IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GREE, INC.,	§	
	§	Case Nos. 2:19-cv-00070-JRG-RSP
Plaintiff,	§	2:19-cv-00071-JRG-RSP
	§	2:19-cv-00161-JRG-RSP
v.	§	2:19-cv-00172-JRG-RSP
	§	2:19-cv-00200-JRG-RSP
SUPERCELL OY,	§	2:19-cv-00237-JRG-RSP
	§	
Defendant.	§	**JURY TRIAL DEMANDED**

PLAINTIFF GREE, INC.'S OPPOSITION TO SUPERCELL OY'S MOTION FOR RELIEF IN VIEW OF GOVERNMENTAL/PUBLIC HEALTH RESTRICTIONS IN RESPONSE TO COVID-19 VIRUS IMPACT

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Plaintiff GREE, Inc. ("GREE") opposes Defendant Supercell Oy's ("Supercell") Motion for Relief in View of Governmental/Public Health Restrictions in Response to COVID-19 Virus Impact ("Motion"). Supercell's Motion is too broad, seeking to extend the trial date and other deadlines in the "First Set" of cases (cv-070 and cv-071) by more than ***90 days*** from the trial date of August 17, 2020, and the trial date and other deadlines in the "Second Set" of cases (cv-161, cv-172, cv-200, cv-237) by at least ***45 days*** from the trial date of October 5, 2020. Mot. at 11.[1]

In doing so, Supercell presents an incomplete picture of the history and timing of its discovery efforts, which GREE corrects below. GREE has made numerous proposals to handle the discovery Supercell has requested as "special accommodations during the health emergency." Standing Order Regarding Pretrial Procedures in Civil Cases Assigned to Chief District Judge Rodney Gilstrap During the Present COVID-19 Pandemic ("Standing Order"), at 2. Supercell has refused to consider these proposals, instead seeking to delay trial to allow its belated PTAB Petitions to proceed ahead of these litigations. Indeed, Supercell already has shown its true motivations by arguing to the PTAB that "[p]rudence counsels proceeding with the efficient IPR process rather than relying on ***a jury trial in the unpredictable Texas Litigation***." Declaration of Steven D. Moore at ¶27, attached hereto as Exhibit A ("Moore Dec.") (emphasis added).

In the First Set of cases, Supercell's Motion comes less than three weeks after the parties agreed to an extension to address the same issues that Supercell raises here. GREE has proposed reasonable and creative alternatives to Supercell, including additional written discovery to GREE, taking depositions of GREE's witnesses out of time, and supplementing expert reports following those depositions, without hampering the "vital need to keep cases moving" that this

[1] Supercell asks to move the Second Set of cases 45 days, and to move the First Set to match that schedule. Mot. at 11. Since the First Set trial date is 50 days before the Second Set trial date, that is a move of more than 90 days.

Court has recognized. Standing Order, at 1. The earlier extension, coupled with these proposals, are sufficient in the First Set of cases, and no further extensions should be granted.

In the Second Set of cases, Supercell omits one critical detail. Even though fact discovery opened in October 2019, Supercell failed to serve a single Notice of Deposition on GREE until April 8, 2020, long after the COVID-19 travel restrictions were in place and just over one month before the current close of fact discovery. Supercell failed to do so even though the parties' counsel made two separate trips to Tokyo in January and February 2020 to take depositions in the First Set of cases, and could have addressed depositions in the Second Set then as well. Thus, Supercell has only itself to blame for the fact that it has not yet taken any depositions in the Second Set of cases.

Despite this, GREE has offered the same accommodations as in the First Set of cases, and remains willing to do so. Moreover, GREE is amenable to a shorter extension of discovery and motions deadlines in the Second Set of cases without moving trial, and proposed the same to Supercell. This proposal is set forth below. Supercell's Motion should be denied.

I. Legal Standard

This Court's Standing Order requires the parties to cooperate "to promote the efficient administration of justice" in light of "the vital need to keep cases moving." Standing Order, at 1-2. The parties are expected to "exhibit extraordinary levels of cooperation during this period and present joint motions to adjust case schedules whenever possible." *Id.* at 2-3. Under the Standing Order, "[t]here will be no in-person depositions conducted during the pandemic." *Id.* at 4. The Court wants the "parties to be willing to make special accommodations during the health emergency" which may "lead to unconventional practices and accommodations that would not normally be accepted as appropriate." *Id.* at 1-2.

