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**Re: ImagineAR, Inc. et al. v. Niantic, Inc., Case No. 1:24-cv-01252-JDW (D. Del.):
Responsive Letter to Plaintiffs' Discovery Disputes**

Counsel:

We write to respond to your August 15, 2025 Letter ("Letter"), which purports to identify deficiencies in Defendants' discovery responses and production thus far. Your Letter raises several inaccuracies that Defendant is compelled to correct, including related to the parties' productions thus far and agreements between the parties. Regardless, we are investigating the issues in your Letter and plan to make a subsequent production, as well as to update certain Interrogatory Responses, as outlined below. We are available for a meet and confer to discuss

these various issues on Friday (August 22), Monday (August 25), or Tuesday (August 26); please let us know your team's availability.

First, as of your August 18, 2025 letter, Plaintiffs have made only two small productions—the first on May 12 producing public materials related to the Asserted Patents (the patents, file histories, assignment records, etc.), and the second on May 15 producing the complaints already filed in this case, certain public documents and videos related to Pokémon GO and Pikmin Bloom, and the filing history of certain Nintendo patents or the dockets of Niantic IPRs. Thus, as of your Letter, Plaintiffs had produced a total of 71 documents, all of which were public; this stands in stark contrast to Defendants' production on July 3, which contained 617 documents, many of which are designated as Highly Confidential or Confidential pursuant to the Protective Order in this case.

Second, the status of the parties' various productions directly reflects the state of the case. Plaintiffs filed their Complaint on November 13, 2024 (Dkt. 1), with Defendant filing its motion to dismiss on January 9, 2025 (Dkt. 12). Plaintiffs then amended their Complaint on February 26 (Dkt. 21), and briefing on Defendants' re-filed motion to dismiss did not conclude until April 18 (Dkts. 33-34, 35, 39)—that motion remains pending and should dramatically reduce the scope of this case by removing three of the seven patents at issue.

Nevertheless, the parties have continued forward, submitting a proposed Scheduling Order on May 9, 2025 (Dkt. 41), and a protective order on June 3 (Dkt. 47). The Court entered the Protective Order on June 4 (Dkt. 48) and, as of your Letter, Plaintiffs still had not produced any non-public documents. Moreover, while the Court has not yet entered the Scheduling Order in this case, the schedule proposed by the parties contemplates that (1) Plaintiffs would identify the products they accuse of infringement by May 9;¹ (2) Defendant would produce its core technical production on July 3 based on Plaintiffs' identification; (3) Plaintiffs would submit their infringement contentions by August 1; (4) Defendant would produce its Invalidity Contentions on August 28th; (5) the parties would engage in claim construction through September to January 2026, and (6) the parties would have until April 3, 2026 for "substantial completion of document production," with Fact Discovery ending around either June 5, 2026 (Plaintiffs' proposal) or 119 days after the Court issues a claim construction order (Defendant's proposal). These early contention deadlines are not just substantive and critically important to the case, but they are also contemplated to come early in the case for a reason—to allow the parties to develop

¹ Critically, as outlined in our July 3, 2025 Letter and confirmed in your July 23, 2023 Email response, Plaintiffs refused to identify the features they accused of infringement for five of the six products in this case until its infringement contentions, which were not provided until August 1, 2026. Plaintiffs' refusal to identify, even at a high-level, the features it purported infringe the Asserted Patents substantially hampered Defendant's ability to identify documents for its core technical production that are actually relevant to Plaintiffs' infringement theories, including because Plaintiffs refused to provide *any* substantive allegations for the Accused Products outside of Pokémon Go.

the factual record based on those contentions, which takes time (as reflected by the fact that the parties have nearly a year remaining to complete fact discovery).

