

1                                    IN THE UNITED STATES DISTRICT COURT  
2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
4 GEOFFREY PECOVER; and ANDREW  
5 OWENS, on behalf of themselves  
6 and all others similarly  
7 situated,

8                                    Plaintiffs,

9                                    v.

10 ELECTRONIC ARTS, INC.,  
11                                    Defendant.

No. C 08-2820 CW

ORDER GRANTING IN  
PART AND DENYING  
IN PART  
PLAINTIFFS' MOTION  
TO FILE UNDER SEAL  
(Docket No. 424)

12                                    \_\_\_\_\_/

13                                    On January 3, 2013, Plaintiffs moved, pursuant to Civil Local  
14 Rule 79-5, to seal Exhibit B to the Scarlett Declaration and  
15 Exhibits A through F to the Paynter Declaration submitted in  
16 support of their motion for final approval of the class action  
17 settlement in this case. Docket No. 424. On January 16, 2013,  
18 the Court granted permission to seal Exhibit B to the Scarlett  
19 Declaration and deferred ruling on the remainder of the motion to  
20 seal. Docket No. 430. On that date, the parties filed a  
21 stipulation indicating that various non-parties, as well as  
22 Defendant Electronic Arts, Inc. (EA), had designated as  
23 confidential certain material in the exhibits to the Paynter  
24 Declaration. Docket No. 431. The Court granted the non-parties  
25 and EA until January 31, 2013 to file declarations in further  
26 support of the motion to seal. Docket No. 432. On January 31,  
27 2013, EA and non-parties National Football League (NFL), National  
28 Football League Players Association (NFLPA) and Collegiate

1 Licensing Corporation (CLC) filed declarations in further support  
2 of Plaintiffs' motion to seal. Docket Nos. 434-37.

3 To establish that these documents are sealable, parties "must  
4 overcome a strong presumption of access by showing that  
5 'compelling reasons supported by specific factual findings . . .  
6 outweigh the general history of access and the public policies  
7 favoring disclosure.'" Pintos v. Pac. Creditors Ass'n, 605 F.3d  
8 665, 679 (9th Cir. 2010) (citation omitted). This cannot be  
9 established simply by showing that the document is subject to a  
10 protective order or by stating in general terms that the material  
11 is considered to be confidential, but rather must be supported by  
12 a sworn declaration demonstrating with particularity the need to  
13 file each document under seal. Civil Local Rule 79-5(a).

14 No party or non-party has provided reason to seal any portion  
15 of Exhibit F to the Paynter Declaration. However, EA, NFL, NFLPA  
16 and CLC have each provided compelling reasons sufficient to  
17 support the sealing of certain portions of Exhibits A through E to  
18 that declaration. The Court identifies these portions in a table  
19 below, along with a numerical code that indicates the reason that  
20 each section has been found to be sealable, and grants permission  
21 to file those sections under seal, as set forth in the table.

22 The designating party has shown that the sections labeled  
23 with a number one on the table contain information about its  
24 pricing models, revenue data, and marketing and sales strategies,  
25 including budgets, spending and internal analysis of third party  
26 game reviews, and that public disclosure would provide its  
27 competitors with insight into its currently implemented business  
28 strategies, negatively impact it in future business transactions

1 and negotiations and place it at a competitive disadvantage. The  
2 designating party has shown that the sections labeled with a  
3 number two contain details of specific license terms, such as  
4 royalty tiers and minimum financial guarantees and the scope of  
5 exclusive and non-exclusive rights granted, in consummated or  
6 proposed license agreements, and that they should be sealed  
7 because, in future negotiations, potential business partners could  
8 use the information to gain a bargaining advantage over the  
9 designating party or its clients, and competitors could use the  
10 information to gain a commercial advantage over the designating  
11 party or its clients when competing for licenses. The designating  
12 party has shown that the sections labeled with a number three  
13 provide the financial details of its research and development  
14 spending, including the development budgets of specific game  
15 titles not at issue in this litigation. The designating party has  
16 shown that the portions labeled with a number four include details  
17 of its negotiations for licensing agreements, including its  
18 strategy, priorities and assessments of the risks and  
19 opportunities associated with future business strategies and  
20 licensing relationships, and that public disclosure could harm its  
21 business relationships, provide its competitors with information  
22 to use to gain a business advantage over it and allow its  
23 licensing partners to obtain an advantageous bargaining position  
24 in future negotiations. Finally, the designating party has shown  
25 that the sections labeled with a number five reveal its internal  
26 assessment of key market factors and projection of future trends  
27 in the video game market as well as its strategies for future  
28

1 marketing and development, and that public disclosure would harm  
2 future negotiations and business dealings for it or its clients.

3 The Court denies permission to file under seal other portions  
4 of these exhibits, for which compelling reasons to seal were not  
5 shown. These sections are also identified in the table below.