II. Argument

A. The Schedule in the First Set Has Already Been Modified to Address These Issues, and GREE Proposes a Short Extension for the Second Set.

As noted above, Supercell's Motion relates to two separate groups of cases: 2:19-cv-00070 and 2:19-cv-00071 (the "First Set"); and 2:19-cv-00161, 2:19-cv-00172, 2:19-cv-00200, and 2:19-cv-00237 (the "Second Set"). In setting forth the respective case schedules, Supercell ignores that the parties already extended the pretrial deadlines in the First Set of cases *post*-COVID-19, and every issue that Supercell claims warrants a continuance was discussed in the parties' joint motion. *See* Dkt. 135 in cv-070, at 2-3 (noting same issues set forth in the Motion), granted in Dkt. 137 in cv-070; Dkt. 126 in cv-0071, at 2-3 (same), granted in Dkt. 128.

The table below shows the prior and current schedule for the First Set of cases.

Original Schedule	Amended Schedule	Event
March 30, 2020	April 24, 2020	Fact Discovery Deadline
March 30, 2020	May 1, 2020	Opening Expert Report Deadline
May 11, 2020	June 5, 2020	Expert Discovery Deadline
May 11, 2020	June 8, 2020	Dispositive Motions Deadline
July 20, 2020	July 20, 2020	*Pretrial Conference
August 17, 2020	August 17, 2020	*Jury Selection

Supercell can articulate no basis to extend the schedule again in the First Set of cases. Supercell has already taken multiple depositions of GREE, including inventors and 30(b)(6) witnesses, during two earlier trips to Japan. Its remaining deposition notices relate to several GREE employees who helped prepare GREE's 30(b)(6) witnesses to give detailed testimony on specific topics relating to GREE's own games (along with a duplicative 30(b)(6) notice). Moreover, GREE provided the relevant source code for inspection months ago yet Supercell never asked to look at it until this month, and Supercell's arguments as to so-called "practicing products" are based on a distortion of the record because GREE repeatedly has said none of its games practice the asserted claims.

Thus, GREE has already provided extensive discovery into the GREE games at issue through written discovery, 30(b)(6) testimony, and source code and document production. There is no basis to delay the entire case schedule due to the additional depositions of individual employees Supercell seeks, whom GREE does not intend to bring to trial in any event. GREE has repeatedly offered to make those witnesses available outside of the discovery period once travel is safe and the U.S. Embassy in Tokyo reopens, and to allow for amendments to expert reports to address any additional testimony these witnesses may be able to provide. Thus, GREE has provided and made proposals to provide Supercell all of the information it has requested.

With respect to the Second Set of cases, as explained below, the delay in depositions is entirely of Supercell's own making. Indeed, Supercell delayed until ***this month*** to serve its first deposition notice. That aside, the drastic continuance Supercell proposes is unnecessary because GREE has already proposed a reasonable extension to the schedule in those cases, as well as the same accommodations offered in the First Set to allow for depositions to occur when it is safe to do so again and to permit supplements to expert reports based upon those depositions.

As noted, GREE is amenable to a modification to the schedule in the Second Set.[2] The proposed modified schedule is as follows:

Current Schedule	Modified Schedule	Event
May 18, 2020	June 8, 2020	Fact Discovery Deadline
May 18, 2020	June 15, 2020	Opening Expert Reports Deadline
June 8, 2020	July 3, 2020	Rebuttal Expert Reports Deadline
June 22, 2020	July 17, 2020	Expert Discovery Deadline
June 29, 2020	July 20, 2020	Dispositive Motions Deadline
August 31, 2020	August 31, 2020	*Pretrial Conference
October 5, 2020	October 5, 2020	*Jury Selection

[2] The proposed schedule is shown in an amended Docket Control Order attached as Exhibit B. GREE proposed this modification to Supercell on April 27, 2020, and discussed the proposal during a meet and confer on April 29. Supercell did not accept GREE's proposed schedule, however it agreed that if the Court denies Supercell's motion the parties should jointly extend the deadlines in the Second Set in line with GREE's proposal. Moore Dec. at ¶38.

