

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

DILLINGER, LLC	)	
	)	
Plaintiff,	)	
	)	
v.	)	Cause No. 1:09-cv-01236-JMS-TAB
	)	
ELECTRONIC ARTS, INC.	)	
	)	
Defendant.	)	

**JOINT AGREED PROTECTIVE ORDER**

Pursuant to Rule 26 of the Federal Rules of Civil Procedure and consistent with the standards of *Citizens First National Bank of Princeton v. Cincinnati Insurance*, 178 F.3d 943 (7th Cir. 1999); *Union Oil Company of California v. Leavell*, 220 F.3d 562 (7th Cir. 2000); *Baxter International v. Abbott Laboratories*, 297 F.3d 544 (7th Cir. 2002), and for good cause shown, the parties hereby stipulate to the entry of the following protective order. This order is to preserve and maintain the confidentiality of certain limited confidential and proprietary information which may be disclosed or obtained by Dillinger, LLC (“Dillinger”) and/or Electronic Arts, Inc. (“EA”), specifically customer information including names and addresses and contact information, customer sales history and account information, company sales information, and pricing, rebates, discounts, plans, strategies, and costs information not known to the general public. This order is also intended to preserve and maintain the confidentiality of certain limited personal, private information (such as financial information) regarding Dillinger and EA and their respective employees through testimony and/or the production of certain records by and between the parties during the course of discovery. The parties agree that good cause exists for this Agreed Protective

Order to preserve the legitimate proprietary and privacy interests of sources of information that have not been released to the public and which the parties may mutually seek production of through their respective discovery requests. The Court specifically finds that good cause exists for this Agreed Protective Order.

1. This Agreed Protective Order shall govern the disclosure and use of Confidential Information produced in connection with this litigation. All information which is or has been produced or discovered in this litigation, regardless of whether designated confidential, shall be used solely for the prosecution or defense of this litigation unless the information is available to the general public without a breach of the terms of this Agreed Protective Order. The measures designated by the parties in this Agreed Protective Order are reasonable and will not prejudice anyone or unduly burden the Court.

2. This Agreed Protective Order is necessary to preserve the legitimate proprietary interests of sources of information and establishes a procedure for disclosing Confidential Information to the parties in this litigation, imposes obligations on persons receiving Confidential Information to protect it from unauthorized use or disclosure, and establishes a procedure for challenging confidentiality designations.

3. By entering into this Agreed Protective Order the parties do not intend to waive any objections raised in response to discovery, nor does this Agreed Protective Order in any way obligate any party to produce any specific documents or records in the future which a party deems inappropriate for production.

4. This Agreed Protective Order is intended to preserve and maintain confidential and proprietary business information of the parties, specifically customer

information including sales history and account information, company sales information, and pricing and costs information not known to the general public, the disclosure of which could cause serious injury or damage to the parties. This Agreed Protective Order is also intended to preserve and protect any confidential and proprietary business information that may be discovered or produced through the inspection of any party's electronic data regardless of where stored, including through the inspection of any personal or business computer by any party's expert. This Agreed Protective Order may also pertain to additional records of a proprietary nature which will be specifically designated by the disclosing party as they are determined by that party to fall within the protections of this Agreed Protective Order.

5. Any documents produced subject to the terms of this Agreed Protective Order shall be considered either "Confidential" or "Attorneys' Eyes Only" and shall be given confidential treatment as described below. All documents produced subject to this Agreed Protective Order shall be designated or stamped "CONFIDENTIAL" or "ATTORNEYS EYES ONLY."

6. Documents designated as "CONFIDENTIAL" will include personal, private, and/or confidential information relating to the employees, officers, directors, managers, or agents of either party. This necessarily includes confidential, personal, and private information for individuals who are not parties to this litigation. Additional documents may be later identified which shall also be considered "Confidential" and such records shall be given similar protections pursuant to this Agreed Protective Order as specifically designated by and agreed to by the parties during the course of this litigation. Jeff Scalf, owner of Dillinger, is permitted to review all documents designated as "Confidential." Joel Wade,

employee of EA, is permitted to review all documents designated as "Confidential."

