

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\*\*\*

CG TECHNOLOGY DEVELOPMENT, LLC,  
INTERACTIVE GAMES LIMITED, and  
INTERACTIVE GAMES LLC,

Plaintiff,

vs.

FANDUEL, INC.,

Defendant.

2:16-cv-00801-RCJ-VCF

For Pre-Trial Discovery Purposes,  
Consolidated with:

2:16-cv-00781-RCJ-VCF

2:16-cv-00856-RCJ-VCF

2:16-cv-00857-RCJ-VCF

2:16-cv-00858-RCJ-VCF

2:16-cv-00859-RCJ-VCF

2:16-cv-00871-RCJ-VCF

**PROTECTIVE ORDER REGARDING THE**  
**DISCLOSURE AND USE OF DISCOVERY**  
**MATERIALS FOR CONSOLIDATED**  
**CASES**

Pursuant to Local Patent Rule 1-4 and Rule 26(c) of the Federal Rules of Civil Procedure, the Court hereby enters the following Protective Order Regarding the Disclosure and Use of Discovery Materials (“Order” or “Protective Order”) setting forth the conditions for treating, obtaining, and using documents, testimony, or information containing or reflecting confidential, proprietary, trade secret, and/or commercially sensitive information by Plaintiffs, CG Technology Development, LLC, Interactive Games Limited, and Interactive Games LLC, and each of the Defendants in the above-captioned cases.

1. Definitions

- (a) “Actions” means the above-captioned litigations in the United States District Court for the District of Nevada, Case Nos. 2:16-cv-00781-RCJ-VCF; 2:16-cv-00801-RCJ-VCF; 2:16-cv-

1 00856-RCJ-VCF; 2:16-cv-00857-RCJ-VCF; 2:16-cv-00858- RCJ-VCF; 2:16-cv-00859-RCJ-  
2 VCF; and 2:16-cv-00871-RCJ-VCF.

3 (b) "Defendants," or each, individually, a "Defendant," means the defendant(s) named in each of  
4 the Actions now consolidated for pre-trial discovery purposes only.

5 (c) "Outside Counsel" means (i) outside attorneys who appear on the pleadings or docket for the  
6 Actions as counsel for a Party, (ii) partners and associates of the law firms of such attorneys to  
7 whom it is reasonably necessary to disclose Protected Material for the Actions and who receive  
8 Protected Material, and (iii) outside attorneys who sign the Undertaking attached as Appendix  
9 A hereto.

10 (d) "Party" means any party to the Actions, including all officers, directors, employees,  
11 consultants, and retained experts.

12 (e) "Producing Party" means any Party or other third-party entity who discloses or produces any  
13 discovery material in the Actions.

14 (f) "Protected Material" means any material that is designated as "CONFIDENTIAL," "HIGHLY  
15 CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY," or "HIGHLY  
16 CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" as  
17 provided for in this Order. Protected Material shall not include published advertising materials,  
18 materials that have been disseminated to the public, or information that the Receiving Party  
19 can show was lawfully in the Receiving Party's possession prior to being designated as  
20 Protected Material in the Actions.

21 (g) "Receiving Party" means any Party who receives discovery material from a Producing Party.

22 (h) "Source Code" means computer instructions and data definitions expressed in a form suitable  
23 for input to an assembler, compiler, other translator, or other data processing module.

24 2. Protected Material shall be designated by the Party producing it by affixing a legend or stamp on  
25 such document, information, or material as follows: "CONFIDENTIAL," "HIGHLY CONFIDENTIAL

1 - OUTSIDE ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL - OUTSIDE  
2 ATTORNEYS' EYES ONLY - SOURCE CODE." The confidentiality designation shall be placed  
3 clearly on each page of the Protected Material (except deposition and hearing transcripts) for which such  
4 protection is sought. For deposition and hearing transcripts, the confidentiality designation shall be  
5 placed on the cover page of the transcript (if not already present on the cover page of the transcript when  
6 received from the court reporter) by each attorney receiving a copy of the transcript after that attorney  
7 receives notice of the designation of some or all of that transcript as Protected Material.

8 3. A Producing Party may designate documents, information or material as "CONFIDENTIAL"  
9 only upon a good faith belief that the documents, information, or material contains confidential or  
10 proprietary information of the Producing Party or a third party to whom the Producing Party reasonably  
11 believes it owes an obligation of confidentiality with respect to such documents, information, or  
12 material.

