NICHOLAS J. SANTORO, ESQ.
Nevada Bar No. 532
JASON D. SMITH, ESQ.
Nevada Bar No. 9691
HOLLEY DRIGGS
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Tel.: (702) 791-0308 / Fax: (702) 791-1912
Email: nsantoro@nevadafirm.com
jsmith@nevadafirm.com

CHING-LEE FUKUDA *(admitted pro hac vice)*
SHARON LEE *(admitted pro hac vice)*
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
(212) 839-5300
Email: clfukuda@sidley.com
sharon.lee@sidley.com

JOSHUA J. FOUGERE *(admitted pro hac vice)*
SIDLEY AUSTIN LLP
1501 K Street, N.W. #600
Washington, DC 20005
(202) 736-8000
Email: jfougere@sidley.com

Attorneys for Plaintiffs Evolution Malta Ltd., Evolution Gaming Malta, Ltd., Evolution Gaming Ltd., and SIA Evolution Latvia

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

EVOLUTION MALTA LIMITED, EVOLUTION GAMING MALTA LIMITED, EVOLUTION GAMING LIMITED, and SIA EVOLUTION LATVIA, Plaintiffs, v. LIGHT & WONDER, INC. f/k/a SCIENTIFIC GAMES CORP. and LNW GAMING, INC. f/k/a SG GAMING, INC., Defendants.	Case No.: 2:24-cv-00993-CDS-EJY **MOTION TO SEAL EXHIBIT C TO THE DECLARATION OF JOSHUA FOUGERE IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE COMPLAINT**

Pursuant to Fed R. C. P. 26(c), LR 1A 10-5, and this Court's order dated August 1, 2024 (ECF No. 40), Plaintiffs Evolution Malta Limited, Evolution Gaming Malta Limited, Evolution Gaming Limited, and SIA Evolution Latvia (collectively, "Evolution"), by and through their undersigned counsel, hereby submit this memorandum detailing compelling reasons to seal select portions of Exhibit C to the Declaration of Joshua Fougere in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss (the "Fougere Declaration"). The Court has already found that compelling reasons exist to seal the information Evolution seeks to redact from Exhibit C to the Fougere Declaration. *See* ECF No. 40. For the reasons set forth below, Evolution respectfully requests that the Court enter an order sealing limited portions of Exhibit C to the Fougere Declaration, as set forth in Exhibit 1 attached hereto.

MATERIALS SOUGHT TO BE SEALED/REDACTED

On February 28, 2022 Evolution sent Defendants a letter (the "February 28, 2022 Letter") providing notice of (1) Defendants' breach of the parties' License Agreement, and (2) Defendants' violation of Evolution's intellectual property rights. The February 28, 2022 Letter has been attached as Exhibit C to the Fougere Declaration. The February 28, 2022 Letter references a confidential royalty provision in the parties' March 29, 2021 License Agreement, which the Defendants attached to their Motion to Dismiss. *See* ECF No. 34-2. On August 1, 2024, this Court granted Evolution's request to seal the relevant royalty provision in the License Agreement because it includes "confidential business information the disclosure of which could potentially cause competitive harm to Plaintiffs." *See* ECF No. 40 at 1.

ARGUMENT

Parties "who seek to maintain the secrecy of documents attached to dispositive motions must meet the high threshold of showing that 'compelling reasons' support secrecy." *Wells Fargo Bank, N.A. v. Saticoy Bay LLC Series 3948 Applecrest*, No. 2:17-cv-01360-APG-VCF, 2020 WL 2311560, at *2 (D. Nev. Apr. 23, 2020) (quoting *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006)). Requests to seal documents must also be "narrowly tailored" to seal "only the material that warrants secrecy." *Wells Fargo*, 2020 WL 2311560, at *2.

HOLLEY DRIGGS

"Compelling reasons" must "outweigh the general history of access and the public policies favoring disclosure, such as the public interest in understanding the judicial process." *Allegiant Travel Co. v. R2 Sols. LLC*, No. 2:22-cv-00828-CDS-BNW, 2022 WL 3346666, at *1 (D. Nev. Aug. 11, 2022).

