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INTERACTIVE, INC. and JOHN RETTIG

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

OBJECTIVITY, INC., a corporation,

Plaintiff,

v.

EXPONENTIAL INTERACTIVE, INC., a  
corporation, and JOHN RETTIG, an  
individual,

Defendants.

CASE NO. 3:14-cv-01434 EMC

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

1. PURPOSES AND LIMITATIONS

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

1 the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below,  
2 that this Stipulated Protective Order does not entitle them to file confidential information under  
3 seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that  
4 will be applied when a party seeks permission from the court to file material under seal.

5       2.     DEFINITIONS

6       2.1.   Challenging Party: a Party or Non-Party that challenges the designation of  
7 information or items under this Order.

8       2.2.   “CONFIDENTIAL” Information or Items: information (regardless of how it is  
9 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of  
10 Civil Procedure 26(c).

11       2.3.   Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well  
12 as their support staff).

13       2.4.   Designating Party: a Party or Non-Party that designates information or items that it  
14 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
15 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

16       2.5.   Disclosure or Discovery Material: all items or information, regardless of the medium  
17 or manner in which it is generated, stored, or maintained (including, among other things, testimony,  
18 transcripts, and tangible things), that are produced or generated in disclosures or responses to  
19 discovery in this matter.

20       2.6.   Expert: a person with specialized knowledge or experience in a matter pertinent to  
21 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as a  
22 consultant in this action, (2) is not a past or current employee of a Party or of a Party’s competitor,  
23 and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s  
24 competitor.

25       2.7.   “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:  
26 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or  
27 Non-Party would create a substantial risk of serious harm that could not be avoided by less  
28 restrictive means.

1           2.8.   House Counsel: attorneys who are employees of a party to this action. House  
2 Counsel does not include Outside Counsel of Record or any other outside counsel.

3           2.9.   Non-Party: any natural person, partnership, corporation, association, or other legal  
4 entity not named as a Party to this action.

5           2.10. Outside Counsel of Record: attorneys who are not employees of a party to this action  
6 but are retained to represent or advise a party to this action and have appeared in this action on  
7 behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

8           2.11. Party: any party to this action, including all of its officers, directors, employees,  
9 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

10          2.12. Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
11 Material in this action.

12          2.13. Professional Vendors: persons or entities that provide litigation support services  
13 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing,  
14 storing, or retrieving data in any form or medium) and their employees and subcontractors.

15          2.14. Protected Material: any Disclosure or Discovery Material that is designated as  
16 "CONFIDENTIAL," or as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

17          2.15. Receiving Party: a Party that receives Disclosure or Discovery Material from a  
18 Producing Party.

19          3.    SCOPE

20          The protections conferred by this Stipulation and Order cover not only Protected Material  
21 (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all  
22 copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
23 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.  
24 However, the protections conferred by this Stipulation and Order do not cover the following  
25 information: (a) any information that is in the public domain at the time of disclosure to a Receiving  
26 Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of  
27 publication not involving a violation of this Order, including becoming part of the public record  
28 through trial or otherwise; and (b) any information known to the Receiving Party prior to the

1 disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the  
2 information lawfully and under no obligation of confidentiality to the Designating Party. Any use of  
3 Protected Material at trial shall be governed by a separate agreement or order.

#### 4 4. DURATION

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

#### 11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or  
13 Non-Party that designates information or items for protection under this Order must take care to  
14 limit any such designation to specific material that qualifies under the appropriate standards. To the  
15 extent it is practical to do so, the Designating Party must designate for protection only those parts of  
16 material, documents, items, or oral or written communications that qualify – so that other portions  
17 of the material, documents, items, or communications for which protection is not warranted are not  
18 swept unjustifiably within the ambit of this Order.

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

23 If it comes to a Designating Party's attention that information or items that it designated for  
24 protection do not qualify for protection at all or do not qualify for the level of protection initially  
25 asserted, that Designating Party must promptly notify all other parties that it is withdrawing the  
26 mistaken designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
28 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,

1 Disclosure or Discovery. Material that qualifies for protection under this Order must be clearly so  
2 designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

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

11 A Party or Non-Party that makes original documents or materials available for inspection  
12 need not designate them for protection until after the inspecting Party has indicated which material  
13 it would like copied and produced. During the inspection and before the designation, all of the  
14 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
16 copied and produced, the Producing Party must determine which documents, or portions thereof,  
17 qualify for protection under this Order. Then, before producing the specified documents, the  
18 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) to each page that contains Protected Material.  
20 If only a portion or portions of the material on a page qualifies for protection, the Producing Party  
21 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
22 margins) and must specify, for each portion, the level of protection being asserted.

