

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  
26  
27

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

CHERYL KATER and SUZIE KELLY,  
individually and on behalf of all others  
similarly situated,

*Plaintiffs,*

v.

CHURCHILL DOWNS INCORPORATED, a  
Kentucky corporation, and BIG FISH GAMES,  
INC., a Washington corporation.

*Defendants.*

No. 15-cv-00612-RSL

**STIPULATION AND ORDER RE  
AGREED RIDER TO PROTECTIVE  
ORDER REGARDING THE USE AND  
DISCLOSURE OF DISCOVERY  
PRODUCED BY NONPARTY  
AMAZON.COM, INC.**

Noting Date: November 27, 2020

MANASA THIMMEGOWDA, individually  
and on behalf of all others similarly situated,

*Plaintiff,*

v.

BIG FISH GAMES, INC., a Washington  
corporation; ARISTOCRAT  
TECHNOLOGIES INC., a Nevada  
corporation; ARISTOCRAT LEISURE  
LIMITED, an Australian corporation; and  
CHURCHILL DOWNS INCORPORATED, a  
Kentucky corporation,

*Defendants.*

No. 19-cv-00199-RSL

**STIPULATION AND ORDER RE  
AGREED RIDER TO PROTECTIVE  
ORDER REGARDING THE USE AND  
DISCLOSURE OF DISCOVERY  
PRODUCED BY NONPARTY  
AMAZON.COM, INC.**

1 This agreement is entered into between and among nonparty Amazon.com, Inc.  
2 (“Amazon”) and certain parties to the two actions captioned above, *Kater et al. v. Churchill*  
3 *Downs Incorporated, et al.*, No. C15-0612-RSL (the “*Kater Action*”) and *Thimmegowda v. Big*  
4 *Fish Games, et al.*, No. C19-0199-RSL (the “*Thimmegowda Action*” and, together with the *Kater*  
5 *Action*, the “*Actions*”), specifically: *Kater Action* plaintiffs Cheryl Kater and Suzie Kelly; and  
6 *Thimmegowda Action* plaintiff Manasa Thimmegowda (collectively with Ms. Kater and Ms.  
7 Kelly, the “*Plaintiffs*”). Plaintiffs and Amazon anticipate that Amazon will produce documents  
8 in this action that contain sensitive consumer information. This agreement is intended to  
9 supplement the protective order entered by the Court on May 5, 2020 (ECF Nos. 192-1 and 213  
10 in the *Kater Action*) (“*Protective Order*”).

11 Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court finds good  
12 cause for the following Agreed Rider To Protective Order Regarding The Use And Disclosure Of  
13 Discovery Produced By Nonparty Amazon.com, Inc. (“*Rider*”).

14 **PURPOSES AND LIMITATIONS**

15 Amazon Protected Material designated under the terms of this Rider shall be used by the  
16 Class Action Administrator and Parties solely for the purpose of providing notice to and  
17 verifying and paying the recovery amount owed to each member of the Settlement Class.  
18 Amazon Protected Material shall not be used directly or indirectly for any other purpose  
19 whatsoever.

20 No Amazon Protected Material provided by Amazon to the Class Action Administrator  
21 under the terms of this Rider may be shared with any of the Parties, unless specifically  
22 authorized by this Rider.

23 It is the intention of Amazon and the Parties that this Rider will protect all materials  
24 produced by Amazon in the *Actions* unless otherwise specified.

1           **DEFINITIONS**

2           “Class Action Administrator” means Angeion Group, acting as class action administrator  
3 to effect the Class Action Settlement Agreement entered.

4           “Class Action Settlement Agreement” means the document filed at ECF No. 218-1 in the  
5 *Kater* Action.

6           “Outside Counsel” means (i) outside counsel who appear on the pleadings as counsel for  
7 a Party and (ii) partners, associates, and staff of such counsel to whom it is reasonably necessary  
8 to disclose the information for this litigation.

