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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 OPPOSITION TO  
DEFENDANTS’ MOTION FOR  
PROTECTIVE ORDER**

Date: April 17, 2018  
Time: 10:00 a.m.  
Courtroom: 580

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**PRELIMINARY STATEMENT**

Defendants, having moved to dismiss Crytek’s Amended Complaint (ECF No. 20), now seek to stay all discovery while their motion to dismiss is pending (ECF No. 30). Whether to grant such a stay is a matter for the Court’s discretion, but Crytek respectfully submits that Defendants have failed to show why any such relief could be justified here.

This is not, for example, an action where there is a question of immunity that must be resolved before the action may proceed any further. Rather, it is a straightforward contract and copyright action. And while it is the Court’s province (and not the parties’) to decide whether Defendants’ motion to dismiss certain of Crytek’s claims has merit, Crytek respectfully submits that the most reasonable course is to get discovery underway so that the parties are best positioned to reach a “just, speedy, and inexpensive determination of [this] action.” Fed. R. Civ. P. 1. As Judge Gee recently wrote when denying a similar motion:

[T]his case is no different from most cases filed before this Court where the defendants bring a motion to dismiss with the hope of obtaining a dismissal of an action in its entirety or, at least, narrowing the issues in the case. **Motions to stay of the sort sought here are rarely sought and almost never granted.** Indeed, the Court states quite clearly in its Initial Standing Order that, absent a Court order that discovery is premature, “it is advisable for counsel to begin to conduct discovery actively before the Scheduling Conference.”

*McCall v. Monsanto Co.*, No. 16-cv-1609, at 3 (C.D. Cal. Apr. 29, 2016), ECF No. 35 (denying motion to stay discovery pending the Court’s ruling on forthcoming motion to dismiss) (emphasis modified). So too here. Crytek has reasonably sought to commence discovery, and Defendants should be directed to engage productively in that process while their motion to dismiss is under submission.

**ARGUMENT**

**I. THIS DISTRICT’S GENERAL PRACTICE IS NOT TO STAY DISCOVERY PENDING RESOLUTION OF A MOTION TO DISMISS**

Judge Gee’s observation in *McCall* that “[m]otions to stay of the sort sought here are rarely sought and almost never granted” is consistent with the general practice of this District. Judge Morrow has noted that staying discovery pending the outcome of a motion to dismiss as a general practice would lead to widespread delay, and accordingly she would only stay discovery for “a good reason”:

As a general matter, the court does not stay discovery or refrain from setting case management dates in cases where a motion to dismiss is pending unless a party provides a good reason for doing so. Were the court’s practice otherwise, some cases would remain pending for a year or more before any case management dates were set or progress on the litigation made.

*Vista del Sol Health Care Servs., Inc. v. Nat’l Labor Relations Bd., Region 31*, No. 14-cv-2193, 2014 WL 12631660, at \*2 (C.D. Cal. May 16, 2014) (denying motion to stay discovery pending resolution of motion to dismiss).

Similarly, Judge Guilford has noted that allowing discovery to continue, notwithstanding a party’s “over-confidence in [a dispositive] motion’s merits,” can both facilitate settlement and ensure that a plaintiff seeking access to the Court will not be denied the ability to promptly support its case with discovery:

[D]iscovery should not be delayed every time a dispositive motion is pending. A party’s judgment that a dispositive motion warrants a stay may suffer from over-confidence in the motion’s merits. Early discovery may also facilitate early settlement — saving clients the time and expense of litigating in federal court. And a plaintiff seeking access to the Court and the ability to promptly support its case should

1 rarely be denied access to discovery. Those interests, among others,  
2 make the Court especially skeptical of staying discovery pending the  
3 resolution of a self-assessed ‘dispositive’ motion.

4 *Carver Int’l, Inc. v. SurfSkate Indus., LLC*, No. 15-cv-1348, 2016 WL 10576627, at  
5 \*5 (C.D. Cal. May 25, 2016) (denying motion to stay discovery pending resolution  
6 of motion to dismiss).

