

1 JAMES Y. PAK (SBN 304563)
james.pak@skadden.com
2 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
525 University Avenue, Suite 1400
3 Palo Alto, California 94301
Telephone: (650) 470-4500
4 Facsimile: (650) 470-4570

5 KEVIN J. MINNICK (SBN 269620)
kevin.minnick@skadden.com
6 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 South Grand Avenue, Suite 3400
7 Los Angeles, California 90071
Telephone: (213) 687-5000
8 Facsimile: (213) 687-5600

9 P. ANTHONY SAMMI (admitted *pro hac vice*)
anthony.sammi@skadden.com
10 KURT WM. HEMR (admitted *pro hac vice*)
kurt.hemr@skadden.com
11 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
Four Times Square
12 New York, New York 10036
Telephone: (212) 735-3000
13 Facsimile: (212) 735-2000

14 Attorneys for Plaintiff
Crytek GmbH

15
16 **IN THE UNITED STATES DISTRICT COURT**
17 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
18 **WESTERN DIVISION**

19 CRYTEK GMBH,
20 Plaintiff,
21 v.
22 CLOUD IMPERIUM GAMES CORP.
and ROBERTS SPACE INDUSTRIES
23 CORP.,
24 Defendants.

Case No. 2:17-cv-08937-DMG-FFM
**PLAINTIFF'S NOTICE OF
FILING SECOND AMENDED
COMPLAINT AND SUGGESTION
THAT RULE 16 CONFERENCE
BE CONVENED**

1 1. On August 14, 2018, this Court entered its Order granting in part and
2 denying in part Defendants' motion to dismiss. (ECF No. 38.)

3 2. The Court granted Defendants' motion insofar as it sought "dismissal of
4 the aspect of Plaintiff's cause of action for breach that is based on section 2.1.2's
5 'exclusive' grant to embed CryEngine in the Game." (*Id.* at 21.) The Court noted
6 that "section 2.4 may support Plaintiff's theory of breach in connection with
7 Defendants' alleged use of another software engine in Star Citizen." (*Id.* at 11 n.6.)
8 The Court also dismissed Crytek's prayer for punitive damages. (*Id.* at 22.)

9 3. The Court denied Defendants' motion in all other respects and granted
10 Crytek leave to file an amended complaint. (*Id.*)

11 4. Today, Crytek filed its Second Amended Complaint, which addresses
12 the relief granted by the Court's Order by (i) expressly alleging Crytek's theory of
13 breach in connection with section 2.4 of the license agreement at issue; and
14 (ii) removing its prayer for punitive damages. As the redline comparison attached
15 hereto as Exhibit 1 shows, that Second Amended Complaint is otherwise
16 substantially identical to the pleading addressed by the Court's Order.

17 5. The Court stated in its Order that it "will schedule a Rule 16 Scheduling
18 Conference once the pleadings are finalized." (ECF No. 38 at 22.) While
19 Defendants may elect to respond to that complaint by filing another motion to
20 dismiss, Crytek respectfully submits that in view of the Court's denial of Defendants'
21 motion to dismiss with respect to numerous claims that are substantially unchanged
22 in Crytek's Second Amended Complaint, that conference might be convened now so
23 that discovery may proceed.¹

24 _____
25 ¹ Crytek is mindful of Magistrate Judge Mumm's remark in his order addressing
26 Defendant's motion for a protective order concerning discovery that "[a]lthough early
27 discovery is strongly encouraged, Judge Gee's policy is not to require the parties to
28 participate in discovery until a scheduling order has issued." (ECF No. 34 at 2.)

1 6. On December 12, 2017, Crytek commenced this action and promptly
2 served Defendants with its Complaint. (ECF Nos. 1, 17.) On February 13, 2018,
3 Crytek served requests for discovery on Defendants in accordance with the Federal
4 Rules of Civil Procedure. On February 27, 2018, the parties filed a Joint Rule 26(f)
5 Report. (ECF No. 28.) Crytek anticipates that its analysis of Defendants' source
6 code in connection with its allegations will be time-consuming, and accordingly
7 would like to begin that analysis as soon as possible.

8 7. Alternatively, Crytek respectfully submits that in lieu of convening a
9 Rule 16 conference at this time, the parties could simply be directed to proceed with
10 discovery now.

11
12 Dated: August 16, 2018

Respectfully submitted,

/s/ James Y. Pak

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14 KEVIN J. MINNICK (SBN 269620)
kevin.minnick@skadden.com
15 SKADDEN, ARPS, SLATE,
16 MEAGHER & FLOM LLP
300 South Grand Avenue, Suite 3400
17 Los Angeles, California 90071
Telephone: (213) 687-5000
18 Facsimile: (213) 687-5600

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MEAGHER & FLOM LLP
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Palo Alto, California 94301
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19
20 P. ANTHONY SAMMI
(admitted *pro hac vice*)
anthony.sammi@skadden.com

***Attorneys for Plaintiff
Crytek GmbH***

21
22 KURT WM. HEMR
(admitted *pro hac vice*)
kurt.hemr@skadden.com
23 SKADDEN, ARPS, SLATE,
24 MEAGHER & FLOM LLP
25 Four Times Square
26 New York, New York 10036
Telephone: (212) 735-3000
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CERTIFICATE OF SERVICE

I hereby certify that on August 16, 2018, I electronically filed the foregoing document with the Clerk of Court using CM/ECF, which sent notification of such filing to all counsel of record.

By: /s/ James Y. Pak
James Y. Pak