

1 GIBSON, DUNN & CRUTCHER LLP
 2 THEODORE J. BOUTROUS, JR., SBN 132099
 3 H. MARK LYON, SBN 162061
 4 ETHAN D. DETTMER, SBN 196046
 5 1881 Page Mill Road
 6 Palo Alto, California 94304
 7 Telephone: (650) 849-5300
 8 Facsimile: (650) 849-5333

9 JENNER & BLOCK LLP
 10 PAUL M. SMITH *pro hac vice*
 11 KATHERINE A. FALLOW *pro hac vice*
 12 AMY L. TENNEY *pro hac vice*
 13 MATTHEW S. HELLMAN, *pro hac vice*
 14 601 13th Street, N.W., Suite 1200
 15 Washington, D.C. 20005
 16 Telephone: (202) 639-6000
 17 Facsimile: (202) 639-6066

18 Attorneys for Plaintiffs
 19 VIDEO SOFTWARE DEALERS ASSOCIATION
 20 and ENTERTAINMENT SOFTWARE ASSOCIATION

21 UNITED STATES DISTRICT COURT
 22 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 23 SAN JOSE DIVISION

24 VIDEO SOFTWARE DEALERS
 25 ASSOCIATION and ENTERTAINMENT
 26 SOFTWARE ASSOCIATION,

CASE NO. C-05-04188 RMW

JOINT CASE MANAGEMENT STATEMENT
 AND PROPOSED ORDER

Plaintiffs,

vs.

27 ARNOLD SCHWARZENEGGER, in his official
 28 capacity as Governor of the State of California;
 BILL LOCKYER, in his official capacity as
 Attorney General of the State of California;
 GEORGE KENNEDY, in his official capacity as
 Santa Clara County District Attorney, RICHARD
 DOYLE, in his official capacity as City Attorney
 for the City of San Jose, and ANN MILLER
 RAVEL, in her official capacity as County
 Counsel for the County of Santa Clara,

Defendants.

1 Pursuant to Federal Rule of Civil Procedure 26(f), Civil L.R. 16-9, and this Court’s Standing
2 Order, the parties to this case jointly submit the following Case Management Statement and Proposed
3 Order.

4 **DESCRIPTION OF THE CASE**

5 (1) *A brief description of the events underlying the action:* On October 7, 2005, Governor
6 Arnold Schwarzenegger signed into law Assembly Bill 1179 (the “Act”), which would impose
7 various labeling requirements and sales prohibitions on video games in California. The Act was to
8 become effective on January 1, 2006. Plaintiffs filed their complaint in this case on October 17,
9 2005, and, on October 19, 2005, filed a motion for preliminary injunction to prevent the enforcement
10 of the Act. On December 21, 2005, following briefing and argument, this Court entered an order
11 granting a preliminary injunction. *Video Software Dealers Assn. & Entertainment Software Assn. v.*
12 *Schwarzenegger*, 401 F. Supp. 2d 1034 (N.D. Cal. 2005).

13 (2) *The principal factual issues which the parties dispute:* As explained below, the parties
14 believe that this case may properly be resolved on summary judgment, and that therefore no material
15 factual disputes exist at this point in time. The parties do, however, dispute the legal import of the
16 material facts in this case.

17 (3) *The principal legal issues which the parties dispute:* The parties dispute the following
18 legal issues:

19 (a) Whether the Act’s restrictions on the sale of “violent” video games are an
20 unconstitutional infringement on protected speech under the First Amendment.

21 (b) Whether the Act’s labeling requirement forces plaintiffs and their members to
22 engage in compelled speech in violation of the First Amendment.

23 (c) Whether the Act is unconstitutionally vague.

24 (4) At this point in time, as set forth below, the parties believe that no factual issues exist that
25 would materially affect the legal issues in this case. If the Court determines that summary judgment
26 is inappropriate, the parties will promptly submit a discovery plan designed to resolve any factual
27 disputes expeditiously.

28 (5) All parties have been served and have appeared at this time.

1 (6) The parties do not currently intend to join any additional parties.

