

envelope manufacturers or the Postal Service, or (2) deliberative process privilege for the Postal Service. Order No. 381 at 11-20; POR-12 at 11-21.

The Commission also made clear in Order No. 381 that the Postal Service would bear the burden of justifying continued sealing of the documents, for this “treatment . . . departs from the rule that public proceedings should be conducted and decided under the light of public scrutiny.” Order No. 381 at 20-21. “Only if the Postal Service carries its burden under Fed. R. Civ. P. rule 26(c) will the Commission bar GameFly’s officers from access to information.” Order No. 381 at 20. The Commission emphasized that the Postal Service could not satisfy this burden with only generalized claims of privilege. To the contrary, the Commission forbade the Postal Service from raising any privilege claim with the presiding officer without having complied with Rule 3007.21(c) on a “document-specific basis.” *Id.* at 17. This is a crucial aspect of Order No. 381, because the showing required by Rule 3007.21(c) is specific and detailed. The required showing includes, *inter alia*:

- “A description of the materials claimed to be non-public in a manner that . . . would allow a person to thoroughly evaluate the basis for the claim that they are non-public.”
- “Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm.”
- “At least one specific hypothetical, illustrative example of each alleged harm.”
- “The extent of protection from public disclosure deemed to be necessary.”

- “The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof.”

39 C.F.R. § 3007.21(c)(3)-(7).

Finally, Order No. 381 put the Postal Service on notice that it may no longer treat the Commission-imposed proof requirements “as movable goal posts” that can safely be ignored until a later time of the Postal Service’s choosing, *cf. In Re: Fannie Mae Securities Litigation*, 552 F.3d 815, 818 (D.C. Cir. 2009),¹ and that the repeated

¹ Before Order No. 381, the Postal Service received—and disregarded—multiple opportunities to make the “specific and detailed” showings of injury required by F.R.C.P. 26(c) and the Commission’s rules (including Rule 3007.21(c)) for each document that the Postal Service seeks to keep under seal. In Order No. 225 (at 12), the Commission elaborated on Rule 3007.21(c):

the “rule requires the Postal Service to identify the material it asserts are non-public and to provide a detailed statement in support thereof, addressing, among other things, the rationale for the claim, including the statutory authority, the nature and extent of any commercial harm, a hypothetical example of such harm, the extent of public protection from public disclosure deemed necessary, and any other factors relevant to the application for non-public treatment.

The Presiding Officer, when granting the Postal Service’s request for a lengthy extension of time to respond to GameFly’s September 25 motion to unseal, reiterated that the Postal Service, and any third-parties that wished to keep documents under seal, should provide

for *each document* it contends must remain sealed, such sufficient support as is ordinarily required for documents that it files under seal in the first instance, pursuant to 39 CFR 3007.21.

Presiding Officer’s Ruling No. C2009-1/7 at 2 n.6 (emphasis added). “[A]ny objections should be filed with the Commission by October 19, 2009, *or they will be deemed to be waived.*” *Id.* at 3 n.7 (emphasis added).

(footnote continued on next page)

opportunities given to the Postal Service to beef up its position with additional claims were at an end. “By establishing the final criteria, the Commission provides a framework for resuming case management and completing discovery.” Order No. 381 at 20; *see also id.* at 17 & n. 23.

Unfortunately, the Postal Service has treated Order No. 381 with the same disregard as the Commission’s previous rulings on the subject. Order No. 381 directed the parties to attempt to resolve the disputed privilege claims within 21 days of the ruling—i.e., by January 28. Not until January 21, however—two weeks into the three-week period—did the Postal Service even identify the documents that it sought to maintain under seal pursuant to Order No. 381. On that day, the Postal Service sent GameFly a list of Bates numbers representing documents that the Postal Service “assert[ed] . . . should remain sealed.” Email from James M. Mecone to David M. Levy (January 21, 2010) (reproduced at Attachment A, *infra*). The list claimed protection for over 300 pages of documents. The document, however, made no attempt to identify

(footnote continued)

The Postal Service responded to this directive by ignoring it. As the Presiding Officer subsequently found in POR-12:

The Postal Service declined to file descriptions of each document marked confidential though required to by an earlier ruling granting it more time. No other meaningful support was provided either until the Postal Service filed its Response in opposition with vague descriptive information on certain classes of documents.