"[C]onfidential business information in the form of license agreements, financial terms, details of confidential licensing negotiations, and business strategies satisfies the compelling reasons standard." *Id.* at *2 (internal quotations omitted); *see also In re Electronic Arts, Inc.*, 298 F. App'x 568, 569-70 (9th Cir. 2008) (finding compelling reasons exist to redact "pricing terms, royalty rates, and guaranteed minimum payment terms" from publicly filed licensing agreement.). Courts in this District have consistently found "compelling reasons" to grant motions to seal where, as here, the moving party seeks to redact limited confidential information relating to licensing terms, royalty rates, and proprietary business plans. *See, e.g.*, *ImageKeeper LLC v. Wright Nat'l Flood Insur. Servs.*, No. 2:20-cv-01470-CDS-MDC, 2024 WL 1330046, at *5 (D. Nev. Mar. 27, 2024) (granting motion to seal information relating to proprietary business information where redactions were "narrowly tailored to only remove confidential information from the public eye"); *Allegiant Travel*, 2022 WL 3346666, at *2 (finding compelling reasons to redact communications relating to litigant's negotiations and licensing strategy); *Rimini Street, Inc. v. Oracle Int'l Corp.*, No. 2:14-cv-01699-LRH-CWH, 2019 WL 2358389, at *1-2 (D. Nev. June 4, 2019) (granting motion to seal "confidential financial and pricing information, business and internal development strategies, and information regarding [] individually-negotiated customer licenses").

Here, within the 6-page February 28, 2022 Letter, Evolution seeks only to redact a single reference to the confidential "Royalty" rate in the License Agreement, as set forth in Exhibit 1 attached hereto. The limited information that Evolution seeks to redact is the exact same information that this Court has previously found compelling reasons to seal. *See* ECF No. 40. Moreover, Evolution is not seeking to redact any portions of the letter relevant to its Opposition to Defendants' Motion to Dismiss. Accordingly, there are compelling reasons to seal a limited confidential portion of the February 28, 2022 Letter and the "public interest in understanding the

HOLLEY DRIGGS

judicial process" is preserved. *Rimini Street*, 2019 WL 2358389, at *1 (internal citation omitted).

CONCLUSION

As set forth above, compelling reasons justify Evolution's narrowly tailored request to seal the confidential and proprietary business information in the February 28, 2022 Letter. Evolution respectfully requests that this Court seal limited portions of the February 28, 2022 Letter in accordance with the proposed redactions in Exhibit 1 attached hereto.

Dated this 10th day of September 2024.

OF COUNSEL:

CHING-LEE FUKUDA *(admitted pro hac vice)*
SHARON LEE *(admitted pro hac vice)*
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
(212) 839-5300
Email: clfukuda@sidley.com
sharon.lee@sidley.com

JOSHUA J. FOUGERE *(admitted pro hac vice)*
SIDLEY AUSTIN LLP
1501 K Street, N.W. #600
Washington, DC 20005
(202) 736-8000
Email: jfougere@sidley.com

HOLLEY DRIGGS

/s/ *Jason D. Smith*
NICHOLAS J. SANTORO, ESQ.
Nevada Bar No. 532
JASON D. SMITH, ESQ.
Nevada Bar No. 9691
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Tel.: (702) 791-0308 / Fax: (702) 791-1912
Email: nsantoro@nevadafirm.com
jsmith@nevadafirm.com

Attorneys for Plaintiffs Evolution Malta Ltd., Evolution Gaming Malta, Ltd., Evolution Gaming Ltd., and SIA Evolution Latvia

HOLLEY DRIGGS

HOLLEY DRIGGS

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of September, 2024, I caused a true and correct copy of the foregoing **Plaintiffs' Motion to Seal Exhibit C to the Fougere Declaration in Support of Plaintiffs' Opposition to the Motion to Dismiss** to be served via the United States District Court CM/ECF system on all parties or persons requiring notice.