7. Documents designated as "ATTORNEYS EYES ONLY" for purposes of this Agreed Protective Order shall include any legitimate confidential and proprietary business information, including but not limited to highly sensitive nonpublic information such as customer names, addresses and contact information; customer account information and customer preferences; pricing information or such other information or documents not known to the general public, the disclosure of which could cause serious injury or damage to the parties. Additional documents may be later identified which shall also be considered "Attorneys Eyes Only" and such records shall be given similar protections pursuant to this Agreed Protective Order as specifically designated by and agreed to by the parties during the course of this litigation.

8. Confidential or Attorneys Eyes Only documents or information shall not be exhibited, disseminated, copied, or in any way communicated to anyone for any purpose whatsoever, other than in conjunction with the above-captioned litigation. Except as provided for in this Agreed Protective Order, the parties shall keep all documents or information covered by the terms of this Agreed Protective Order from all persons as provided for by the terms of this agreement.

9. Neither the receiving party nor its representatives shall disclose documents designated as Confidential, other than to the following persons (hereinafter referred to as "Qualified Persons - Confidential"):

- (a) Jeff Scalf or Dillinger's designated counsel of record in this action;
- (b) Employees of Dillinger's counsel acting at the direction of counsel,

and assigned to and necessary to assist such counsel in the preparation or trial of this action;

- (c) The following designated EA representatives: Joel Wade or EA's designated counsel of record in this action;
- (d) Employees of EA's counsel acting at the direction of counsel, and assigned to and necessary to assist such counsel in the preparation or trial of this action;
- (e) All attorneys for the parties in this action, including in-house attorneys, and their assistants, associates, paralegals, clerks, stenographic personnel, those individuals specifically acting at the direction of counsel, and the parties' human resources administrators and staff, and assigned to and necessary to assist such counsel in the preparation or trial of this action;
- (f) Independent experts and consultants retained by any party whose assistance is necessary for the preparation of trial of this specific action; and
- (g) At any deposition, hearing or trial in this matter, witnesses for any party provided that such witnesses expressly agree to comply with the terms of this Protective Order and provided that such witnesses shall be allowed to review the CONFIDENTIAL documents or information, but shall not be provided with copies of the CONFIDENTIAL documents or information.
- (h) The Court (including any agent of the Court) and any court reporter used during depositions.

This Agreed Protective Order permits the parties and their designated representatives to view documents or information designated as CONFIDENTIAL exclusively for purposes of this litigation; however, the parties and their designated representatives are precluded from sharing and/or disclosing that information to anyone other than their designated counsel of record in this action. Accordingly, the parties and their designated representatives expressly agree to maintain the confidentiality associated with those documents designated as CONFIDENTIAL and agree that they will not disclose or otherwise share such information with anyone other than their designated counsel of record in this action at any time either during the pendency of this action or subsequent to the conclusion of the

litigation. To the extent CONFIDENTIAL documents are used as exhibits or attachments to any filing with the Court in the above-captioned litigation, the party so using the CONFIDENTIAL documents will file the documents with the Court in accordance with Local Rule 5.3 and Section 18 of "Civil Electronic Case Filing Administrative Policies and Procedures Manual for the Southern District of Indiana" with documents appropriately designated.

10. Disclosure shall be made to persons identified in Paragraph 9 above only as necessary for this litigation, and only after the person to whom disclosure is made has been informed of the Protective Order, and has agreed in writing to be bound by it, by signing the form of acknowledgment attached to this Protective Order as *Exhibit A – Acknowledgment*. The terms of this Protective Order shall be explained to such persons by the persons disclosing the confidential material or information it contains. The executed acknowledgment shall be retained by counsel disclosing the confidential material or information. Confidential information shall not be disclosed to any person in any manner not specified in this Protective Order.

11. Counsel for the receiving party shall not disclose documents designated as ATTORNEYS EYES ONLY, as defined by paragraphs 7 and 18(b) herein, other than to the following persons (hereinafter referred to as "Qualified Persons - Highly Confidential"):

- (a) Dillinger's designated counsel of record in this action;
- (b) EA's designated counsel of record in this action;
- (c) All attorneys for the parties in this action, including in-house attorneys, and those individuals specifically acting at the direction of counsel, and assigned to and necessary to assist such counsel in the preparation or trial of this action, including their assistants, associates, paralegals, clerks, stenographic personnel, and assigned to and necessary to assist such

counsel in the preparation or trial of this action;

- (d) Independent experts and consultants retained by any party whose assistance is necessary for the preparation of trial of this specific action; and
- (e) The Court (including any agent of the Court) and any court reporter used during depositions.

