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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 KONAMI GAMING, INC., a Nevada
16 corporation,
17 Plaintiff,
18 v.
19 MARKS STUDIOS, LLC d/b/a Gimmie
Games, a Georgia limited liability company,
20 Defendant.
21

CASE NO.: 2:14-cv-01485-JAD-CWH
Honorable Jennifer A. Dorsey
Magistrate Judge Carl W. Hoffman

**STIPULATION AND [PROPOSED]
ORDER TO MODIFY SCHEDULING
ORDER
(THIRD REQUEST)**

22 Pursuant to Local Rules 6-1 and 26-4, Plaintiff Konami Gaming, Inc. (“Konami” or
23 “Plaintiff”) and Defendant Marks Studios, LLC d/b/a Gimmie Games (“Marks Studios” or
24 Defendant”) hereby stipulate as follows:

25 **WHEREAS**, the parties to this action filed a proposed joint Discovery Plan and
26 Scheduling Order (the “Scheduling Order”) on December 30, 2014, (*Docket No. 24*);

27 **WHEREAS**, the Court so ordered the Scheduling Order on January 27, 2015 (*Docket*
28 *No. 31*);

1 **WHEREAS**, to date, the Plaintiff and Defendant have made their Initial Disclosures
2 pursuant to Federal Rule of Civil Procedure 26(a)(1) and have filed the Stipulated Protective
3 Order required under Local Rule 16.1-4;

4 **WHEREAS**, pursuant to the Scheduling Order, discovery is partially stayed until the
5 Court issues a *Markman* order on claim construction. Until that time, the only permitted
6 discovery: (a) the substantive disclosures included in section C (“Markman schedule”) of the
7 Scheduling Order; (b) Defendant’s deposition of the inventor(s), (c) Plaintiff’s deposition of a
8 technical person knowledgeable concerning operation of Defendant’s games, (d) Plaintiff’s and
9 Defendant’s discovery relating to claim construction and the validity of the patents in suit, and
10 (e) expert discovery;

11 **WHEREAS**, the Scheduling Order provided that Plaintiff Konami Gaming, Inc.
12 (“Konami”) would serve its Disclosure of Asserted Claims and Infringement Contentions
13 (“Claims and Contentions”), along with supporting documents, by January 14, 2015 (*Docket No.*
14 *24*);

15 **WHEREAS**, the parties first requested to modify the Scheduling Order on February 6,
16 2015 (*Docket No. 35*);

17 **WHEREAS**, the Court so ordered the Scheduling Order on February 6, 2015 (*Docket*
18 *No. 37*);

19 **WHEREAS**, the parties again requested to modify the Scheduling Order on May 18,
20 2015 (*Docket No. 65*);

21 **WHEREAS**, the Court so ordered the Scheduling Order on May 19, 2015 (*Docket No.*
22 *66*);

23 **WHEREAS**, the parties filed their opening claim construction briefs on October 28,
24 2016 (*Docket Nos. 108 & 109*);

25 **WHEREAS**, on November 3, 2015, the Court ordered the parties to file a stipulation
26 vacating the dates associated with the Scheduling Order outlined in Docket No. 66 (the court
27 order is *Docket No. 110*);

28

1 **WHEREAS**, on November 10, 2015, the parties filed a joint stipulation vacating the
2 Scheduling Order, pending the scheduling of Osamu Yoshimi’s continued deposition, which this
3 Court so-ordered on November 12, 2015 (*Docket No. 112*);

4 **WHEREAS**, on December 2, 2015, the parties filed a second joint stipulation requesting
5 additional time to schedule Mr. Yoshimi’s continued deposition and requested until January 22,
6 2016 to submit to this Court a revised Scheduling Order;

7 **WHEREAS**, the parties have schedule Mr. Yoshimi’s continued deposition, which will
8 take place on February 26, 2016;

9 **WHEREAS**, Konami stated in its Initial Infringement Contentions and Supplemental
10 Initial Infringement Contentions that: “For purposes of claim construction under *Markman* only,
11 Konami identifies no apparatus, product, device, process, method, act or other instrumentality
12 that incorporates or reflects a particular claim.”;

13 **WHEREAS**, Konami contends it was not required to identify the commercial
14 embodiments in its Initial Contentions based on its interpretation of the scheduling order under
15 which discovery was limited to claim construction purposes only and, therefore, that such
16 identification at that time was not necessary. The Court since has ruled that the scheduling order
17 is not so limited.

