NICHOLAS J. SANTORO, ESQ.
Nevada Bar No. 532
JASON D. SMITH, ESQ.
Nevada Bar No. 9691
SPENCER FANE
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Tel.: (702) 408-3400/ Fax: (702) 408-3401
Email: nsantoro@spencerfane.com
jdsmith@spencerfane.com

CHING-LEE FUKUDA *(admitted pro hac vice)*
SHARON LEE *(admitted pro hac vice)*
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
(212) 839-5300
Email: clfukuda@sidley.com
sharon.lee@sidley.com

JOSHUA J. FOUGERE *(admitted pro hac vice)*
SIDLEY AUSTIN LLP
1501 K Street, N.W. #600
Washington, DC 20005
(202) 736-8000
Email: jfougere@sidley.com

Attorneys for Plaintiffs Evolution Malta Ltd., Evolution Gaming Malta, Ltd., Evolution Gaming Ltd., and SIA Evolution Latvia

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

EVOLUTION MALTA LIMITED, EVOLUTION GAMING MALTA LIMITED, EVOLUTION GAMING LIMITED, and SIA EVOLUTION LATVIA, Plaintiffs, v. LIGHT & WONDER, INC. f/k/a SCIENTIFIC GAMES CORP. and LNW GAMING, INC. f/k/a SG GAMING, INC., Defendants.	Case No.: 2:24-cv-00993-CDS-EJY **PLAINTIFFS' MOTION FOR LEAVE TO FILE THEIR SECOND AMENDED COMPLAINT**

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Pursuant to Federal Rule of Civil Procedure 15(a) and Local Rule 15-1, Plaintiffs Evolution Malta Limited, Evolution Gaming Malta Limited, Evolution Gaming Limited, and SIA Evolution Latvia (collectively, "Evolution"), hereby move the Court for leave to amend their First Amended Complaint (ECF No. 85). Consistent with Local Rule 15-1(a), the proposed Second Amended Complaint, together with all exhibits referred to therein, is attached hereto as Exhibit A.

This motion is supported by the following Memorandum of Points and Authorities.

DATED: April 10, 2025

OF COUNSEL:

CHING-LEE FUKUDA *(admitted pro hac vice)*
SHARON LEE *(admitted pro hac vice)*
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
(212) 839-5300
Email: clfukuda@sidley.com
sharon.lee@sidley.com

JOSHUA J. FOUGERE *(admitted pro hac vice)*
SIDLEY AUSTIN LLP
1501 K Street, N.W. #600
Washington, DC 20005
(202) 736-8000
Email: jfougere@sidley.com

SPENCER FANE

/s/ *Jason D. Smith*
NICHOLAS J. SANTORO, ESQ.
Nevada Bar No. 532
JASON D. SMITH, ESQ.
Nevada Bar No. 9691
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Tel.: (702) 408-3400/ Fax: (702) 408-3401
Email: nsantoro@spencerfane.com
jdsmith@spencerfane.com

Attorneys for Plaintiffs Evolution Malta Ltd., Evolution Gaming Malta, Ltd., Evolution Gaming Ltd., and SIA Evolution Latvia

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Evolution respectfully seeks leave to amend and add a new party and two new patents to this case. Amendment should be allowed with "extreme liberality" in this Circuit, and Evolution has satisfied each of the factors that courts consider.

First, L&W bears the burden of showing any prejudice, but it cannot do so. The proposed amendments will not significantly expand the scope of discovery. There is considerable overlap in relevant discovery with the products and patents that are already in the case, and substantial fact discovery remains to be conducted—document production is far from being complete, and no deposition has yet taken place. Any alleged prejudice could be readily accommodated and mitigated with modest modifications to the case schedule.

Second, there has been no undue delay or bad faith. Evolution gave L&W notice of its infringement of these two additional patents on March 14, 2025. This motion is being filed well ahead of the scheduled deadline for amendment (June 30, 2025) and at the same time that Evolution is amending its initial complaint as of right. *See* ECF No. 76. That makes amendment now particularly timely and efficient. And Evolution could not have included the two additional patents in its original complaint because Evolution did not own them at that time. Evolution investigated additional grounds for infringement promptly and is seeking amendment in good faith and without undue delay.