The terms “Highly Confidential” and “Attorneys Eyes Only” have identical meaning.

To the extent an “ATTORNEYS EYES ONLY” document is used as an exhibit or attachment to any filing with the Court in the above-captioned litigation, the party so using the document will file the ATTORNEYS EYES ONLY document with the Court in strict accordance with Local Rule 5.3 and Section 18 of “Civil Electronic case Filing Administrative Policies and Procedures Manual for the Southern District of Indiana” with documents appropriately designated.

12. In accordance with Local Rule 5.3 and Section 18 of the Policies and Procedures Manual of this Court, the party seeking to file any documents under seal must file a separate and specific motion for such protection, and the motion will only be granted for good cause shown and if consistent with Seventh Circuit case law regarding filing materials under seal.

13. The attorneys of record, where practicable, shall make reasonable efforts to redact Confidential Information contained within documents produced under this protective order and file such redacted copies for the public record.

14. Nothing in this Agreed Protective Order shall be construed as precluding a party from seeking additional protection from the Court against the disclosure or production of any other confidential information, including an order that such information not be disclosed or that it be disclosed only in a designated manner. If the Court agrees with the

person or party challenging confidentiality and/or permits disclosure, the disclosing person or party shall pay the reasonable attorney's fees incurred as a result of the challenge.

15. Nothing in this Agreed Protective Order precludes or limits a party from viewing its own confidential or attorneys eyes only documents.

16. Protective Orders are covered in Rule 26(c) of the Federal Rules of Civil Procedure, which provides in pertinent part, "Upon motion by a party. . . the court may make any order which justice requires to protect a party . . . including one or more of the following. . . (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way."

(Emphasis added). The courts have recognized that this language of the Rule means what it says and thus protective orders are proper to protect things other than just trade secrets. For example, in a recent opinion in *Directory Concepts, Inc. v. Fox*, 2008 WL 5263386 (N.D. Ind. Dec 16, 2008), the Court noted the following:

It is important to remember that Federal Rule of Civil Procedure 26(c) does not limit a court to entering a protective order solely for trade secrets. Rather a court may also enter a protective order to protect 'other confidential research, development, or commercial information.' Furthermore, the IUTSA [Indiana Uniform Trade Secrets Act] expressly mandates that a court 'shall preserve the secrecy of an *alleged* trade secret.

Id. at \* 5 (Emphasis added). Other courts have similarly ruled that proprietary information, while discoverable, is properly produced subject to a protective order. See *Innovative Piledriving Prods., LLC v. Unisto Oy*, 2005 U.S. Dist. LEXIS 23652, \*7 (N.D. Ind. 2005)("Proprietary information is not per se undiscoverable, but rather such information can be protected from improper disclosure by an appropriate protective order.")

17. The use of CONFIDENTIAL or ATTORNEYS EYES ONLY documents or



information at trial or hearing shall be addressed in any pre-trial or pre-hearing order or by a stipulation submitted by the parties to comport with the Court's pre-trial or pre-hearing filing deadlines.

18. As used herein, the following definitions shall apply:

- (a) "Confidential Information" or "Confidential" means any information or documents (regardless whether in electronic or hard copy format) that:
  - (i) is personal or private or confidential information relating to any party; the parties' employees, managers, or agents, such as personal financial information, social security numbers, personal medical information; and,
- (b) "Attorneys Eyes Only" means any information or documents (regardless whether in electronic or hard copy format) that:
  - (i) shall be deemed proprietary business information including but not limited to customer information including names and addresses and contact information, customer sales history and account information, company sales information, and pricing, rebates, discounts, plans, strategies, and costs information not known to the general public; and,
  - (ii) all electronic data, information or documents retrieved a party's computers during any inspection of those computers will be considered "Attorneys Eyes Only" during the inspection and subsequent to the inspection only until defense counsel has reviewed the data, information or documents retrieved during that inspection such that defense counsel may appropriately designate the data, information, or documents as "Confidential" or "Attorneys Eyes Only." Defense counsel promptly will review and designate any data, information, or documents afforded protection pursuant to this Agreed Protective Order.

