

FILED

UNITED STATES COURT OF APPEALS

SEP 23 2011

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

REBECCA SWIFT, on behalf of herself &
all others similarly situated,

Plaintiff - Appellee,

v.

ZYNGA GAME NETWORK, INC.,

Defendant,

and

ADKNOWLEDGE, INC., DBA Super
Rewards and KITN MEDIA USA, INC.,
DBA Super Rewards,

Defendants - Appellants.

No. 11-16933

ORDER SETTING
ASSESSMENT CONFERENCE

Date: October 11, 2011

Time: 10:30 a.m. Pacific Time

1:30 p.m. Eastern Time

The Mediation Program of the Ninth Circuit Court of Appeals facilitates settlement while appeals are pending. See Fed. R. App. P. 33 and Ninth Cir. R. 33-1.

The court has scheduled a telephone settlement assessment conference, with counsel only, on **October 11, 2011**, at **10:30 a.m. Pacific Time** (1:30 p.m. Eastern Time) to discuss whether this case is appropriate for participation in the Mediation Program. The Circuit Mediator will initiate the conference call by contacting each person on the attached list of participants at the telephone number listed. Please be available for the call at least five minutes before the scheduled time.

BS/Mediation_9/21/11

Counsel should review the attached list and inform Mediation Assistant Beatriz Smith by email (Beatriz_Smith@ca9.uscourts.gov) at least 72 hours in advance of the scheduled call of any of the following: (1) any attorneys on the list of counsel who will not be participating in the conference; (2) the direct dial phone number of any participant if it is not listed; and (3) any other corrections to the list.

Please notify Circuit Mediator Margaret Corrigan immediately by email (Margaret_Corrigan@ca9.uscourts.gov) if the dispute is settled, the appeal is dismissed or if counsel has an unavoidable scheduling conflict. Please copy all counsel on any such communications.

All discussions that take place in the context of the assessment conference are strictly confidential.

For more detailed information about the assessment conference, confidentiality, the Mediation Program and its procedures generally, please see the attachment to this order and the Mediation Program web site: www.ca9.uscourts.gov/mediation.

FOR THE COURT:

By: Beatriz Smith
Deputy Clerk

LIST OF CONFERENCE PARTICIPANTS

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Plaintiff - Appellee

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v.

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Defendant - Appellant

KITN Media USA, Inc.
Defendant - Appellant

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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CIRCUIT MEDIATION OFFICE

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Phone: 415-355-7900 ___ Fax: 415-355-8566

INFORMATION ABOUT ASSESSMENT CONFERENCES

Overview of Purpose and Participants

- The purpose of the assessment conference is to provide an opportunity for counsel and the Circuit Mediator to have a frank discussion about settlement. The mediator will explore the parties' interests in settlement and, if appropriate, work with counsel to design a process to pursue resolution of the dispute.
- The conference will be conducted by one of the nine Circuit Mediators, all of whom are court employees with extensive mediation and litigation experience. Appeals are randomly assigned to the Circuit Mediators irrespective of the subject matter or issues on appeal. The Circuit Mediators are authorized to file orders on most procedural matters, including vacating or moving the briefing schedule.
- Counsel for all parties who intend to file briefs in the case should participate in the assessment conference. The lawyer with the closest relationship to the client should be on the call. Clients are neither expected nor required to participate in the assessment conference.
- In advance of the conference, counsel should have a discussion with their clients about their goals in the litigation, its possible costs and outcomes (good and bad), the potential for further legal proceedings, and what issues beyond the litigation might be explored in mediation. (See the court's website for a list of questions for exploring the suitability of the dispute for settlement.)
- During the conference, counsel and the Circuit Mediator will discuss the factual and legal background of the dispute, the legal issues involved in the litigation and on appeal, any related legal proceedings, and any other considerations that may affect the parties' willingness to engage in settlement discussions. The scope of discussions is not limited to the issues on appeal and can include related legal proceedings or any other issues between the parties.

Confidentiality

- Settlement-related information disclosed to a Circuit Mediator will be kept confidential and will not be disclosed to the judges deciding the appeal or to any other person outside the Mediation Program participants. Ninth Cir. R. 33-1.
- All participants in the assessment conference are required to abide by the Mediation Program's confidentiality rules. With limited exceptions, any communication made by the Circuit Mediator or any participant during the conference may not be used in any pending or future proceeding in this court or any other forum and may not be disclosed to anyone who is not a participant. Gen. Or. 7.4.

Likely Outcomes of Assessment Conference

- At the conclusion of the assessment conference, the Circuit Mediator may confirm in an order the agreements of the parties regarding the scope, process and timing of any further settlement efforts. Typical settlement processes include in-person mediation sessions, telephone settlement dialogues facilitated by the Circuit Mediator, or direct discussions between counsel.
- The parties may agree to defer briefing in order to focus on settlement efforts or to provide an opportunity for circumstances to develop that might make settlement more likely. In most cases, the deferral of briefing will not delay disposition of the appeal, since the date of the filing of the notice of appeal controls when an appeal is assigned to a three-judge panel for decision.
- At any point that the parties choose not to pursue settlement efforts, the Circuit Mediator will work with the parties to resolve any outstanding procedural issues and will enter orders effectuating any procedural agreements.

More information is available on the Mediation Circuit link on the Ninth Circuit website www.ca9.uscourts.gov/mediation.