Presiding Officer’s Ruling No. C2009-1/12 at 30. In POR-12, however, the Commission gave the Postal Service a *further* “chance to provide the requisite support for claims of continuing protection for the documents in question.” Order No. 381 at 19. And Order No. 381 gave the Postal Service yet a further opportunity. *Id.* at 20-21.

the particular information on these pages that the Postal Service claimed to be sensitive. Nor did the document make any of the showings required by Order No. 381 for continued protection.

During a meeting between Postal Service and GameFly counsel at Postal Service headquarters the next day, January 22, GameFly asked the Postal Service to supply the missing information. On January 25, the Postal Service responded by producing the document reproduced at Attachment B, *infra*. The January 25 document consisted of the January 22 document modified by inserting one or more of the following phrases next to the Bates number range of each document for which the Postal Service sought continued protection:

“Third Party Confidential Information”

“Blockbuster Confidential Information”

“Trade Secret”

“Deliberative Process Privilege”

Id. The January 25 document, however, still did not specify *what* information was the basis for these privilege claims, let alone attempt to make the particularized showings required by Order No. 381 for continued protection on these grounds.

Because GameFly had voluntarily agreed to the redaction of information about mailers and other third-parties named in the documents,² GameFly reviewed anew each of the pages for which the January 25 document asserted confidentiality claims other

² Rejoinder of GameFly to Oppositions of the USPS et al. (Oct. 26, 2009) at 23-24.

than deliberative process privilege. On January 27, GameFly sent the Postal Service a list of the specific references in the documents to private parties other than Netflix and Blockbuster, and informed the Postal Service that GameFly consented to the redaction of those particular references. See Attachment C, *infra* (list of references that GameFly agrees to have redacted). GameFly added, however, that it would not agree to any additional redactions without more information from the Postal Service.

GameFly has received no further communication from the Postal Service about the documents.

II. THE POSTAL SERVICE’S GENERALIZED CLAIMS OF CONFIDENTIALITY DO NOT BEGIN TO JUSTIFY ANY FURTHER CONCEALMENT OF THE DOCUMENTS AT ISSUE.

As noted above, the Postal Service has responded to Order No. 381 by identifying four general categories of privilege that supposedly justify continued protection for the documents that the Postal Service wants to keep secret from the public: “Third Party Confidential Information”; “Blockbuster Confidential Information”; “Trade Secret”; and “Deliberative Process Privilege.” We discuss each one in turn.

A. “Third Party Confidential Information”

The Postal Service seeks continued protection for the following Bates-numbered pages on the ground that they contain “third party confidential information” (presumably information about private parties other than Netflix, Blockbuster or GameFly): GFL33, 189, 210-218, 373-374, 428, 505-506, 511, 685-704, 732-738, 765-773, 805, 1180, 7278-7279, 7285-7286, 7287, 7292-7293, 7294-7295, 74289-74297.

As noted above, GameFly agrees to the redaction of identifying information about these parties. See Attachment C, *infra*; Rejoinder of GameFly to Oppositions of the USPS et al. (Oct. 26, 2009) at 23-24. The remainder of each page should be made public, however. The pages contain information that is relevant to the Postal Service's discriminatory practices and the arguments that the Postal Services appears likely to assert in defense of the reasonableness of the discrimination under 39 U.S.C. § 403(c). Accordingly, the Commission should adopt the less drastic remedy of redacting only the identifying information rather than the entirety of each page.

B. "Blockbuster Confidential Information"

The Postal Service seeks continued protection for the following Bates-numbered pages on the ground that they contain "Blockbuster Confidential Information": GFL317, 327-329, 545-547, 553-557 and 1020-1063. To narrow the issues in dispute, GameFly agrees that page 545-547 other than the title, paragraph marked "purpose," and the third paragraph on page GFL546 may remain under seal; so may pages 553-557. The remaining material identified by the Postal Service does not warrant continued protection, however.