13 4. A Producing Party may designate documents, information or material as "HIGHLY  
14 CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY" only upon a good faith belief that the  
15 documents, information, or material contains trade secrets, proprietary financial or technical or  
16 commercially-sensitive competitive information, including but not limited to strategic plans, technical  
17 documents that would reveal trade secrets, or technical documents that would reveal the operation of  
18 Source Code of the Producing Party or a third party to whom the Party reasonably believes it owes an  
19 obligation of confidentiality with respect to such documents, information, or material, and the Producing  
20 Party reasonably believes that the disclosure of such Protected Material is likely to cause economic harm  
21 or competitive disadvantage to the Producing Party.

22 5. A Producing Party may designate documents, information or material that includes Source Code  
23 as "HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE."

24 6. Nothing in this Order shall restrict in any way the use or disclosure by a Receiving Party of material  
25 (a) that is or has become publicly known through no fault of the Receiving Party;

1 7. (b) that is lawfully acquired by or known to the Receiving Party independent of the Producing  
2 Party; or (c) previously produced, disclosed, and/or provided by the Producing Party to the Receiving  
3 Party or a non-party without an obligation of confidentiality and not by inadvertence or mistake.

4 8. By entering into this Protective Order, no party is agreeing to the relevance or materiality of any  
5 discovery request or is otherwise waiving any objections to the production of any type of Protected  
6 Material described herein. This Protective Order is entered into by the Parties solely in the event  
7 documents or things which may be agreed to be produced or ordered to be produced in the Actions may  
8 be designated as Protected Material subject to this Protective Order.

9 9. A designation of Protected Material (i.e., "CONFIDENTIAL," "HIGHLY CONFIDENTIAL -  
10 OUTSIDE ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS'  
11 EYES ONLY - SOURCE CODE") may be made at any time. Inadvertent or unintentional production of  
12 documents, information or material that has not been designated as Protected Material shall not be deemed  
13 a waiver in whole or in part of a claim for confidential treatment. Any party that inadvertently or  
14 unintentionally produces confidential material without designating it as "CONFIDENTIAL," "HIGHLY  
15 CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY," or "HIGHLY CONFIDENTIAL -  
16 OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE" may request destruction of that material by  
17 notifying the recipient(s), as soon as reasonably possible after the Producing Party becomes aware of the  
18 inadvertent or unintentional disclosure, and providing replacement Protected Material that is properly  
19 designated. The recipient(s) shall then destroy all copies of the inadvertently or unintentionally produced  
20 materials and any documents, information or material derived from or based thereon.

21 10. Protected Material marked "HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES  
22 ONLY" or "HIGHLY CONFIDENTIAL - OUTSIDE ATTORNEYS' EYES ONLY - SOURCE CODE"  
23 may be disclosed only to the following persons, except upon receipt of the prior written consent of the  
24 Producing Party or upon order of the Court:

1 (a) Outside Counsel and employees of such Outside Counsel reasonably necessary to assist such  
2 Outside Counsel in the litigation of the Actions;

3 (b) outside consultants or experts (i.e., not existing employees or affiliates of a Party or an  
4 affiliate of a Party) retained for the purpose of the Actions, provided that (1) such consultants  
5 or experts are not current employees of any Party and (2) before access is given, the  
6 consultant or expert has completed the Undertaking attached as Appendix A hereto, and the  
7 Undertaking is served upon the Producing Party with a written notice that includes (i) the  
8 name of the consultant or expert, (ii) the present employer, business address, and title of the  
9 consultant or expert, (iii) a current curriculum vitae of the consultant or expert, and (iv) a list  
10 of all other cases in which, during the previous four (4) years, the consultant or expert  
11 testified as an expert at trial or by deposition with a brief description of the subject matter of  
12 the consultancy or employment in connection with those cases. Such written notice and  
13 information shall be provided to the Producing Party at least ten (10) days before access to  
14 the Protected Material is to be given to that consultant or expert. The Producing Party shall  
15 have ten (10) days after such notice is provided to notify the Receiving Party in writing that it  
16 objects to disclosure of Protected Material to the consultant or expert. The Parties agree to  
17 promptly confer and use good faith to resolve any such objection. If the Parties are unable to  
18 resolve any objection, the objecting Party may file a motion with the Court within fifteen  
19 (15) days of the notice, or within such other time as the Parties may agree, seeking a  
20 protective order with respect to the proposed disclosure. The objecting Party shall have the  
21 burden of proving the need for a protective order. No disclosure shall occur until all such  
22 objections are resolved by agreement or Court order;

