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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SEGAN LLC,

v.

ZYNGA INC.

Plaintiff,

Defendant.

Case No. 3:14-cv-01315-VC (JCS)

**STIPULATED PROTECTIVE ORDER FOR
LITIGATION INVOLVING PATENTS AND
HIGHLY SENSITIVE CONFIDENTIAL
INFORMATION**

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of confidential,
3 proprietary, or private information for which special protection from public disclosure and from use for
4 any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby
5 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
6 acknowledge that this Order does not confer blanket protections on all disclosures or responses to
7 discovery and that the protection it affords from public disclosure and use extends only to the limited
8 information or items that are entitled to confidential treatment under the applicable legal principles. The
9 parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does
10 not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the
11 procedures that must be followed and the standards that will be applied when a party seeks permission
12 from the court to file material under seal.

13 **2. DEFINITIONS**

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
15 items under this Order.

16 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,
17 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure
18 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
20 their support staff).

21 2.4 Designating Party: a Party or Non-Party that designates information or items that it
22 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
24 CODE”.

25 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or
26 manner in which it is generated, stored, or maintained (including, among other things, testimony,
27 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery
28 in this matter.

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

6 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
7 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-
8 Party would create a substantial risk of serious harm that could not be avoided by less restrictive means.

9 2.8 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
10 sensitive “Confidential Information or Items” representing computer code and associated comments and
11 revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in
12 detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or
13 Non-Party would create a substantial risk of serious harm that could not be avoided by less restrictive
14 means.

15 2.9 House Counsel: attorneys who are employees of a party to this action. House Counsel
16 does not include Outside Counsel of Record or any other outside counsel.

17 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal entity
18 not named as a Party to this action.

19 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this action but
20 are retained to represent or advise a party to this action and have appeared in this action on behalf of that
21 party or are affiliated with a law firm which has appeared on behalf of that party.

22 2.12 Party: any party to this action, including all of its officers, directors, employees,
23 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

24 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
25 this action.

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

1 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
2 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as
3 “HIGHLY CONFIDENTIAL – SOURCE CODE.”

4 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
5 Party.

6 **3. SCOPE**

7 The protections conferred by this Stipulation and Order cover not only Protected Material (as
8 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
9 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
10 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections
11 conferred by this Stipulation and Order do not cover the following information: (a) any information that
12 is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public
13 domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this
14 Order, including becoming part of the public record through trial or otherwise; and (b) any information
15 known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the
16 disclosure from a source who obtained the information lawfully and under no obligation of
17 confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a
18 separate agreement or order.

19 **4. DURATION**

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

26 **5. DESIGNATING PROTECTED MATERIAL**

27 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
28 Party that designates information or items for protection under this Order must take care to limit any such

1 designation to specific material that qualifies under the appropriate standards. To the extent it is practical
2 to do so, the Designating Party must designate for protection only those parts of material, documents,
3 items, or oral or written communications that qualify – so that other portions of the material, documents,
4 items, or communications for which protection is not warranted are not swept unjustifiably within the
5 ambit of this Order.

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

10 If it comes to a Designating Party’s attention that information or items that it designated for
11 protection do not qualify for protection at all or do not qualify for the level of protection initially
12 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken
13 designation.

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

18 Designation in conformity with this Order requires:

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

26 A Party or Non-Party that makes original documents or materials available for inspection need
27 not designate them for protection until after the inspecting Party has indicated which material it would
28 like copied and produced. During the inspection and before the designation, all of the material made

1 available for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
2 After the inspecting Party has identified the documents it wants copied and produced, the Producing
3 Party must determine which documents, or portions thereof, qualify for protection under this Order.
4 Then, before producing the specified documents, the Producing Party must affix the appropriate legend
5 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
6 CONFIDENTIAL – SOURCE CODE”) to each page that contains Protected Material. If only a portion
7 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
8 identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify,
9 for each portion, the level of protection being asserted.