The Commission has held that requests for continued sealing of information about Blockbuster shall be governed by the standards of 39 C.F.R. § 3007.33(b) and Fed. R. Civ. P. 26(c)(1)(G). POR-12 at 21-14, *affirmed*, Order No. 381 at 11-14. Under these standards, information about Blockbuster is entitled to protection only if the information is:

- (a) a trade secret; or (b) proprietary commercial information that was (i) generated after November 8, 2007, and (ii) contains one of the limited kinds of content, described below as "highly confidential." The limited

kinds of content, protected under (ii) include only (a) strategic business plans, not readily ascertainable elsewhere, that would disclose a material competitive advantage to a rival, or (b) information to which employees of the Postal Service have only limited access that is comprised of one or more of the following: company production data; company security matters; customer lists; company financial data; projected sales data or goals; proprietary market research, or matters relating to mergers and acquisitions.

POR-12 at 24-25. Moreover, company financial data, production data or market research shall not be protected if readily available elsewhere or expressed in percentages or relative quantitative values rather than absolute values. *Id.* at 25.

The Postal Service has not begun to satisfy these standards for GFL317, 327-329 and 1020-1063. As noted above, the Postal Service has not even identified the information in these documents that assertedly constitute proprietary commercial information. Nor does a review of the documents review any information that could fairly be characterized as proprietary and commercial. GFL317 and 327-329 concern certain operational requests by Blockbuster that were denied at the time by the Postal Service. It is hardly evident that public disclosure of these requests would provide any competitive benefit to Blockbuster's competitors. GFL1020-1063 is a report of a study by an outside consultant on how the Postal Service processed DVD mailers in 2005 or 2006. In any event, GFL317, 327-329 and 1020-1063 were all created in 2006, well before the November 8, 2007, cutoff date before which commercial information is conclusively presumed by the Commission to have lost any proprietary value. See POR-12 at 24.

C. “Trade Secrets”

The Postal Service seeks continued protection for the following Bates-numbered pages on the ground that they contain “Trade Secrets”: GFL685-704, 765-773, 1020-1063 and 74299-74302. This claim is also unsupported. The Postal Service has failed to identify what trade secrets supposedly appear in these pages, let alone attempt to show that the information is “truly within the ambit of trade secrets as defined under the Uniform Trade Secret Act.” POR-12 at 22 n. 39. Indeed, the Postal Service has not made *any* showing concerning *any* of the factors that are traditionally considered in evaluating claims that particular information is a trade secret: “(1) the extent to which the information is known outside the business; (2) the extent to which it is known by employees and others involved in the business; (3) measures taken to guard the information's secrecy; (4) the value of the information to the business or to its competitors; (5) the amount of time, money, and effort expended in development of the information; and (6) the ease or difficulty of duplicating or properly acquiring the information.” 6-26 MOORE'S FEDERAL PRACTICE – CIVIL § 26.105.

Moreover, the pages identified by the Postal Service contain no information that even colorably qualifies as a trade secret. GFL685-704 is a copy of the November 2007 OIG report, virtually all of which has already been made public. GFL765-773 and 74299-74302 are reports on teleconferences and meetings between the Postal Service and multiple private parties in 2005 concerning various rate, classification and operational proposals, most of which the Postal Service did not adopt. GFL1020-1063, as noted above, is a report of a study by an outside consultant on how the Postal Service processed DVD mailers in 2005 or 2006.

D. “Deliberative Process Privilege”

Perhaps the most extravagant and unfounded privilege claim asserted by the Postal Service in its January 25 confidentiality list (Attachment B, *infra*) is “Deliberative Process Privilege.” The Postal Service asserts this privilege for virtually every document on the list. Moreover, for most of the documents, “Deliberative Process Privilege” is the only privilege asserted.

The privilege must be denied, however, on two independent grounds. First, the Postal Service has failed to satisfy *any* of the procedural and evidentiary requirements imposed in Order No. 381 and Rule 3007.21(c) as a condition for invoking the privilege. Second, the deliberative process privilege is inapplicable where, as here, the Postal Service’s intent is directly at issue. We discuss each ground in turn.

1. The Postal Service has failed to make the showings required by Order No. 381 and Rule 3007.21(c).

In Order No. 381, the Commission established very specific hurdles for any claim of deliberative process privilege:

(1) The supposedly privileged information must be predecisional, in the sense that it was generated before the affirmative adoption of different specific agency policy. Order No. 381 at 16 (citing *Public Citizen, Inc. v. Office of Management and Budget*, 569 F.3d 434, 442-44 (D.C. Cir. 2009)). To avoid any question on this point, the Commission specifically forbade the Postal Service from raising a claim of deliberative process privilege with the presiding officer without having made the document-specific showings required by Rule 3007.21(c) *and* produced a “complete privilege log that identifies the subsequent decision at issue.” Order No. 381 at 17.