7 Many other courts have noted that discovery should not be routinely stayed  
8 pending the determination of a dispositive motion, unless the party seeking to stay  
9 discovery can make a “strong showing” that staying discovery is justified:

10 “The Federal Rules of Civil Procedure do not provide for automatic or  
11 blanket stays of discovery when a potentially dispositive motion is  
12 pending.” *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 600 (D. Nev.  
13 2011). “Had the Federal Rules contemplated that a motion to dismiss  
14 under Fed. R. Civ. Pro. 12(b)(6) would stay discovery, the Rules would  
15 contain a provision to that effect. In fact, such a notion is directly at  
16 odds with the need for expeditious resolution of litigation.” *Gray v.*  
17 *First Winthrop Corp.*, 133 F.R.D. 39, 40 (N.D. Cal. 1990). . . . Under  
18 Ninth Circuit law, “[a] party seeking a stay of discovery carries the  
19 heavy burden of making a ‘strong showing’ why discovery should be  
20 denied.” *Gray*, 133 F.R.D. at 40 (citation omitted).

21 *Singh v. Google, Inc.*, No. 16-cv-03734-BLF, 2016 WL 10807598, at \*1 (N.D. Cal.  
22 Nov. 4, 2016) (alteration in original); *see also Skellerup Indus. Ltd. v. City of L.A.*,  
23 163 F.R.D. 598, 600 (C.D. Cal. 1995) (citing *Gray* and denying motion to stay  
24 discovery pending resolution of motion to dismiss).

25 Indeed, even in cases on which Defendants rely, courts have made clear that  
26 staying discovery in this circumstance is disfavored. *E.g., Mlejnecky v. Olympus*

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1 *Imaging Am., Inc.*, No. 10-cv-2630, 2011 WL 489743, at \*6 (E.D. Cal. Feb. 7, 2011)  
2 (“[D]istrict courts look unfavorably upon such blanket stays of discovery.”).

3 **II. THE SPECIAL CIRCUMSTANCES THAT HAVE WARRANTED**  
4 **DISCOVERY STAYS IN SOME ACTIONS ARE NOT PRESENT HERE**

5 As Judge Gee noted in *McCall*, the moving party has the burden of  
6 demonstrating that a stay is justified in view of four factors:

7 [A] district court has discretion to stay proceedings pending before it.  
8 The Supreme Court has emphasized that “[a] stay is not a matter of  
9 right, even if irreparable injury might otherwise result” but “is instead  
10 an exercise of judicial discretion[.]” *Nken v. Holder*, 556 U.S. 418,  
11 433-34 (2009) (internal citations and quotation marks omitted). “The  
12 party requesting a stay bears the burden of showing that the  
13 circumstances justify an exercise of that discretion.” *Id.* (internal  
14 citations omitted).

15 In exercising its discretion, the court “must weigh competing  
16 interests and maintain an even balance.” *Landis [v. N. Am. Co.]*, 299  
17 U.S. [248,] 254-55 [(1936)]. *In Nken*, the Supreme Court identified  
18 four factors a district court should consider in deciding whether to grant  
19 an application for a stay: “(1) whether the stay applicant has made a  
20 strong showing that he is likely to succeed on the merits; (2) whether  
21 the applicant will be irreparably injured absent a stay; (3) whether  
22 issuance of the stay will substantially injure the other parties interested  
23 in the proceeding; and (4) where the public interest lies.” 556 U.S. at  
24 434.

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1 *McCall* at 2.<sup>1</sup> A number of the cases on which Defendants rely illustrate the special  
2 circumstances — not present here — where staying discovery can be appropriate,  
3 such as an unusual procedural posture; a question of immunity; antitrust claims,  
4 which are given slightly distinctive treatment; or a patently unmeritorious claim.<sup>2</sup>

5 ***Unusual Procedural Posture.*** In *Good v. Prudential Insurance Co. of*  
6 *America*, 5 F. Supp. 2d 804 (N.D. Cal. 1998), the court elected to stay all  
7 proceedings pending a decision whether the case would be transferred by the Judicial  
8 Panel on Multidistrict Litigation for consolidated pretrial proceedings. *Id.* at 809  
9 (noting that “[c]ourts frequently grant stays pending a decision by the MDL Panel  
10 regarding whether to transfer a case”).