9           “Amazon Protected Material” means any discovery produced by Amazon in the Actions.

10          “Settlement Class” has the meaning provided in the Class Action Settlement Agreement.

11           **COMPUTATION OF TIME**

12          The computation of any period of time prescribed or allowed by this Order shall  
13 be governed by the provisions for computing time set forth in Federal Rule of Civil Procedure 6.

14           **SCOPE**

15          The protections conferred by this Rider cover not only the Amazon Protected Material  
16 governed by this Rider as addressed herein, but also any information copied or extracted  
17 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony,  
18 conversations, or presentations by Parties or their counsel in court or in other settings that might  
19 reveal Amazon Protected Material.

20          Nothing in this Rider shall prevent or restrict Amazon’s own disclosure or use of its own  
21 Amazon Protected Material for any purpose, and nothing in this Rider shall preclude Amazon  
22 from showing its Amazon Protected Material to an individual who prepared the Amazon  
23 Protected Material.

24           **DURATION**

25          Even after the termination of this case, the confidentiality obligations imposed by this  
26 Order shall remain in effect until a Producing Party agrees otherwise in writing or a court order  
27 otherwise directs, subject to the Final Disposition clause herein.

1                   **ACCESS TO AMAZON PROTECTED MATERIAL**

2                   Basic Principles. All Amazon Protected Material shall be used solely for the purpose of  
3 providing notice to and verifying and paying the recovery amount owed to members of the  
4 Settlement Class, and not for any other purpose whatsoever, including without limitation any  
5 other litigation, patent prosecution or acquisition, patent reexamination or reissue proceedings, or  
6 any business or competitive purpose or function. Amazon Protected Material shall not be  
7 provided, distributed, disclosed, or made available to anyone except as expressly provided in this  
8 Rider.

9                   Secure Storage, No Export . Amazon Protected Material must be stored and maintained  
10 by a Receiving Party at a location in the United States and in a secure manner that ensures that  
11 access is limited to the persons authorized under this Rider. To ensure compliance with  
12 applicable United States Export Administration Regulations, Amazon Protected Material may  
13 not be exported outside the United States or released to any foreign national (even if within the  
14 United States).

15                   Legal Advice Based on Amazon Protected Material. Nothing in this Rider shall be  
16 construed to prevent counsel from advising their clients with respect to this case based in whole  
17 or in part upon Amazon Protected Materials, provided counsel does not disclose the Amazon  
18 Protected Material itself except as provided in this Rider.

19                   Limitations. Nothing in this Rider shall restrict in any way Amazon’s use or disclosure  
20 of its own Amazon Protected Material.

21                   Designation. For the avoidance of doubt, in all circumstances not specifically addressed  
22 by this Rider, all Amazon Protected Material shall be treated as if designated  
23 “CONFIDENTIAL” under the Protective Order regardless of whether the Amazon Protected  
24 Material has been stamped or marked in accordance with that Order.

25                   **USE OF PROTECTED MATERIAL**

26                   It is Amazon’s and the Parties’ intention that Amazon will produce Amazon Protected  
27 Materials directly to the Class Action Administrator, with no production to any of the Parties.

1 Unless otherwise ordered by the Court or authorized through the prior written consent of  
2 Amazon, the Class Action Administrator may disclose Amazon Protected Materials only to those  
3 members of the Class Action Administrator's staff, or to any copying, clerical or other support  
4 services working at the direction of the Class Action Administrator, to whom disclosure is  
5 reasonably necessary in order to provide notice to and/or to verify and pay the recovery amount  
6 owed to members of the Settlement Class, provided that each such person to whom disclosure is  
7 made must first agree to be bound by the provisions of this Rider by signing a copy of Exhibit A.

8 Nothing in the foregoing paragraph is intended to restrict the Class Action Administrator  
9 from disclosing to a member of the Settlement Class any Amazon Protected Material that  
10 specifically relates to that individual.

