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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

GEOFFREY PECOVER and ANDREW OWENS, on behalf of themselves and a class of person similarly situated,

Plaintiffs,

v.

ELECTRONIC ARTS INC., a Delaware Corporation,

Defendant.

No.08-cv-02820 CW

STIPULATION AND ~~PROPOSED~~ ORDER SUPPLEMENTING STIPULATED PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF NON-PARTY NBA PROPERTIES, INC.'S DOCUMENTS AND MATERIALS

ACTION FILED: June 5, 2008

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1 In order to protect confidential information obtained from non-party NBA
2 Properties, Inc. (“NBA”) in connection with the above-captioned action, Plaintiffs and Defendant
3 Electronic Arts Inc. (“EA,” and collectively with Plaintiffs, the “Parties”), by and through their
4 undersigned attorneys, hereby stipulate as follows:

5 1. This stipulation supplements the Stipulated Protective Order Regarding
6 Confidentiality of Documents and Materials that was So Ordered by the Court in the above-
7 captioned action on January 20, 2009 (“Protective Order”). *See* ECF No. 32.

8 2. In addition to the provisions and protections contained in the Protective
9 Order, the following shall apply to documents and information produced by NBA in connection
10 with this action.

11 3. NBA may designate any materials, including interrogatory responses, other
12 discovery responses, or transcripts, as “Confidential – Outside Counsel Only” if it reasonably and
13 in good faith believes that such document contains confidential information so commercially
14 sensitive that the protections afforded by the Protective Order are insufficient to adequately protect
15 the interests of NBA.

16 4. The Parties acknowledge and agree that examples of an appropriate
17 “Confidential – Outside Counsel Only” designation include the terms of licensing agreements
18 between NBA and licensees.

19 5. Except as expressly provided below, any document produced by NBA and
20 designated “Confidential – Outside Counsel Only” may be used only for purposes of this action
21 and shall not be given, shown, made available or communicated in any way to anyone except:

- 22 a. the Court, court personnel and court reporters;
- 23 b. outside litigation counsel of record to the Parties, including the legal
24 associates and clerical or other support staff who are employed by
25 such counsel and are working under the express direction of such
26 counsel;
- 27 c. court reporters who record deposition or other testimony in this

1 action;

2 d. outside consultants or experts retained by the Parties for purposes of
3 this action;

4 e. any person who is indicated on the face of a document to have been
5 an author, addressee or copy recipient thereof;

6 f. any person whom NBA agrees to in writing prior to any such
7 disclosure;

8 g. outside persons or entities that provide litigation support services
9 (*e.g.*, photocopying; videotaping; translating; preparing exhibits or
10 demonstrations; organizing, storing, retrieving data in any form or
11 medium; etc.) for this action to the Parties.

12 6. Counsel for the Parties shall obtain and provide to NBA from all persons
13 who are given access to any documents produced by NBA, including documents designated
14 “Confidential – Outside Counsel Only,” written acknowledgement that such persons have read,
15 understand, and will comply with the terms of the Protective Order and this stipulation
16 supplementing the Protective Order.

17 7. In the event that a party deems it necessary to disclose any document
18 designated as “Confidential – Outside Counsel Only” to any person not specified in Paragraph 5,
19 that party shall notify counsel for NBA in writing of: (i) the document it wishes to disclose; and
20 (ii) the persons to whom such disclosure is to be made. The proposed disclosure shall not be made
21 absent written permission from NBA, unless the party wishing to make the disclosure obtains an
22 order from the United States District Court for the Southern District of New York permitting the
23 proposed disclosure.

24 8. Any document designated as “Confidential – Outside Counsel Only” that is
25 used in connection with any court proceeding shall not lose its outside counsel only status through
26 such use, and the parties shall take all steps reasonably required to protect its confidentiality during
27 such use, including the notice and filing under seal procedures provided in paragraphs 13, 15, and

1 16 of the Protective Order.

2 9. The parties agree that any documents produced by NBA, however
3 designated, will be treated in accordance with the Protective Order and this stipulation
4 supplementing the Protective Order, and will not be shown or in any way provided to any third
5 party, including during the deposition of other third parties, unless the third party otherwise
6 satisfies an exception to gain access to such confidential information as set forth herein.

7 10. The United States District Court for the Southern District of New York shall
8 retain jurisdiction over all disputes relating to any subpoena issued by that court to non-party NBA,
9 including the jurisdiction to resolve any motion for a protective order brought by NBA pursuant to
10 Fed. R. Civ. P. 45(c).

11 **IT IS SO STIPULATED.**

12
13 DATED: February 24, 2012

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Class Counsel

1 DATED: February 24, 2012

NBA PROPERTIES, INC.

2 By /s/ William S. Koenig
3 William S. Koenig

4 Executive Vice President, Business Affairs and
5 General Counsel
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10 Attorneys for NBA Properties, Inc.

11 DATED: February 24, 2012

LATHAM & WATKINS LLP

12 By /s/ Timothy L. O'Mara
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23 Attorneys for Defendant Electronic Arts Inc.

24 I, Timothy L. O'Mara, am the ECF User whose ID and password are being used to file this
25 STIPULATION AND [PROPOSED] ORDER SUPPLEMENTING STIPULATED PROTECTIVE
26 ORDER REGARDING CONFIDENTIALITY OF NON-PARTY NBA PROPERTIES, INC.'S
27 DOCUMENTS AND MATERIALS. In compliance with General Order 45, X.B., I hereby attest
28 that Shana E. Scarlett and William S. Koenig have concurred in this filing.

IT IS SO ORDERED.

DATED: 2/28/2012


HONORABLE CLAUDIA WILKEN
UNITED STATES DISTRICT COURT JUDGE

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on February 24, 2012, I electronically filed the foregoing document
3 using the CM/ECF system which will send notification of such filing to the e-mail addresses
4 registered in the CM/ECF system, as denoted on the Electronic Mail Notice List, and I hereby
5 certify that I have mailed a paper copy of the foregoing document via the United States Postal
6 Service to the non-CM/ECF participants indicated on the Manual Notice List generated by the
7 CM/ECF system.

8 /s/ Timothy L. O'Mara
9 Timothy L. O'Mara