11 In *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353 (11th Cir. 1997), there  
12 was a fraud claim of dubious viability that dramatically increased the scope of  
13 discovery, and the district court granted a motion to compel discovery even though it  
14 had not ruled on the defendant’s motion to dismiss for more than a year and a half  
15 after briefing was complete. The Eleventh Circuit criticized the district court’s  
16 management of the case and ordered that the case be reassigned to another district  
17 judge on remand. *Id.* at 1360, 1368-69. (“[E]ven the most cursory review of the  
18 [plaintiffs’] shotgun complaint reveals that it contains a fraud count that is novel and  
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20 <sup>1</sup> As several courts have noted, staying discovery is “directly at odds with the  
21 need for expeditious resolution of litigation.” *E.g.*, *Gray*, 133 F.R.D. at 40. The  
22 tension between the public interest in prompt resolution of civil actions and staying  
23 discovery may be one reason why parties who seek stays must make an affirmative  
24 showing that such a stay is warranted.

25 <sup>2</sup> *See Landis*, 299 U.S. at 256-59 (acknowledging the district court’s discretion  
26 to stay proceedings in appropriate cases but *vacating* the particular stay at issue)  
27 (“[T]he burden of making out the justice and wisdom of a departure from the beaten  
28 track lay heavily on the petitioners, suppliants for relief, and discretion was abused if  
the stay was not kept within the bounds of moderation.”).

1 of questionable validity. . . . [W]e conclude that this claim was dubious enough to  
2 require the district court to rule on Mazda’s motion to dismiss prior to entering the  
3 compel order.”).

4 No such unusual procedural posture is presented here.

5 **Question of Immunity.** In *Little v. City of Seattle*, 863 F.2d 681 (9th Cir.  
6 1988), discovery was stayed while the district court determined whether a defendant  
7 was entitled to various forms of immunity. *Id.* at 685. The Ninth Circuit affirmed  
8 that staying discovery was not an abuse of discretion in that circumstance. *Id.*

9 Likewise, *Wenger v. Monroe*, 282 F.3d 1068 (9th Cir. 2002), involved an  
10 unusual form of immunity from suit: The district court “concluded that Wenger’s  
11 claims challenged non-reviewable military personnel decisions, and thus were  
12 nonjusticiable . . . .” *Id.* at 1072. The Ninth Circuit held that staying discovery was  
13 not an abuse of discretion in that circumstance. *Id.* at 1077 (quoting *Wood v.*  
14 *McEwen*, 644 F.2d 797, 801 (9th Cir. 1981), discussed *infra*).

15 This action does not present a question of immunity.

16 **Antitrust Actions.** Antitrust actions are given slightly distinctive treatment in  
17 federal courts. In *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th  
18 Cir. 1987), the court noted that evaluating Rule 12(b)(6) motions before discovery  
19 “especially makes sense” in antitrust cases “because the costs of discovery in such  
20 actions are prohibitive.” The court affirmed the dismissal of certain claims and  
21 denial of discovery as to those claims because the complaint failed to allege specific  
22 intent to harm competition. *Id.* at 736-38.

23 Similarly, in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), another  
24 antitrust case, the Supreme Court noted “the potentially enormous expense of  
25 discovery in cases with no reasonably founded hope that the discovery process will  
26 reveal relevant evidence” while determining that the complaint should have been  
27 dismissed for its failure to allege an agreement between defendants, rather than  
28

1 “merely parallel conduct that could just as well be independent action.” *Id.* at 557,  
2 559 (internal quotation marks omitted). As noted in another case on which  
3 Defendants rely, even *Twombly* did not “erect an automatic, blanket prohibition on  
4 any and all discovery before an antitrust plaintiff’s complaint survives a motion to  
5 dismiss.” *In re Graphics Processing Units Antitrust Litig.*, No. 06-cv-7417, 2007  
6 WL 2127577, at \*4 (N.D. Cal. July 24, 2007).<sup>3</sup>

7 This action involves contract and copyright claims, not antitrust claims.

8 ***Patently Unmeritorious Claim.*** Courts have also stayed discovery in limited  
9 circumstances where there was a substantial basis to believe from the outset that the  
10 plaintiff would never be able to state a claim for relief. Defendants rely on several  
11 such cases:

12 (i) In *Wood*, a pro se plaintiff had been sanctioned by dismissal in a prior  
13 action for refusing to participate in discovery. The plaintiff commenced a new  
14 action seeking relief from that earlier dismissal, alleging that it was the result of a  
15 fraud upon the court. The district court suspended discovery, and the Ninth Circuit  
16 affirmed that decision because that “[a] district court **may . . . stay discovery when**  
17 **it is convinced that the plaintiff will be unable to state a claim for relief.**” *Wood*,  
18 644 F.2d at 801-02 (emphasis added) (noting that “there was a real question whether  
19 *Wood*’s claim presented a substantive basis for vacating the judgment”).<sup>4</sup>

20 \_\_\_\_\_  
21 <sup>3</sup> *In re Graphics Processing Units*, an MDL involving antitrust and a criminal  
22 investigation, also involved parties who had agreed to a “leisurely briefing schedule  
23 on the motions to dismiss,” from which the court inferred that commencing  
24 discovery was not urgent. *Id.* at \*1, 5.