B. None of the Additional Depositions Supercell Noticed in the First Set is Necessary, and Supercell Delayed Seeking Depositions in the Second Set.

1) Supercell Served Overly Broad 30(b)(6) Topics in the First Set of Cases, and GREE Nevertheless Provided Significant Testimony.

Supercell took three full days of depositions of two separate 30(b)(6) witnesses from February 4-6, 2020, in Tokyo, after it deposed GREE's inventor employees for four days in January 2020. GREE provided significant 30(b)(6) testimony covering the thirty-two overly broad topics Supercell provided. Supercell's counsel did not hold the depositions open, instead tacitly acknowledging that the testimony was sufficient by waiting until April 21, 2020 – 75 days after the deposition, weeks after fact discovery was initially scheduled to close, and the day before it filed this Motion – to provide any explanation of alleged deficiencies in GREE's 30(b)(6) testimony. Moore Dec. ¶28. Supercell's delay in raising this issue exposes its true purpose – extending the deadline in these cases so that it can proceed faster at the PTAB.

Specifically, Supercell served multiple overbroad and improper topics in the First Set of cases. GREE urged Supercell to narrow these improperly broad topics during a meet and confer on Friday, January 17. *Id*. ¶36. Supercell agreed to provide narrowed topics in writing before the deposition. *Id.* Supercell never did so, instead proceeding with the deposition on the same overly broad topics. *Id.*

Moreover, contrary to Supercell's urging, GREE's corporate representative Mr. Fujimoto provided significant testimony regarding each of the GREE games at issue in Wave 1. *See, e.g.*, Ex. 16 to Moore Dec., Fujimoto Tr. 36-54 (testifying regarding the development and game play of One Piece); 73-80, 115-120 (testifying regarding the development and gameplay of Tenmega); 152-159 (testifying regarding gameplay of Haconiwa and Clinoppe); 147-152 (testifying regarding features in Avatar); 132-133, 143-145 (testifying regarding War Corps).

This testimony was bolstered by additional testimony that Supercell received from GREE's other corporate representative Mr. Araki, who was the developer that created two of the games at issue and the head of a department that created a third. *See, e.g.*, Ex. 15 to Moore Dec., Araki Tr. at 134:8-25 (explaining that he created Clinoppe); 129:12-18 (explaining that he created Haconiwa); 88:1-89:20 (explaining that Tenmega launched from his department).

Supercell acknowledges that this testimony is sufficient because it does not identify any topic about which GREE's 30(b)(6) representatives were allegedly unable to testify or any specific question they should have been able to answer. Instead Supercell simply states "GREE's corporate witnesses lacked personal knowledge regarding relevant matters and were not adequately prepared to testify about several of Supercell's 30(b)(6) topics." Mot. at 4. To the extent Supercell contends that the witnesses were not adequately prepared, a motion for continuance is not the proper procedure to seek relief. Moreover, there is no requirement that a 30(b)(6) witnesses have personal knowledge about the topics for which the witness is designated. *Allianz Life Ins. Co. of N. Am. v. Muse*, No. CIV-17-1361-G, 2019 WL 3976854, at *3 (W.D. Okla. Aug. 22, 2019) ("[P]ersonal knowledge of the designated subject matter by the selected deponent is of no consequence." (quoting *Sprint Commc'ns Co., L.P. v. Theglobe.com, Inc*., 236 F.R.D. 524, 527-29 (D. Kan. 2006))). In any event, GREE provided significant 30(b)(6) testimony about each of the relevant games.

Thus, the additional deposition notices that Supercell served in the First Set and claims to justify a more than 90-day delay of trial relate to the specific individual employees who helped GREE's corporate representatives prepare for the extensive testimony they already gave. Supercell has not made and cannot make any showing that those witnesses have additional information beyond that which GREE provided through 30(b)(6) witnesses, as well as its written

discovery and source code and document production. In any event, GREE has indicated that it is willing to provide any additional relevant information Supercell seeks through written discovery now, and then when travel is possible again, to permit the depositions of these employees, along with any necessary supplementations to expert reports. Supercell has not even tried to ask GREE to provide additional information in writing now, insisting that unless it can take these depositions, the case must be delayed for more than 90 days.

