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.	§	

MOTION TO SET DEADLINES FOR DISCOVERY AND EXPERT REPORTS

Plaintiff Eolas Technologies Incorporated ("Eolas") hereby respectfully requests certain deadlines be set for the completion of discovery and exchange of expert reports as to Frito-Lay, Inc ("Frito-Lay") (collectively, Eolas and Frito-Lay are referred to as "the Parties"). Pursuant to the Parties request, the Court entered a stay as to these activities on July 7, 2011 and July 25, 2011 (Dkt. Nos. 757, 789). The current stay ordered by the Court with respect to the Parties expired at the end of the day on Friday August 5, 2011.

The Parties reached an oral agreement to settle this case on June 24, 2011. Three days later, Eolas provided Frito-Lay with a draft settlement and license agreement. Frito-Lay did not substantively respond or provide comments to the draft settlement and license agreement until almost six weeks later on August 5, 2011. Frito-Lay's comments to the draft settlement and

license agreement raised, for the first time, a fundamental issue with the terms of the settlement. At that point, the Parties realized that they may be unable to finalize a written settlement and license agreement. Accordingly, Eolas respectfully requests the following stayed deadlines be set as to Frito-Lay.

	New Deadline	
<u>Event</u>	Requested by this Motion	
Complete fact discovery	August 26, 2011	
Parties to Identify Trial	August 26, 2011	
Witnesses		
Parties with burden of proof	August 21, 2011	
designate expert witnesses	August 31, 2011	
Parties to Identify Rebuttal	September 9, 2011	
Trial Witnesses		
Parties designate rebuttal	September 16, 2011	
expert witnesses		

Frito-Lay opposes this motion and seeks a continuance for the trial. Frito-Lay does not offer a counter-proposal for these deadlines requested that would allow the Parties to proceed to trial as scheduled. Frito-Lay's request for a continuance of the trial is directly contrary to its prior representation to the Court in seeking the stay. Frito-Lay (and Eolas) stated that:

"The Parties agree that this Motion is not made for the purpose of delay and does not affect the date of trial, jury selection or the pretrial conference."

Dkt No. 751 at 1; Dkt. No. 784 at 1. The Parties made this representation to the Court with the full understanding that a written settlement may not be finalized. In fact, Frito-Lay should have known over six weeks ago when Eolas sent the draft license agreement that the Parties had a fundamental difference of opinion related to the proposed settlement terms. Consistent with the Parties' representation to the Court in seeking the stay, Eolas requests the above deadlines so the Parties can proceed to trial as scheduled.

Respectfully submitted,

McKool Smith, P.C.

/s/ Mike McKool

Mike McKool

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ATTORNEYS FOR PLAINTIFF EOLAS TECHNOLOGIES, 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 service. Local Rule CV-5(a)(3)(A) on this August 15, 2011.

/s/ John B. Campbell
John B. Campbell

CERTIFICATE OF CONFERENCE

I hereby certify that counsel for Eolas Technologies Incorporated conferred with counsel for Frito-Lay, Inc. on August 12, 2011, regarding the foregoing motion, who represented that Frito-Lay, Inc. opposes this motion.

Dated: August 15, 2011

/s/ John B. Campbell
John B. Campbell