11 Certain Members of the Settlement Class: As a limited exception and subject to this  
12 Rider, as of the date of production, the Class Action Administrator may furnish to Counsel for  
13 Plaintiffs the contact information for and Lifetime Spending Amount associated with each  
14 Settlement Class Member who has a Lifetime Spending Amount of greater than or equal to  
15 \$25,000.

16 For the avoidance of doubt, no Settlement Class Member's contact information or  
17 Lifetime Spending Amounts shall be provided to Counsel for Plaintiffs unless Counsel for  
18 Plaintiffs have been appointed by the Court as Class Counsel.

19 Any contact information disclosed to counsel for Plaintiffs pursuant to this section shall  
20 be used solely for the purpose of providing notice of the Class Action Settlement Agreement to  
21 members of the Settlement Class, and counsel for Plaintiffs shall disclose Contact Information  
22 only to counsel's staff, or to any copying, clerical or other support services working at the  
23 direction of counsel for Plaintiffs, to whom disclosure is reasonably necessary to provide notice  
24 to the member. All Contact Information relating to a member of the Settlement Class shall be  
25 destroyed by counsel for Plaintiffs upon confirmation that the member has received actual notice  
26 of the Class Action Settlement.

1           **CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL**

2           This Rider is intended to provide no mechanism to the Parties through which they can  
3 challenge the designation or protected status of Amazon Protected Materials.

4           **SUBPOENAS OR COURT ORDERS**

5           If at any time Amazon Protected Material is subpoenaed by any court, arbitral,  
6 administrative, or legislative body, the Party to whom the subpoena or other request is directed  
7 shall immediately give prompt written notice thereof to Amazon and to its counsel and shall  
8 provide Amazon with an opportunity to move for a protective order regarding the production of  
9 Amazon Protected Materials implicated by the subpoena.

10           **FILING PROTECTED MATERIAL**

11           Absent written permission from Amazon or a court Order secured after appropriate notice  
12 to all interested persons, the Parties may not file or disclose in the public record any Amazon  
13 Protected Material.

14           **INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER**

15           In the event of a disclosure of any Amazon Protected Material pursuant to this Rider to  
16 any person or persons not authorized to receive such disclosure under this Rider, the Party  
17 responsible for having made such disclosure, and each Party with knowledge thereof, shall  
18 immediately notify counsel for Amazon and provide to such counsel all known relevant  
19 information concerning the nature and circumstances of the disclosure. The responsible  
20 disclosing Party shall also promptly take all reasonable measures to retrieve the improperly  
21 disclosed Amazon Protected Material and to ensure that no further or greater unauthorized  
22 disclosure and/or use thereof is made.

23           Unauthorized or inadvertent disclosure does not change the status of Amazon Protected  
24 Material or waive the right to hold the disclosed document or information as Protected.

25           **FINAL DISPOSITION**

26           Not later than ninety (90) days after closure of the Final Disposition of this case, each  
27 Party and the Class Action Administrator shall return all Discovery Material of a Producing

1 Party to the respective outside counsel of the Producing Party or destroy such Material, at the  
2 option of Amazon. For purposes of this Order, “Final Disposition” occurs after an order,  
3 mandate, or dismissal finally terminating the above-captioned action with prejudice, including all  
4 appeals.

5 All Parties that have received any such Discovery Material, as well as the Class Action  
6 Administrator, shall certify in writing that all such materials have been returned to counsel for  
7 Amazon or destroyed.

8 **MISCELLANEOUS**

9 **Termination of Matter and Retention of Jurisdiction.** The Parties and Amazon agree that  
10 the terms of this Rider shall survive and remain in effect after the Final Determination of the  
11 Actions. The Court shall retain jurisdiction after Final Determination of the matter to hear and  
12 resolve any disputes arising out of this Rider.

13 **Successors.** This Rider shall be binding upon Amazon and the Parties hereto, their  
14 attorneys, and their successors, executors, personal representatives, administrators, heirs, legal  
15 representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and  
16 experts, and any persons or organizations over which they have direct control.

