

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOHN ROBERT RODERICK,

Plaintiff,

-against-

OUTSIDE INTERACTIVE, INC.,

Defendant.

No. 23 Civ. 4125 (LAK) (GWG)

ECF Case

PROTECTIVE ORDER

WHEREAS, the parties to this action (the “Parties”) request that this Court issue a protective order pursuant to Federal Rule of Civil Procedure 26(c) to protect the confidentiality of certain nonpublic and confidential material that will be exchanged pursuant to and during the course of discovery in this case;

WHEREAS, the Court directed the Parties to submit a proposed order by July 25, 2024;

WHEREAS, the Parties, through counsel, have conferred and agree to the following terms;

WHEREAS, the Parties acknowledge that this Protective Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords only extends to the limited information or items that are entitled, under the applicable legal principles, to confidential treatment;

WHEREAS, the Parties further acknowledge that this protective Order does not create entitlement to file confidential information under seal;

WHEREAS, in light of these acknowledgments, and based on the representations of the Parties that discovery in this case will involve confidential documents or information the public disclosure of which will cause harm to the producing party, or a third party to whom a duty of

confidentiality is owed, and to protect against injury caused by dissemination of confidential documents and information, this Court finds good cause for issuance of an appropriately tailored confidentiality order governing the pretrial phase of this action.

IT IS HEREBY ORDERED that any person or party subject to this Protective Order—including without limitation the Parties, their representatives, agents, experts, and consultants, all third parties providing discovery in this action, and all other interested persons with actual or constructive notice of this Protective Order—shall adhere to the following terms:

1. Any person subject to this Protective Order who receives from any other person or party subject to this Protective Order any “Discovery Material” (*i.e.*, information of any kind produced or disclosed pursuant to and in the course of discovery in this action) that is designated “Confidential” pursuant to the terms of this Protective Order (hereinafter “Confidential Discovery Material”) shall not disclose such Confidential Discovery Material to anyone else except as expressly permitted hereunder.

2. The party producing Discovery Material may designate as “Confidential” any document or information that the public disclosure of which either is restricted by law or will cause harm to the business, commercial, financial, or personal interests of the producing party and/or a third party to whom a duty of confidentiality is owed and that consists of:

- a. previously nondisclosed financial information (including without limitation profitability reports or estimates, percentage fees, design fees, royalty rates, minimum guarantee payments, sales reports and sale margins);
- b. previously nondisclosed information relating to ownership or control of any nonpublic company;
- c. previously nondisclosed sensitive commercial information relating to any party’s business including, but not limited to, tax data; proposed strategic transactions or other business combinations; internal audit practices, procedures and outcomes; trade secrets; marketing plans and strategies; studies or analyses by internal or outside experts; competitive analyses; customer or prospective

customer lists and information; product or service pricing or billing agreements or guidelines; and/or confidential project-related information;

- d. any information of a personal or intimate nature regarding any individual; or
- e. any other category of information herein after given confidential status by the Court.

3. With respect to Discovery Material other than deposition transcripts and exhibits, the producing party may designate it as “Confidential” by stamping the document as “Confidential” in a manner that will not interfere with legibility or audibility.

4. With respect to deposition transcripts, a producing party may designate such portion “Confidential” by notifying the reporter and all counsel of record, in writing, within 30 days after a deposition has concluded, of the specific pages and lines of the transcript and/or the specific exhibits that are to be designated Confidential, in which case all counsel receiving the transcript will be responsible for marking the copies of the designated transcript or exhibit, in their possession or under their control as directed by the producing party. During the 30-day period following the conclusion of a deposition, the entire deposition transcript will be treated as if it had been designated Confidential.

5. If at any point prior to the trial of this action, a producing party realizes that some Discovery Material that they previously had produced without limitation should be designated “Confidential,” they may so designate by apprising all prior recipients in writing, and thereafter such designated Discovery Material will be deemed to be and treated as Confidential Discovery Material under the terms of this Protective Order.

6. No party subject to this Protective Order other than the producing party shall disclose any Confidential Discovery Material to any other person whomsoever, except to:

- a. the Parties to this action, their insurers, and counsel to their insurers;

- b. counsel retained specifically for this action, including any paralegal, clerical and other assistant employed by such counsel and assigned to this matter;
- c. outside vendors or service providers (such as copy-service providers and document-management consultants, graphic production services or other litigation support services) that counsel hire and assign to this matter, including computer service personnel performing duties in relation to a computerized litigation system;
- d. any mediator or arbitrator who the Parties engage in this matter or that this Court appoints, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
- e. as to any document, its author, its addressee and any other person indicated on the face of the document as having received a copy;
- f. any witness who counsel for a party in good faith believes may be called to testify at trial or deposition in this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
- g. any person retained by a party to serve as an expert witness or otherwise provide specialized advice to counsel in connection with this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
- h. stenographers engaged to transcribe depositions conducted in this action; and
- i. this Court, including any appellate court, and the court reporters and support personnel for the same.