2 (7) No party has consented to the assignment of this case to a United States Magistrate Judge
3 for trial.

4 **ALTERNATIVE DISPUTE RESOLUTION**

5 (8) & (9) As noted above, and described at greater length below, the parties to this case agree
6 that there are no disputes as to any material facts, and that the Court can and should resolve this case
7 as a matter of law. The parties intend to file motions for summary judgment shortly, and do not plan
8 to make disclosures or engage in discovery unless the Court denies the impending motions for
9 summary judgment. The defendants do not agree that the Act is unconstitutional, and the plaintiffs
10 and their members require protection from the enforcement of the Act. In light of these facts, the
11 parties do not believe that any ADR process is likely to deliver benefits sufficient to justify the
12 resources consumed by its use (ADR L.R. 3-5(e)(3)), and therefore respectfully submit that this case
13 should be exempted from any ADR process at this time.

14 **DISCLOSURES AND DISCOVERY**

15 (10) & (11) Because the parties do not dispute any material factual issues, and because the
16 parties agree that this case can be disposed of upon summary judgment on the record before the Court
17 at this time, the parties have agreed that initial disclosures and discovery are not necessary and would
18 be an inefficient use of time and resources. The parties have further agreed that, in the event the
19 Court does not resolve this case on summary judgment, they will meet and confer promptly regarding
20 disclosures and discovery and present a proposed discovery plan to the Court at that time.

21 **SUMMARY JUDGMENT SCHEDULE**

22 (12) The parties agree that this case is appropriate for prompt resolution on a motion for
23 summary judgment. Therefore, the parties have not agreed to a trial date or length of trial, but have
24 agreed to the following briefing schedule for the anticipated motions for summary judgment:

25 Plaintiffs' and defendants' motions filed: March 31, 2006
26 Defendants' and plaintiffs' oppositions filed: April 19, 2006
27 Plaintiffs' and defendants' replies filed: April 28, 2006
28 Hearing on motions: May 12, 2006

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DATED: March 10, 2006

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: _____ /s/
Ethan D. Dettmer

THEODORE J. BOUTROUS, Jr., SBN 132099
H. MARK LYON, SBN 162061
ETHAN D. DETTMER, SBN 196046
1881 Page Mill Road
Palo Alto, California 94304
Telephone: (650) 849-5300
Facsimile: (650) 849-5333

JENNER & BLOCK LLP
PAUL M. SMITH
KATHERINE A. FALLOW
AMY L. TENNEY
MATTHEW S. HELLMAN
601 13th Street, N.W., Suite 1200
Washington, D.C. 20005
Telephone: (202) 639-6000
Facsimile: (202) 639-6066

Attorneys for Plaintiffs
VIDEO SOFTWARE DEALERS ASSOCIATION
and ENTERTAINMENT SOFTWARE
ASSOCIATION

DATED: March 10, 2006

OFFICE OF THE ATTORNEY GENERAL

By: _____ /s/
Zackery P. Morazzini
Deputy Attorney General

Attorneys for Defendants
ARNOLD SCHWARZENEGGER, in his official
capacity as Governor of the State of California, and
BILL LOCKYER, in his official capacity as
Attorney General of the State of California

1 DATED: March 10, 2006

OFFICE OF THE SANTA CLARA COUNTY COUNSEL

2
3 By: _____ /s/

4 David M. Rollo
Assistant County Counsel

5 Attorneys for Defendants
6 GEORGE KENNEDY, in his official capacity as
7 Santa Clara County District Attorney, and
8 ANN MILLER RAVEL, in her official capacity as County
9 Counsel for the County of Santa Clara

10 DATED: March 10, 2006

OFFICE OF THE SAN JOSE CITY ATTORNEY

11 By: _____ /s/

12 Robert R. Fabela
Assistant City Attorney

13 Attorneys for Defendant
14 RICHARD DOYLE, in his official capacity as
15 San Jose City Attorney

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PROPOSED ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order.

DATED: _____

The Honorable Ronald M. Whyte
United States District Judge