(2) The information must be deliberative, in the sense that it “clearly reflects the give-and-take of consultative process.” Order No. 381 at 16. “Only those portions of a pre-decisional document that reflect the give and take of the deliberative process may be withheld.” *Id.* at 15-16 (citing *Public Citizen, Inc.*, 569 F.3d at 434, 444 (D.C. Cir. 2009) (citing *Access Reports v. Dep’t of Justice*, 926 F.2d 1192, 1195 (D.C. Cir.1991))). Moreover, deliberations voluntarily disclosed to an outside party would fall outside “the ambit of the deliberative process privilege.” Order No. 381 at 19 (citing *Levy v. USPS*, 567 F.Supp.2d 162, 166-167 (D.D.C. 2008)).

(3) “It is clear that none of the deliberations referenced in the information at issue in the document is the subject of any alleged misconduct that serves as a basis of this unfair discrimination suit.” Order No. 381 at 16.

(4) “Such allegedly privileged content is non-factual, unless it is factual material inextricably intertwined with non-factual information.” *Id.*

(5) The Commission added that the burden of establishing a deliberative process privilege would be even greater in this case because the privilege assumes “top-down” decision making, but the Postal Service has defended its conduct on the theory that “its decision-making, in substantial part, was left or delegated to personnel in the field.” *Id.* at 16.

(6) Finally, the Postal Service must satisfy the above standards “in a timely manner with clear support that the information is both pre-decisional and deliberative.” *Id.* at 15.

The Postal Service has not come close to satisfying these proof requirements. Indeed, its January 25 confidentiality log, like its December 9 comments on POR-12, does not even mention them. In *Rein v. United States Patent & Trademark Office*, 553 F.3d 353, 368-369 (4th Cir. 2009), the Court of Appeals held that claims of deliberative process privilege based solely on summary descriptions of documents as “predecisional and deliberative” and “represent[ing] the give and take of internal Agency deliberation” lacked the “specificity and particularity required for a proper determination of whether they are exempt from disclosure” under the deliberative process privilege. The confidentiality log produced by the Postal Service on December 25 is even more cryptic and uninformative than the confidentiality log found insufficient in *Rein*. *A fortiori* the same outcome is warranted here.³

2. The deliberative process privilege is inapplicable because the Postal Service’s intent is directly at issue in this case.

Finally, the deliberative process privilege is inapplicable for an even more fundamental reason. The Postal Service is not a disinterested government regulator vis-à-vis Netflix, Blockbuster and GameFly. To the contrary, GameFly’s claim of undue discrimination under 39 U.S.C. § 403(c), and the Postal Service’s insistence that its disparate treatment of GameFly and Netflix arose from motives that were entirely

³ Needless to say, the Postal Service should not be allowed to satisfy the proof requirements of Order No. 381 and Rule 3007.21(c) with information disclosed for the first time in the Postal Service’s comments today to the Presiding Officer. Giving weight to “stale claims of privilege delayed for tactical purposes” would not only flout the Commission’s clear admonition to the contrary (Order No. 381 at 17 & n. 23), but would violate GameFly’s due process rights.

legitimate, has placed the Postal Service's intent directly at issue. In this circumstance, the deliberative process privilege is simply inapplicable.

As GameFly noted in its Rejoinder filed on October 26, a number of courts have stated this principle in terms of misconduct. "Simply put, when there is reason to believe that government misconduct has occurred, the deliberative process privilege disappears." *Tri-State Hosp. Supply Corp. v. United States*, 226 F.R.D. 118, 135 (D.D.C. 2005) (citing *In re Subpoena Duces Tecum Served on Office of the Comptroller of Currency*, 145 F.3d 1422, 1424 (D.C. Cir. 1998)). See also *id.* ("Since the government's alleged misconduct in making these determinations is the basis of this lawsuit, the deliberative process privilege may yield"); *Adair v. Winter*, 451 F. Supp. 2d 202, 209 (D.D.C. 2006) ("When there is any reason to believe that government misconduct has occurred . . . the deliberative-process privilege disappears altogether."); *In re Sealed Case*, 121 F.3d 729, 746 (D.C. Cir. 1997) ("[T]he privilege disappears altogether when there is any reason to believe government misconduct occurred.").⁴

The exception to the deliberative process privilege does not require a finding of misconduct, however. A leading case is *In re: Subpoena Duces Tecum Served on the OCC*, 145 F.3d. 1422 (D.C. Cir. 1998), *reh'g granted*, 156 F.3d 1279 (D.C. Cir. 1998).