/s/ Marissa Vallette
An employee of HOLLEY DRIGGS

HOLLEY DRIGGS

INDEX OF EXHIBITS

Description	Exhibit
Redacted copy of Exhibit C to the Fougere Declaration	1

EXHIBIT 1

February 28, 2022 Letter
(Redacted)

Evolution

February 28, 2022

By Email and Express Courier

SG Gaming, Inc.
601 Bermuda Road
Las Vegas, Nevada 89119
United States
Email: Michael.Blankstein@scientificgames.com

Re: Notice of Material Breach of License Agreement and Violation of Intellectual Property

Dear Michael J. Blankstein,

This letter constitutes a notice of material breach of the License Agreement entered into as of March 29, 2021 between Evolution Malta Limited ("Evolution") and SG Gaming, Inc. ("SG") regarding the Lightning Roulette game (the "Agreement") under Sections 8 and 15 of the Agreement, and SG's violation of Evolution's intellectual property ("IP") rights in and to the Lightning Roulette game.[1] The following is a brief description of some of the facts and circumstances supporting this Notice:

Background

Evolution developed and launched its award-winning game Lightning Roulette online in March 2018. Lightning Roulette was immensely successful and, as SG knows, is the biggest, most profitable roulette game in the world. Evolution sought to build upon Lighting Roulette's popularity and success by bringing Lightning Roulette to land-based casinos and searched for suitable partners to develop a Lightning Roulette Game Table. SG expressed its interest in partnering with Evolution. The parties negotiated the terms of a Mutual Non-Disclosure Agreement (the "NDA") to protect confidential information that the parties may exchange in connection with discussions related to the development of a land-based version of Lightning Roulette. The parties agreed to the terms of the NDA on February 18, 2020.

As SG is aware, a number of other companies, including Galaxy Gaming ("Galaxy"), were seriously interested in partnering with Evolution on the Lightning Roulette Game Tables. Evolution was already engaged in negotiations with Galaxy when SG first expressed interest in partnering with Evolution. Accordingly, Evolution was engaged in parallel negotiations with SG's competitors and specifically informed SG of that fact. In fact, during negotiations, Evolution informed SG that if SG continued to delay negotiations, then Evolution would instead pursue an arrangement with one of SG's interested competitors. As Evolution stressed to SG, it was important to Evolution for Lightning Roulette Game Tables

[1] Capitalized terms used herein but not otherwise defined shall have the meanings set forth in the Agreement.

EXHIBIT 1-01

Evolution

to be placed in land-based casinos by January 2022, to coincide with Evolution's planned U.S. launch of the online version of Lightning Roulette.

SG then picked up negotiations again and Evolution and SG entered into Heads of Terms on March 8, 2021, to set out their common understanding of the negotiations for the Agreement. The Heads of Terms also included a Confidentiality provision whereby the parties agreed not to use the other party's confidential information for any purpose other than to perform its obligations under the Heads of Terms. *See* Heads of Terms, pp. 5-6. The parties then subsequently entered into the Agreement on March 29, 2021. Under the Agreement, Evolution licensed to SG all IP owned by Evolution in the Lightning Roulette game on an exclusive basis, for SG to develop and manufacture Game Tables to be placed in land-based/brick-and-mortar casinos worldwide and to pay royalties to Evolution. The Agreement also included a Confidentiality provision reiterating the parties' obligations to maintain the confidentiality of the other party's confidential information, and not to use the other party's confidential information for its own or anyone else's benefit. *See* Agreement, § 7.

Pursuant to the Agreement, by the Launch Date of January 1, 2022, SG was required to develop and manufacture the Game Tables and place at least one of them in a land-based casino for real-money wagering. *See* Agreement, § 2(d). To date, SG has not met its contractual obligations in breach of the Agreement. On August 6, 2021, SG sent a unilateral termination notice and an amendment to terminate the Agreement, which was improper and did not serve to terminate the Agreement.