17 **Modification by Court.** This Order is subject to further court order based upon public  
18 policy or other considerations, and the Court may modify this Order sua sponte in the interests of  
19 justice. The United States District Court for the Western District of Washington is responsible  
20 for the interpretation and enforcement of this Order. All disputes concerning Amazon Protected  
21 Material, however designated, produced under the protection of this Order shall be resolved by  
22 the United States District Court for the Western District of Washington.

23 **Discovery Rules Remain Unchanged.** Nothing herein shall alter or change in any way  
24 the discovery provisions of the Federal Rules of Civil Procedure, the Local Rules for the United  
25 States District Court for the Western District of Washington, or the Court’s own orders.

26 Identification of any individual pursuant to this Protective Order does not make that individual  
27 available for deposition or any other form of discovery outside of the restrictions and procedures

1 of the Federal Rules of Civil Procedure, the Local Rules for the United States District Court for  
2 the Western District of Washington, or the Court's own orders.

3 Representation and Agreements Regarding Production. Amazon represents that it will  
4 complete production of emails and spending amounts, directly to the Settlement Administrator,  
5 as promptly as possible, and on or before December 1, 2020. Amazon further represents that it  
6 will promptly complete production of names, physical addresses, and phone numbers  
7 ("Supplemental Information") for class members who spent over \$100, to the extent Amazon is  
8 in possession of such information, though compiling and producing the Supplemental  
9 Information may require additional time and production may not be complete as of the Court-  
10 ordered deadline. Class Counsel agrees to further meet and confer in good faith with Amazon  
11 regarding timing of the production of the Supplemental Information, but reserve their right to  
12 pursue appropriate remedies should Amazon not timely produce the Supplemental Information.

13  
14 \* \* \*

15 Respectfully submitted,

16  
17 **Dated:** November 27, 2020

By: /s/ Todd Logan

18 Todd Logan\*  
19 tlogan@edelson.com  
EDELSON PC  
20 123 Townsend Street, Suite 100  
San Francisco, California 94107  
21 Tel: 415.212.9300/Fax: 415.373.9435

22  
23 By: /s/ Cecily C. Shiel

TOUSLEY BRAIN STEPHENS PLLC  
24 Cecily C. Shiel, WSBA #50061  
cshiel@tousley.com  
25 1700 Seventh Avenue, Suite 2200  
Seattle, Washington 98101-4416  
26 Tel: 206.682.5600

27 *Class Counsel*



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  
26  
27

\*Admitted *pro hac vice*

Dated: November 25, 2020

By: /s/ James Howard

James Howard (Bar No. 37259)  
JimHoward@dwt.com  
Molly N. Tullman (Bar No. 50420)  
mollytullman@dwt.com  
DAVIS WRIGHT TREMAINE LLP  
920 Fifth Avenue, Suite 3300  
Seattle, WA 98104-1610  
Telephone: (206) 757-8137

*Attorneys for Nonparty Amazon.com, Inc.*

**ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated this 30th day of November, 2020.



ROBERT S. LASNIK  
UNITED STATES DISTRICT JUDGE

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  
26  
27

**EXHIBIT A**

I, \_\_\_\_\_, acknowledge and declare that I have received a copy of the Agreed Rider To Protective Order Regarding The Use And Disclosure Of Discovery Produced By Nonparty Amazon.com, Inc. ("Rider") in *Kater et al. v. Churchill Downs Incorporated, et al.*, No. C15-0612-RSL and *Thimmegowda v. Big Fish Games, et al.*, NO. C19-0199-RSL, United States District Court, District of Washington, Western District. Having read and understood the terms of the Rider, I agree to be bound by the terms of the Rider and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Rider.

Name of individual: \_\_\_\_\_

Present occupation/job description: \_\_\_\_\_

Name of Company or Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Signature]