

1 Eric A. Buresh (*pro hac vice*)
2 eric.buresh@eriseip.com
3 Adam P. Seitz (*pro hac vice*)
4 adam.seitz@eriseip.com
5 Clifford T. Brazen (*pro hac vice*)
6 cliff.brazen@eriseip.com
7 Chris R. Schmidt
8 chris.schmidt@eriseip.com
9 Erise IP, P.A.
10 7015 College Blvd.
11 Suite 700
12 Overland Park, KS 66211
13 Phone: (913) 777-5600
14 Facsimile: (913) 777-5601

15 Ben M. Davidson (Cal. Bar. No. 181464)
16 ben@dlgla.com
17 Davidson Law Group, a Law Corporation
18 4500 Park Granada Boulevard, Suite 202
19 Calabasas, CA 91302
20 Telephone: (818) 918-4622
21 Facsimile: (310) 473-2941

22 *Attorneys for Plaintiff Crytek GmbH*

Joseph R. Taylor (SBN 129933)
jtaylor@fkks.com
Jeremy S. Goldman (SBN 306943)
jgoldman@fkks.com
Azita Iskandar (SBN 280749)
aiskandar@fkks.com
FRANKFURT KURNIT KLEIN & SELZ,
P.C.
2029 Century Park East, Suite 1060
Los Angeles, California 90067
Telephone: (310) 579-9600
Facsimile: (347) 438-2156

*Attorneys for Defendants Cloud Imperium
Games Corp. and Roberts Space Industries
Corp.*

23 **IN THE UNITED STATES DISTRICT COURT**
24 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
25 **WESTERN DIVISION**

26 CRYTEK GMBH,
27
28 Plaintiff,
v.
CLOUD IMPERIUM GAMES CORP.
and ROBERTS SPACE INDUSTRIES
CORP.,
Defendants.

Case No. 2:17-cv-08937-DMG-FFM
**JOINT STIPULATION
REGARDING BRIEFING
SCHEDULE FOR PLAINTIFF'S
MOTION TO DISMISS
VOLUNTARILY AND
CONTINUANCE OF TRIAL AND
RELATED DATES**
[Filed concurrently with Proposed
Order]

Judge: Hon. Dolly M. Gee

1 Pursuant to Local Rules 7-1 (Stipulations) and 40-1 (Continuances), Plaintiff
2 Crytek GmbH (“Crytek”) and Defendants Cloud Imperium Games Corporation and
3 Roberts Space Industries Corporation (together, “CIG”), by and through their
4 undersigned counsel, hereby stipulate and agree as follows:

5 1. The purpose of this stipulation is to memorialize the parties’ agreement
6 and seek the Court’s approval of (a) a briefing schedule for Crytek’s anticipated
7 motion to dismiss this case voluntarily without prejudice; and (b) a continuance of
8 the current trial and related dates.

9 **Relevant Background**

10 2. Crytek commenced this action against CIG for breach of contract and
11 copyright infringement on December 12, 2017. ECF 1.

12 3. On March 7, 2019, after deciding two motions to dismiss [ECF 38, 49]
13 and several other matters, the Court entered a scheduling order setting a trial date of
14 March 24, 2020. ECF 55.

15 4. On September 11, 2019, following a settlement conference [ECF 80]
16 and the Court’s grant of CIG’s motion for a bond pursuant to Cal. Civ. P. Code §
17 1030 [ECF 81], the parties filed a joint stipulation to continue the trial date to June
18 16, 2020. ECF 86. On September 16, 2019, the Court granted the parties’ joint
19 stipulation to continue trial to June 16, 2020. ECF 87.