2) In the Second Set of Cases Supercell Delayed Until the Close of Discovery to Serve Any Deposition Notices.

In the Second Set of cases, Supercell never acknowledges the relevant timeline. Fact discovery opened in these cases in October 2019. Yet Supercell failed to serve a single Notice of Deposition on GREE until April 8, 2020, long after the COVID-19 travel restrictions were in place. Moore Decl. ¶29. Supercell was not without opportunity during the discovery period. For example, counsel for both parties made two trips to Japan during January and February for depositions of four witness in the First Set of cases. Supercell did not even attempt to proceed with a deposition in the Second Set of cases during those times. *Id.* ¶¶15-17. Thus, Supercell has only itself to blame for the fact that it has not yet taken any depositions in the Second Set of cases. Regardless, GREE has made the same offer for the Second Set as it has for the First Set.

3) Supercell Never Considered Reasonable Alternatives to Depositions.

Due to COVID-19, Japan has been under travel restrictions and depositions have been unable to take place since early March. Declaration of Tomoki Umeya, ¶¶7-10, attached hereto as Exhibit C ("Umeya Dec."). Even before then, GREE informed Supercell that GREE's witnesses could not travel as early as February 25, 2020, and agreed that the depositions could take place later, even after the close of fact discovery, once travel became possible. Moore Dec. ¶20. Since that time GREE has repeatedly proposed reasonable alternatives to proceeding with

depositions. *Id.* ¶¶21- 23, 31.[3]

Supercell wrongly asserts that "GREE's only proposal has been for Supercell to completely forego the depositions, and to opt instead for discovery through written discovery, such as written Q&A." This is not correct. For months, GREE has made clear that it will not oppose these depositions occurring after the close of fact discovery. *Id.* ¶20. As part of this compromise, GREE has made clear that it will not oppose supplements to expert reports to include any additional information that may be gleaned from these depositions. *Id.* ¶¶20, 21, 23, 31.[4] Further, GREE has suggested multiple additional alternatives such as additional interrogatories, requests for admission, or written questions. *Id.* ¶¶23, 31. But Supercell has refused to take advantage of any of these long-standing alternative options to obviate the need for, or at least narrow the scope of, these depositions. *Id.* ¶¶30, 31.

In any event, the fact witness testimony Supercell now seeks is available to Supercell through alternate means. These witnesses helped prepare GREE's 30(b)(6) witnesses with information regarding features of some of GREE's games. Any testimony from these witnesses will be cumulative of 30(b)(6) testimony Supercell already received from Mr. Araki (the developer of several of the relevant games and GREE's corporate designee) and Mr. Fujimoto (GREE's corporate designee). Any additional information these witnesses could provide also has already been made available to Supercell through GREE's production of source code, and the production of numerous documents regarding these games. *Id.* ¶11.[5] Requiring additional written

[3] Japanese law prohibits telephonic or remote depositions, which the parties have utilized for other depositions. Umeya Dec. ¶¶4-7.

[4] Indeed, in a letter sent to Supercell on April 22, GREE's counsel "reiterate[d] our offer to allow these depositions to go forward after the close of discovery along with amendments to expert reports." Moore Dec. ¶36.

[5] Indeed, before the end of December, before Supercell had taken its first deposition, GREE had produced nearly 700 documents related to Avatar, Haconiwa, and Clinoppe. *Id.* ¶11.

discovery now is a reasonable alternative given the current extreme circumstances, and much more reasonable than a 90-day or more continuance. *See e.g.*, Standing Order. This would obviate or reduce the need for additional depositions in the Second Set of cases as well, because the parties have already agreed that any testimony or other evidence from the First Set of cases may be used in the Second Set of cases as well. *See, e.g.*, Dkt. 48, in the -161 Case, at 9.