23 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
24 Designating Party identify on the record, before the close of the deposition, hearing, or other  
25 proceeding, all protected testimony and specify the level of protection being asserted. When it is  
26 impractical to identify separately each portion of testimony that is entitled to protection and it  
27 appears that substantial portions of the testimony may qualify for protection, the Designating Party  
28 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right

1 to have up to 21 days to identify the specific portions of the testimony as to which protection is  
2 sought and to specify the level of protection being asserted. Only those portions of the testimony  
3 that are appropriately designated for protection within the 21 days shall be covered by the  
4 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the  
5 deposition or up to 21 days afterwards if that period is properly invoked, that the entire transcript  
6 shall be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES  
7 ONLY."

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

14 Transcripts containing Protected Material shall have an obvious legend on the title page that  
15 the transcript contains Protected Material, and the title page shall be followed by a list of all pages  
16 (including line numbers as appropriate) that have been designated as Protected Material and the  
17 level of protection being asserted by the Designating Party. The Designating Party shall inform the  
18 court reporter of these requirements. Any transcript that is prepared before the expiration of a 21-  
19 day period for designation shall be treated during that period as if it had been designated "HIGHLY  
20 CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety unless otherwise agreed. After the  
21 expiration of that period, the transcript shall be treated only as actually designated.

22 (c) for information produced in some form other than documentary and for any other  
23 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
24 containers in which the information or item is stored the legend "CONFIDENTIAL" or "HIGHLY  
25 CONFIDENTIAL – ATTORNEYS' EYES ONLY". If only a portion or portions of the information  
26 or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected  
27 portion(s) and specify the level of protection being asserted.

28 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to

1 designate qualified information or items does not, standing alone, waive the Designating Party's  
2 right to secure protection under this Order for such material. Upon timely correction of a  
3 designation, the Receiving Party must make reasonable efforts to assure that the material is treated  
4 in accordance with the provisions of this Order.

5         6.       CHALLENGING CONFIDENTIALITY DESIGNATIONS

6         6.1       Timing of Challenges. Any Party or Non-Party may challenge a designation of  
7 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
8 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
9 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
10 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
11 original designation is disclosed.

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

25         6.3       Judicial Intervention. If the Parties cannot resolve a challenge without court  
26 intervention, the Designating Party shall file and serve a motion to retain confidentiality under Civil  
27 Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of the  
28 initial notice of challenge or within 14 days of the parties agreeing that the meet and confer process

1 will not resolve their dispute, whichever is earlier. Each such motion must be accompanied by a  
2 competent declaration affirming that the movant has complied with the meet and confer  
3 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a  
4 motion including the required declaration within 21 days (or 14 days, if applicable) shall  
5 automatically waive the confidentiality designation for each challenged designation. In addition, the  
6 Challenging Party may file a motion challenging a confidentiality designation at any time if there is  
7 good cause for doing so, including a challenge to the designation of a deposition transcript or any  
8 portions thereof. Any motion brought pursuant to this provision must be accompanied by a  
9 competent declaration affirming that the movant has complied with the meet and confer  
10 requirements imposed by the preceding paragraph.

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

18 7. ACCESS TO AND USE OF PROTECTED MATERIAL

19 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
20 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
21 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
22 the categories of persons and under the conditions described in this Order. When the litigation has  
23 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL  
24 DISPOSITION).

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

27 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered  
28 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any



1 information or item designated “CONFIDENTIAL” only to:

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

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

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

12 (d) the court and its personnel;

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

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

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

24 (h) persons to whom the Designating Party agrees in writing or on the record of a  
25 deposition or hearing that disclosure may be made.

26 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
27 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
28 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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

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

9 (c) the court and its personnel;

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

13 (e) the author or recipient of a document containing the information or a custodian or  
14 other person who otherwise possessed or knew the information; and

15 (f) persons to whom the Designating Party agrees in writing or on the record of a  
16 deposition or hearing that disclosure may be made.

17 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
18 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to Designated House  
19 Counsel or Experts.

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

28 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating

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

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

19 (c) A Party that receives a timely written objection must meet and confer with the  
20 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement  
21 within seven days of the written objection. If no agreement is reached, the Party seeking to make the  
22 disclosure to Designated House Counsel or the Expert may file a motion as provided in Civil Local  
23 Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) seeking permission from the  
24 court to do so. Any such motion must describe the circumstances with specificity, set forth in detail

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25  
26 <sup>1</sup> If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then  
27 the Expert should provide whatever information the Expert believes can be disclosed without violating any  
28 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.