23 (c) independent litigation support services, including persons working for or as court reporters,  
24 graphics or design services, jury or trial consulting services, and photocopy, document  
25

1 imaging, and database services retained by Outside Counsel and reasonably necessary to  
2 assist Outside Counsel with the litigation of the Actions; and

3 (d) the Court and its personnel.

4 11. "CONFIDENTIAL" Protected Material may be disclosed only to the following persons, except  
5 upon receipt of the prior written consent of the Producing Party or upon order of the Court:

6 (a) all persons to whom "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES  
7 ONLY" or "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY –  
8 SOURCE CODE" Protected Material may be disclosed pursuant to Paragraph 10 herein; and

9 (b) up to two (2) persons employed as in-house counsel by a Party who either have responsibility  
10 for making decisions dealing directly with the litigation of the Actions, or who are otherwise  
11 assisting Outside Counsel in the litigation of the Actions, including secretarial and support  
12 personnel reasonably necessary to assist such in-house counsel.

13 12. No Defendant is required to produce its Protected Material to any other Defendant or Defendants,  
14 but nothing in this Order shall preclude such production if the affected Parties so agree. Plaintiffs,  
15 including Plaintiffs' Outside Counsel, experts, and consultants, shall not disclose one Defendant's  
16 Protected Material to any other Defendant through Court filings, oral argument in Court, expert reports,  
17 deposition, discovery requests, discovery responses, or any other means, absent agreement of the  
18 Defendant that produced the Protected Material. Any pleadings, reports, communications, papers or other  
19 information submitted to the Court containing Protected Material of a particular Defendant shall be filed  
20 and served only to Outside Counsel for the Parties in the Action in which the particular Defendant is  
21 named.

22 13. Protected Material produced in the Actions shall be used by the Parties only in the litigation of the  
23 Actions and shall not be used for any other purpose. Nothing in this Protective Order shall be construed  
24 to prevent Outside Counsel from advising their clients with respect to the Actions based in whole or in  
25 part upon Protected Materials, provided counsel does not disclose the Protected Material itself except as

1 provided in this Order. Any person or entity who obtains access to Protected Material or the contents  
2 thereof pursuant to this Order shall not make any copies, duplicates, extracts, summaries or descriptions  
3 of such Protected Material or any portion thereof except as may be reasonably necessary in the litigation  
4 of the Actions. Any such copies, duplicates, extracts, summaries or descriptions shall be classified  
5 Protected Materials and subject to all of the terms and conditions of this Protective Order.

6 14. For Protected Material designated “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’  
7 EYES ONLY – SOURCE CODE,” the following restrictions apply:

8 (a) If a Producing Party wishes to waive or otherwise reduce the restrictions set forth below on  
9 the production of Source Code, it may do so by agreement in writing with the Receiving Party.  
10 However, no action taken (or not taken) by the Producing Party shall be considered a waiver  
11 of the provisions of protection set forth herein relating to Source Code absent written  
12 agreement between the Producing Party and the Receiving Party explicitly addressing such.

13 (b) Access to Protected Material designated “HIGHLY CONFIDENTIAL – OUTSIDE  
14 ATTORNEYS’ EYES ONLY – SOURCE CODE” shall be limited to Outside Counsel and up  
15 to three (3) outside consultants or experts for each Party retained for the purpose of the Actions  
16 and approved to access such Protected Materials pursuant to Paragraph 10(b) herein. A  
17 Receiving Party may include excerpts of Source Code in a pleading, exhibit, expert report,  
18 discovery document, deposition transcript, or other Court document (hereinafter “Source Code  
19 Document”), provided that the Source Code Documents are appropriately marked under this  
20 Protective Order, restricted to those who are entitled to have access to them as specified herein,  
21 and, if filed with the Court, filed under seal in accordance with the Court’s rules, procedures  
22 and orders.

