

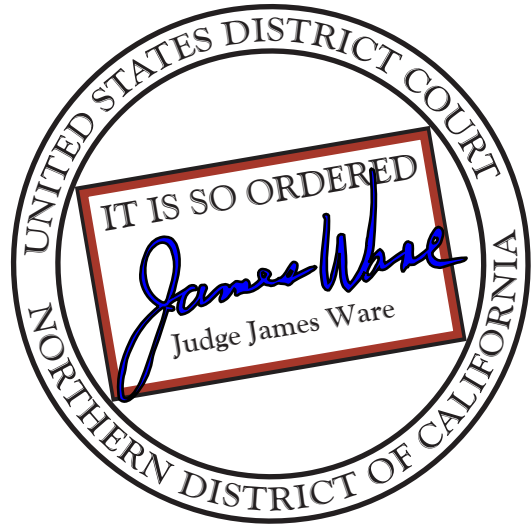
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17 **UNITED STATES DISTRICT COURT**
 18 **NORTHERN DISTRICT OF CALIFORNIA**
 19 **SAN JOSE DIVISION**

20 RUDOLF ZIJDEL, individually and on behalf
 of a class of similarly situated individuals,

21 Plaintiff,

22 v.

23 THUMBPLAY, INC., a Delaware corporation;
 24 M-QUBE, INC., a Delaware corporation,

25 Defendants.

Case No. 1-09-CV-03252 (JW)

**STIPULATION TO STAY LITIGATION
 AS TO DEFENDANT M-QUBE, INC.,
 PENDING FINAL APPROVAL OF
 CLASS ACTION SETTLEMENT [AND
 PROPOSED ORDER]**

1 Plaintiff RUDOLF ZIJDEL (“Plaintiff” or “Zijdel”) and Defendant M-QUBE, INC.
2 (“Defendant” or “m-Qube”) (Zijdel and m-Qube are collectively the “Parties”), hereby stipulate
3 and respectfully request that the Court stay this litigation as to Defendant m-Qube, including any
4 responsive pleadings, discovery or any pending motions, until March 1, 2010. In support of this
5 Stipulation, the Parties state as follows:

6 **WHEREAS**, on June 10, 2009, Plaintiff filed a putative class action complaint against
7 Defendants in the Superior Court of the State of California, Santa Clara County, seeking damages
8 and injunctive relief related to Defendants’ alleged imposition of unauthorized mobile content
9 charges on the cell phone bills of certain T-Mobile subscribers;

10 **WHEREAS**, on July 16, 2009, Thumbplay removed the case to this Court pursuant to the
11 Class Action Fairness Act of 2005 Pub. L. No. 109-2, 119 Stat. 4 (codified in various sections of
12 28 U.S.C.) (“CAFA”);

13 **WHEREAS**, on August 17, 2009, Plaintiff moved to remand the case back to the Santa
14 Clara Superior Court. Plaintiff’s motion to remand is currently set for hearing on November 16,
15 2009;

16 **WHEREAS**, Plaintiff and Defendant m-Qube have entered into a nationwide class action
17 settlement resolving all claims against m-Qube related to the alleged imposition of unauthorized
18 mobile content charges on the cell phone bills of wireless subscribers. (*See* “Stipulation of Class
19 Action Settlement,” a true and accurate copy of which is attached hereto as Exhibit A.) Judge
20 Stewart L. Palmer of the Circuit Court of Cook County, Illinois, granted preliminary approval to
21 the class action settlement on November 3, 2009 in the case entitled *Edward Parone, et al. v. m-*
22 *Qube, Inc., et al.*, No. 08 CH 15834 (Circuit Court of Cook County, Illinois). Judge Palmer has
23 set the Final Fairness Hearing for February 24, 2010. (*See* “Court Order Granting Preliminary
24 Approval of the Class Action Settlement, a true and accurate copy of which is attached hereto as
25 Exhibit B.)

26 **WHEREAS**, if final approval is entered in the *Parone* action referenced above, all claims
27 in this action asserted against m-Qube will be released and m-Qube will be dismissed from this
28 action with prejudice.

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WHEREAS, the Parties seek this stay this litigation as to m-Qube only in order to allow the above-referenced settlement to continue without the Parties incurring additional fees and costs related to this litigation.

WHEREAS, the Parties request that the Court stay this litigation as to Defendant m-Qube, including any responsive pleadings, discovery or any pending motions, until March 1, 2010, or such other date as the Court may determine, at which time the Parties will apprise the Court as to the status of the pending class action settlement in the *Parone* action.

NOW, THEREFORE, the Parties hereby stipulate and agree that, with the Court's approval:

1. This litigation, including any responsive pleadings, discovery and all pending motions, shall be stayed as to Defendant m-Qube, Inc., only until further order of the Court.

2. Plaintiff and defendant m-Qube will advise the Court of the final disposition of the class action settlement in the *Parone* action referenced above by March 1, 2010.

Dated: November 4, 2009

PARISI & HAVENS, LLP

By: s/David C. Parisi

David C. Parisi
Attorney for Plaintiff Rudolf Zijdel

Dated: November 4, 2009

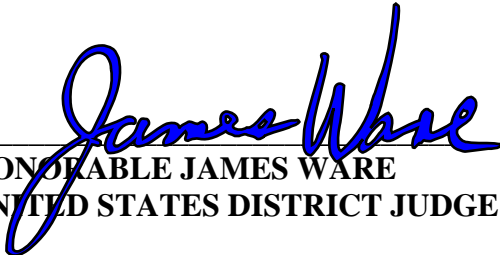
ARNOLD & PORTER LLP

By: s/Ronald L. Johnston

Ronald L. Johnston
Attorney for Defendant m-Qube, Inc.

IT IS SO ORDERED.

Dated: November 13, 2009



HONORABLE JAMES WARE
UNITED STATES DISTRICT JUDGE