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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 CRYTEK GMBH,

11 vs.

12 CLOUD IMPERIUM GAMES CORP. and
13 ROBERTS SPACE INDUSTRIES CORP.,

14 Defendants.

) Case No. 2:17-CV-08937-DMG-FFM

) [HON. DOLLY M. GEE]

) **DEFENDANTS' OPPOSITION TO**
PLAINTIFF'S NOTICE OF
FILING SECOND AMENDED
COMPLAINT AND SUGGESTION
THAT RULE 16 CONFERENCE
BE CONVENED

1 Defendants Cloud Imperium Games Corp. and Roberts Space Industries Corp.
2 (collectively, “Defendants”) oppose Plaintiff Crytek GMBH’s (“Crytek”) “suggestion”
3 to modify the Court’s order regarding the timing of a Scheduling Conference. Crytek
4 buries its suggestion in a “Notice of Filing of Second Amended Complaint” that lacks
5 any basis under the FRCP, the Local Rules, or the Court’s Standing Order.

6 The Court’s August 14 order on Defendants’ motion to dismiss Crytek’s First
7 Amended Complaint (the “Order”) provided a clear, sound decision, on a matter
8 squarely within the Court’s discretion, to schedule a Rule 16 Scheduling Conference
9 after the pleadings are finalized. (Dkt. 38, at p. 22.) Crytek’s “suggestion” that the
10 Court immediately convene a Rule 16 conference or, alternatively, “simply . . . direct[]”
11 the parties “to proceed with discovery now” directly challenges the Court’s Order. In
12 essence, Crytek is asking the Court to reconsider its Order. This is improper. To the
13 extent Crytek seeks relief from the Court’s Order, it may do so by filing a noticed
14 motion pursuant to FRCP 60 and providing the necessary evidence to establish good
15 cause for such relief.

16 Crytek filed its Second Amended Complaint yesterday, on August 16, 2018. As
17 Crytek acknowledges, Defendants may elect to file a motion to dismiss Crytek’s new
18 claim added to the Second Amended Complaint. Because the outcome of that motion
19 could again significantly impact the scope of discovery, the Court’s decision to
20 schedule a Rule 16 Schedule Conference once the pleadings are finalized was sound
21 and should not be disturbed.

22 The Court should reject Crytek’s improper attempt to circumvent the rules of this
23 Court and not deviate from its sound determination to issue the Scheduling Order after
24 the pleadings in this case are settled.

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Dated: August 17, 2018

FRANKFURT KURNIT KLEIN & SELZ P.C.

BY: /s/ Jeremy S. Goldman
Jeremy S. Goldman

Attorneys for Defendants CLOUD IMPERIUM
GAMES CORP. and ROBERTS SPACE
INDUSTRIES CORP.

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which sent notification of such filing to all counsel of record.

BY: /s/ Jeremy S. Goldman
Jeremy S. Goldman

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