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

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

27 Transcripts containing Protected Material shall have an obvious legend on the title page that the
28 transcript contains Protected Material, and the title page shall be followed by a list of all pages (including

1 line numbers as appropriate) that have been designated as Protected Material and the level of protection
2 being asserted by the Designating Party. The Designating Party shall inform the court reporter of these
3 requirements. Any transcript that is prepared before the expiration of a 21-day period for designation
4 shall be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL –
5 ATTORNEYS’ EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period,
6 the transcript shall be treated only as actually designated.

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

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
14 qualified information or items does not, standing alone, waive the Designating Party’s right to secure
15 protection under this Order for such material. Upon timely correction of a designation, the Receiving
16 Party must make reasonable efforts to assure that the material is treated in accordance with the provisions
17 of this Order.

18 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
20 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
21 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
22 significant disruption or delay of the litigation, a Party does not waive its right to challenge a
23 confidentiality designation by electing not to mount a challenge promptly after the original designation is
24 disclosed.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
26 providing written notice of each designation it is challenging and describing the basis for each challenge.
27 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the
28 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective

1 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by
2 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within
3 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its
4 belief that the confidentiality designation was not proper and must give the Designating Party an
5 opportunity to review the designated material, to reconsider the circumstances, and, if no change in
6 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed
7 to the next stage of the challenge process only if it has engaged in this meet and confer process first or
8 establishes that the Designating Party is unwilling to participate in the meet and confer process in a
9 timely manner.

10 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,
11 the parties shall follow the procedures set forth in the NOTICE OF REFERENCE AND ORDER RE
12 DISCOVERY PROCEDURES (Dkt. No. 69), as modified herein. Any detailed letter submitted to the
13 Court raising a dispute under this Section 6 must be accompanied by a competent declaration affirming
14 that the movant has complied with the meet and confer requirements. Failure by the Designating Party to
15 meet and confer within 14 days of the demand for a meet and confer, shall automatically waive the
16 confidentiality designation for each challenged designation. The burden of persuasion in any such
17 challenge proceeding shall be on the Designating Party. Frivolous challenges and those made for an
18 improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
19 expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality
20 designation by failing to file a motion to retain confidentiality as described above, all parties shall
21 continue to afford the material in question the level of protection to which it is entitled under the
22 Producing Party's designation until the court rules on the challenge.

23 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

24 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
25 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
26 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
27 categories of persons and under the conditions described in this Order. When the litigation has been
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1 terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL
2 DISPOSITION).

3 Protected Material must be stored and maintained by a Receiving Party at a location and in a
4 secure manner¹ that ensures that access is limited to the persons authorized under this Order.

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

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

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

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

18 (d) the court and its personnel;

19 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
20 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed
21 the “Acknowledgment and Agreement to Be Bound” (Exhibit A), except, in the case of mock jurors, the
22 parties agree to work together to identify a simplified, precisely tailored Undertaking for mock jurors to
23 sign in lieu of the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

24 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary
25 and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise
26 agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or
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28 ¹ It may be appropriate under certain circumstances to require the Receiving Party to store any electronic Protected
Material in password-protected form.

1 exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and
2 may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

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

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

10 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of said
11 Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
12 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached
13 hereto as Exhibit A²;

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

17 (c) the court and its personnel;

18 (d) court reporters and their staff, professional jury or trial consultants, mock jurors, and
19 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed
20 the “Acknowledgment and Agreement to Be Bound” (Exhibit A) except, in the case of mock jurors, the
21 parties agree to work together to identify a simplified, precisely tailored Undertaking for mock jurors to
22 sign in lieu of the “Acknowledgement and Agreement to Be Bound” (Exhibit A); and
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25 ² A party may also allow House Counsel access to derivative materials, such as exhibits to motions or expert
26 reports, or summaries of HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY materials (not including
27 HIGHLY CONFIDENTIAL – SOURCE CODE materials), but only to the extent that such materials are financial
28 information responsive to discovery requests (in the case of Zynga, such financial information consists of
specifically designated (by Zynga) spreadsheets showing usage, revenue, and cost data for each accused game).
Derivative materials does not include non-financial technical materials. Any materials a party wishes to share with
its respective House Counsel that is not defined above as financial-related materials shall be shared only after
approval by the producing party on a case-by-case basis.