25 <sup>4</sup> The Ninth Circuit described *Wood*’s extensive abuse of process: “In the first  
26 action, *Wood* continually refused to comply with the court’s discovery orders. In  
27 this action, he has made spurious and unsubstantiated allegations of misconduct  
28 against large groups of individuals and organizations. The filing of this and thirty-  
six other cases, which repeatedly raise the same claims, has become burdensome and

(cont'd)

1 (ii) In *Hall v. Tilton*, No. 07-cv-3233, 2010 WL 539679 (N.D. Cal. Feb. 9,  
2 2010), a Section 1983 action brought by a pro se prisoner, all claims were barred by  
3 the applicable statute of limitations. *See Hall v. Tilton*, No. 07-cv-3233, 2010 WL  
4 2629914 (N.D. Cal. June 29, 2010) (order granting motion to dismiss).

5 (iii) In *GTE Wireless, Inc. v. Qualcomm, Inc.*, 192 F.R.D. 284 (S.D. Cal.  
6 2000), a patent action, the court made a “preliminary finding” that the plaintiff had  
7 failed to provide notice of infringement pursuant to 35 U.S.C. § 287, such that the  
8 defendant had “demonstrated that it ha[d] a clear possibility of precluding damages.”  
9 *Id.* at 289. Given that determination and the court’s balancing of the harms of  
10 whether to stay discovery, the court elected to stay discovery concerning only  
11 damages (discovery as to other issues proceeded). *Id.* at 289-90.

12 (iv) In *Jarvis v. Regan*, 833 F.2d 149 (9th Cir. 1987), a suit brought by a self-  
13 styled taxpayer advocate alleging RICO and First Amendment claims against the  
14 Secretary of the Treasury and the federal Legal Services Corporation, among others,  
15 the court concluded that the facts as alleged did not constitute a pattern of  
16 racketeering activity and the plaintiff’s claim under the First Amendment was moot.  
17 *Id.* at 152-55.<sup>5</sup>

18 (v) In *Anti-Monopoly, Inc. v. Hasbro, Inc.*, No. 94-cv-2120, 1996 WL 101277  
19 (S.D.N.Y. Mar. 7, 1996), another antitrust action, the Court stayed discovery as to  
20 one claim where the discovery requests as to that claim were “quite extensive”;

21  
22 (cont’d from previous page)  
23 costly to the litigants. Wood continually asserts frivolous grounds of error.” *Wood*,  
24 644 F.2d at 802.

25 <sup>5</sup> Neither *Jarvis* nor the other authorities cited in Defendants’ brief compel  
26 staying discovery whenever a motion to dismiss is pending; that question is  
27 committed to the Court’s discretion. *See, e.g., Turner Broad. Sys., Inc. v. Tracinda*  
28 *Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997) (acknowledging *Jarvis* yet denying a  
motion to stay discovery).

1 discovery would complete within the parties’ originally proposed schedule even if  
2 stayed; and the Court, upon review of the motion to dismiss, concluded that “not  
3 only does Hasbro’s motion to dismiss appear not unfounded on the law but indeed it  
4 appears to have substantial grounds.” *Id.* at \*2-4 (internal quotation marks omitted).<sup>6</sup>

5 \* \* \*

6 Remarkably, Defendants rely on two cases where motions to stay discovery  
7 were *denied* because the moving party could not demonstrate that the plaintiff’s  
8 entire case was likely to be disposed of by the pending motions. *See Mlejnecky*,  
9 2011 WL 489743, at \*9 (denying motion to stay discovery after concluding that  
10 defendant “[had] not demonstrated an immediate and clear possibility that its motion  
11 will dispose of plaintiff’s claims altogether”) (citing *Wood*, 644 F.2d at 801); *Lowery*  
12 *v. Fed. Aviation Admin.*, No. 93-cv-1352, 1994 WL 912632, at \*3-7 (E.D. Cal. Apr.  
13 11, 1994) (denying motion to stay discovery after determining that genuine issues of  
14 material fact would preclude a pending motion for summary judgment from  
15 disposing of the entire case).