23 (c) The Receiving Party may only include excerpts of Source Code that are reasonably necessary  
24 for the purposes for which such part of the Source Code is used in any Source Code Document.  
25 To the extent portions of Source Code are quoted in a Source Code Document, either: (1) the

1 entire Source Code Document will be stamped and treated as “HIGHLY CONFIDENTIAL –  
2 OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” or (2) those pages containing  
3 quoted Source Code will be separately stamped and treated as “HIGHLY CONFIDENTIAL –  
4 OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE.”

5 (d) Images or copies of Source Code shall not be included in correspondence between the Parties  
6 (references to production numbers shall be used instead) and shall be omitted from pleadings  
7 and other papers except to the extent permitted herein.

8 (e) Outside Counsel, consultants, and experts for the Receiving Party shall be entitled to take notes  
9 relating to the Source Code. Such notes shall themselves thereafter be deemed “Source Code”  
10 and treated as “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY –  
11 SOURCE CODE” for all purposes and provisions herein, except that the Outside Counsel,  
12 consultants, or experts for the Receiving Party may keep the original of such notes (but such  
13 originals shall be subject to all restrictions placed on copies in the possession of a Receiving  
14 Party included within this Protective Order).

15 (f) Other recording devices, recordable media, or other electronic devices (including but not  
16 limited to sound recorders, computers, PDAs, landline or cellular telephones, peripheral  
17 equipment, cameras, CDs, DVDs, floppy drives, zip drives, thumb drives, USB memory sticks,  
18 portable hard drives, BlackBerry® devices, or Dictaphones) shall not be permitted inside the  
19 secure room containing the stand- alone computer(s).

20 (g) Persons authorized to have access to Source Code for a Receiving Party under this Protective  
21 Order shall protect Source Code of the Producing Party with at least as much care as the  
22 Receiving Party would give to its own confidential trade secret Source Code, and in no case  
23 less than a reasonable degree of care. In addition to and apart from the steps required by the  
24 previous sentence, the Receiving Party shall maintain and store any paper copies of the Source  
25



1 Code or notes related to such Source Code in a manner that prevents unauthorized access to  
2 the Source Code material or notes.

3 (h) If Outside Counsel, consultants, or experts for the Receiving Party obtain printouts or  
4 photocopies of Source Code, the Receiving Party shall ensure that such Outside Counsel,  
5 consultants, or experts keep the printouts or photocopies in a secured locked area in the offices  
6 of such Outside Counsel, consultants, or experts. The Receiving Party may also temporarily  
7 keep the printouts or photocopies at: (i) the Court for any proceedings(s) relating to the Source  
8 Code, for the dates associated with the proceeding(s); (ii) the sites where any deposition(s)  
9 relating to the Source Code are taken, for the dates associated with the deposition(s); and (iii)  
10 any intermediate location reasonably necessary to transport the printouts or photocopies (e.g.,  
11 a hotel prior to a Court proceeding or deposition).

12 (i) No electronic copies of the Source Code need be provided by the Producing Party to the  
13 Receiving Party. The Receiving Party is not to create any electronic copies except as necessary  
14 to create documents which, pursuant to the Court's rules, procedures, and order, must be filed  
15 or served electronically.

16 (j) All paper copies of Source Code shall be returned to the Producing Party, or at the Producing  
17 Party's option securely destroyed (and the Receiving Party shall certify to the Producing Party  
18 in writing the fact of such destruction), if they are no longer necessary in the Actions (e.g.,  
19 extra copies at the conclusion of a deposition). Copies of Source Code that are marked as  
20 deposition exhibits shall not be provided to the court reporter or attached to deposition  
21 transcriptions; rather, the deposition record will identify the exhibit by its production numbers.

22 (k) A Producing Party's Source Code shall be made available in electronic format for inspection  
23 at the office of the Producing Party's Outside Counsel or another location mutually agreed  
24 upon by the Producing Party and a Receiving Party. The Source Code shall be made available  
25 for inspection by the Producing Party on a "standalone" computer (that is, the computer may

1 not be linked to any network, including a local area network (“LAN”), an intranet, or the  
2 Internet). The Producing Party shall be entitled to have a person observe all entrances and exits  
3 from the Source Code reviewing room. The Producing Party may also visually monitor the  
4 activities of the Receiving Party’s representatives during any Source Code review to ensure  
5 that there is no unauthorized recording, copying, or transmission of the Source Code.