⁴ In its December 9 comments on POR-12, the Postal Service argued that the "government misconduct exception to the [deliberative process] privilege does not apply where the proponent of the exception simply "relies on the unverified allegations it made in its complaint." USPS Comments (December 9, 2009) at 12. But GameFly has not rested on "unverified allegations"; its discrimination claims are supported by many of the very documents that the Postal Service wants to shield from public view. See, e.g., Response of GameFly (Sept. 3, 2009) at 21-22 (citing emails and other internal documents); Rejoinder of GameFly (Oct. 26, 2009) at 28-29 (quoting document).

In that case, the Court of Appeals held that the deliberative process privilege does not apply at all when a claim of discrimination or undue preference has placed the agency's intent directly at issue. In such a case, there need not be government misconduct, as the misconduct exception does not apply—the entire discussion of the deliberative process privilege is a "non sequitur." 144 F.3d at 1424.

As the court explained, the deliberative process privilege "was fashioned in cases where the governmental decisionmaking process is collateral to the plaintiff's suit. . . . If the plaintiff's cause of action is directed at the government's intent, however, it makes no sense to permit the government to use the privilege as a shield. For instance, it seems rather obvious to us that the privilege has no place in a Title VII [discrimination] action or in a constitutional claim for discrimination." *Id.* "The central purpose of the privilege is to foster government decisionmaking by protecting it from the chill of potential disclosure. If Congress creates a cause of action that deliberately exposes government decisionmaking to light, the privilege's *raison d'être* evaporates." *Id.* (citation omitted).

In Order No. 381, the Commission declined to rule on the applicability of the government misconduct exception to the deliberative process privilege "on the basis of the limited arguments received to date." *Id.* at 17 n. 22. But the Commission now has received multiple rounds of pleadings on the issue.⁵ GameFly respectfully submits that, if the Postal Service's claims of deliberative process privilege are not denied for the

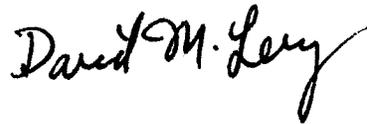
⁵ USPS Opposition (October 19, 2009) at 10-11; GameFly Rejoinder (Oct. 26, 2009) at 29-31; USPS Comments on POR-12 (Dec. 9, 2009) at 8-12; and the current pleading.

reasons specified in II.D.1, *supra*, the more fundamental threshold issue of whether the privilege applies at all needs to be addressed.

CONCLUSION

For the foregoing reasons, the Commission should order the documents at issue unsealed except to the extent identified in Attachment C.

Respectfully submitted,



David M. Levy
Matthew D. Field
Alexandra Megaris
VENABLE LLP
575 7th Street, N.W.
Washington, DC 20004
(202) 344-4800

Counsel for GameFly, Inc.

January 28, 2010

Attachment A

**Confidentiality Log
Produced By USPS
On January 21, 2010**

Levy, David M.

To: Levy, David M.

Subject: FW: GameFly

From: Mecone, James M - Washington, DC [mailto:James.M.Mecone@usps.gov]

Sent: Thursday, January 21, 2010 2:39 PM

To: Levy, David M.

Subject: RE: GameFly

David:

The meeting will be at 2:30 pm in room 6400.

In response to Order No. 381, we assert that the documents listed below should remain sealed.