1 (e) the author or recipient of a document containing the information or a custodian or other person
2 who otherwise possessed or knew the information.

3 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or
5 Items to Experts.

6 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a
7 Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been
8 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
9 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a written request to
10 the Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL –
11 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that the
12 Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and
13 the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4)
14 identifies the Expert’s current employer(s), (5) identifies each person or entity to whom the expert has
15 provided professional services, including in connection with a litigation, at any time during the preceding
16 five years (if the Expert believes any of this information is subject to a confidentiality obligation to a
17 third-party, then the Expert must disclose the existence of the confidential services rendered, the period
18 the services were rendered, a general description of the person or entity (e.g., private game developer,
19 government entity, etc.) to whom the Expert provided the services, and a general description of the work
20 provided to the person or entity; and the Party seeking to disclose to the Expert shall be available to meet
21 and confer with the Designating Party regarding any such engagement)³, and (6) identifies (by name and
22 number of the case, filing date, and location of court) any litigation in connection with which the Expert
23 has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial,
24 during the preceding five years.

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26 ³ Except where such identified information is required to be publicly disclosed pursuant to a court order, the
27 Court’s Local Rules, or applicable Federal Rules, the party that receives the information shall take reasonable
28 measures to maintain the confidentiality of the information and shall not publicly disclose the information without
prior written consent of the expert. Nothing in this section shall be construed to limit the evidence used to impeach
an opposing Party’s Expert at trial. In particular, information about the people or entities to whom an Expert has
provided professional services in the past may be used at trial to impeach that Expert’s credibility, regardless of
whether the trial is open to the public.

1 (b) A Party that makes a request and provides the information specified in the preceding
2 respective paragraphs may disclose the subject Protected Material to the identified Designated House
3 Counsel or Expert unless, within 7 days of delivering the request, the Party receives a written objection
4 from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

5 (c) A Party that receives a timely written objection must meet and confer with the Designating
6 Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days
7 of the written objection. If no agreement is reached, the Party seeking to make the disclosure to the
8 Expert must follow the procedures set forth in the NOTICE OF REFERENCE AND ORDER RE
9 DISCOVERY PROCEDURES (Dkt. No. 69), as modified herein. Any detailed letter submitted to the
10 Court raising a dispute under this Section 7.4 must be accompanied by a competent declaration affirming
11 that the movant has complied with the meet and confer requirements. The detailed letter must set forth
12 the reasons why the disclosure to the Expert is reasonably necessary, assess the risk of harm that the
13 disclosure would entail, and suggest any additional means that could be used to reduce that risk. The
14 Party opposing disclosure to the Expert shall bear the burden of proving that the risk of harm that the
15 disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose
16 the Protected Material to its Expert.

17 **8. PROSECUTION BAR**

18 Absent written consent from the Producing Party, any individual who receives access to
19 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL –
20 SOURCE CODE" information shall not be involved in the prosecution of patents or patent applications
21 relating to the subject matter of the Accused Games (which are identified in Plaintiff's infringement
22 contentions) and the subject matter of U.S. Patent No. 7,054,928 ("the '928 Patent") and any patent or
23 application claiming priority to or otherwise related to the '928 Patent, before any foreign or domestic
24 agency, including the United States Patent and Trademark Office ("the Patent Office"). For purposes of
25 this paragraph, "prosecution" as used in this paragraph includes directly or indirectly drafting, amending,
26 advising, or otherwise affecting the scope of patent claims. To avoid any doubt, "prosecution" as used in
27 this paragraph does not include challenging a patent before a domestic or foreign agency (including, but
28 not limited to, a reissue protest, *ex parte* reexamination, *inter partes* reexamination, or *inter partes*

1 review). This Prosecution Bar shall begin when access to “HIGHLY CONFIDENTIAL – ATTORNEYS’
2 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information is first received by the
3 affected individual and shall end two (2) years after final termination of this action.