18 **WHEREAS**, the parties agree that there are commercial embodiments that Konami will
19 now identify, and that the parties shall engage in necessary discovery concerning the foregoing.

20 **WHEREAS**, the parties agree that Konami may serve a revised Supplemental Disclosure
21 of Asserted Claims and Infringement Contentions, that Marks Studios may then serve a revised
22 Disclosure of Non-Infringement, Invalidity and Unenforceability Contentions, and Konami may
23 then serve a revised Response to Non-Infringement, Invalidity and Unenforceability Contentions,
24 and that the Claim Construction process as contemplated in the Local Patent rules must then be
25 renewed following the revised disclosures;

26 **WHEREAS**, in accordance with the Protective Order, Konami will produce the source
27 code for the commercial embodiments of the patents-in-suit;

28

1 **WHEREAS**, the parties previously filed simultaneously their Opening Claim
 2 Construction briefs and both parties agree to simultaneously submit revised Opening Claim
 3 Construction briefs followed by the simultaneous submission of Responsive Claim Construction
 4 briefs;

5 **WHEREAS**, this is the parties' third request to modify the Scheduling Order;

6 **IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned
 7 counsel for the named parties hereto, that the schedule in the Scheduling Order will be amended
 8 as follows:

Event	Basis	Proposed Date
Defendant shall produce source code and operating documents for the games related to the supplemental Asserted Claims and Infringement Contentions	LR 16.1-9	Completed
Revised Disclosure of Asserted Claims and Infringement Contentions	LR 16.1-6	March 22, 2016
Revised Disclosure of Non-Infringement, Invalidity and Unenforceability Contentions	LR 16.1-8	May 6, 2016
Revised Response to Non-Infringement, Invalidity and Unenforceability Contentions	LR 16.1-10	May 20, 2016
Second Exchange of Proposed Terms for Claim Construction	LR 16.1-13	May 24, 2016
Second Exchange of Preliminary Claim Construction and Extrinsic Evidence	LR 16.1-14	June 23, 2016
Parties to Meet and Confer regarding terms requiring construction and proposed meaning of the terms	LR 16.1-14	June 24-28, 2016
Revised Joint Claim Construction Statement	LR 16.1-15	July 8, 2016
Revised, Simultaneous Filing of Opening Claim Construction Briefs	LR 16.1-16	August 8, 2016
Revised Simultaneous Filing of Responsive Claim Construction Briefs	LR 16.1-16	August 29, 2016
<i>Markman</i> Hearing	N/A	To be Set By Court

1 2 3	Initial Expert Disclosures and Submission of Interim Status Report	N/A	October 2, 2016
3 4	Rebuttal Expert Exchange	N/A	November 3, 2016

4 **IT IS FURTHER STIPULATED AND AGREED** that nothing herein alters the
5 obligations and requirements included in the Scheduling Order and that this Stipulation is made
6 in good faith and not for the purpose of delay.

7 **IT IS SO STIPULATED THROUGH COUNSEL OF RECORD,**

8 Dated: January 22, 2016

Dated: January 22, 2016

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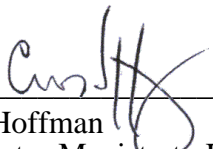
Attorneys for Plaintiff Konami Gaming, Inc.

Attorneys for Defendant Marks Studios, LLC

ORDER

PURSUANT TO THE STIPULATION, IT IS SO ORDERED:

Dated: January 25, 2016



Carl W. Hoffman
United States Magistrate Judge