19. Confidential or Attorneys Eyes Only documents or information subject to this Agreed Protective Order shall not be made public by counsel for the receiving party or divulged to anyone other than the persons entitled to access such information under paragraphs 9 and 11.

20. The agreement of the parties to this Agreed Protective Order shall not be construed as an agreement or admission: (i) that any material or document designated as confidential is, in fact, confidential; (ii) as to the correctness or truth of any allegation made or position taken relative to any matter designated as confidential; or (iii) with respect to the authenticity, competency, relevance or materiality of any document or thing designated as confidential.

21. A party shall designate all other Confidential Information disclosed during any deposition in this matter as "CONFIDENTIAL" by notifying all parties either during the deposition or, in writing, within thirty (30) days of receipt of the transcript, of the specific pages and lines of the transcript which contain Confidential Information. Each party shall attach a copy of such written notice to the face of the transcript and each copy thereof in its possession, custody or control.

22. Nothing shall prevent disclosure beyond the terms of this Agreed Protective Order if any party expressly consents to such disclosure, either in writing or in the record of any proceeding in this litigation, or if the Court, after notice to all affected parties, orders such disclosure.

23. The attorneys of record are responsible for employing reasonable measures to control access to and distribution of confidential items.

24. Upon the termination of this litigation, the provisions of this Protective Order shall continue to be binding, except with respect to those documents and information that become a matter of public record.

25. This Agreed Protective Order shall not prohibit disclosure of Confidential or Attorneys Eyes Only documents or information to the Court or Court personnel (including

any Court for purposes of appellate review) at any time. Any party and any interested member of the public can challenge the secreting of any particular documents.

26. Upon written request by counsel for the disclosing party or person, the party or witness having received any documents or information subject to this Agreed Protective Order shall return or destroy these items at the close of this litigation, at the option of the disclosing party.

27. If a producing party inadvertently or unintentionally produces to a receiving party any documents or information subject to a claim of privilege or immunity from discovery (including but not limited to attorney-client privilege, work product immunity, and immunities created by federal or state statute or regulation), the producing party shall, within 15 days of the discovery of the inadvertent production, give notice to the receiving party in writing of the producing party's claim of privilege or immunity from discovery. Thereafter, the receiving party shall immediately return to the producing party the original and all copies of the privileged materials, including copies of the privileged materials disseminated to other persons by the receiving party. The receiving party shall also immediately destroy all summaries, abstracts, written digests, or other recordings of such documents and information. Such inadvertent or unintentional disclosure shall not be deemed a waiver in whole or in part of the producing party's claim of privilege or immunity from discovery either as to specific documents and information disclosed or on the same or related subject matter.

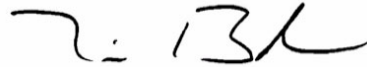
28. In the event that the receiving party disagrees with the producing party's claim of privilege or immunity from discovery of the inadvertently disclosed documents or information, then the receiving party shall notify the producing party within five (5) business days of receipt of the producing party's written notice of claim of privilege, and shall set forth the precise

grounds upon which the receiving party's position rests. If the parties cannot resolve the matter, then the dispute will be presented to the Court by motion or otherwise. During the pendency of any such motion, the receiving party shall not copy, distribute, or otherwise use in any manner the disputed documents or information, and shall instruct all persons to whom the receiving party has disseminated a copy of the documents or information that the documents or information are subject to this Order and may not be copied, distributed, or otherwise used pending the motion and further notice from the Court.

The parties, by their respective representatives, hereby agree and stipulate to each of the terms and conditions as set forth in the foregoing Agreed Protective Order.

**COURT APPROVAL**

SO ORDERED: 08/16/2010



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Tim A. Baker  
United States Magistrate Judge  
Southern District of Indiana

**APPROVED AS TO FORM AND SUBSTANCE:**

DISTRIBUTION :

**EXHIBIT A - ACKNOWLEDGMENT**

I, \_\_\_\_\_, have reviewed the protective order entered in the case of *Dillinger, LLC v. Electronic Arts, Inc.*, Cause No. 1:09-cv-01236-JMS-TAB and I agree to abide by the terms contained in it. I understand that all Confidential Information/Documentation shall not be disclosed pursuant to terms of this Protective Order and that all such information must be returned to the producing party following the resolution of this case.

Date: \_\_\_\_\_ Signed: \_\_\_\_\_