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GameAnarchy, LLC, a Georgia Limited
17 Liability Company, and David Allen Baker
a/k/a "Drunken Cheetah," an individual

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

21 NEXON AMERICAN INC., a
22 Delaware corporation, and NEXON
KOREA CORPORATION, a Korean
23 corporation,

24 Plaintiffs,

25 v.

26 GAMEANARCHY, LLC, a Georgia
Limited Liability Company, DAVID
27 ALLEN BAKER, a/k/a "Drunken
Cheetah," an individual, and DOES 1
through 10,

28 Defendants.

CASE NO. 2:12-cv-02083-JHN-PLAx
JOINT RULE 26(F) REPORT

1 Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, Central
2 District Local Rule 26-1, and the Court’s April 5, 2012 Order (Doc. 11), the parties
3 hereby present their Joint Rule 26(f) Report as follows:

4 **I. Rule 26(F) Topics**

5 **A. Statements of the Case.**

6 This is an action for copyright infringement, violation of the DMCA, and
7 related claims brought by Plaintiffs Nexon America, Inc. and NEXON Korea
8 Corporation (collectively, “Nexon”) against certain parties, including Defendants
9 Game Anarchy, LLC, and David Baker (collectively, “Game Anarchy”) based on
10 Game Anarchy’s software products and online service in connection with Nexon’s
11 online video game, “Combat Arms.”

12 **Nexon’s contentions:** Nexon alleges that it owns the copyrights and/or
13 certain exclusive rights in the computer game “Combat Arms.” Nexon alleges that
14 Game Anarchy is the owner and operator of a service known as “Game Anarchy,”
15 available via Game Anarchy’s website, located at the domain name
16 <gameanarchy.com>. In particular, Nexon alleges that GameAnarchy allows
17 players to manipulate and alter the Combat Arms game in various respects, without
18 Nexon’s authorization. Nexon alleges that the Game Anarchy’s conduct
19 constitutes copyright infringement, inducement to infringe copyrights, contributory
20 copyright infringement, and vicarious copyright infringement. Nexon further
21 alleges that GameAnarchy circumvents an anti-hacking technology used in Combat
22 Arms known as “HackShield.”

23 Finally, Nexon alleges that Game Anarchy has violated Nexon’s contracts
24 with its users and thus Game Anarchy is engaged in interference with these
25 contracts. Nexon alleges that Game Anarchy’s actions have caused significant
26 harm to Nexon and its products, and Game Anarchy has profited from such
27 actions.

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1 **Game Anarchy’s contentions:** Game Anarchy contends that its products
2 and services do not constitute copyright infringement, inducement to infringe
3 copyrights, contributory copyright infringement, or vicarious copyright
4 infringement. Game Anarchy also asserts that, to the extent the third-party
5 “HackShield” software used by Nexon contains measures to prevent access to
6 “Combat Arms,” Game Anarchy has not circumvented those measures, or provided
7 others with a means of doing so.

8 Game Anarchy disputes the existence of the contract on which Nexon’s
9 breach of contract claim is premised and asserts that it has not undertaken any
10 actions that would give rise to the breach of contract or intentional interference
11 with contract claims asserted by Nexon.

12 Game Anarchy has asserted several affirmative defenses, including failure to
13 state a claim, lack of personal jurisdiction, improper venue, failure to register
14 copyrights and lack of ownership of copyrights, fair use, defenses under the
15 DMCA, and preemption. Finally, Game Anarchy also contends that it has not
16 taken any action that has significantly harmed Nexon.

17 **B. Subject Matter Jurisdiction**

18 This Court has subject matter jurisdiction over Nexon's claims for copyright
19 infringement and violation of the DMCA pursuant to 28 U.S.C. §§ 1331 and
20 1338(a). Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction
21 over Nexon's state law claims for breach of contract, intentional interference with
22 contract, and unfair competition in that those claims are so related to Nexon's
23 claims under the Copyright Act and DMCA as to be part of the same case or
24 controversy.

25 **C. Legal Issues**

26 The key legal issues in this action are:

- 27 • whether Game Anarchy’s actions constitute either direct or secondary
28 copyright infringement;

1 • whether Game Anarchy’s products unlawfully circumvent Nexon’s
2 technological protection measures (including “HackShield”) under 17 U.S.C. §
3 1201(a)(1);

4 • Whether Game Anarchy’s actions constitute a breach of Nexon’s
5 “Terms of Use” and “End User License Agreement,” or intentional interference
6 with those agreements; and

7 • Whether Game Anarchy’s actions constitute unfair competition under
8 California Business and Professions Code § 17200.

