permission from the Designating Party
3 or a court order secured after appropriate notice to all interested persons, a Party may not file in
4 the public record in this action any Protected Material. A Party seeking to file under seal any
5 Protected Material must comply with Civil Local Rule 79-5 and General Order 62. Protected
6 Material may only be filed under seal pursuant to a court order authorizing the sealing of the
7 specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a
8 sealing order will issue only upon a request establishing that the Protected Material at issue is
9 privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
10 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-
11 5(d) and General Order 62 is denied by the court, then the Receiving Party may file the Protected
12 Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by
13 the court.

14 14. FINAL DISPOSITION

15 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
16 Receiving Party must return all Protected Material to the Producing Party or destroy such
17 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
18 compilations, summaries, and any other format reproducing or capturing any of the Protected
19 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
20 submit a written certification to the Producing Party (and, if not the same person or entity, to the
21 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
22 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
23 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
24 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
25 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
26 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
27 product, and consultant and expert work product, even if such materials contain Protected
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1 Material. Any such archival copies that contain or constitute Protected Material remain subject to
2 this Protective Order as set forth in Section 4 (DURATION).

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 Dated: December 12, 2013

FENWICK & WEST LLP

6 By: /s/ Rodger R. Cole
Rodger R. Cole

7 Attorneys for Defendants
8 SEGA OF AMERICA, INC., and GEARBOX
9 SOFTWARE, L.L.C.

10 Dated: December 12, 2013


EDELSON LLC

12 By: /s/ Benjamin S. Thomassen
Benjamin S. Thomassen

13 Attorneys for Plaintiffs
14 JOHN LOCKE and DAMION PERRINE and
15 on the Putative Class

17 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

19 DATED: December 13, 2013

20 
THE HONORABLE JEFFREY S. ~~WHITE~~ WHITE
21 United States District Judge

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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1

I, Rodger R. Cole, am the ECF User whose identification and password are being used to file this document. In compliance with Civil Local Rule 5-1, I hereby attest that all signatories have concurred in this filing.

Dated: December 12, 2013

By: /s/ Rodger R. Cole
Rodger R. Cole

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of *Locke and Perrine v. Sega of America, Inc., et al.*, Case No. 3:13-cv-01962-JSW. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

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

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

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]