6	<u>Ex.</u>	<u>Portion</u> <sup>1</sup>	<u>Party</u>	<u>Granted</u>	<u>Code</u>	<u>Denied</u>	<u>Notes</u>
7	A	pp. 7:12-13, 8	EA	X	1		
8		8:11-12 9					
9		& n.25					
10	A	pp. 19:12- 11	EA	X	2		
11		14, 12					
12		20:1-9, 13					
13		20:18- 14					
14		20, 21:6-14 & n. 83					
15	A	p. 21:13	EA	X	1		
16	A	p. 22:1- 17	EA; CLC	X	2		
17		9					
18	A	Exs. 1- 19	EA	X	1		
19		2, 4-12, 20					
20		14, 18- 21					
21		26					
22	A	All other portions	None			X	
23	B	p. 17, n.31	EA	X	4		

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25  
26 <sup>1</sup> EA has provided chambers copies of these exhibits, in which  
27 it has identified the portions of each page that it and the  
28 non-parties have designated as confidential. Where permission is  
granted to file certain pages, exhibits, footnotes or lines under  
seal, the Court refers only to the portions thereof that have been  
identified as confidential in these chambers copies.

United States District Court  
For the Northern District of California

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1							
2	B	pp. 22:14,	EA	X	3		
3		23:1-3,					
4		24:4-18					
5	B	p. 25:6- 11	EA	X	2		
6							
7	B	p. 43:4	EA	X	3		
8	B	p. 47, n.99	EA	X	4		
9							
10	B	Exs. 4-6	EA	X	3		
11	B	All other portions	None			X	
12							
13	C	p. 6 & nn.18-19	EA	X	1		
14	C	p. 9	EA, CLC	X	2		
15	C	p. 17:6- 8	EA			X	This portion is marked as confidential by EA in the chambers copy but is not addressed in its declaration. Its content is also contained in the first two bullet points of note 68.
16							
17							
18							
19							
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21							
22							
23							
24							
25	C	p. 17, n.68	EA	X	1		
26							
27	C	p. 18, n.73	EA	X	4		
28							

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1							
2	C	p. 18-19 & n.74	NFL	X as to p. 19 & n.74 only	4	X as to p. 18	No portion of p. 18 is identified in the chambers copy.
3							
4							
5							
6	C	p. 19 & n.78	EA	X	4		
7							
8	C	p. 20 & n.80	EA			X	The same information is disclosed in Exhibit D, p. 38, ¶ 60, which EA does not seek to seal.
9							
10							
11							
12							
13	C	p. 20 & nn.81-83	NFL	X	4		
14							
15	C	p. 22 & n.85	EA	X	4		
16							
17	C	p. 22 & n.88	NFL	X	2, 4		
18							
19	C	p. 23	EA	X	2		
20							
21	C	p. 23 & nn.89, 91	NFL	X	2, 4		
22							
23	C	p. 25 & nn.99, 100	EA	X	4		
24							
25	C	p. 26, n.105	EA	X	4		
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1	<u>Ex.</u>	<u>Portion</u> <sup>1</sup>	<u>Party</u>	<u>Granted</u>	<u>Code</u>	<u>Denied</u>	<u>Notes</u>
2	C	p. 26 & nn.104- 06	NFLPA	X as to p. 26:3-4, 26:7-9 & nn.104 & 106 & the portion of n.105 also designated by EA	2, 4	X as to p. 26:5-6 and the remainder of n.105	
3							
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7							
8	C	pp. 27- 28 & n.113	EA	X	2, 4		
9							
10	C	p. 29-30 & nn.120- 21	EA	X	4		
11							
12							
13	C	p. 29-30 & nn.120- 21	CLC	X, except as to p. 30:9- 10, before n.127	4	X as to p. 30:9-10, before n.127	
14							
15							
16	C	p. 31 & nn.130, 133	EA	X	2, 4		
17							
18	C	p. 31 & nn.130, 132	CLC	X	2, 4		
19							
20	C	pp. 32- 33 & n.139	EA	X	2, 4		
21							
22	C	p. 34 & nn.155, 156	EA	X	2, 4		
23							
24	C	p. 35	NFLPA	X	2		
25							
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1							
2	C	pp. 35-	EA, CLC	X, except:	2, 4	X as to the	
3		36 &	(p. 36	in the		remainder	
4		nn.159,	only),	sentence			
5		163-64	NFL (p.	preceding			
6			36	n.168, from			
7			only)	the start of			
8				the sentence			
9				through the			
10				word "deal";			
11	C	p. 64,	EA			X	
12		n.241					
13	C	p. 65,	CLC	X	5		
14		n.246					
15	C	p. 66 &	NFL			X	
16		n.249					
17	C	p. 67	EA	X	2		
18							
19	C	pp. 73-	EA,	X	2, 4		
20		74	NFL,				
21			NFLPA,				
22			CLC				
23	C	p. 77,	EA	X	1		
24		n.282					
25	C	p. 84 &	NFL	X	4		
26		n.304					
27	C	p. 85,	EA	X	1		
28		n.308					
29	C	p. 86	EA	X	2		
30							
31	C	pp. 96-	EA	X	3		
32		97 &					
33		nn.337,					
34		339					