Disturbingly, Evolution recently became aware that SG has developed its own copycat version of the Lightning Roulette game in the U.S., titled RouletteX, and placed RouletteX in land-based casinos in at least the U.S. and Europe. On or around December 6, 2021, Evolution learned that SG had informed customers that the Agreement between Evolution and SG was cancelled, and SG would not be supporting Lightning Roulette.

Material Breach of the Agreement

SG is in material breach of multiple provisions of the Agreement.

Pursuant to Section 2(d), by January 1, 2022, SG was required to "(i) submit the Game Table(s) for regulatory approval in accordance with the provisions of the Agreement and (ii) have placed at least one (1) Game Table in a land-based casino in the Territory for real-money wagering." In material breach of Section 2(d), SG has failed to submit the Game Tables for regulatory approval by January 1, 2022. As of January 1, 2022, no Lightning Roulette Game Table has been placed in a land-based casino by SG.

The Agreement also provides that from January 1, 2022, SG is obligated to pay Royalty to Evolution and provide a written report on a monthly basis, no later than 30 days after the end of each month. Royalty is defined under the Agreement [redacted]. SG's failure to pay Royalty, because of its failure to place Game Tables, is another material breach of the Agreement.

Moreover, it has come to our attention that SG has developed its own copycat version of the Lightning Roulette game, which SG calls RouletteX. It is evident that various elements of RouletteX, such as "lightning numbers," multipliers, multiplier range, adjusted straight up number payouts, and designs were copied in part or in whole from Evolution's

EXHIBIT 1-02

Evolution

Lightning Roulette. SG's development and launch of RouletteX constitute material breach of Sections 2, 7, and 11 of the Agreement at least as follows:

- Pursuant to Section 2(b)(iv), SG may not, either directly or indirectly, without the prior written consent of Evolution, "use the Licensed Property for any purpose other than in strict accordance with this Agreement or in a way that could adversely affect Licensor's name, image or reputation."

- In addition, Section 7(a)(ii) provides that "Licensee agrees to hold all confidential information of Licensor … in strict confidence and not to use any of the foregoing commercially for its own benefit or that of anyone else." Comparison of Lightning Roulette and RouletteX indicates that SG used Licensed Property and Know-How Evolution disclosed and transferred under the Agreement to develop its own version of the Lightning Roulette game for its own commercial benefit to the detriment of Evolution.

- Section 11(a) provides that the Licensed Property "shall be and remain Licensor's or Licensor's designee's sole and exclusive property." Pursuant to Section 11(c), SG "shall not do or cause anything to be done, within the scope of the Exclusive License, that would cause or, otherwise, result in Licensor's rights in and to the Licensed Property or otherwise deriving from the Agreement being circumvented in any manner or form." Furthermore, Section 11(d) prohibits SG from applying for or obtaining registration of any Licensed Property or any trademark, copyright, or trade dress that "consists of, or comprises, or is confusingly similar to any of the Licensed Property." SG's RouletteX consists of various elements of the Licensed Property and is confusingly similar to Evolution's Lightning Roulette.

In addition, the Agreement prohibits SG from unilaterally terminating the commercial relationship in the manner SG sought to do so on August 6, 2021. Section 8(a) sets out the term of this Agreement, which is for a period of five years with automatic renewal for one year. Pursuant to Section 8(c), SG may terminate the Agreement upon bankruptcy of Evolution or material breach of the Agreement by Evolution. Section 8(d) provides that Agreement may also be terminated upon written notice by a party if a party is notified by any regulatory agency that the conduct of business with the other party will jeopardize a party or its affiliates' license or ability to be licensed, or if a party (acting reasonably) concludes that the other party fails to meet the above criteria. SG had no basis under the Agreement, nor did it allege to have any such basis, to send a unilateral termination notice without cause on August 6, 2021.

This letter constitutes notice to SG of its material breach of this Agreement. Pursuant to Section 15(b), Evolution identifies Todd Haushalter, Fredrik Bjurle and Julia Simonsson as Authorized Individuals to discuss the issues with SG. If the parties fail to resolve the issues referred to in this letter, Evolution will have to submit the dispute to be settled under the Rules of Arbitration of the International Chamber of Commerce pursuant to Section 15(c) of the Agreement.

