

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

Anascape, Ltd.,

Plaintiff,

v.

Microsoft Corp., and
Nintendo of America Inc.,

Defendants.

Civil Action No. 9:06-cv-158-RC

JURY TRIAL REQUESTED

UNOPPOSED MOTION TO TAKE DEPOSITIONS IN JAPAN

Plaintiff Anascape, Ltd. (“Anascape”) has reached an agreement with Defendant Nintendo of America Inc. (“NOA”), to take depositions of certain employees of non-party Nintendo Co., Ltd. (“NCL”) in Osaka, Japan in light of NCL’s agreement to produce certain witnesses at the United States Consulate. Pursuant to Art. 17 of the United States-Japan Consular Convention, the attorneys for Anascape and NOA present at the deposition must obtain a special visa issued by the Japanese Government. In order to obtain such a visa, Anascape must present a Court order authorizing the deposition. Anascape expects to obtain relevant, admissible evidence through these depositions.

Anascape respectfully requests that the Court enter the attached Order. Defendants do not oppose the relief requested in this Motion.

Anascape acknowledges and agrees that NCL is not a party to this litigation and that nothing herein shall be deemed to constitute, or argued to be deemed to constitute, a waiver of any of NCL’s rights or remedies, all of which are expressly reserved. Anascape does not waive the right to contend that any materials held by, controlled by, and/or associated with NCL are

within the possession, custody, or control of NOA, as contemplated by the Federal Rules of Civil Procedure and/or any controlling law or local rule of this Court. NOA does not waive the right to contend that any materials held by, controlled by, and/or associated with NCL are not within the possession, custody or control of NOA, as contemplated by the Federal Rules of Civil Procedure and/or any controlling law or local rule of this Court.

DATED: October 26, 2007.

Respectfully submitted,

McKOOL SMITH, P.C.

/s/ Sam Baxter

Sam Baxter
Lead Attorney
Texas State Bar No. 01938000
sbaxter@mckoolsmith.com
P.O. Box O
104 East Houston Street, Suite 300
Marshall, Texas 75670
Telephone: (903) 923-9000
Facsimile: (903) 923-9099

Theodore Stevenson, III
Texas State Bar No. 19196650
tstevenson@mckoolsmith.com
Luke F. McLeroy
Texas State Bar No. 24041455
lmcleroy@mckoolsmith.com
McKool Smith, P.C.
300 Crescent Court, Suite 1500
Dallas, Texas 75201
Telephone: (214) 978-4000
Telecopier: (214) 978-4044

Robert M. Parker
Texas State Bar No. 15498000
rmparker@cox-internet.com
Robert Christopher Bunt
Texas State Bar No. 00787165
cbunt@cox-internet.com
Charles Ainsworth
Texas State Bar No. 00783521
charley@pbatyler.com
Parker, Bunt & Ainsworth P.C.
100 E. Ferguson Street, Suite 1114
Tyler, Texas 75702
Telephone: (903) 531-3535
Telecopier: (903) 533-9687

**ATTORNEYS FOR PLAINTIFF
ANASCAPE, LTD.**

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who have consented to electronic service.

/s/ Anthony M. Garza

Anthony M. Garza