GFL0000001

GFL0000003 - GFL0000004

GFL0000006 - GFL0000009

GFL0000022 - GFL0000023

GFL0000029

GFL0000030

GFL0000033

GFL0000058

GFL0000072

GFL0000100 - GFL0000102

GFL0000107 - GFL0000109

GFL0000125 - GFL0000127

GFL0000136

GFL0000189

GFL0000210 - GFL0000218

GFL0000272

GFL0000275 - GFL0000278

GFL0000311 - GFL0000314

GFL0000315 - GFL0000316

GFL0000317

GFL0000327 - GFL0000329

GFL0000337

GFL0000340

GFL0000347 - GFL0000349

GFL0000373 - GFL0000374

GFL0000419 - GFL0000421

GFL0000422 - GFL0000423

GFL0000424 - GFL0000425

GFL0000428

GFL0000458

GFL0000462

GFL0000464 - GFL0000473

GFL0000474 - GFL0000477

GFL0000495 - GFL0000496

GFL0000505 - GFL0000506

GFL0000509 - GFL0000510

GFL0000511

GFL0000523 - GFL0000524

GFL0000545 - GFL0000547

GFL0000553 - GFL0000557

GFL0000685 - GFL0000704

GFL0000732 - GFL0000738

GFL0000761 - GFL0000764

GFL0000765 - GFL0000773

GFL0000805

GFL0000844 - GFL0000845

GFL0000849 - GFL0000854

GFL0000869

GFL0000920

GFL0000921 - GFL0000938

GFL0001020 - GFL0001063

GFL0001064

GFL0001077 - GFL0001078

GFL0001113 - GFL0001114

GFL0001115 - GFL0001116

GFL0001117 - GFL0001118

GFL0001119 - GFL0001120

GFL0001121 - GFL0001122

GFL0001158 - GFL0001159

GFL0001180

GFL0001334 - GFL0001348

GFL0001349 - GFL0001387

GFL0001480

GFL0002422 - GFL0002423

GFL0007149

GFL0007150 - GFL0007153

GFL0007278 - GFL0007279

GFL0007285 - GFL0007286

GFL0007287

GFL0007292 - GFL0007293

GFL0007294 - GFL0007295

GFL0074224

GFL0074250 - GFL0074252

GFL0074289 - GFL0074297

GFL0074298

GFL0074299 - GFL0074302

GFL0077696 - GFL0077698

We can discuss this further at tomorrow's meeting.

James M. Mecone
US Postal Service Law Department
475 L'Enfant Plaza, SW
Washington, DC 20260-1137
+ 1 202 268 6525
Fax + 1 202 268 6187
James.M.Mecone@usps.gov

Attachment B

**Confidentiality Log
Produced By USPS
On January 25, 2010**

CONFIDENTIAL

C2009-1

Document Number	Confidentiality
GFL0000001	Deliberative Process Privilege
GFL0000003 - GFL0000004	Deliberative Process Privilege
GFL0000006 - GFL0000009	Deliberative Process Privilege
GFL0000022 - GFL0000023	Deliberative Process Privilege
GFL0000029	Deliberative Process Privilege
GFL0000030	Deliberative Process Privilege
GFL0000033	Third Party Confidential Information; Deliberative Process Privilege
GFL0000058	Deliberative Process Privilege
GFL0000072	Deliberative Process Privilege
GFL0000100 - GFL0000102	Deliberative Process Privilege
GFL0000107 - GFL0000109	Deliberative Process Privilege
GFL0000125 - GFL0000127	Deliberative Process Privilege
GFL0000136	Deliberative Process Privilege
GFL0000189	Third Party Confidential Information; Deliberative Process Privilege
GFL0000210 - GFL0000218	Third Party Confidential Information; Deliberative Process Privilege
GFL0000272	Deliberative Process Privilege
GFL0000275 - GFL0000278	Deliberative Process Privilege
GFL0000311 - GFL0000314	Deliberative Process Privilege
GFL0000315 - GFL0000316	Deliberative Process Privilege
GFL0000317	Blockbuster Confidential Information