Third, and finally, the proposed amendments would not be futile. In detailed allegations, Evolution has identified specific L&W products that infringe the claims of the two new patents—providing L&W with adequate notice. Evolution has also alleged that the new patents claim patent-eligible subject matter. These amendments plead a viable claim for relief that Evolution should be able to try on the merits.

FACTUAL BACKGROUND

A. Evolution's Initial Complaint and Amendments

Evolution filed suit in May 2024. The Complaint asserted five counts: three for patent infringement (Counts I-III) and two for misappropriation of trade secrets under federal and Nevada

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law (Counts IV-V). ECF No. 1, Compl. ¶¶ 42-146. The three patent counts corresponded to three asserted patents, U.S. Patent Nos. 10,629,024 (the '024 patent), 11,011,014 (the '014 patent), and 11,756,371 (the '371 patent). These patents are referred to as the Haushalter patents based on the inventor's name. *Id.* ¶¶ 44, 69, 96.

Defendants Light & Wonder, Inc. f/k/a Scientific Games Corp. ("Light & Wonder") and LNW Gaming, Inc. f/k/a SG Gaming, Inc. ("LNW Gaming") (collectively, "L&W") moved to dismiss the patent counts, and the Court granted that motion without prejudice on February 11, 2025. ECF No. 76. Based on the allegations in the Complaint and based on an analysis of one claim of one patent as "representative," *id.* at 8, the Court found that the patents are directed to ineligible subject matter under 35 U.S.C. § 101. More specifically, at *Alice* step one, the Court found that Evolution had not adequately explained "how" the game's technological improvements work, and thus the patent was directed to an abstract idea, a "method for a roulette game." *Id.* at 11. At *Alice* step two, the Court found that Evolution had not alleged with enough specificity that the technological advancements were not "well-known, routine, or conventional." *Id.* at 12-14. Because the Court could not "say amendment would be futile," however, it "grant[ed] dismissal of the complaint without prejudice and with leave to amend." *Id.* at 16.

On April 10, 2025, Evolution filed a First Amended Complaint as of right. The amended complaint adds 59 paragraphs of allegations concerning, among other things, the Haushalter patents' new and improved roulette games and technological innovations. Under the case schedule, the deadline for any motion to amend the pleadings or to add parties is June 30, 2025. ECF No. 71

B. Evolution's Acquisition of Uplay

On July 31, 2024, several months after Evolution filed its original Complaint, Evolution acquired Uplay1, a company that was developing systems for providing live casino games to players via a hybrid gaming platform. Ezugi, an Evolution subsidiary, had previously partnered with Uplay1 from 2013 to 2023 to provide a hybrid blackjack game to players over the Internet.[1]

[1] https://g3newswire.com/costa-rica-ezugi-launches-uplay1s-live-hybrid-black-jack/; https://www.casinolistings.com/news/2014/01/ezugi-and-uplay1-team-up-release-hybrid-

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Uplay1 is now a wholly-owned subsidiary of Evolution. Uplay1's intellectual property assets include U.S. Patent Nos. 9,905,074 (the '074 patent) and 11,783,663 (the '663 patent), which are directed to systems and methods for a hybrid gaming server. The '074 and '663 patents are referred to as the Merati patents.[2]

C. L&W's Launch of a New Product: 88 Fortunes Blaze Live Roulette

Around October 2024, L&W revealed a new game—88 Fortunes Blaze Live Roulette—at the October 2024 G2E Global Gaming Expo in Las Vegas.[3] The game combines a physical roulette wheel and a computer that electronically generates lucky numbers that are assigned increased payout multipliers.[4] In January 2025, L&W announced that it had launched 88 Fortunes Blaze Live Roulette in posts on its LinkedIn page and its YouTube channel.[5] Evolution learned about the game from L&W's public posts following its launch.