9 The parties do not believe this case presents any unusual legal issues.

10 **D. Parties, Evidence, etc.**

11 Parties

12 The Plaintiffs in this action are Nexon America, Inc., and NEXON Korea
13 Corporation.

14 Defendants are Game Anarchy, LLC, and David Allen Baker.

15 Nexon’s Complaint also names Does 1 through 10 as defendants. Does 1
16 through 10 are unidentified at this time, but Nexon believes Does 1 through 10 are
17 administrators or moderators of the Game Anarchy website, developers of the
18 products at issue in this lawsuit, or otherwise participated in the unlawful acts set
19 forth in Nexon’s Complaint. Does 1 through 10 are not parties to this joint
20 statement.

21 Percipient Witnesses

22 The parties presently anticipate the following percipient witnesses:

- 23 • David Allen Baker;
- 24 • “Flamez,” “Crojo” and other currently anonymous defendants;
- 25 • Witnesses regarding the operation and Nexon’s use of the “HackShield”
26 software;
- 27 • Representatives of Nexon regarding Nexon’s damages allegedly caused
28 by use of Game Anarchy’s products and services;

- Representatives of Nexon regarding its ownership of the copyright in Combat Arms; and
- Representatives of third party payment services (PayPal, PaymentWall).

Key Documents:

The parties presently anticipate that the following key documents will be relevant to the instant lawsuit:

- The Game Anarchy software products;
- The Game Anarchy website;
- Nexon’s “Terms of Use;”
- Nexon’s “End User License Agreement;”
- Source Code for the Game Anarchy software at issue;
- Documents reflecting the manner by which the Game Anarchy software product works to establish whether and/or in what manner those products circumvent the “HackShield” software;
- Documents reflecting the manner by which the “HackShield” software works to control access to the “Combat Arms” video game; and
- Documents establishing ownership of the copyright in the “Combat Arms” game.

GameAnarchy contends that key documents may include the source code for “HackShield” and/or “Combat Arms.” Nexon contends that such documents are not relevant.

E. Damages

Nexon contends that it is entitled to the following measures of damages:

- Nexon’s actual damages and Game Anarchy’s profits for Game Anarchy’s alleged copyright infringement;
- Nexon’s Actual damages and Game Anarchy’s profits, or maximum statutory damages of \$2500 per violation, for Game Anarchy’s alleged violation of

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1 the DMCA. The total amount of statutory damages will depend upon the number
2 of distributions of the Game Anarchy software;

- 3 ● Nexon’s actual damages for Game Anarchy’s alleged breach of
- 4 contract and intentional interference with contract;
- 5 ● Punitive Damages on Nexon’s claim for intentional interference; and
- 6 ● Attorneys’ fees and costs.

7 Game Anarchy disputes each of these contentions.

8 **F. Insurance**

9 No insurance is applicable to this dispute.

10 **G. Motions**

11 Nexon may seek leave to amend its pleadings to add the true names and
12 capacities of certain anonymous “Doe” defendants, including “Flamez” and
13 “Crojo.” Nexon also may file a motion for a preliminary injunction.

14 Game Anarchy may file a motion to dismiss the Complaint due to lack of
15 personal jurisdiction or improper venue.

16 **H. Manual for Complex Litigation**

17 The parties do not believe any portion of the Manual For Complex Litigation
18 should be utilized in this case.

19 **I. Status of Discovery**

20 On March 29, 2012, Nexon received leave of court to conduct some limited
21 third party-discovery designed to elicit the identity and contact information for
22 certain of the unidentified “Doe” defendants in this action. Nexon has served some
23 third-party discovery pursuant to the Court’s order. Full Responses have not yet
24 been received.

25 On April 17, Nexon served its first set of written discovery on Game
26 Anarchy.

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1 **J. Discovery Plan**

2 The parties agreed to exchange initial disclosures on or before **May 15,**
3 **2012.**

4 Nexon requests a discovery cut-off of **February 15, 2013.**

5 Game Anarchy requests a discovery cut-off of **May 15, 2013.**

6 Nexon's Discovery:

7 **Nexon's Anticipated Discovery:** Nexon anticipates needing discovery
8 regarding the following subjects:

- 9 ● The creation and technical operation of Game Anarchy's software
10 products, including the means or manner by which they allegedly circumvent
11 HackShield;
- 12 ● The manner in which Game Anarchy operates, including the structure
13 of the organization, its acquisition of the software products at issue, and its overall
14 business operations;
- 15 ● The number of users of the software products at issue and the amount
16 of revenue generated by Game Anarchy from these users; and
- 17 ● Game Anarchy's knowledge of the contracts at issue and intent to
18 interfere with those contracts.

