

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

THE HONORABLE RICARDO S. MARTINEZ
THE HONORABLE THERESA L. FRICKE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UTHERVERSE GAMING LLC,

Plaintiff,

v.

EPIC GAMES, INC.,

Defendant.

Case No. 2:21-cv-00799-RSM-TLF

**STIPULATED MOTION TO EXTEND
MEDIATION DEADLINE AND
ORDER**

**NOTE ON MOTION CALENDAR:
June 29, 2022**

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

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 16(b)(4) and Local Civil Rules 7(d)(1), 10(g), and 16(b)(6), Plaintiff Uthervers Gaming LLC (“Plaintiff”) and Defendant Epic Games, Inc. (“Defendant”) submit this stipulated motion to request that the Court extend the current June 30, 2022 deadline for mediation, as set forth in the current Case Schedule, ECF No. 48, until a date that is sixty days after the issuance of a claim construction ruling. This limited extension will not impact any other Case Schedule deadline, including the existing dispositive motion deadline of March 2, 2023.

Good cause exists for this minor adjustment to the case schedule because the parties agree that resolution of disputed claim construction issues is necessary to facilitate productive mediation.

II. BACKGROUND

A. Existing Case Schedule Deadlines

Under the existing Case Schedule, mediation is to be completed by June 30, 2022; the claim construction hearing is set for August 16, 2022; disclosure of opening expert witnesses’ reports is due November 3, 2022; disclosure of rebuttal expert witnesses’ reports is due December 1, 2022; discovery is to be completed by February 2, 2023; and the last date to file and serve dispositive motions and *Daubert* motions is March 2, 2023.

B. The Parties Jointly Request Extending the Deadline for Mediation, With No Impact to Any Other Case Schedule Deadline

Plaintiff and Defendant have jointly agreed to request that the Court extend the current June 30, 2022 deadline for mediation, until a date that is sixty days after the issuance of a claim construction ruling. This extension will not impact any other existing deadlines under the Case Schedule, including the existing dispositive motion deadline of March 2, 2023.

III. ARGUMENT

A. The Court May Modify the Case Schedule for Good Cause

The Federal Rules of Civil Procedure and Local Rules provide that a case schedule may be modified for good cause and with the judge’s consent. Fed. R. Civ. P. 16(b)(4); LCR 16(b)(6). “In

1 determining whether ‘good cause’ exists under Federal Rule of Civil Procedure 16(b) to modify a
2 case schedule, the court ‘primarily considers the diligence of the party seeking amendment.’” *Doe*
3 *v. Trump*, 329 F.R.D. 262, 272 (W.D. Wash. 2018) (citing *Johnson v. Mammoth Recreations, Inc.*,
4 975 F.2d 604, 609 (9th Cir. 1992)). “Good cause” exists “when the deadline in the scheduling
5 order ‘cannot reasonably be met despite the diligence of the party seeking the extension.’” *Id.*

6 **B. Good Cause Exists to Extend the Deadline for Mediation**

7 Plaintiff and Defendant each assert that they have diligently prosecuted and defended this
8 case. The parties have exchanged written discovery requests and responses, are engaged in fact
9 discovery, including third-party discovery, and continue to produce documents to each other. The
10 parties have also served patent contentions, exchanged claim construction disclosures, and have
11 completed claim construction briefing in accordance with the Local Patent Rules and the Case
12 Schedule. The parties conferred about the prospect of mediation prior to resolution of the disputed
13 claim construction issues, and the parties agree mediation would not be productive until those
14 issues were resolved. Notably, the current June 30, 2022 mediation deadline comes from the
15 parties’ proposal in a September 18, 2021 joint status report, in which the parties contemplated a
16 mid-June 2022 claim construction hearing, which was ultimately set for August 16. Dkt. 43 at 5-
17 6, 8; April 28, 2022 oral order.

18 Under the circumstances, good cause exists to extend the deadline for mediation until a
19 date that is sixty days after the issuance of a claim construction ruling. The extension will allow
20 the parties to continue working on discovery while conserving their mediation efforts until a time
21 when they will be most productive. The extension will not result in a delay of any of the other
22 case deadlines.

23 **IV. CONCLUSION**

24 For the foregoing reasons, the parties respectfully request that the Court extend the current
25 June 30, 2022 deadline for mediation until a date that is sixty days after the issuance of a claim
26 construction ruling, consistent with the Proposed Order accompanying this Motion.

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

IT IS SO STIPULATED by and between the parties hereto.

DATED this 29th day of June, 2022.