88 Fortunes Blaze Live Roulette is yet another copycat of Evolution's Lightning Roulette. 88 Fortunes Blaze Live is a live casino game provided to players using a hybrid gaming platform. The game is broadcast from a studio and provided to players using a server. Players can use a mobile device or their personal computer to connect to the server and play the game. A person in the studio is the host, and in each round, the person spins the roulette wheel, informs players of the lucky numbers and multipliers generated by the server, and then announces the final game results based on the results of the spin of the roulette wheel and the lucky numbers and multipliers.

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blackjack-game

[2] The Merati patent family also includes U.S. Application No. 18/465,774 ("the '774 application"). The USPTO has issued a notice of allowance for the '774 application but the patent has not yet issued. After the application issues as a patent, Evolution intends to move for leave to amend to add it. To that end, Evolution has included a claim chart mapping L&W's products to the allowed claims of the '774 application.

[3] *See, e.g.*, https://www.youtube.com/watch?v=AItaRI6iaCo.

[4] *See, e.g.*, https://www.youtube.com/watch?v=x0ZtuyrMqmQ.

[5] *See, e.g.*, https://www.linkedin.com/posts/lnw-live_88fortuneslive-livecasino-fortunatenewyear-activity-7279830021098098689-Ej2e/?utm_source=share&utm_medium=member_desktop

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L&W broadcasts 88 Fortunes Blaze Live Roulette from its studios in Michigan[6] and/or elsewhere in the United States.[7]

On March 14, 2025, Evolution sent L&W a letter notifying it that its new 88 Fortunes Blaze Live game infringes both the Haushalter and Merati patents. In that letter, Evolution also notified L&W that RouletteX infringes the Merati patents.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 15(a)(2), "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). Courts "should freely give leave when justice so requires." *Id.* The Ninth Circuit has found that this policy "is to be applied with extreme liberality." *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1049 (9th Cir. 2003) (quoting *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3dd 708, 712 (9th Cir. 2001)).

"Four factors are commonly used to determine the propriety of a motion for leave to amend. These are: bad faith, undue delay, prejudice to the opposing party, and futility of amendment. These factors, however, are not of equal weight in that delay, by itself, is insufficient to justify denial of leave to amend." *Hologram USA, Inc. v. Pulse Evolution Corp.*, No. 2:14-CV-0772-GMN-NJK, 2015 WL 316900, at *2 (D. Nev. Jan. 23, 2015) (quoting *DCD Programs, Ltd. v. Leighton,* 833 F.2d 183, 186 (9th Cir. 1987)). The "consideration of prejudice to the opposing party that carries the greatest weight," and the party opposing amendment "bears the burden of showing prejudice." *Id.*

ARGUMENT

It is still early in the fact discovery and the parties have not started the claim construction process. Given the nascent stage of discovery on the patent claims, the parties can accommodate the additional patents here. For the reasons explained below, each of the four factors favors granting Evolution leave to amend.

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[6] *See* https://explore.lnw.com/newsroom/light-wonder-premium-live-dealer-by-authentic-gaming-goes-live-with-betrivers-in-landmark-u-s-launch/.

[7] *See* https://www.youtube.com/watch?v=AItaRI6iaCo.

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I. AMENDMENT WOULD NOT UNDULY PREJUDICE L&W.

L&W will not be unduly prejudiced by amendment of the First Amended Complaint to add the Merati patents because their addition will not significantly expand the scope of discovery nor will it cause a significant amount of discovery to be redone. The two L&W products accused of infringing the Merati patents—RouletteX and 88 Fortunes Blaze Live Roulette—are a subset of the products that Evolution has alleged infringe the Haushalter patents and that already are subject to discovery. Thus, adding the Merati patents will have minimal impact on the scope of discovery from L&W. Although L&W will need to respond to allegations regarding its infringement of additional patents, "the mere fact that Defendants will be forced to refute a claim does not warrant a finding of undue prejudice." *Hologram USA*, 2015 WL 316900 at *3 (explaining that it would not be undue prejudice simply because the defendant needed to undergo an "entirely new sets of disclosures, an additional prior art search, and more claim construction briefing").