6 (l) The Receiving Party shall provide ten (10) days’ notice prior to any inspection of Source Code.  
7 Such notice shall identify all persons who will review a Producing Party’s Source Code on  
8 behalf of a Receiving Party. The Receiving Party shall conduct any inspections during regular  
9 business hours (9:00 am to 6:00 pm local time). To the extent access is necessary outside of  
10 normal business hours, the Parties agree to cooperate in good faith and make reasonable efforts  
11 to accommodate reasonable requests for access outside of normal business hours.

12 (m) Outside Counsel, consultants, and experts for the Receiving Party may request paper copies  
13 of limited portions of Source Code that are reasonably necessary for the preparation of court  
14 filings, pleadings, expert reports, or other papers, or for deposition or trial (which shall in no  
15 case exceed 25 consecutive pages nor 1000 total pages), but shall not request paper copies for  
16 the purposes of reviewing the Source Code. The Receiving Party’s Outside Counsel may  
17 make no more than two (2) additional paper copies of any printed portions of Source Code.  
18 Any printed pages of Source Code, and any other documents or things reflecting Source Code  
19 that have been designated by the Producing Party as “HIGHLY CONFIDENTIAL – OUTSIDE  
20 ATTORNEYS’ EYES ONLY – SOURCE CODE” may not be digitally imaged or otherwise  
21 duplicated, except to the extent the Court requires electronic filing of sealed materials,  
22 electronic copies of such limited excerpts of Source Code as are reasonably needed for use as  
23 exhibits to court filings. Any court filings including Source Code shall be filed under seal in  
24 compliance with LR IA 10-5. Expert reports may refer to Source Code by Bates number and  
25 may reproduce limited excerpts of Source Code in the report itself as needed to identify or

1 discuss specific Source Code on a Bates numbered page; however, expert reports shall not  
2 attach copies of Source Code as exhibits.

3 (n) The Producing Party shall have ten (10) days in which to object in writing as to the extent or  
4 relevance of printed Source Code portions. If no such objection is made, the Producing Party  
5 shall produce a copy of the printouts to the Receiving Party pursuant to the terms of Paragraph  
6 14(h). If objection is made, the parties shall meet and confer within five (5) days in a good  
7 faith attempt to resolve the objection. If the objection is not resolved, the Producing Party shall  
8 have fourteen (14) days after the meet and confer in which to file a motion for relief from the  
9 Court for production of the printouts that are the subject of the objection. The printouts shall  
10 be retained by the Producing Party, and not produced, pending the Court's resolution of the  
11 dispute.

12 15. A prosecution bar is imposed as follows:

13 Outside Counsel representing a Plaintiff, and any person associated with a Plaintiff permitted to  
14 receive a Defendant's technical Protected Material that is designated "HIGHLY CONFIDENTIAL –  
15 OUTSIDE ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – OUTSIDE  
16 ATTORNEYS' EYES ONLY – SOURCE CODE," who obtains, receives, has access to, or otherwise  
17 learns, in whole or in part, a Defendant's technical Protected Material designated "HIGHLY  
18 CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY" or "HIGHLY  
19 CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" under this  
20 Protective Order shall not prepare, prosecute, supervise, or assist in the preparation or prosecution of  
21 any patent application seeking a patent for networked gaming technology<sup>3</sup> during the pendency of an  
22 Action and for two years after its conclusion, including any appeals. To ensure compliance with the  
23 purpose of this provision, Plaintiffs shall create an "ethical wall" between those persons with access  
24 to "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY" or "HIGHLY  
25 CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" technical