IP Infringement in the United States

As SG is well aware, the U.S. Patent and Trademark Office has awarded Evolution several patents for the innovations embodied in Lightning Roulette, including US Patent Nos. 10,629,024 (the "'024 patent") and 11,011,014 (the "'014 patent"). SG has been aware of the

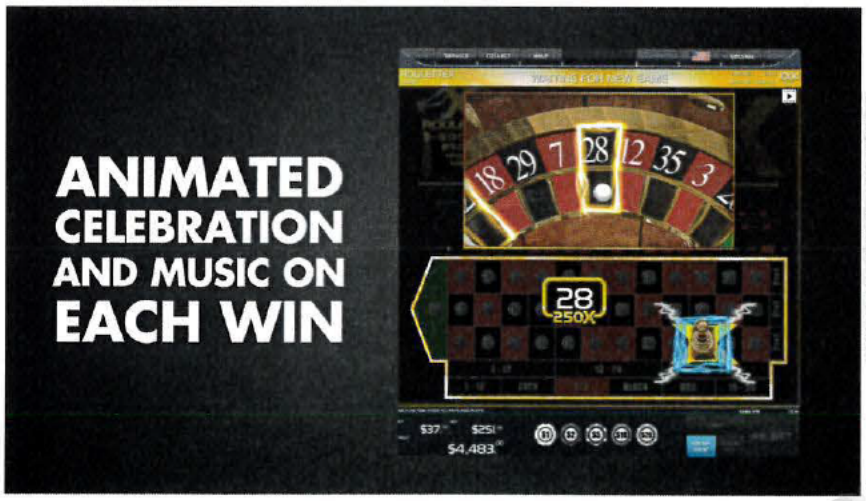
EXHIBIT 1-03

Evolution

'024 and '014 patents since at least March 8, 2021, as they were expressly identified in the Head of Terms as IP that protects Lightning Roulette. *See* Heads of Terms, p. 3, Exhibit A.

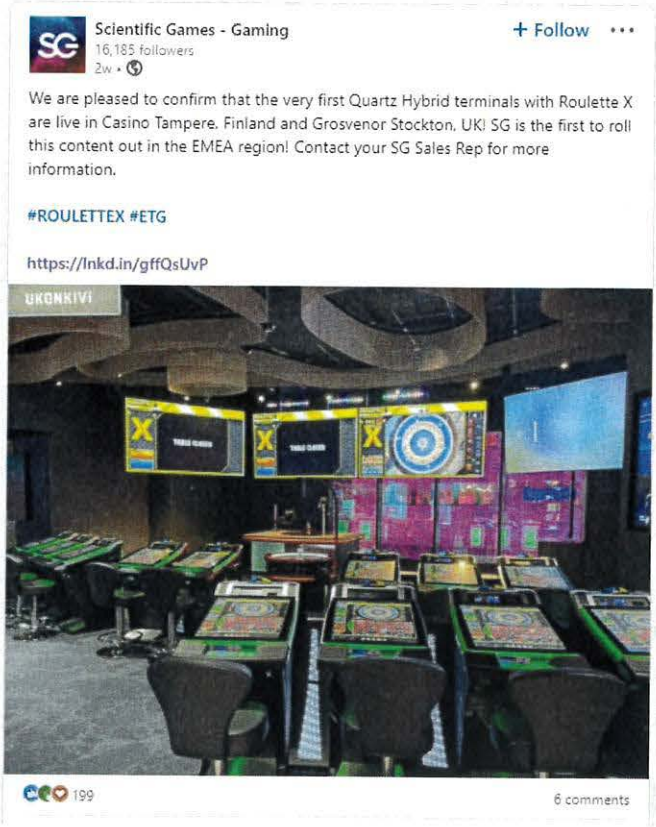
SG's launch of its RouletteX game infringes Evolution's IP, including the '024 and '014 patents. The '024 and '014 patents, both titled "Systems, Methods, and Media for Implementing Internet-Based Wagering," are directed to novel and inventive systems, methods, and articles for implementing a roulette game. For example, to enhance the players' gameplaying experience, the '024 and '014 patents describe, for each roulette spin, randomly selecting one or more roulette wheel numbers, determining the payouts for the selected numbers, and determining the corresponding payout once the roulette ball falls into a position on the roulette wheel. *See, e.g.*, '024 patent, 4:56-5:38; '014 patent, 4:58-5:40. Evolution's Lightning Roulette game embodies the '024 and '014 patents.