4 **9. SOURCE CODE**

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

8 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE” shall
9 be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
10 ONLY” information including the Prosecution Bar set forth in Paragraph 8, and may be disclosed only to
11 the individuals to whom “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information may
12 be disclosed, as set forth in Paragraphs 7.3 and 7.4.

13 (c) Any source code produced in discovery shall be made available for inspection, in a format
14 allowing it to be reasonably reviewed and searched, during normal business hours or at other mutually
15 agreeable times, at an office of the Producing Party’s counsel or another mutually agreed upon location.
16 The source code shall be made available for inspection on a secured computer in a secured room without
17 Internet access or network access to other computers, and the Receiving Party shall not copy, remove, or
18 otherwise transfer any portion of the source code onto any recordable media or recordable device. The
19 Producing Party may visually monitor the activities of the Receiving Party’s representatives during any
20 source code review, but only to ensure that there is no unauthorized recording, copying, or transmission
21 of the source code.

22 (d) The Receiving Party may request paper copies of limited portions of source code that are
23 reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers, or for
24 deposition or trial, but shall not request paper copies for the purposes of reviewing the source code other
25 than electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide all
26 such source code in paper form including bates numbers and the label “HIGHLY CONFIDENTIAL -
27 SOURCE CODE.” The Producing Party may challenge the amount of source code requested in hard
28 copy form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby

1 the Producing Party is the “Challenging Party” and the Receiving Party is the “Designating Party” for
2 purposes of dispute resolution.

3 (e) The Receiving Party shall maintain a record of any individual who has inspected any
4 portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper
5 copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall not
6 create any electronic or other images of the paper copies and shall not convert any of the information
7 contained in the paper copies into any electronic format. The Receiving Party shall only make additional
8 paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers
9 (including a testifying expert’s expert report), (2) necessary for deposition, or (3) otherwise necessary for
10 the preparation of its case. Any paper copies used during a deposition shall be retrieved by the Producing
11 Party at the end of each day and must not be given to or left with a court reporter or any other individual.
12 The Receiving Party shall provide notice to the Producing Party no later than three (3) days before
13 including “HIGHLY CONFIDENTIAL – SOURCE CODE” information in a court filing, pleading, or
14 expert report.

15 **10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**
16 **LITIGATION**

17 If a Party is served with a subpoena or a court order issued in other litigation that compels
18 disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
20 CODE” that Party must:

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

23 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
24 litigation that some or all of the material covered by the subpoena or order is subject to this Protective
25 Order. Such notification shall include a copy of this Stipulated Protective Order; and
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1 (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating
2 Party whose Protected Material may be affected.⁴

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

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

13 (a) The terms of this Order are applicable to information produced by a Non-Party in this
14 action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
15 ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”. Such information produced by Non-
16 Parties in connection with this litigation is protected by the remedies and relief provided by this Order.
17 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional
18 protections.

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

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

24
25
26
27 ⁴ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and
28 to afford the 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 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in
2 this litigation, the relevant discovery request(s), and a reasonably specific description of the information
3 requested; and

4 3. make the information requested available for inspection by the Non-Party.

5 (c) If the Non-Party fails to object or seek a protective order from this court within 14 days of
6 receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's
7 confidential information responsive to the discovery request. If the Non-Party timely seeks a protective
8 order, the Receiving Party shall not produce any information in its possession or control that is subject to
9 the confidentiality agreement with the Non-Party before a determination by the court.⁵ Absent a court
10 order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court
11 of its Protected Material.