I. Defendants' Substantial Core Document Production.

Niantic strongly disputes any allegation that its Core Technical Production is insufficient. Plaintiffs appear to take the position that Defendant must provide “the totality of the relevant technical documents for the Accused Products,” which is simply not the requirement. Defendant intends to produce source code related to the Accused Products in this case, but, as your Letter appears to concede, Section 4(b) of the Default Discovery Standard does not require source code as part of a defendant’s core technical production. As Defendant will confirm in its forthcoming supplements to Plaintiffs Interrogatory No. 7, Defendant is not substantively involved in the development of Skatrix and developer Reality Crisis would have technical documents related to that product, which Defendant’s counsel conveyed to James Lucas and Renée Delcollo on July 3; thus, any such materials would be in the possession of Reality Crisis or, if not, Niantic Spatial. See NIAN TIC_IAR_00005994; *see also Skatrix*, Niantic Labs, Jan. 31, 2024, <https://nianticlabs.com/news/skatrix> (“Niantic and *developer Reality Crisis* have signed a Co-Publishing agreement to bring ‘Rodney Mullen’s SKATRIX’ to iOS and Android”). As we previously discussed, the small revenue attributable to these games makes such discovery pressure even less appropriate, considering that when we last communicated, Plaintiffs suggested they would consider dropping Peridot and Skatrix rather than seek to add Niantic Spatial and Reality Crisis as defendants.

Moreover, Plaintiffs appear to misapprehend the number of relevant documents produced in this case as part of Defendant’s core technical production for each product. Using Pokémon Go as a simple example, Defendant’s core technical production included 270 documents that mention “Pokémon GO” in some form, including 53 that are designated either “Confidential” or Highly Confidential Outside Counsels Eyes Only.”² Thus, Plaintiffs’ claim that Defendants produced only “10 documents relating to Pokémon Go” is simply false. Letter at 4. And not only do similar issues appear with respect to the other Accused Products in this case—as another example, Defendant produced at least 83 documents discussing “Pikmin,” with sixty seven being designated “Confidential” or “Highly Confidential Outside Counsels Eyes Only,” not “22” as Plaintiffs contend—but any issues related to the other Accused Products stem from Plaintiffs’ outright refusal to identify the features it contends infringes until its Infringement Contentions, which were due a month after Defendants’ Core Technical Production. Regardless, the count of documents says nothing of the substance of those documents—for example, Defendant produced a nearly 40-minute video (and accompanying slides) that teach key engineering details and history related to Pokémon Go. NIAN TIC_IAR_00005945; NIAN TIC_IAR_00005946.

Plaintiffs’ Letter identified a number of categories of documents that are purportedly outstanding. Letter at 3. We are investigating these categories and intend to produce responsive documents, if any, as soon as possible. As you are aware—including as reflected by the limited nature of Plaintiffs’ own production as of your Letter, which is far smaller and less complete

² Defendant will provide a privilege log for any documents with redactions.

than Defendant's—identifying relevant documents takes time, including because the schedule contemplated by the parties prioritizes discovery that is directly relevant to the parties' (non)infringement and (in)validity positions. To respond to each category of information:

- Niantic has produced several documents detailing early conception and design of the Accused Products and intends to produce additional documents over the course of this case. *See, e.g.*, NIAntic_IAR_00005891 (providing product overview and initial game design principles for Pokémon Go); NIAntic_IAR_00006992 (Pikmin Bloom); NIAntic_IAR_00007018 (same); NIAntic_IAR_00007365 (Peridot); NIAntic_IAR_00007837 (Monster Hunter Now Greenlight Pitch); NIAntic_IAR_00006131 (Harry Potter).
- Niantic intends to produce financial documents that are relevant to damages, and, to the extent they exist, potentially technically and economically relevant patent licenses.
- Niantic has produced certain documents related to marketing and business strategy, and it intends to produce additional documents. *See, e.g.*, NIAntic_IAR_00005648 (discussing goals and summarizing results of “City Spotlight 2020” event); NIAntic_IAR_00006066 (reviewing Pokémon Go accomplishments for 2017 and identifying features for 2018); NIAntic_IAR_00006006 (explaining rationale for changes to Pokémon Go); NIAntic_IAR_00006035 (“Pokémon GO Gen 2 Go-To-Market Plan); NIAntic_IAR_00006019 (early messaging regarding announcement of Harry Potter: Wizards Unite).
- Although Niantic’s patents are a matter of public record, Niantic will produce patents and applications in this technical space.
- As we have repeatedly stated, Plaintiffs are not entitled to privileged information related to filings with the USPTO, including prior art search results performed at the direction of attorneys and/or internal documents reflecting attorney work product or communications related to patent and/or IPR filings. A. Ohlert 5/21/25 Email to E. Bokar. Niantic produced public information related to those Nintendo’s patents/applications and/or Niantic’s IPRs Plaintiffs identified. *See, e.g.*, NIAntic_IAR_00004259 (Zyda Declaration for IPR challenging U.S. Patent No. 10,664,518); NIAntic_IAR_00001824 (File History for Nintendo’s U.S. Pat. No. 11,701,588); NIAntic_IAR_00002462 (File History for Nintendo’s U.S. Pat. No. 12,023,590).
- Niantic has produced certain documents related to its work with third-parties related to the Accused Products and intends to produce additional documents. *See, e.g.*, NIAntic_IAR_00006006 (listing Niantic and The Pokemon Company as partners); NIAntic_IAR_00006992 (“Project ICHIGO is a collaboration between Niantic Tokyo Studio and Nintendo[.]”).

II. Defendants' Supplemented Interrogatory Nos. 5 and 9 on June 13, 2025, and Plans Supplements to Interrogatory Nos. 2 and 7.

Contrary to Plaintiffs' Letter, Defendant supplemented its responses for Interrogatory Nos. 5 and 9 on June 21, 2025. *See* S. Metzler 6/13/20215 Email to E. Bokar. In its Response for Interrogatory No. 9, Niantic confirmed details of its relationship with Scopely, explaining, as confirmed by public documents, that Scopely acquired Niantic, which retained Pokémon Go, Pikmin Bloom, and Monster Hunter Now; at the same time, Niantic Spatial spun out of Niantic as a newly formed independent entity, retaining Peridot.

As to Interrogatory No. 2, Niantic did not agree to supplement this Interrogatory; rather, the parties agreed "agreed to revisit after Niantic's initial productions." A. Ohlert 5/21/25 Email to E. Bokar. As discussed above, Niantic intends to make a forthcoming production related to financial documents and will supplement its response to Interrogatory No. 2.

As to Interrogatory No. 7, we addressed this issue in our May 2, 2025 Letter, and again in our May 21, 2025 email memorializing the parties' discussion, when we explained that Interrogatory No. 7 is a boilerplate interrogatory that has no relationship to this case, including because Niantic does not use "manufacturers" or "resellers." Imagine AR's First Set of Interrogatories, No. 7 ("Identify on an Accused Product-by-Accused Product basis each Person or Entity who **manufactures, imports, offers for sale, sells, and/or supplies** each Accused Product (including services, structures, components, materials, features, and functionalities for each Accused Product), including in your response the names of all **resellers, distributors, online and retail stores** in the United States through which Niantic offers for sale and/or sells the Accused Products, and the locations where each Accused Product (including services, structures, components, materials, features, and functionalities for each Accused Product) has been **manufactured, imported from, offered for sale, sold, or supplied by** or for Niantic."). In the interest of resolving this dispute, Niantic will supplement its response to Interrogatory No. 7 to clarify that Reality Crisis develops Skatrix.

III. Plaintiffs' Second and Third Sets of Document Requests

Subject to its objections, Niantic agreed to search for and produce responsive documents related to Defendants' Second Set of Document Requests on May 12 and Defendants' Third Set of Document Requests on July 7, 2025. Niantic remains willing to meet and confer as to Plaintiffs RFP Nos. 109-111, 113, 117, and 119 and Interrogatory No. 11. Niantic's investigation into these requests is ongoing.

Regards,

/s/ Andrew T. Ohlert

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