1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON 8 AT SEATTLE 9 AMIGA, INC., a Delaware corporation, 10 CAUSE NO. CV07-0631RSM Plaintiff, 11 **JOINT FRCP 26(f) REPORT AND DISCOVERY PLAN** and 12 HYPERION VOF, a Belgium corporation, STIPULATION SEEKING 13 APPOINTMENT OF SETTLEMENT Defendant. **JUDGE** 14 15 16 Counsel for the parties, Lawrence Cock (representing Plaintiff) and William Kinsel 17 (representing Defendant), held a Fed.R.Civ.P. 26(f) telephone conference, and submit this joint 18 report to the Court. 19 I. Request For Appointment of U.S. Magistrate Judge J. Kelley Arnold As Settlement Judge [LR 39.1(e)] 20 This case is related to Hyperion VOF v. Amino Development Corporation, case no. C07-21 01761RSM. On January 17, 2008, the court entered an Order on Pending Motions in case no. 22 C07-01671RSM. The court offered to appoint a settlement judge in lieu of mediation: 23 In the event all parties elect to participate, they may apply to the Court for appointment of 24 a settlement judge to conduct a judicial settlement in lieu of mediation, pursuant to Local Rule CR 39.1(e). Order on Pending Motions, p. 2 (lines 23-25).

Hyperion VOF (defendant in this action), Amiga, Inc. (plaintiff in this action), Itec, LLC (a former third party defendant in this action), and Amino Development Corporation (defendant in case no. C07-1761RSM) have all agreed to participate in a judicial settlement conference so long as the court appoints U.S. Magistrate Judge J. Kelley Arnold as the settlement judge, and so long as Eyetech Group Ltd., the third signatory to the 3 November 2001 Agreement, is given the opportunity to participate in that conference. Eyetech has informed Hyperion that it may want to participate in that settlement effort if permitted to do so. Hence, the parties move the court to appoint The Honorable J. Kelley Arnold to conduct a consolidated Settlement Conference pursuant to Local Rule 39.1(e) in this case and in case no. C07-01671RSM, which Settlement Conference may include as participants non-parties Itec, LLC and Eyetech Group Ltd.

The Court may not intend to include any language in its order referring this matter to a settlement judge with respect to the deadline for the completion of that mediation. If the Court does intend to include a deadline in that regard, Hyperion asks the Court to take into account that its representative(s), and the representative(s) of Eyetech Group Ltd., will have to make travel arrangements from Europe in the light of their other commitments. Because of this, it is likely that October is the earliest that all concerned European residents could arrange to travel to Washington state.

II. 26(a)(1) Disclosures, Trial Date, and Other Case Schedule Deadlines:

The parties have already undertaken some discovery in this matter. Nevertheless, in keeping with their desire to promptly participate in a settlement conference and avoid unnecessary expense, the parties stipulate to continue the following deadline and move the court to adopt the parties' stipulation:

• Fed. R. Civ. P. 26(a)(1) initial disclosures

Forty-five days after judicial settlement conference

The parties stipulate (and move the court to adopt their stipulation) that the following deadlines be set by the court following a joint status report, to be filed no later than forty-five days after the judicial settlement conference:

- Discovery cutoff
- Dispositive motion cutoff
- Trial Date
- Lodging Date

III. MODIFICATIONS TO DISCOVERY RULES

The parties have agreed that, as a supplement to their CR 26(a)(1) disclosures, they will exchange lists of the witnesses who they wish to depose. The purpose of the exchange is to facilitate travel schedules of attorneys and the witnesses. The parties will work together to agree upon mutually agreeable dates and locations for depositions.

The parties have not agreed on the number of depositions which should be allowed in this case. Defendant Hyperion wishes the parties to be limited to ten depositions; Plaintiff Amiga anticipates seeking more than ten depositions.

IV. TRIAL

If this case is tried to a jury, the parties estimate that it would require ten trial days, subject to adjustment as the parties undertake discovery.

V. OTHER COURT ORDERS/ACTION

The parties have negotiated a Stipulated Protective Order pursuant to Fed.R.Civ.P. 26(c), which order was submitted to the Court on July 23, 2008. The parties have not agreed upon a deadline for disclosure of expert testimony under Fed.R.Civ.P. 26(a)(2).

1	Respectfully submitted this 29th day of July 2008.
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3	/s/ Lawrence R Cock Lawrence R. Cock, WSBA No. 20326
4	CABLE, LANGENBACH, KINERK & BAUER, LLP 1000 Second Avenue Suite 3500 Seattle, WA 98104
5	Telephone: 206-292-8800 Facsimile: 206-292-0494
6	lrc@cablelang.com
7	
8	/s/ Lance Gotthoffer Lance Gotthoffer (Pro Hac Vice), NYSBA No. 1088186 Jeffrey M. Tamarin, (Pro Hac Vice), NYSBA No. 1935071
9	REED SMITH LLP 599 Lexington Avenue
11	New York, NY 10022 Telephone: 212-521-5400
12	Facsimile: 212-521-5450 lgotthoffer@reedsmith.com jtamarin@reedsmith.com
13	Attorneys for Plaintiff/Counterclaim Defendant Amiga,
14	Inc.
15	
16	/s/ William Kinsel William Kinsel, WSBA No. 18077
17	LAW OFFICES OF WILLIAM A. KINSEL, PLLC 2025 First Avenue, Suite 440
18	Seattle, WA 98121 Telephone: 206-706-8148
19	Fasimile: 206-374-3201 wak@kinsellaw.com
20	Attorneys for Defendant/Counterclaim Plaintiff
21	Hyperion, VOF
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1	CERTIFICATE OF SERVICE
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3	I hereby certify that on July 29, 2008, I electronically filed the foregoing with the Clerl
4	of the Court using the CM/ECF system which will send notification of such filing to the
5	following:
6	William A. Wingel
7	William A. Kinsel Law Offices of William A. Kinsel, PLLC Market Place Tower
8	2025 First Avenue, Suite 440 Seattle, WA 98121
9	Seattle, WA 98121
10	/s/
11	Lawrence R. Cock, WSBA No. 20326 Attorney for Plaintiff Amiga, Inc.
12	CABLE, LANGENBACH, KINERK & BAUER, LLP Suite 3500, 1000 Second Avenue Building
13	Seattle, Washington 98104-1048 (206) 292-8800 phone
14	(206) 292-0494 facsimile lrc@cablelang.com
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