1 Protected Material and any individuals who prepare, prosecute, supervise, or assist in the preparation  
2 or prosecution of any patent application pertaining to networked gaming technology. To avoid any  
3 doubt, “prosecution” as used in this paragraph does not include representing or advising a party before  
4 a domestic or foreign agency in connection with a reissue protest, ex parte reexamination, covered  
5 business method review, or inter partes review; though in connection with any such reissue protest, ex  
6 parte reexamination, covered business method review, or inter partes review involving the patents-in-  
7 suit, Outside Counsel for Plaintiffs shall not: (i) participate in the preparation of any amended claims;  
8 (ii) reveal any of Defendants’ technical Protected Material to any prosecuting reexamination counsel  
9 or agent; or (iii) use Defendants’ technical Protected SOURCE CODE” technical Protected Material  
10 and any individuals who prepare, prosecute, supervise, or assist in the preparation or prosecution of  
11 any patent application pertaining to networked gaming technology. To avoid any doubt, “prosecution”  
12 as used in this paragraph does not include representing or advising a party before a domestic or foreign  
13 agency in connection with a reissue protest, ex parte reexamination, covered business method review,  
14 or inter partes review; though in connection with any such reissue protest, ex parte reexamination,  
15 covered business method review, or inter partes review involving the patents-in-suit, Outside Counsel  
16 for Plaintiffs shall not: (i) participate in the preparation of any amended claims; (ii) reveal any of  
17 Defendants’ technical Protected Material to any prosecuting reexamination counsel or agent; or (iii)  
18 use Defendants’ technical Protected Material for any purpose other than this litigation.

19  
20 16. Nothing in this Order shall require production of documents, information or other material that a  
21 Party contends is protected from disclosure by the attorney-client privilege, the work product doctrine, or  
22 any other privilege, doctrine, or immunity. If documents, information, or other material subject to a claim  
23 of attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity is  
24 inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise  
25 constitute a waiver of, or estoppel as to, any such privilege, doctrine, or immunity. Any Party that

1 inadvertently or unintentionally produces documents, information or other material it reasonably believes  
2 are protected under the attorney-client privilege, work product doctrine, or other privilege, doctrine, or  
3 immunity may obtain the return of such documents, information or other material by promptly notifying  
4 the recipient(s). The recipient(s) shall gather and return all copies of such documents, information or other  
5 material to the Producing Party, except for any pages containing privileged or otherwise protected  
6 markings by the recipient(s), which pages shall instead be destroyed and certified as such to the Producing  
7 Party. No demonstration or proof of error, inadvertence, excusable neglect, or absence of negligence shall  
8 be required of the Producing Party in order for such Party to avail itself of the provisions of this paragraph.  
9 The fact of the inadvertent production cannot be used by the Receiving Party as a basis for any motion to  
10 compel.

11 17. There shall be no disclosure of any Protected Material by any person authorized to have access  
12 thereto to any person who is not authorized for such access under this Protective Order. The Parties shall  
13 safeguard all such documents, information and material to protect against disclosure to any unauthorized  
14 persons or entities.

15 18. Nothing contained herein shall be construed to prejudice any Party's right to use any Protected  
16 Material in taking testimony at any deposition or hearing provided that the Protected Material is only  
17 disclosed to a person(s) who is: (i) eligible to have access to the Protected Material by virtue of his or her  
18 employment with the Producing Party; (ii) identified in the Protected Material as an author, addressee, or  
19 copy recipient of such information; (iii) although not identified as an author, addressee, or copy recipient  
20 of such Protected Material, has, in the ordinary course of business, seen such Protected Material;  
21 (iv) a current or former officer, director or employee of the Producing Party or a current or former officer,  
22 director or employee of a company affiliated with the Producing Party; (v) counsel for a Party, including  
23 Outside Counsel and in-house counsel (subject to Paragraphs 10-11 of this Order); (vi) an independent  
24 contractor, consultant, and/or expert retained for the purpose of the Actions; (vii) court reporters and  
25 videographers; (viii) the Court; or (ix) other persons entitled hereunder to access Protected Material.

1 Protected Material shall not be disclosed to any other persons unless prior authorization is obtained from  
2 counsel representing the Producing Party or from the Court.

3 19. Parties may, at a deposition or hearing or within thirty (30) days after receipt of a deposition or  
4 hearing transcript, designate the deposition or hearing transcript or any portion thereof as  
5 “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY,” or  
6 “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” pursuant  
7 to this Protective Order. Access to the deposition or hearing transcript so designated shall be limited in  
8 accordance with the terms of this Order. Until expiration of the 30-day period, the entire deposition or  
9 hearing transcript shall be treated as Protected Material.