20 5. During a telephone conference regarding settlement on December 4,
21 2019, counsel for Crytek noted that in addition to settlement, it was considering a
22 motion to dismiss based on CIG’s recently served objections and responses to
23 Crytek’s Interrogatories. Then, on or about December 11, 2019, Crytek’s counsel
24 indicated to CIG’s counsel during a meet and confer that, based on CIG’s responses
25 to certain written discovery, which Crytek contends revealed new information
26 regarding the ripeness of one of Crytek’s existing claims, Crytek wished to
27 voluntarily dismiss its claims against CIG without prejudice, with the intention of re-

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1 filing the suit against CIG following the release of *Squadron 42* by CIG. The parties
2 met and conferred to discuss the terms of a stipulated dismissal, but they were unable
3 to reach an agreement. Crytek intends to file a motion to dismiss the case without
4 prejudice (the “Motion to Dismiss”) and CIG intends to oppose the Motion to
5 Dismiss.

6 **Briefing Schedule on Anticipated Motion to Dismiss**

7 6. The parties agree to the following briefing schedule on Crytek’s
8 anticipated Motion to Dismiss:

9 a. Crytek shall file its Motion to Dismiss no later than Friday,
10 January 3, 2020.

11 b. CIG’s deadline to respond to the Motion to Dismiss shall be
12 January 24, 2020.

13 c. Crytek’s deadline to reply to CIG’s response shall be February 7,
14 2020.

15 **Joint Request for Continuance**

16 7. Until recently, the parties have been actively engaged in discovery,
17 including exchanging written discovery and producing documents. CIG has
18 reviewed tens of thousands of documents and emails and is prepared to make a
19 significant production to Crytek. CIG noticed depositions of Crytek’s CEO and
20 corporate designee for January 8 and 9, 2020.

21 8. Crytek’s position is that, in light of its anticipated Motion to Dismiss, it
22 would not be an efficient use of party resources to continue serving or producing
23 additional discovery or to move forward with the depositions CIG noticed for early
24 January 2020. Crytek further believes that allowing the depositions to move forward
25 would result in the duplication of efforts—including potentially requiring multiple
26 overseas trips to facilitate depositions in a second litigation on similar claims based
27 on similar facts—should the Court grant Crytek’s motion for voluntary dismissal.

1 Moreover, CIG has indicated that it believes its expenses incurred to date in this
2 lawsuit support its opposition to Crytek's motion to dismiss and, further, that CIG
3 would seek to have the Court impose a condition on any dismissal requiring Crytek to
4 pay some amount of attorneys' fees to CIG. Accordingly, Crytek believes the
5 continued incurring of attorneys' fees pending Crytek's motion is unwarranted.
6 Crytek believes the most efficient path forward is to stay discovery and will be filing
7 a motion to stay or, at a minimum, a motion for protective order to prevent CIG's
8 noticed deposition from taking place if CIG intends to move forward with the
9 currently scheduled depositions.

10 9. CIG's position is that, unless and until the Court grants Crytek's Motion
11 to Dismiss or a motion for a protective order, motions which CIG intends to oppose,
12 it is improper for Crytek to delay discovery, including by refusing to produce their
13 CEO and corporate designees for their noticed depositions or to produce Crytek's
14 relevant documents in advance of these noticed depositions. CIG further believes
15 that, in light of the existing schedule set by the Court, the parties need to proceed
16 with the litigation and continue preparing for trial.

17 10. Despite these differences, and irrespective of the outcome of Crytek's
18 anticipated Motion to Dismiss, the parties agree that a continuance of trial and related
19 dates is necessary. The parties believe there is good cause for the Court to grant the
20 requested continuance because, despite the parties' best efforts, much discovery
21 remains to be conducted in this case, Crytek intends to move to dismiss the case, and
22 the current deadline for the parties to file discovery motions in order for them to be
23 heard by the non-expert discovery cut-off date is **January 14, 2020**.

24 11. Based on the foregoing, the parties stipulate to jointly request a four-
25 month continuance of the trial date and related dates. The requested continuance will
26 allow the Court adequate time to rule on the anticipated Motion to Dismiss without
27 prejudicing the parties' ability to complete discovery and prepare for trial in the event
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1 the Court either denies the Motion to Dismiss or grants the Motion to Dismiss but
 2 Crytek fails to satisfy any conditions the Court may impose for a dismissal.