Fact discovery is still in a relatively early stage, and the addition of the Merati patents and Uplay1, Evolution's wholly-owned subsidiary, can readily be accommodated. For example, the parties are still negotiating ESI search terms, no depositions have been requested yet, and a substantial amount of fact discovery still remains to be done. The parties can include the additional patents and party as they proceed with the discovery that is still outstanding. Further, L&W cannot claim surprise by Evolution's addition of the Merati patents. Not only did Evolution notify L&W of its infringement of the Merati patents on March 14, 2025, but Evolution also provided L&W with proposed ESI search terms directed to the Merati patents on March 21, 2025. Any burden to L&W of adding the Merati patents and Uplay1 at this phase of the case is minimal.

To the extent there is any prejudice to L&W, that prejudice is not undue and is easily mitigated. "The existence of prejudice is 'generally mitigated where the case is still in the discovery stage, no trial date is pending, and no pretrial conference has occurred.'" *Underwood v. O'Reilly Auto Enters., LLC*, 342 F.R.D. 338, 343 (D. Nev. 2022) (quoting *Pizana v. SanMedica Int'l, LLC*, 345 F.R.D. 469, 483, 2022 WL 1241098, at *10 (E.D. Cal. Apr. 27, 2022)). This case is still early in the discovery phase, and modest adjustments to the schedule could be made to accommodate any additional discovery activities due to allowing Evolution's amendment.

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II. AMENDMENT WOULD NOT CAUSE UNDUE DELAY AND IT IS NOT MADE IN BAD FAITH.

There was also no undue delay or bad faith in seeking amendment to bring claims based on the Merati patents. In this district, there is "a strong presumption against a finding of undue delay exists when a case is still in discovery." *Hologram USA*, 2015 WL 316900 at *3. This case is still in the fact discovery phase and the parties are still negotiating ESI search terms. The Court's scheduling order provides that the deadline for amending the pleadings is June 30, 2025. Evolution is submitting this motion well in advance of that deadline and in parallel with another amendment that Evolution is making as of right.

In addition, it was not possible for Evolution to include the Merati patents in its original Complaint because it did not own them at that time. Evolution did not acquire Uplay1 and the Merati patents until more than two months after filing the initial complaint. In or around February 2025, Evolution became aware that L&W was launching a new hybrid live casino game, 88 Fortunes Blaze Live, shortly after L&W publicly posted about the game's launch. Evolution provided L&W with notice of infringement of these two additional patents (and allowed claims of a patent application) in March 2025. Evolution is promptly seeking leave to amend to add the Merati patents after its investigation revealed new grounds for infringement by L&W.

On April 9, 2025, the parties met at a settlement conference ordered by the Court, but the settlement efforts did not result in a final resolution. To mitigate any further delay to the case, Evolution promptly filed this motion. Evolution respectfully submits that it was reasonable to wait for the results of the settlement conference before moving to amend.

In a similar vein, Evolution has not acted in bad faith by seeking to add Uplay1 and the Merati patents. Evolution is seeking to add the patents after its careful and diligent investigation into L&W's activities, and it is filing this motion well in advance of the Court's deadline for doing so. As the claims charts attached to the Second Amended Complaint show, Evolution has ample factual support for its allegations.

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III. AMENDMENT WOULD NOT BE FUTILE.

"[A] proposed amendment is futile only if no set of facts can be proved under the amendment to the pleadings that would constitute a valid and sufficient claim or defense." *Hologram USA*, 2015 WL 316900 at *2. "Where underlying facts or circumstances of a case 'may be a proper subject of relief, [a plaintiff] ought to be afforded an opportunity to test his claims on the merits.'" *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 185 (9th Cir. 1987). In a patent case, moreover, "a patentee need only plead facts sufficient to place the alleged infringer on notice as to what he must defend." *McZeal v. Sprint Nextel Corp.*, 501 F.3d 1354, 1357 (Fed. Cir. 2007).

