IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS TYLER DIVISION

Eolas Technologies Incorporated,	§
	§
Plaintiff,	§ Civil Action No. 6:09-CV-00446-LED
	§
VS.	§
	§.
Adobe Systems Inc., Amazon.com, Inc.,	§ § § JURY TRIAL
Apple Inc., Argosy Publishing, Inc.,	§
Blockbuster Inc., CDW Corp.,	§
Citigroup Inc., eBay Inc., Frito-Lay, Inc.,	§
The Go Daddy Group, Inc., Google Inc.,	§
J.C. Penney Company, Inc., JPMorgan	§
Chase & Co., New Frontier Media, Inc.,	§
Office Depot, Inc., Perot Systems Corp.,	§
Playboy Enterprises International, Inc.,	§
Rent-A-Center, Inc., Staples, Inc., Sun	§
Microsystems Inc., Texas Instruments Inc.,	§
Yahoo! Inc., and YouTube, LLC	§
	§
Defendants.	§

JOINT MOTION TO DISMISS WITHOUT PREJUDICE PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 41(2)(2)

Pursuant to Fed. R. Civ. P. 41(a)(2), Plaintiff Eolas Technologies Incorporated ("Eolas") and Defendant J.C. Penney Company, Inc. (Eolas and J.C. Penney Company, Inc. are referenced individually as "Party" and collectively as "the Parties") and in accordance with the Court's Order at Dkt. 515, hereby jointly move to dismiss any and all claims made by Eolas against J.C. Penney Company, Inc. in the above-captioned action and any and all counterclaims made by J.C. Penney Company, Inc. against Eolas in the above-captioned action, without prejudice to re-filing the same.

Based on the representations of J.C. Penney Company, Inc.'s counsel, Eolas' counsel believes that the correct corporate entity in this lawsuit is J.C. Penney Corporation, Inc. and not

J.C. Penney Company, Inc. Accordingly, an amended complaint naming J.C. Penney Corporation, Inc. is being filed concurrently with this motion to dismiss.

Eolas and J.C. Penney Company, Inc. further stipulate that all fees, costs and expenses relating to the above-captioned litigation (including, but not limited to, attorneys' fees) shall be borne solely by the Party incurring the same.

The Parties respectfully request that the Court grant their Motion and dismiss without prejudice their respective claims against each other. This dismissal shall have no bearing on Eolas' claims with respect to the other defendants in the above-captioned action or the correctly named corporate entity of J.C. Penney Corporation, Inc.

DATED: December 7, 2010

Respectfully submitted,

MCKOOL SMITH, P.C. /s/ Kevin Burgess

Kevin L. Burgess Texas State Bar No. 24006927 kburgess@mckoolsmith.com Steven J. Pollinger Texas State Bar No. 24011919 spollinger@mckoolsmith.com Josh W. Budwin Texas State Bar No. 24050347 jbudwin@mckoolsmith.com Matthew B. Rappaport Texas State Bar No. 24070472 mrappaport@mckoolsmith.com MCKOOL SMITH, P.C. 300 West Sixth Street, Suite 1700 Austin, Texas 78701 Telephone: (512) 692-8700 Telecopier: (512) 692-8744

Mike McKool Lead Attorney Texas State Bar No. 13732100 <u>mmckool@mckoolsmith.com</u> Douglas Cawley Texas State Bar No. 04035500 dcawley@mckoolsmith.com MCKOOL SMITH, P.C. 300 Crescent Court, Suite 1500 Dallas, Texas 75201 Telephone: (214) 978-4000 Telecopier: (214) 978-4044

Sam F. Baxter Texas State Bar No. 01938000 sbaxter@mckoolsmith.com MCKOOL SMITH, P.C. 104 E. Houston St., Ste. 300 P.O. Box ● Marshall, Texas 75670 Telephone: (903) 923-9000 Telecopier: (903) 923-9095

ATTORNEYS FOR PLAINTIFF EOLAS TECHNOLOGIES INC.

/s/ Christopher M. Joe with Permission Christopher M. Joe joec@gtlaw.com Brian Carpenter carpenterb@gtlaw.com Eric W. Buether buethere@gtlaw.com BUETHER JOE & CARPENTER 2200 Ross Avenue, Suite 5200 Dallas, Texas 75201 Telephone: (214) 665-3600 Facsimile: (214) 665-3601

Jeffrey K. Joyner (admitted pro hac vice) joynerj@gtlaw.com Jeffrey F. Yee (admitted pro hac vice) yeej@gtlaw.com GREENBERG TAURIG, LLP 2450 Colorado Avenue, Suite 400E Santa Monica, California 90404 Telephone: (310) 586-7700 Facsimile: (310) 586-7800

Diane Lettelleir dlettell@jcpenney.com J.C. PENNEY COMPANY, INC. 6501 Legacy Drive (MS-1122) Plano, TX 75024 972.431.5012

ATTORNEYS FOR DEFENDANT J.C. PENNEY COMPANY, INC.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic services on this the 7th day of December, 2010. Local Rule CV-5(a)(3)(A).

<u>/s/ Sam F. Baxter</u> Sam F. Baxter