3 12. This is the parties' second request for a continuance of the trial date and
 4 associated pre-trial deadlines in this case.

5 Based on the foregoing, the parties jointly request that the Court continue the
 6 current June 16, 2020 trial date to **Tuesday, October 13, 2020** or an alternative date
 7 convenient for the Court, the parties, and their counsel. The parties further jointly
 8 request that the Court continue the related dates as follows:

| MATTER | TIME COMPUTATION | JOINTLY REQUESTED DATE |
|--|--|---------------------------|
| Trial | | Oct. 13, 2020 8:30 am |
| Final Pretrial Conference (FPTC) | 4 weeks before trial | Sept. 15, 2020 2:00 pm |
| Amended Pleadings and Addition of Parties Cut-Off (includes hearing of motions to amend) | 90 days after scheduling conference | N/A |
| Early Mediation Deadline Joint Report re Results of Early Mediation | | N/A |
| Non-Expert Discovery Cut-Off (includes hearing of discovery motions) | at least 14 wks before FPTC | June 9, 2020 |
| Non-Dispositive Motion Cut-Off (filing deadline) | at least 13 wks before FPTC | June 16, 2020 |
| Dispositive Motion Cut-Off (filing deadline) | 4 wks after Rebuttal Expert Disclosure & Report Deadline | Sept. 8, 2020 |
| Initial Expert Disclosure & Report Deadline | at least 9 wks before FPTC | July 14, 2020 |
| Rebuttal Expert Disclosure & Report Deadline | at least 5 wks before FPTC | Aug. 11, 2020 |
| Expert Discovery Cut-Off (includes hearing of discovery motions) | at least 3 wks before FPTC | Aug. 25, 2020 |
| Second Settlement Conference Completion Date | at least 4 wks before FPTC | Aug. 18, 2020 |

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| Motions in Limine Filing Deadline | at least 3 wks before FPTC | Aug. 25, 2020 |
| Opposition to Motion in Limine Filing Deadline | at least 2 wks before FPTC | Sept. 1, 2020 |
| Joint Status Report re Settlement | | Aug. 25, 2020 |
| Proposed Pretrial Conference Order | | Aug. 25, 2020 |
| Contentions of Fact/Law | | Aug. 25, 2020 |
| Pretrial Exhibit Stipulation | | Aug. 25, 2020 |
| Joint Exhibit List | | Aug. 25, 2020 |
| Witness Lists & Joint Trial Witness Time Estimate Form | | Aug. 25, 2020 |
| Agreed Statement of the Case | | Aug. 25, 2020 |
| Proposed Voir Dire Questions | | Aug. 25, 2020 |
| Joint Statement of Jury Instructions & Joint Statement of Disputed Instructions | | Aug. 25, 2020 |
| Verdict Forms | | Aug. 25, 2020 |

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: 1/2/20

ERISE IP, P.A.

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4 /s/ Clifford T. Brazen

5 Clifford T. Brazen
6 Phone: (913) 777-5600
7 cliff.brazen@eriseip.com
8 Attorneys for Plaintiff CRYTEK GMBH

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9 DATED: 1/2/20

FRANKFURT KURNIT KLEIN & SELZ P.C.

9

10 /s/ Jeremy S. Goldman

11 Jeremy S. Goldman
12 Phone: (310) 579-9611
13 jgoldman@fkks.com
14 Attorneys for Defendants CLOUD
15 IMPERIUM GAMES CORP. and
16 ROBERTS SPACE INDUSTRIES CORP

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16 **ATTESTATION**

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17 Pursuant to Central District Local Rule 5-4.3.4(a)(2)(i), the filer of this
18 document hereby attests that all other signatories listed, and on whose behalf the
19 filing is submitted, concur in the filing's content and have authorized this filing.

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