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13 THUMBPLAY, INC.

14

15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**

17

**SAN JOSE DIVISION**

18

RUDOLF ZIJDEL, individually and on behalf  
of all others similarly situated,

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Plaintiff,

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v.

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THUMBPLAY, INC., a Delaware  
corporation,

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Defendant.

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JOINT CASE MANAGEMENT STATEMENT



Case No.: C 09-03252 (JW)

**STIPULATION TO DISMISS ACTION  
WITHOUT PREJUDICE PURSUANT TO  
FED. R. CIV. P. 41(a)(1)**

[Honorable James Ware]

Case No. C 09-03252 (JW)

1

**STIPULATION TO DISMISS ACTION**  
**WITHOUT PREJUDICE PURSUANT TO FED. R. CIV. P. 41(a)(1)**

2 Plaintiffs RUDOLF ZIJDEL (“Plaintiff” or “Zijdel”), and Defendant THUMBPLAY,  
3 INC., (“Defendant” or “Thumbplay”) (collectively the “Parties”), hereby stipulate pursuant to  
4 Federal Rule of Civil Procedure 41(a)(1) to the dismissal of this action, without prejudice and with  
5 each Party to bear their own costs. In support of this stipulation, the Parties state as follows:  
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7       **WHEREAS**, Plaintiff originally filed this action on July 10, 2009, in the Superior Court of  
8 the State of California, Santa Clara County;

9       **WHEREAS**, on July 16, 2009, Thumbplay removed the case to this Court pursuant to the  
10 Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2) (“CAFA”);

11       **WHEREAS**, on September 11, 2009, Plaintiff filed his motion to remand this action back  
12 to the Superior Court of Santa Clara;

13       **WHEREAS**, on October 20, 2009, Plaintiff filed his First Amended Class Action  
14 Complaint against Thumbplay;

15       **WHEREAS**, on November 3, 2009, Thumbplay filed its motion for a more definite  
16 statement;

17       **WHEREAS**, on November 12, 2009, the Court denied both Plaintiff’s motion to remand  
18 and Thumbplay’s motion for a more definite statement;

19       **WHEREAS**, on December 21, 2009, Thumbplay moved to dismiss Plaintiff’s First  
20 Amended Class Action Complaint;

21       **WHEREAS**, during the pendency of Thumbplay’s Motion to Dismiss, the Parties to this  
22 action, along with two other providers of mobile content and a mobile content affiliate marketer,  
23 reached a global class action settlement in principle, which if finally approved by an appropriate  
24 court, will resolve all class action lawsuits pending against Thumbplay and the other defendants  
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1 joining the settlement, related to the alleged imposition of unauthorized charges on the wireless  
2 telephone bills of consumers;

3 **WHEREAS**, on March 25, 2010, the Court issued an Order terminating Thumbplay's  
4 motion to dismiss and requiring the Parties to voluntarily dismiss this action pursuant to Fed. R.  
5 Civ. P. 41(a) on or before June 4, 2010, or appear to show cause on June 14, 2010 as to why the  
6 Court should not dismiss the action pursuant to Fed. R. Civ. P. 41(b);

7 **WHEREAS**, the settlement referenced above is proceeding;

8 **NOW THEREFORE**, pursuant to Fed. R. Civ. P. 41(a)(1), the Parties hereby  
9 **STIPULATE** and **AGREE** as follows:

10 1. This action is hereby dismissed without prejudice and with each Party to bear their  
11 own costs and attorneys fees.

12 **IT IS SO STIPULATED.**

13 Dated: June 4, 2010

14 EDELSON MC GUIRE LLC

15  
16 By: /s/ Rafe S. Balabanian  
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22 Dated: June 4, 2010

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28 *Attorneys for Defendant*  
THUMBPLAY, INC.

**CERTIFICATE OF SERVICE**

I, Rafey S. Balabanian, an attorney, certify that on June 4, 2010, I served the above and foregoing ***Stipulation to Dismiss Action Without Prejudice Pursuant to Fed. R. Civ. P. 41(a)(1)***, by causing true and accurate copies of such paper to be filed and transmitted to the persons shown below via the Court's CM/ECF electronic filing system on this the 4th day of June, 2010.

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