10 20. Any Protected Material that is filed with the Court shall be filed under seal and shall remain under  
11 seal until further order of the Court. The filing party shall be responsible for informing the Clerk of the  
12 Court that the filing should be sealed and for placing the legend, pursuant to Local Rule 10-5, “FILED  
13 UNDER SEAL PURSUANT TO COURT ORDER DATED \_” above the caption and conspicuously on  
14 each page of the filing. Exhibits to a filing shall conform to the labeling requirements set forth in this  
15 Protective Order. The Party who has designated such materials as Protected Material shall, within 10 days  
16 after the filing of the document under seal, submit a motion to the Court making the showing required  
17 under *Kamakana v. City and County of Honolulu*, 447 F.3d 172 (9th Cir. 2006) and *Center for Auto Safety*  
18 *v. Chrysler Group, LLC*, 809 F.3d 1092 (9th Cir. 2016) to sustain the sealed status of such materials.  
19 When filings are made under seal, the parties agree to file through the Court’s Electronic Case Filing  
20 Procedures redacted versions of such filings with any Protected Material removed. In complying with this  
21 requirement, the parties shall exercise good faith in redacting Protected Material of other parties.

22 21. This Protective Order applies to pretrial discovery. Nothing in this Order shall be deemed to  
23 prevent the Parties from introducing any Protected Material into evidence at the trial of the Actions, or  
24 from using any information contained in Protected Material at the trial of the Actions, subject to any  
25 pretrial order issued by this Court.

1 22. A Party may request in writing to another Party that the designation given to any Protected Material  
2 be modified or withdrawn. If the Producing Party does not agree to re-designation within ten (10) days of  
3 receipt of the written request, the requesting Party may apply to the Court for relief. Upon any such  
4 application to the Court, the burden shall be on the Producing Party to show why its classification is  
5 proper. Such application shall be treated procedurally as a motion to compel pursuant to Federal Rule of  
6 Civil Procedure 37, subject to that Rule's provisions relating to sanctions. In making such application,  
7 the requirements of the Federal Rules of Civil Procedure and the Local Rules of the Court shall be met.  
8 Pending the Court's determination of the application, the designation of the Producing Party shall be  
9 maintained.

10 23. To the extent that any discovery is taken of persons who are not Parties to the Actions, and in the  
11 event that such third parties contend the discovery sought involves trade secrets, confidential business  
12 information, or other proprietary information, then such third parties may agree to be bound by this  
13 Protective Order.

14 24. To the extent that discovery or testimony is taken of a third party, the third party may designate as  
15 "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY," or  
16 "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY – SOURCE CODE" any  
17 documents, information, or other material, in whole or in part, produced or given by such third party. The  
18 third party shall have ten (10) days after production of such documents, information, or other materials to  
19 make such a designation. Until that time period lapses or until such a designation has been made,  
20 whichever occurs first, all documents, information, or other material so produced or given shall be treated  
21 as Protected Material in accordance with this Order.

22 25. Within thirty (30) days of final termination of any of the Actions, including any appeals, all  
23 Protected Material produced in that Action, including all copies, duplicates, abstracts, indexes, summaries,  
24 descriptions, and excerpts or extracts thereof (excluding excerpts or extracts incorporated into any  
25 privileged memoranda of the Parties and materials which have been admitted into evidence in the Action),

1 shall at the Producing Party's election either be returned to the Producing Party or be destroyed. The  
2 Receiving Party shall verify the return or destruction by affidavit furnished to the Producing Party, upon  
3 the Producing Party's request.

4 26. The failure to designate documents, information, or material in accordance with this Protective  
5 Order and the failure to object to a designation at a given time shall not preclude the filing of a motion at  
6 a later date seeking to impose such designation or challenging the propriety thereof. The entry of this  
7 Protective Order or the production of documents, information, and material hereunder shall in no way  
8 constitute a waiver of any objection to the furnishing thereof, all such objections being hereby preserved.

9 27. Any Party knowing or believing that another Party is in violation of or intends to violate this  
10 Protective Order and has raised the question of violation or potential violation with the opposing Party  
11 and has been unable to resolve the matter by agreement may move the Court for such relief as may be  
12 appropriate in the circumstances. Pending disposition of the motion by the Court, the Party alleged to be  
13 in violation of or intending to violate this Order shall discontinue the performance of and/or shall not  
14 undertake the further performance of any action alleged to constitute a violation of this Protective Order.