7. Prior to any disclosure of any Confidential Discovery Material to any person referred to in subparagraphs 6(d), 6(f) or 6(g) above, such person shall be provided by counsel with a copy of this Protective Order and shall sign a Non-Disclosure Agreement in the form annexed as an Exhibit hereto stating that that person has read this Protective Order and agrees to be bound by its terms. Counsel shall retain each signed Non-Disclosure Agreement and produce it to opposing counsel upon request.

8. Any party who objects to any confidentiality designation may at any time prior to the trial of this action serve upon counsel for the designating person a written notice stating with particularity the grounds of the objection. The Parties shall then confer in good faith by

telephone or in person in an effort to resolve the dispute. If the Parties cannot reach agreement promptly, the Parties shall follow the procedure for discovery motions outlined in the Court's Individual Practices.

9. Any party who requests additional limits on disclosure (such as "attorneys' eyes only" in extraordinary circumstances) may at any time prior to the trial of this action serve upon counsel for the receiving party a written notice stating with particularity the grounds for the request. The Parties shall then confer in good faith by telephone or in person in an effort to resolve the dispute. If the Parties cannot reach agreement promptly, the Parties shall follow the procedure for discovery motions outlined in the Court's Individual Practices.

10. A party may be requested to produce Discovery Material that is subject to contractual or other obligations of confidentiality owed to a third party. Within two business days of receiving the request, the party subject to such obligation shall inform the third party of the request and that the third party may seek a protective order or other relief from this Court. If neither the third party nor the producing party seeks a protective order or other relief from this Court within 21 days of that notice, the party shall produce the information responsive to the discovery request but may affix the appropriate controlling designation.

11. Recipients of Confidential Discovery Material under this Protective Order may use such material solely for the prosecution and defense of this action and any appeals thereto, and specifically (and by way of example and not limitations) may not use Confidential Discovery Material for any business, commercial or competitive purpose. Nothing contained in this Protective Order, however, will affect or restrict the rights of any person with respect to its own documents or information produced in this action. Nor does anything contained in this Protective

Order limit or restrict the rights of any person to use or disclose information or material obtained independently from and not through or pursuant to the Federal Rules of Civil Procedure.

12. Nothing in this Protective Order will prevent any party subject to it from producing any Confidential Discovery Material in its possession in response to a lawful subpoena or other compulsory process, or if required to produce by law or by any government agency having jurisdiction; provided, however, that such party receiving a request, will provide written notice to the party to whom the documents belong, if not the party receiving the request, before disclosure and as soon as reasonably possible, and, if permitted by the time allowed under the request, at least 10 days before any disclosure. Upon receiving such notice, the party to whom the documents belong will have the right to oppose compliance with the subpoena, other compulsory process, or other legal notice if the party deems it appropriate to do so.

13. All persons seeking to file redacted documents or documents under seal with the Court shall follow the relevant portion of the Court's Individual Practices.

14. All persons are hereby placed on notice that the Court is unlikely to seal or otherwise afford confidential treatment to any Discovery Material introduced in evidence at trial or supporting or refuting any motion for summary judgment, even if such material has previously been sealed or designated as Confidential.

15. Each person who has access to Confidential Discovery Material shall take all due precautions to prevent the unauthorized or inadvertent disclosure of such material.

16. Any Personally Identifying Information ("PII") (e.g., social security numbers, financial account numbers, passwords, and information that may be used for identity theft) exchanged in discovery shall be maintained by the parties who receive such information and are bound by this Protective Order in a manner that is secure and confidential. In the event that the

party receiving PII experiences a data breach, they immediately shall notify the producing party of the same and cooperate with the producing party to address and remedy the breach. Nothing herein shall preclude the producing party from asserting legal claims or constitute a waiver of legal rights or defenses in the event of litigation arising out of the receiving party's failure to appropriately protect PII from unauthorized disclosure.

17. This Protective Order shall survive the termination of the litigation. Within 30 days of the final disposition of this action, all Confidential Discovery Material, and all copies thereof, shall be promptly returned to the producing party, or, upon permission of the producing party, destroyed.

18. All parties subject to this Protective Order acknowledge that willful violation of this Protective Order could subject them to punishment for contempt of Court. This Court shall retain jurisdiction over all persons subject to this Protective Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof.

SO STIPULATED AND AGREED:

Dated: July 25, 2024

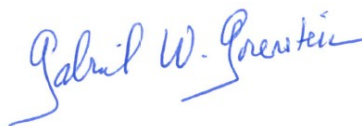
/s/Katherine J. Daniels (with consent)
Counsel for Plaintiff

Dated: July 25, 2024

/s/Thomas B. Sullivan
Counsel for Defendant

Dated: July 26, 2024

SO ORDERED:



Hon. Gabriel W. Gorenstein, U.S.M.J.

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NON-DISCLOSURE AGREEMENT

I, _____, acknowledge that I have read and understand the Protective Order in this action governing the non-disclosure of those portions of Discovery Material that have been designated as Confidential. I agree that I will not disclose such Confidential Discovery Material to anyone other than for purposes of this litigation and that at the conclusion of the litigation I will either return all discovery information to the party or attorney from whom I received it, or upon permission of the producing party, destroy such discovery information. By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the United States District Court for the Southern District of New York for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

Dated: _____