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1							
2	C	p. 98, n.343	EA	X	2, 3		
3							
4	C	p. 98, n.345	EA	X	3		
5	C	p. 99	EA	X	2		
6							
7	C	p. 99, n.349	EA	X	1		
8	C	pp. 104- 05 & n.364	EA	X as to 104:5-6 and n.364	2, 4	X as to 104:19- 105:2	
9							
10	C	p. 107	EA	X	4		
11	C	Ex. 58	EA, NFL, NFLPA, CLC	X	2, 4		
12							
13							
14	C	Exs. 81- 84	EA	X	3		
15							
16	C	All other portions	None			X	
17							
18	D	p. 11, ¶ 19	EA; CLC (last portion only)	X	2, 5		
19							
20							
21	D	p. 21, ¶ 31	EA	X	1		
22							
23	D	p. 27, n.90	EA, CLC	X	2		
24	D	p. 30, ¶ 48	EA	X	2		
25							
26	D	p. 38, ¶ 59	EA	X	2, 4		
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	<u>Ex.</u>	<u>Portion</u> <sup>1</sup>	<u>Party</u>	<u>Granted</u>	<u>Code</u>	<u>Denied</u>	<u>Notes</u>
1							
2	D	p. 30, n.123	EA, NFLPA	X	2		
3							
4	D	p. 30, nn.127- 29	EA			X	These footnotes are marked as confidential by EA in the chambers copy provided to the Court, but not addressed in its supporting declaration.
5							
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10							
11							
12							
13	D	All other portions	None			X	
14							
15	E	pp. 1-2 & n.2	NFL, CLC	X	4		
16							
17	E	p. 11, n.17	CLC	X	5		
18							
19	E	p. 11, n.17	EA			X	
20							
21	E	p. 23	EA	X	2		
22							
23	E	p. 25, n.42	EA	X	2		
24							
25	E	p. 26 & n.44	EA	X	4		
26							
27	E	p. 26- 27, n.46	CLC	X	4		
28							
	E	p. 27, n.47	EA	X	2		

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2	E	pp. 28-29 & nn.52-54	EA	X	2		
3							
4	E	pp. 28-30 & n. 52	NFL	X	2		
5							
6	E	p. 28 & n.54	CLC	X as to n.54	2	X as to p. 28	
7							
8	E	p. 30 & n.64	EA, CLC, NFLPA	X	2		Although NFLPA does not address this page or footnote in its declaration, EA and CLC have provided compelling reasons to seal the identified sections.
9							
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14							
15							
16							
17	E	p.31	EA	X as to the identified portion in the sentence that begins, "He argues . . . ."	2	X as to the identified portion in the sentence beginning, "Professor Kalt claims . . . ."	
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1	<u>Ex.</u>	<u>Portion<sup>1</sup></u>	<u>Party</u>	<u>Granted</u>	<u>Code</u>	<u>Denied</u>	<u>Notes</u>
2	E	p. 32-33 & n.72	EA; CLC; NFLPA	X, except as to the portion that reads, "and that this is 'pro- consumer.'"	2, 3	X as to the portion that reads, "and that this is 'pro- consumer.'"	Although NFLPA does not address this page or footnote in its declaration, EA and CLC have provided compelling reasons to seal the identified sections, except as indicated.
3							
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11							
12	E	p. 33 & nn.73-74	NFL	X	2, 4		
13							
14	E	p. 34	EA	X	2		
15	E	p. 37-38	EA	X	3		
16	E	p.38-39, n.95	EA	X	2, 3, 4		
17							
18	E	p. 42-43 & n.104	EA	X	2, 4		
19	E	All other portions	None			X	
20							
21							

22 For the reasons set forth above, Plaintiffs' motion to file  
 23 under seal is granted in part and denied in part (Docket No. 424).  
 24 Within one day of the date of this Order, the parties shall file  
 25 Exhibits A through E to the Paynter Declaration under seal and  
 26 shall file in the public record Exhibit F and versions of Exhibits  
 27 A through E that have been redacted in accordance with this order.  
 28 By that time, the parties shall also ensure that the redacted

1 versions of Exhibits A through E and the complete Exhibit F are  
2 made available on the settlement website located at  
3 www.easportslitigation.com.

4 IT IS SO ORDERED.

5  
6 Dated: 2/4/2013

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9 CLAUDIA WILKEN  
10 United States District Judge  
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