12 **12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

20 **13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**
21 **MATERIAL**

22 If information is produced in discovery that is subject to a claim of privilege or of protection as
23 trial-preparation material, the party making the claim may notify any party that received the information
24 of the claim and the basis for it. After being notified, a party must promptly return or destroy the
25 specified information and any copies it has and may not sequester, use or disclose the information until
26

27 _____
28 ⁵ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 the claim is resolved. This includes a restriction against presenting the information to the court for a
2 determination of the claim.

3 **14. MISCELLANEOUS**

4 14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its
5 modification by the court in the future.

6 14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
7 Party waives any right it otherwise would have to object to disclosing or producing any information or
8 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any
9 right to object on any ground to use in evidence of any of the material covered by this Protective Order.

10 14.3 Export Control. Disclosure of Protected Material shall be subject to all applicable laws
11 and regulations relating to the export of technical data contained in such Protected Material, including the
12 release of such technical data to foreign persons or nationals in the United States or elsewhere. The
13 Producing Party shall be responsible for identifying any such controlled technical data, and the Receiving
14 Party shall take measures necessary to ensure compliance.

15 14.4 Filing Protected Material. Without written permission from the Designating Party or a
16 court order secured after appropriate notice to all interested persons, a Party may not file in the public
17 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
18 must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a
19 court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local
20 Rule 79-5, a sealing order will issue only upon a request establishing that the Protected Material at issue
21 is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a
22 Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is
23 denied by the court, then the Receiving Party may file the Protected Material in the public record
24 pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the court.

25 **15. FINAL DISPOSITION**

26 Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving
27 Party must return all Protected Material to the Producing Party or destroy such material. As used in this
28 subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any

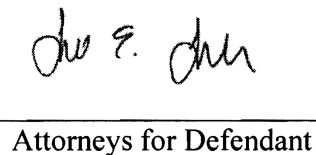
1 other format reproducing or capturing any of the Protected Material. Whether the Protected Material is
2 returned or destroyed, the Receiving Party must submit a written certification to the Producing Party
3 (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that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

12 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

13
14
15 DATED: August 28, 2014

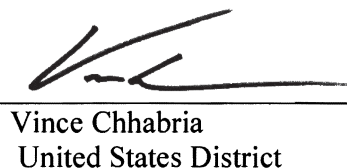

Attorneys for Plaintiff

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17
18 DATED: August 27, 2014


Attorneys for Defendant

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20
21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22
23 DATED: September 4, 2014


Vince Chhabria
United States District

1 EXHIBIT A

2 STIPULATED PROTECTIVE ORDER FOR LITIGATION INVOLVING PATENTS AND HIGHLY
3 SENSITIVE CONFIDENTIAL INFORMATION

4
5 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

6 I, _____ [print or type full name], of

7 _____ [print or type full

8 address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated

9 Protective Order that was issued by the United States District Court for the Northern District of

10 California on _____ [date] in the case of Segan LLC v. Zynga Inc., 3:14-CV-01315-VC. I

11 agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I

12 understand and acknowledge that failure to so comply could expose me to sanctions and punishment in

13 the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item

14 that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with

15 the provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States District Court for the Northern

17 District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if

18 such enforcement proceedings occur after termination of this action.

19 I hereby appoint _____ [print or type full name] of

20 _____ [print or

21 type full address and telephone number] as my California agent for service of process in connection with

22 this action or any proceedings related to enforcement of this Stipulated Protective Order.

23 Date: _____

24 City and State where sworn and signed: _____

25 Printed name: _____

26 [printed name]

27 Signature: _____

28 [signature]

CERTIFICATE OF SERVICE

I certify that all counsel of record is being served on September 2, 2014 with a copy of this document via the Court's CM/ECF system.

/s/ David. A. Dorey
DAVID. A. DOREY, ESQUIRE