The proposed amendments here would not be futile. Evolution has alleged the specific L&W products that infringe the specific Merati patent claims, which suffices to put L&W on notice of what it must defend. Ex. A, ¶¶ 235-69. The Merati patents also claim patent-eligible subject matter under 35 U.S.C. § 101. *Id.* ¶¶ 59-74, 103-25, 132-35. As alleged in detailed allegations spanning 16 paragraphs, the patents are "directed to specific system for providing 'hybrid gaming services' that use both mechanically-generated game values and electronically-generated game values during game play to determine a game's outcome." *Id.* ¶¶ 103-18. That is *Alice* step one. At *Alice* step two, as detailed in 4 paragraphs, the patents also contain inventive concepts, such as "steps for receiving an electronic indication of a physical game value and also generating electronic game values and determining a game outcome based on both types of values." *Id.* ¶¶ 132-35. Evolution's proposed amendment shows that Evolution "ought to be afforded an opportunity to test [its] claims on the merits.'" *DCD*, 833 F.2d at 185.

In any event, any potential challenges to the merits of the Merati claims are better left to a motion to dismiss. Courts rarely deny leave to amend on the ground an amendment would be futile, and instead they "defer consideration of challenges to the merits of a proposed amended pleading until after leave to amend is granted and the amended pleading is filed." *Playup, Inc. v. Mintas*, No. 2:21-CV-02129-GMN-NJK, 2022 WL 1525449, at *2 (D. Nev. May 13, 2022) (*quoting Netbula, LLC v. Distinct Corp.*, 212 F.R.D. 534, 539 (N.D. Cal. 2003)). If L&W intends to file a motion to dismiss, that would be the better course here.

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CONCLUSION

For the foregoing reasons, the Court should grant Evolution's Motion to Amend.

Dated this 10th day of April 2025.

OF COUNSEL:

CHING-LEE FUKUDA *(admitted pro hac vice)*
SHARON LEE *(admitted pro hac vice)*
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
(212) 839-5300
Email: clfukuda@sidley.com
sharon.lee@sidley.com

JOSHUA J. FOUGERE *(admitted pro hac vice)*
SIDLEY AUSTIN LLP
1501 K Street, N.W. #600
Washington, DC 20005
(202) 736-8000
Email: jfougere@sidley.com

SPENCER FANE

/s/ *Jason D. Smith*
NICHOLAS J. SANTORO, ESQ.
Nevada Bar No. 532
JASON D. SMITH, ESQ.
Nevada Bar No. 9691
300 South Fourth Street, Suite 1600
Las Vegas, Nevada 89101
Tel.: (702) 408-3400/ Fax: (702) 408-3401
Email: nsantoro@spencerfane.com
jdsmith@spencerfane.com

Attorneys for Plaintiffs Evolution Malta Ltd., Evolution Gaming Malta, Ltd., Evolution Gaming Ltd., and SIA Evolution Latvia

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CERTIFICATE OF SERVICE

I hereby certify that on this April 10 2025, a true and correct copy of the foregoing **Plaintiffs' Motion For Leave to File Their Second Amended Complaint** was served upon the parties registered for service with the Court's Case Management and Electronic Case Filing (CM/ECF) system via electronic mail to the addresses of the listed counsel of record below.

CAMPBELL & WILLIAMS
PHILIP R. ERWIN, ESQ.
710 South Seventh Street
Las Vegas, Nevada 89101
Email: pre@cwlawlv.com

JONES DAY
HAROLD K. GORDON, ESQ.
(admitted pro hac vice)
250 Vesey Street
New York, NY 10281
Email: hkgordon@jonesday.com

JENNIFER D. BENNETT, ESQ.
(admitted pro hac vice)
555 California Street
Suite 26th FL
San Francisco, CA 94104
Email: jenniferbennett@jonesday.com

RANDALL E. KAY, ESQ.
(admitted pro hac vice)
4655 Executive Drive
Suite 1500
San Diego, CA 92121
Email: rekay@jonesday.com

JONES DAY
RYAN K. WALSH, ESQ.
(admitted pro hac vice)
LAURA K. VINING, ESQ.
(admitted pro hac vice)
1221 Peachtree Street, NE
Suite 400
Atlanta, GA 30361
Email: rkwalsh@jonesday.com
lkvining@jonesday.com

COLLIN J. KURTENBACH, ESQ.
(admitted pro hac vice)
110 N. Wacker Drive
Suite 4800
Chicago, Illinois 60606
Email: ckurtenback@jonesday.com

Attorneys for Defendants

/s/ Marissa Vallette
An employee of SPENCER FANE LLP

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