1 the reasons why the disclosure to Designated House Counsel or the Expert is reasonably necessary,  
2 assess the risk of harm that the disclosure would entail, and suggest any additional means that could  
3 be used to reduce that risk. In addition, any such motion must be accompanied by a competent  
4 declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the  
5 content of the meet and confer discussions) and setting forth the reasons advanced by the  
6 Designating Party for its refusal to approve the disclosure.

7 In any such proceeding, the Party opposing disclosure to Designated House Counsel or the  
8 Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under  
9 the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to  
10 its Designated House Counsel or Expert.

11 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
12 OTHER LITIGATION

13 If a Party is served with a subpoena or a court order issued in other litigation that compels  
14 disclosure of any information or items designated in this action as "CONFIDENTIAL" or  
15 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

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

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

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

23 If the Designating Party timely seeks a protective order, the Party served with the subpoena  
24 or court order shall not produce any information designated in this action as "CONFIDENTIAL" or  
25 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" before a determination by the court  
26 from which the subpoena or order issued, unless the Party has obtained the Designating Party's  
27 permission. The Designating Party shall bear the burden and expense of seeking protection in that  
28 court of its confidential material – and nothing in these provisions should be construed as

1 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from  
2 another court.

3 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN  
4 THIS LITIGATION

5 (a) The terms of this Order are applicable to information produced by a Non-Party in  
6 this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –  
7 ATTORNEYS' EYES ONLY". Such information produced by Non-Parties in connection with this  
8 litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions  
9 should be construed as prohibiting a Non-Party from seeking additional protections.

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

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

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

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

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

26 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

27 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
28 Material to any person or in any circumstance not authorized under this Stipulated Protective Order,

1 the Receiving Party must immediately (a) notify in writing the Designating Party of the  
2 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected  
3 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the  
4 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and  
5 Agreement to Be Bound" that is attached hereto as Exhibit A.

6 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
7 PROTECTED MATERIAL

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

16 12. MISCELLANEOUS

17 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
18 seek its modification by the court in the future.

19 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order  
20 no Party waives any right it otherwise would have to object to disclosing or producing any  
21 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
22 Party waives any right to object on any ground to use in evidence of any of the material covered by  
23 this Protective Order.

24 12.4 Filing Protected Material. Without written permission from the Designating Party or  
25 a court order secured after appropriate notice to all interested persons, a Party may not file in the  
26 public record in this action any Protected Material. A Party that seeks to file under seal any  
27 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
28 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at

1 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing  
2 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled  
3 to protection under the law. If a Receiving Party's request to file Protected Material under seal  
4 pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the  
5 Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise  
6 instructed by the court.

7 13. FINAL DISPOSITION

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

23 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

24  
25 ///

26 ///

27 ///

28 ///

1 Dated: June 19, 2014

CARR & FERRELL LLP

2  
3 By: /s/Stuart C. Clark  
STUART C. CLARK

4 Attorneys for OBJECTIVITY, INC.

5  
6 Dated: June 19, 2014

KAUFMAN DOLOWICH & VOLUCK, LLP

7  
8 By: /s/Hsiao C. Mao  
HSIAO C. (MARK) MAO

9 Attorneys for EXPONENTIAL INTERACTIVE, INC.  
10 and JOHN RETTIG

11  
12 PURSUANT TO STIPULATION, IT IS SO ORDERED.

13  
14 DATED: June <sup>20</sup>, 2014

15 HON. ED  
16 UNITED STA

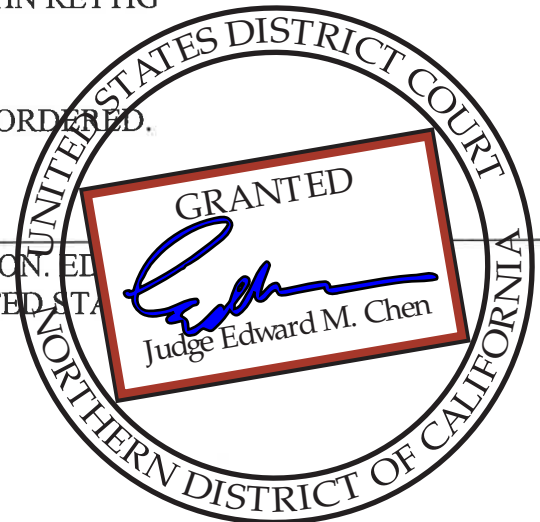




EXHIBIT A

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 May , 2014 in the case of *Objectivity, Inc. v. Exponential Interactive, Inc. et al.*, Case No. C14-1434 EMC. 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 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]