16 Defendants of course profess confidence that the Court will grant their motion  
17 to dismiss. (*E.g.*, Defts.’ Br. at 7, ECF No. 30-1.) Crytek of course disagrees, for all  
18 the reasons stated in its briefing on that motion. (ECF No. 25.) Crytek will not  
19 nettle the Court by rearguing those points here. Suffice it to say that Defendants’  
20 hyperbolic assertions of confidence do not serve to meet their burden here.

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23 <sup>6</sup> Similarly, in *Limbu v. UST Global, Inc.*, No. 16-cv-8499 (C.D. Cal. Apr. 20,  
24 2017), ECF No. 26, in which a plaintiff raised claims under the whistleblower  
25 protections of the Sarbanes-Oxley Act, that plaintiff had failed to allege that she had  
26 engaged in a protected activity under the Act. *Id.* Under those circumstances, Judge  
27 Gee dismissed the complaint and stayed discovery. She dismissed the amended  
28 complaint and entered judgment in favor of the defendants just two months later.  
*Limbu*, No. 16-cv-8499 (C.D. Cal. June 29, 2017), ECF No. 42.

1 **III. THE BALANCE OF HARMS**  
2 **DOES NOT FAVOR STAYING DISCOVERY**

3 As it commonly does when exercising discretion, the Court should balance the  
4 harms that would befall Defendants if discovery continues against those that would  
5 befall Crytek if discovery is stayed. *McCall* at 2. The factors that Judge Gee  
6 identified in *McCall* reflect the strong showing that Defendants must make to justify  
7 a stay of discovery. The factors concerning the balancing of harms are: “whether the  
8 applicant will be **irreparably** injured absent a stay” and “whether issuance of the  
9 stay will **substantially** injure the other parties interested in the proceeding.” *Id.*  
10 (emphasis added) (quoting *Nken*, 556 U.S. at 434).

11 Defendants do not even use the word “irreparable” in their motion, much less  
12 demonstrate that they will suffer irreparable injury in the absence of a stay. But even  
13 assuming that a lesser showing of injury could justify staying discovery, Defendants  
14 have not made that showing; indeed they have not identified any particular burden  
15 that commencing discovery would cause. Instead, they rail against the burdens that  
16 are inherent to discovery and generally accuse Crytek of nefarious intent. (*E.g.*,  
17 Defts.’ Br. at 1 (“Crytek instead hopes to inflict damage upon Defendants by abusing  
18 the discovery process.”).) That is not enough to justify staying discovery. *See, e.g.*,  
19 *Singh*, 2016 WL 10807598, at \*2 (“Google has not demonstrated that denial of the  
20 stay would be burdensome. Plaintiff correctly states that Google fails to identify any  
21 discovery burdens, and offers no particular or specific facts to support its assertion  
22 that a stay would be necessary to spare the parties or the Court from the ‘burden’ of  
23 discovery.”). That is not the sort of harm that warrants a stay.

24 In contrast, staying discovery would impede Crytek from developing its case.  
25 Defendants may well be correct that the “source code underlying *Star Citizen* and  
26 *SQ42* . . . comprises *millions* of lines of code that, over the course of the last six  
27 years, have evolved and been compiled into hundreds of different builds.” (Defts.’  
28

1 Br. at 8.) It will be Crytek’s burden, not Defendants’, to analyze those millions of  
2 lines of code and develop the proof it will need to demonstrate to the jury how  
3 Defendants have breached the GLA and infringed Crytek’s copyright. And although  
4 the Court has not yet entered a scheduling order in this action, Crytek’s proposed  
5 trial date of July 16, 2019, does not provide a leisurely period in which Crytek may  
6 complete that analysis. (ECF No. 28 Ex. A.) Staying discovery would serve only to  
7 delay and prejudice Crytek’s efforts to prove its claims.