Far from attempting the reasonable alternatives GREE has proposed, Supercell has instead urged that GREE should have its employees travel from Japan to "countries within Asia, such as Cambodia and Laos, as well as countries closer to the US, such as Mexico," in order to proceed with a video deposition (that Supercell's counsel would take from their homes in the United States). Moore Dec. ¶30. Supercell's proposal ignores expense, multi-week quarantines, and limited availability of travel, much less the personal risk to the witnesses if they travel during a global pandemic. Umeya Dec. ¶¶7-13. Supercell's proposal also ignores this Court's admonishment that "travel should be avoided during the pandemic" and that the parties should "prioritize health concerns above all other considerations."

Further, GREE is unable to designate a person in the United States to testify because GREE, Inc. has no employees located in the United States, nor does it have individuals who can testify from other countries as to which remote depositions are possible. *See* Umeya Dec. ¶10 .

C. GREE Never Released a Product in the United States that Practiced a Claim of the Asserted Patents.

Supercell's motion also rests on the incorrect premise that GREE released games in the United States that practiced the asserted claims of its U.S. patents. This is incorrect. GREE has consistently stated that it has not practiced the asserted claims – which can only be done through activities in the United States after the patents issued. Rather, the only GREE games with features related to the Asserted Patents were released in Japan, and several have not been

available for years. Further discovery into these games (of which there already has been extensive discovery) is no basis to extend the case schedule as Supercell proposes.

1) There are No Practicing Products Consistent with PR 3.1(f).

GREE disclosed whether it had practicing products as required by Patent Local Rule 3.1(f) – it said that it does not. Moore Dec. ¶1. ("GREE has not identified its own games that practice the asserted claims based on its investigation."). Indeed, GREE has never contended that any game it released in the United States practices the asserted claims of the Patents-in-Suit, and has always said the opposite. *Id.* ¶¶1, 2, 4-6, 12-13; *see also* Resp. to Interrog. 6 in the -0070 case (and related Interrogatories in other cases) ("No products licensed by GREE in the United States or sold by GREE in the United States embody the claims of the Patents-in-Suit . . . ."). Notwithstanding these statements, GREE collected and produced during discovery numerous documents and files relating to its games in Japan that either considered using or did use features developed by the inventors of the Patents-in-Suit. Moore Dec. ¶11.

After receiving those documents, Supercell urged that GREE was obliged to identify all games that would have practiced any claim or even any portion of the specification and explain how they did so, even if those games had never been released in the United States and even if they had never been used at all after any Patent-in-Suit issued. *Id*. ¶9. GREE agreed to identify certain games that it believes had features relevant to the asserted claims, and did so. *Id.* ¶10.

However, GREE stated that it had been unable to determine whether any of its earlier, Japan-only games, would have practiced any asserted claim had they been sold in the United States because the games were no longer active and other materials available to GREE did not allow it to do so. *Id.* ¶¶25-26, 32. Ultimately, following outside expert review of archived source code, and in response to a newly served interrogatory by Supercell, GREE was able to determine that three of its earlier games would have practiced asserted claims, had they been used in the

United States after the patents issued (which they were not). GREE told Supercell this. Moore Decl. Exs. 22-23 and 28.

Supercell continues to mischaracterize GREE's Interrogatory Responses on these issues as an identification of "practicing" products. Supercell is wrong. GREE has been explicit that these games were never released in the United States with functionality that meets the claims. *See, e.g.*, Resp. to Interrog. 19, Ex. 22 to Moore Dec. (stating that certain games "include[] features that would, ***if used in the United States***, practice one or more of the asserted claims of" the Asserted Patents.) (emphasis added); Resp. to Reqs. for Admis. in -070, Ex. 12 to Moore Dec. ("GREE admits that no games distributed by GREE in the United States practiced any asserted claim of the ['137, '481, '655, or '873] patent."); Resp. to Reqs. for Admis. in -071, Ex. 13 to Moore Dec. ("GREE admits that no games distributed by GREE have practiced asserted claim 2 of the '594 Patent.").

