

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ESC-TOY LTD.,
Plaintiffs,
v.
SONY INTERACTIVE
ENTERTAINMENT LLC,
Defendants.

Case No. 21-cv-00778-EMC

PROTECTIVE ORDER

On November 27, 2023, the Court granted Sony Interactive Entertainment LLC’s (“SIE”) Motion to Disqualify ESC-Toy Ltd.’s (“ESC”) Counsel, Maschoff Brennan (“MABR”). *See* Docket No. 335. In the Court’s Order, it instructed SIE’s counsel to meet and confer with MABR to draft appropriate language for a protective order to ensure that ESC’s new counsel does not have access to the same improperly obtained privileged and confidential information that created the basis for MABR’s disqualification. SIE and MABR met and conferred but did not agree upon the appropriate language for the protective order. MABR requested that the Court permit briefing so each party could explain its position regarding the appropriate language for the protective order. The Court hereby denies MABR’s request for additional briefing and grants an edited version of SIE’s proposed protective order.

The protective order is as follows:

1. ESC and any counsel representing ESC in connection with this matter, whether or not such counsel has made an appearance in this case, is prohibited from contacting or communicating with Shelly Gayner in any capacity or manner to discuss this case, the factual backgrounds of this case, and/or Ms. Gayner’s knowledge of SIE-related matters;

- 1 2. ESC may not provide any counsel representing ESC in connection with this matter,
2 whether or not such counsel has made an appearance in this case, with any documents,
3 materials, or information prepared by or received from Ms. Gayner that concerns this case,
4 the factual background of this case, or Ms. Gayner’s knowledge of any SIE-related matters.
5 This includes any documents, materials, or other writings that contain, reflect, include, or
6 are derived in any way from documents, materials, or information received from Ms.
7 Gayner as well as any material in which Ms. Gayner was involved in any aspect of its
8 preparation, drafting, or creation, including as a co-author, editor, or person who provided
9 factual knowledge in preparing the content of the document where such document,
10 material or information is based on Ms. Gayner’s knowledge of any SIE-related matters;
- 11 3. Neither ESC nor any of its counsel, regardless of whether they have made an appearance in
12 this litigation, may rely upon any documents, materials, or information described in ¶ 2 of
13 this Order for any purpose at any point in this case. Such documents, materials, or factual
14 information shall be inadmissible at trial if offered into evidence by ESC;
- 15 4. MABR shall not provide any assistance to ESC to retain new counsel and is prohibited
16 from speaking to new counsel concerning this case other than to transfer case documents to
17 new counsel subject to the restrictions in ¶ 2 or to inform ESC of any appeal right, though
18 MABR may not represent ESC in the appeal;
- 19 5. MABR shall destroy all accessible documents that reflect any communications with Ms.
20 Gayner or ESC discussing information provided by Ms. Gayner about any SIE-related
21 matters and certify under penalty of perjury 5 calendar days after this Order is entered to
22 said destruction and shall not retain copies;
- 23 6. Ms. Gayner’s testimony, whether live or in the form of deposition designations, shall not
24 be admissible at trial if offered into evidence by ESC; and
- 25 7. The Court hereby strikes the Declaration of Ms. Gayner (Docket Nos. 76 and 100) from
26 the record. ESC may not rely on the contents of Ms. Gayner’s Declaration for any purpose
27 at any point in this case. Ms. Gayner’s Declaration shall be inadmissible at trial if offered
28 into evidence by ESC.

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As stated in the Court’s Order to Disqualify MABR, ESC has 90 days from the date of the Order to find counsel and to have new counsel enter an appearance. Docket No. 316. Subsequently, the stay will be lifted.

IT IS SO ORDERED.

Dated: January 16, 2024



EDWARD M. CHEN
United States District Judge