8 Defendants assert that “Crytek will suffer no prejudice by a stay of discovery  
9 while the motion to dismiss is pending.” (Defts.’ Br. at 9.) Even if true — and it is  
10 not — that would be insufficient to justify a stay. In *Novelposter v. Javitch Canfield*  
11 *Group*, No. 13-cv-05186, 2014 WL 12618174 (N.D. Cal. May 23, 2014), the parties  
12 seeking a stay of discovery while a motion to dismiss was pending similarly  
13 “assert[ed] that a stay would not prejudice the defendants.” *Id.* at \*1. The court  
14 declined to stay discovery, concluding that “mere lack of prejudice is not the same as  
15 ‘good cause’ and falls far short of the ‘strong showing’ required.” *Id.*

16 **IV. DEFENDANTS SHOULD BE DIRECTED TO PROCEED WITH**  
17 **DISCOVERY IN ACCORDANCE WITH THE FEDERAL RULES**

18 Defendants request that the Court hold a conference if it does not stay all  
19 discovery. (Defts.’ Br. at 10.) Crytek would of course welcome any conference that  
20 the Court wishes to hold. That said, Defendants are not correct when they complain  
21 that “[t]o date, Crytek has been unwilling to agree to any reasonable limitations on  
22 the timing or scope of discovery.” (*Id.*) Defendants have proposed that Crytek  
23 should not be permitted to obtain any discovery at all (or, in the alternative, that  
24 Crytek should not be permitted to obtain discovery relating to its damages until some  
25 unidentified future date, even though damages are an essential element of Crytek’s  
26 claims). (*E.g.*, Defts.’ Br. at 6-10; Joint Rule 26(f) Report at 5, 7, 9, ECF No. 28.)

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1 Crytek has not agreed with Defendants' flat refusal to proceed with discovery for all  
2 of the obvious reasons.

3       Instead, Crytek respectfully submits that Defendants ought to be directed to  
4 proceed in accordance with the Rules: Defendants should serve complete written  
5 responses and objections to Crytek's outstanding discovery requests, and to the  
6 extent that Defendants have genuine disputes over particular requests, they should  
7 meet and confer with Crytek and otherwise comply with Local Rules 7-3, 37-1, and  
8 37-2 before seeking the Court's assistance in resolving those particularized disputes.  
9 The Court may then assess whether Defendants' concerns with those particular  
10 requests are justified, or whether Defendants should be directed to comply with those  
11 same discovery requests. As Defendants are well aware, that is how discovery  
12 ordinarily proceeds in this Court, and for good reason. Instead, Defendants have  
13 showered the Court with multiple pages of criticisms and complaints about the scope  
14 of Crytek's discovery requests. (*E.g.*, Defts.' Br. at 1, 3-5, 8-10.) Defendants sought  
15 to justify their decision to not follow Local Rule 37-2 by asserting that "there are no  
16 specific discovery issues in dispute here — rather, the *commencement* of discovery  
17 as a whole is in dispute." (Defts.' Mot. at 2, ECF No. 30.) Crytek respectfully  
18 submits that Defendants' barrage of *ad hoc* criticisms does not present the Court with  
19 any manageable method of resolving any genuine disputes that Defendants might  
20 purport to have with Crytek's discovery requests, and it should be disregarded.

21       Defendants' complaints concerning the timing of Crytek's discovery requests  
22 (*e.g.*, Defts.' Br. at 3) are also misguided. As noted in the Joint Rule 26(f) Report,  
23 Crytek served its discovery requests on January 19, 2018, in advance of the Rule  
24 26(f) conference that took place on February 13, 2018. (Joint Rule 26(f) Report at  
25 4.) Pre-conference delivery of document requests is expressly contemplated by Rule  
26 26(d)(2); pursuant to that Rule, Crytek's document requests are "considered to have  
27 been served at the first Rule 26(f) conference." Given Defendants' objection to the  
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1 pre-conference service of the interrogatory during that conference, and for the  
2 avoidance of any doubt, Crytek immediately re-served its interrogatory after the Rule  
3 26(f) conference. (Joint Rule 26(f) Report at 4.) Crytek respectfully submits that  
4 Defendants should be directed to provide complete responses to those requests in the  
5 usual fashion.

6 **CONCLUSION**

7 For the foregoing reasons, Defendants' Motion For Protective Order  
8 Controlling Timing And Scope Of Discovery Pending Resolution Of Motion To  
9 Dismiss should be denied in its entirety.

10  
11 Dated: March 27, 2018

Respectfully submitted,

12  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 27, 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