15 28. Production of Protected Material by any Party shall not be deemed a publication of the documents,  
16 information, and material (or the contents thereof) produced so as to void or make voidable whatever  
17 claim the Party may have as to the proprietary and confidential nature of the documents, information, or  
18 other material or its contents.

19 29. Nothing in this Order shall be construed to effect an abrogation, waiver or limitation of any kind  
20 on the rights of each of the Parties to assert any applicable discovery or trial privilege.

21 30. Each of the Parties shall also retain the right to file a motion with the Court to: (a) modify this  
22 Protective Order to allow disclosure of Protected Material to additional persons or entities if reasonably  
23 necessary to litigate the Actions; or (b) apply for additional protection of Protected Material.


24 31. No reference may be made at trial in this action in the presence of the jury to the existence of this  
25 Order or to the effect that certain material is subject to this Order, unless permitted by the Court.



1 32. Nothing herein shall be construed to affect in any way the evidentiary admissibility of any  
2 document, testimony, or other matter at any court proceeding related to this mater.

3 33. In the event that Protected Material disclosed during the course of the Actions is sought by any  
4 person or entity not a Party to the Actions, whether by subpoena in another action or service with any  
5 legal process, the Party receiving such subpoena or service shall promptly notify in writing Outside  
6 Counsel for the Producing Party if such subpoena or service demands the production of Protected Material  
7 of such Producing Party. Any such person or entity seeking such Protected Material by attempting to  
8 enforce such subpoena or other legal process shall be apprised of this Protective Order by Outside Counsel  
9 for the Party upon whom the subpoena or process was served. Nothing herein shall be construed as  
10 requiring anyone covered by this Protective Order to contest a subpoena or other process, to appeal any  
11 order requiring production of Protected Material covered by this Protective Order, or to subject itself to  
12 penalties for non-compliance with any legal process or order.

13 DATED this 30th day of December, 2016.

14 

15 \_\_\_\_\_  
16 CAM FERENBACH  
17 UNITED STATES MAGISTRATE JUDGE  
18  
19  
20  
21  
22  
23  
24  
25

**UNDERTAKING OF EXPERTS OR  
CONSULTANTS REGARDING  
PROTECTIVE ORDER**

**APPENDIX A**

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 \*\*\*

4 CG TECHNOLOGY DEVELOPMENT, LLC,  
5 INTERACTIVE GAMES LIMITED, and  
6 INTERACTIVE GAMES LLC,

7 Plaintiff,

8 vs.

9 \_\_\_\_\_,

10 Defendant(s).

2:16-cv-00802-RCJ-VCF

For Pre-Trial Discovery Purposes,  
Consolidated with:

2:16-cv-00781-RCJ-VCF

2:16-cv-00856-RCJ-VCF

2:16-cv-00857-RCJ-VCF

2:16-cv-00858-RCJ-VCF

2:16-cv-00859-RCJ-VCF

2:16-cv-00871-RCJ-VCF

11 **UNDERTAKING OF EXPERTS OR**  
12 **CONSULTANTS REGARDING**  
13 **PROTECTIVE ORDER**

14 I, \_\_\_\_\_, acknowledge and declare that:

15 1. My address is \_\_\_\_\_.

16 My current employer is \_\_\_\_\_.

17 My current occupation is \_\_\_\_\_.

18 2. I have received a copy of the Protective Order in this action. I have carefully read and understand  
19 the provisions of the Protective Order.

20 3. I will comply with all of the provisions of the Protective Order. I will hold in confidence, will not  
21 disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action  
22 any information designated as “CONFIDENTIAL,” “HIGHLY CONFIDENTIAL – OUTSIDE  
23 ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES  
24 ONLY – SOURCE CODE” that is disclosed to me.  
25

1 4. Promptly upon termination of these actions, I will destroy or return to the outside counsel for the  
2 party by whom I am employed all documents and things designated as “CONFIDENTIAL,” “HIGHLY  
3 CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY,” or “HIGHLY CONFIDENTIAL –  
4 OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE” that came into my possession, and all  
5 documents and things that I have prepared relating thereto. I will also provide written certification to the  
6 outside counsel for the party by whom I am employed that all such documents and things have been  
7 returned or destroyed.

8 Signature \_\_\_\_\_

9  
10 Date \_\_\_\_\_

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25