CONFIDENTIAL

C2009-1

Document Number	Confidentiality
GFL0000327 - GFL0000329	Blockbuster Confidential Information
GFL0000337 & GFL0000340	Deliberative Process Privilege
GFL0000347 - GFL0000349	Deliberative Process Privilege
GFL0000373 - GFL0000374	Third Party Confidential Information
GFL0000419 - GFL0000421	Deliberative Process Privilege; Trade Secret
GFL0000422 - GFL0000423	Deliberative Process Privilege
GFL0000424 - GFL0000425	Deliberative Process Privilege
GFL0000428	Third Party Confidential Information; Deliberative Process Privilege
GFL0000458	Deliberative Process Privilege
GFL0000462	Deliberative Process Privilege
GFL0000464 - GFL0000473	Deliberative Process Privilege
GFL0000474 - GFL0000477 GFL0000495 - GFL0000496	Deliberative Process Privilege
GFL0000505 - GFL0000506	Third Party Confidential Information; Deliberative Process Privilege
GFL0000509 - GFL0000510	Deliberative Process Privilege
GFL0000511	Third Party Confidential Information; Deliberative Process Privilege

CONFIDENTIAL

C2009-1

Document Number	Confidentiality
GFL0000523 - GFL0000524	Deliberative Process Privilege
GFL0000545 - GFL0000547	Blockbuster Confidential Information
GFL0000553 - GFL0000557	Blockbuster Confidential Information
GFL0000685 - GFL0000704	Trade Secret; Deliberative Process Privilege; Third Party Confidential Information
GFL0000732 - GFL0000738	Deliberative Process Privilege; Third Party Confidential Information
GFL0000761 - GFL0000764	Deliberative Process Privilege
GFL0000765 - GFL0000773	Third Party Confidential Information; Trade Secrets; Deliberative Process Privilege
GFL0000805	Third Party Confidential Information; Deliberative Process Privilege
GFL0000844 - GFL0000845	Deliberative Process Privilege; Third Party Confidential Information
GFL0000849 - GFL0000854	Deliberative Process Privilege
GFL0000869	Deliberative Process Privilege
GFL0000920	Deliberative Process Privilege
GFL0000921 - GFL0000938	Deliberative Process Privilege; Trade Secret
GFL0001020 - GFL0001063	Trade Secret; Blockbuster Confidential Information
GFL0001064	Deliberative Process Privilege
GFL0001077 - GFL0001078	Deliberative Process Privilege

CONFIDENTIAL

C2009-1

Document Number	Confidentiality
GFL0001113 - GFL0001114	Deliberative Process Privilege
GFL0001115 - GFL0001116	Deliberative Process Privilege
GFL0001117 - GFL0001118	Deliberative Process Privilege
GFL0001119 - GFL0001120	Deliberative Process Privilege
GFL0001121 - GFL0001122	Deliberative Process Privilege
GFL0001158 - GFL0001159	Deliberative Process Privilege
GFL0001180	Third Party Confidential Information; Deliberative Process Privilege
GFL0001334 - GFL0001348	Deliberative Process Privilege
GFL0001349 - GFL0001387	Deliberative Process Privilege
GFL0001480	Deliberative Process Privilege
GFL0002422 - GFL0002423	Deliberative Process Privilege
GFL0007149	Deliberative Process Privilege
GFL0007150 - GFL0007153	Deliberative Process Privilege
GFL0007278 - GFL0007279	Third Party Confidential Information
GFL0007285 - GFL0007286	Third Party Confidential Information

CONFIDENTIAL

C2009-1

Document Number	Confidentiality
GFL0007287	Third Party Confidential Information
GFL0007292 - GFL0007293	Third Party Confidential Information
GFL0007294 - GFL0007295	Third Party Confidential Information
GFL0074224	Deliberative Process Privilege
GFL0074250 - GFL0074252	Deliberative Process Privilege
GFL0074289 - GFL0074297	Third Party Confidential Information; Trade Secrets; Deliberative Process Privilege
GFL0074298	Deliberative Process Privilege
GFL0074299 - GFL0074302	Trade Secrets; Deliberative Process Privilege
GFL0077696 - GFL0077698	Deliberative Process Privilege

**WORDS, PHRASES AND PAGES THAT
GAMEFLY AGREES TO HAVE REDACTED**

PUBLIC (REDACTED) VERSION

GFL Bates Numbers	Information To Remain Under Seal
33	
189	
216	
373-374	
428	
505	
511	
545-547	Keep everything under seal except title, paragraph marked “purpose,” and third paragraph on page GFL546.
553-557	Keep entire page under seal.
733	
770	
805	
844	
1115	
1180	

7278-7279	
7285-7286	
7287	
7292-7293	
7294-7295	
74294	

PUBLIC (REDACTED) VERSION