Indeed, GREE was very clear that only one of the games at issue in the First Set of cases—Clinoppe—was ever released in the United States, and that game did not use the patented feature in the United States and was only available here from June 28, 2012 to February 4, 2014. Yet the only relevant asserted patent, the '655 Patent, would not issue for another three years in September 2017. Similarly, in the Second Set of cases, GREE disclosed Animal Friends as "includ[ing] features that may be relevant to one or more of the asserted claims of U.S. Patent Nos. 10,286,318 and 10,279,262," but stated that it was not able to determine if Animal Friends would have practiced any asserted claim. Resp. to Interrog. 18 in the -0161 Case, Ex. 23 to Moore Dec. GREE was also very clear that, while Animal Friends was available in the United States, that was only from July 25, 2012 to January 8, 2014, and thus stopped being played in the United States more than five years before the relevant patents issued. *Id*.

Supercell's argument that any of these games may constitute prior art is simply wrong. With respect to Clinoppe, GREE's discovery response makes clear that the only times when the game could have met an asserted claim was "during multiple events from 2014 to 2019 ***in Japan***." Am. Resp. to Interrog. 19 in the -0070 Case, Ex. 28 to Moore Dec. (emphasis added). The priority date of the '655 patent is in September 2012, two years before these events in Clinoppe. Similarly, with respect to Animal Friends in the -0161 case, GREE never suggested that this was a practicing product. In any event, as discussed below, GREE has produced source code and numerous documents for both of these games. Supercell has more than enough time under GREE's proposed modified schedule for Supercell to perform its own analysis.

Supercell nevertheless seems to suggest that further discovery into these games remains relevant due to allegations of competitive harm. However, GREE has explained in written discovery responses that "GREE does not contend that any specific game was competitively harmed by any specific instance of infringement by Supercell . . . ." Ex. 21 to Moore Dec. This should resolve any argument that GREE's games, which never practiced the asserted patents in the United States, are relevant to competitive harm to GREE in the United States. But in any event, GREE has provided extensive discovery concerning these games already, in the form of written discovery responses, document and source code production, and 30(b)(6) testimony, and has offered to provide additional information in written form now, since further depositions are not possible at this time, and to allow depositions later.

2) Supercell has had Access to GREE's Source Code for Months.

Supercell also contends that an extension is necessary because it has not had access to GREE's source code for the games discussed above. This is wrong. On February 24, 2020, GREE made its source code for five of the seven games at issue available for inspection at Kilpatrick Townsend's San Francisco Office. Moore Dec. ¶18. On March 3, 2020, GREE offered

source code for the two additional relevant games for inspection—all before San Francisco was placed under a Stay-In-Place Order on March 16. *Id.* ¶19. Yet Supercell never attempted to inspect GREE's code, nor even responded to GREE's offer to inspect the source code. *Id.*

In fact, Supercell did not request access to the source code until April 1, weeks after the Shelter-In-Place Order had been in effect and more than a month after GREE made the source code available for inspection. *Id.* ¶28. Now, Supercell tries to use GREE's source code production as a reason to delay trial between 45 and 90 days – when, had Supercell acted diligently, it could have reviewed all of this code well before those restrictions went into place.

Moreover, contrary to Supercell's suggestion, GREE willingly agreed to provide remote access to its source code once Supercell finally asked to review it. *Id.* After the parties reached agreement to amend the protective order (which will be filed soon), GREE provided all of the relevant source code directly to Supercell's expert on April 22, 2020. *Id.* ¶35. Even though its counsel knew this before filing this Motion (which was filed later that same night), Supercell fails to acknowledge that GREE already had provided its source code to Supercell's expert for remote review. *Id.* ¶¶35-36. In any event, Supercell now has had access to GREE's source code (and could have had access months earlier), which enables Supercell to fully resolve any question its expert may have regarding the operation of GREE's games.

D. One Third Party Subpoena does not Merit Modifying the Schedule.

Supercell also states that it "needs time to review source code that will be made available by a third party, Zynga, pursuant to a subpoena." Mot. at 10. Supercell's motion is silent as to whether remote review of Zynga's source code is available, or whether it has even asked that question of Zynga. However, there is no basis to delay this entire case simply because Supercell needs time to review third-party source code related to one prior art reference. Before Supercell even filed its motion, GREE agreed to allow Supercell (or GREE) to perform this review once

the code becomes available, and to amend its expert report to include citations to source code that it may receive from Zynga. Moore Dec. ¶31.