Respectfully submitted,

By: /s/ Jessica M. Andrade
Jessica M. Andrade (WSBA No. 39297)
POLSINELLI PC
1000 Second Avenue, Suite 3500
Seattle, WA 98104
Tel: 206-393-5400
Fax: 206-393-5401
Email: jessica.andrade@polsinelli.com

Of Counsel:

Colby B. Springer (admitted *pro hac vice*)
POLSINELLI LLP
Three Embarcadero Center, Suite 2400
San Francisco, CA 94111
Tel: 415-248-2100
Fax: 415-248-2101
Email: cspringer@polsinelli.com

Mark T. Deming (admitted *pro hac vice*)
POLSINELLI PC
150 N. Riverside Place, Suite 3000
Chicago, IL 60606
Tel: 312-819-1900
Fax: 312-819-1901
Email: mdeming@polsinelli.com

Melenie Van (admitted *pro hac vice*)
POLSINELLI LLP
2049 Century Park East, Suite 2900
Los Angeles, CA 90067
Tel: (310) 229-1355
Fax: (415) 276-8959
Email: mvan@polsinelli.com

Enes Ovcina (admitted *pro hac vice*)
POLSINELLI PC
1000 Louisiana Street, Suite 6400
Houston, TX 77002
Tel: 713-374-1600
Fax: 713-374-1601
Email: eovcina@polsinelli.com

Attorneys for Plaintiff
UTHERVERSE GAMING LLC

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

Dated: June 29, 2022

By: *s/ Eugene Novikov*

Eugene Novikov (*pro hac vice*)
enovikov@durietangri.com
Mark A. Lemley (*pro hac vice*)
mlemley@durietangri.com
Timothy C. Saulsbury (*pro hac vice*)
tsaulsbury@durietangri.com
Bethany D. Bengfort (*pro hac vice*)
bbengfort@durietangri.com
Matthaeus Martino-Weinhardt (*pro hac vice*)
mweinhardt@durietangri.com
Nari E.C. Ely (*pro hac vice*)
nely@durietangri.com
DURIE TANGRI LLP
217 Leidesdorff Street
San Francisco, CA 94111
Telephone: (415) 362-6666
Facsimile: (415) 236-6300

Dated: June 29, 2022

By: *s/ Christina McCullough*

Antoine M. McNamara (WSBA No. 41701)
AMcNamara@perkinscoie.com
Christina J. McCullough (WSBA No. 47147)
CMcCullough@perkinscoie.com
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: 206-359-8000
Facsimile: 206-359-9000

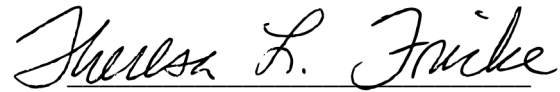
Attorneys for Defendant Epic Games, Inc.

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

ORDER

PURSUANT TO THE FOREGOING STIPULATION, it is ORDERED that the June 30, 2022 deadline for mediation is reset to the date that is sixty days after the issuance of a claim construction ruling. All other provisions of the Case Schedule remain in effect.

DATED this 30th day of June, 2022.



HON. THERESA L. FRICKE
UNITED STATES MAGISTRATE 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

CERTIFICATE OF SERVICE

On June 29, 2022, I caused to be served the foregoing document(s) in the manner described below:

STIPULATED MOTION TO EXTEND MEDIATION DEADLINE AND [PROPOSED] ORDER

to be served on the following parties as indicated below:

Antoine M. McNamara By United States Mail
Christina J. McCullough By Electronic Mail
PERKINS COIE (SEA) By Facsimile
1201 3rd Avenue, Ste. 4900
Seattle, WA 98101-3099
Fax: (206) 359-9000
Email: amcnamara@perkinscoie.com
Email: cmccullough@perkinscoie.com

Eugene Novikov By United States Mail
Nari E.C. Ely By Electronic Mail
Bethany D. Bengfort By Facsimile
Mark A. Lemley
Matthaeus Martino-Weinhardt
Timothy C. Saulsbury
DURIE TANGRI LLP
217 Leidesdorff Street
San Francisco, CA 94111
Fax: (415) 236-6300
Email: enovikov@durietangri.com
Email: nely@durietangri.com
Email: bbengfort@durietangri.com
Email: mlemley@durietangri.com
Email: mweinhardt@durietangri.com
Email: tsaulsbury@durietangri.com
Email: SERVICE-
PENDRAGON@durietangri.com

Evan S. Nadel By United States Mail
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY By Electronic Mail
and POPEO, P.C. By Facsimile
44 Montgomery Street, 36th Floor
San Francisco, CA 94104
Fax: (415) 432-6001
Email: enadel@mintz.com

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

Daniel Weinger
MINTZ, LEVIN, COHN, FERRIS, GLOVSKY
and POPEO, P.C.
One Financial Center
Boston, MA 02111
Fax: (617) 542-2241
Email: dbweinger@mintz.com

**COUNSEL FOR DEFENDANT
EPIC GAMES, INC.**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed June 29, 2022.

By: /s/ Tricia Northgrove
Tricia Northgrove