SG's RouletteX game practices one or more claims of each of the '024 and '014 patent. For example, as shown below, RouletteX randomly selects up to five roulette wheel numbers, determines multipliers for those numbers (from 50X to 500X), and determines a player's corresponding payout when the roulette ball falls into one of those numbers:



(captured from https://www.youtube.com/watch?v=gSD-ynTxJ8M).

Further, we understand that SG has manufactured and exported to at least Europe a stadium-style version of RouletteX in which numerous players can participate in a live roulette game via electronic terminals:



SG's stadium-style format of RouletteX also infringes one or more claims of each of the '024 and '014 patent.

In addition, as SG is aware, Evolution disclosed to SG certain confidential and proprietary information, including trade secrets, under the NDA, Heads of Terms, and Agreement for the sole purpose of developing the Lightning Roulette Game Tables. For example, on March 11, 2021, after the parties agreed to the terms of the NDA and Heads of Terms, Evolution shared its highly confidential and proprietary math files for Lightning Roulette with SG and, at SG's request, explained the contents of the math files to SG in a subsequent meeting. As SG knows, these math files, which were each prominently marked with a "COMPANY CONFIDENTIAL" label, contain the underlying math for Lightning Roulette, including the frequency with which each multiplier is selected, the frequency with which the roulette numbers are randomly selected to be multiplier numbers, the frequency with which the ball lands on a roulette number, and the payouts associated with betting on the various roulette numbers. Evolution spent significant time and resources developing the math files for Lightning Roulette. And, as SG knows, the information in the math files is critical to the profitability of and player engagement with the game, and the success of Lightning Roulette is attributable, at least in part, to the information in these math files.

SG had an obligation to maintain the secrecy of Evolution's confidential information and limit its use to developing the Lightning Roulette Game Tables. For example, pursuant to

EXHIBIT 1 - 05

Evolution

Section 3(b) of the NDA, SG was only allowed to use Evolution's confidential information, which includes the math files, to the extent necessary to evaluate the possibility of developing a land-based version of Lightning Roulette, and "not for any other purpose." Under Section D of the Heads of Terms, SG was not permitted to use any of Evolution's confidential information for any purpose other than to perform its obligations under the Heads of Terms. Section 7(a)(ii) of the Agreement reiterated that SG was obligated to keep Evolution's confidential information "in strict confidence and not to use any of the foregoing commercially for its own benefit or that of anyone else." The Agreement further provided that Evolution's disclosure of confidential and proprietary information to SG shall not be construed as a grant of any rights in or license to that information. *See* Agreement, § 7(c). SG's improper use of Evolution's trade secrets, including the aforementioned math files, to develop and launch its own copycat game is not only a material breach of the NDA, Heads of Terms, and Agreement, but also constitutes trade secret misappropriation under applicable federal and state law. As SG acknowledged via Section 11 of the NDA, SG's improper use of Evolution's trade secrets in violation of the NDA will "irreparably harm[]" Evolution and Evolution is entitled to injunctive or other equitable relief.

We request that SG immediately take all necessary steps to refrain from further violating Evolution's IP.

* * *

This Notice is not intended to and in no way shall limit Evolution's rights and remedies under the Agreement and this Notice is being delivered without prejudice to, and Evolution specifically reserves, all of its rights, claims, remedies and defenses under the Agreement and/or otherwise available at law or equity.

Respectfully,

Jesper von Bahr, Director

EXHIBIT 1-06