E. The Court's Decision in *EVS Codec* is Inapposite to these Facts.

Supercell suggests that the Court's decision in *EVS Codec Tech., LLC v. T-Mobile USA, Inc.*, Case No. 2:19-cv-00057 (Order dated Apr. 13, 2020) ("*EVS*") entitles it to a continuance to proceed with depositions. In *EVS*, the parties jointly sought a 45-day continuance in view of governmental/public health restrictions in response to COVID-19 to allow both parties to complete their noticed Rule 30(b)(6) corporate depositions and allow experts to review source code. The facts here as to the First Set are the opposite – the parties have completed their noticed Rule 30(b)(6) corporate depositions, and Supercell's expert is reviewing GREE's source code.

Rather, this case is consistent with this Court's recent Order denying an overly long requested extension—*RevoLaze LLC v. J.C. Penney Corp.*, No. 2:19-cv-00043-JRG, Dkt. 142 (E.D. Tex. Apr. 4, 2020) ("*RevoLaze*"). JCP unilaterally moved the Court to extend deadlines to allow JCP to complete depositions and inspections in light of the current international travel restrictions. *Id.* at 1. RevoLaze agreed to make the witnesses "available for depositions, ***even if such goes beyond the discovery cut-off***, as long as they are limited to the particular physical samples identified by JCP, and provided such depositions are conducted under certain health and safety requirements." *Id.* at 2. Further, JCP's inability to timely complete the inspections "[wa]s a problem of its own making." *Id.*; *see also id.* ("The Court agrees with RevoLaze that the issues raised by JCP are largely a result of JCP's own dilatory conduct.").

The facts are the same here. GREE is making its additional witnesses available beyond the close of discovery and proposing amendments to expert reports to account for the depositions. Moore Dec. ¶¶20-23, 31. Further, Supercell's inability to have taken other depositions earlier or to review the code "is a problem of its own making." *RevoLaze*, at 2; *see*

Moore Dec. ¶¶20- 23, 31. The parties took two trips to Japan for depositions, yet Supercell never sought to take depositions for the Second Set of cases then, and did not even serve a deposition notice in those cases until April 2020. And, GREE made its source code available to Supercell nearly two months ago, yet Supercell did not review it then. Moore Dec. ¶¶18, 19.

Thus, Supercell has failed to establish good cause for a continuance. *See RevoLaze*, at 2.

F. With Respect to the Second Set of Cases GREE Proposes a More Modest Modification to the Schedule Allowing Trial in October as Scheduled.

As explained above, GREE has proposed a reasonable alternative to provide Supercell with several additional weeks to address its additional concerns in the Second Set of cases. This extension is consistent with this Court's other recent decisions. For example, in *Solas Oled LTD v. Samsung Display Co., LTD*, No. 2:19-cv-00152-JRG (E.D. Tex. Mar. 25, 2020), Judge Gilstrap denied Samsung's request for "a 60- to 90-day continuance of the fact and expert discovery deadlines." *Id*. at 1. Instead the Court granted Solas's alternative proposal of a two-week extension, noting that the shorter extension "allows the case to move forward without foreclosing the possibility that the Parties may require additional relief at a later date as the current health crisis evolves." *Id*. The Court should follow the same approach here and deny Supercell's request, and instead grant GREE's more modest proposed extension.

III. Conclusion

For the foregoing reasons, Supercell's motion should be denied in its entirety. GREE requests that the Court should allow the First Set of cases to proceed to trial on the current schedule. GREE further requests that the Court enter its proposed modest extension of deadlines in the Second Set of cases.

DATED: April 29, 2020

GILLAM & SMITH, LLP

By */s/ Steven D. Moore*

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CERTIFICATE OF SERVICE

I hereby certify that on April 29, 2020, all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system pursuant to Local Rule CV-5(a)(3):

/s/ Steven D. Moore
Steven D. Moore

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I hereby certify that Exhibits 6, 15, 16, 22, and 28, attached to the Declaration of Steven D. Moore, are authorized to be filed under seal pursuant to the Protective order entered in this case.

/s/Steven D. Moore
Steven D. Moore