19 **Nexon's Written Discovery:** Nexon has served its first set of written
20 discovery requests, as well as its first set of third-party discovery requests. In its
21 discovery, Nexon has sought:

- 22 ● Source code, revision logs, and other technical information and data
23 concerning GameAnarchy.
- 24 ● Documents pertaining to Game Anarchy's alleged circumvention of
25 HackShield.
- 26 ● Communications concerning Nexon, Hackshield, Nexon's Terms of
27 Service, and other related topics.
- 28 ● Game Anarchy's website and message board postings.

1 • Documents reflecting Game Anarchy’s income and expenses in
2 connection with the software products at issue.

3 • Documents reflecting the number of downloads of the Game Anarchy
4 software.

5 Nexon anticipates that, subject to Game Anarchy’s cooperation, its written
6 discovery will be complete in the Summer or Fall of 2012.

7 **Depositions:** Nexon anticipates taking the deposition of David Baker and
8 any other individuals involved in the development or sale of the GameAnarchy
9 software and service. Nexon anticipates that such depositions will take place in the
10 Fall of 2012.

11 Game Anarchy’s Discovery

12 **Game Anarchy’s Anticipated Discovery:** Game Anarchy anticipates
13 needing discovery regarding the following subjects:

14 • Source code and other technical information concerning the “Combat
15 Arms” game and the “HackShield” software;

16 • Information regarding the history of Nexon’s implementation and
17 operation of the “HackShield” software;

18 • Information regarding complaints made to Nexon by “Combat Arms”
19 players;

20 • Actual damages alleged by Nexon; and

21 • The ownership of the copyright in and to the “Combat Arms” game.

22 **Game Anarchy’s Written Discovery:** Game Anarchy has not issued
23 written discovery requests at this time, but intends to do so after finishing its own
24 investigation into Nexon’s allegations.

25 **Depositions:** Game Anarchy anticipates taking depositions of Nexon
26 representatives and others most knowledgeable about the issues set forth above,
27 but does not know the identity of such persons.

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1 The parties expect that much of the information at issue will be in electronic
2 format. The parties will agree on the manner of electronic production on a case-
3 by-case basis, with an effort to produce documents in an agreed-upon format where
4 feasible.

5 The parties have agreed that privileged communications concerning this
6 litigation (i.e., privileged communications concerning the potential commencement
7 of litigation and privileged communications occurring after the litigation was filed
8 concerning the litigation) do not need to be identified in privilege logs. The parties
9 further agreed that privileged documents should be identified in a privilege log no
10 later than thirty days after the document production to which they are responsive.
11 The parties also agreed that the provisions of Fed. R. Civ. P. 26(b)(5) shall govern
12 with respect to the issue of “clawback” of privileged material.

13 No changes in the discovery rules are required.

14 The parties have agreed that a stipulated protective order, protecting the
15 confidentiality of certain confidential, sensitive and proprietary information, may
16 be appropriate in this case.

17 **K. Dispositive Motions**

18 Nexon anticipates filing a motion or motions for summary judgment or
19 partial summary judgment. Nexon believes that it may wish to file an early
20 summary judgment on the narrow issue of Game Anarchy’s liability under the
21 DMCA, and subsequent motions on the other issues.

22 Game Anarchy may file a motion to dismiss due to this Court’s lack of
23 personal jurisdiction or improper venue.

24 **L. Settlement**

25 The parties have had very preliminary settlement discussions, but have not
26 been able to resolve the action.

27 Pursuant to Local Rule 16-15.4, the parties agree to ADR Procedure No. 2
28 (Panel Mediator). The parties are amenable to an early mediation.

1 **M. Trial Estimate**

2 The parties estimate the trial will take 3-5 days, and that trial will be by jury.

3 Each party anticipates calling 4-6 witnesses at trial, including at least one
4 (and possibly two) expert witnesses.

5 **N. Trial Counsel**

6 Nexon’s trial counsel will be Marc E. Mayer and Karin G. Pagnanelli of
7 Mitchell Silberberg & Knupp LLP.

8 Game Anarchy’s trial counsel will be determined at a later date.

9 **O. Independent Expert or Master**

10 The parties do not anticipate that the Court will be required to appoint a
11 master pursuant to Rule 53 or an independent scientific expert.

12 Both parties anticipate presenting testimony from one or more expert
13 witnesses.

14 **P. Proposed Trial Date**

15 Nexon proposes that trial be set for May 14, 2013.

16 Game Anarchy proposes that trial be set for November 14, 2013.

17 **Q. Other Issues**

18 Certain potential witnesses (e.g., representatives of NEXON Korea
19 Corporation and Ahn Lab, makers of HackShield) are located in South Korea.
20 Certain procedures may be required for the testimony of such representatives
21 (including the assistance of a translator). Additionally, it is possible that some
22 relevant documents will be in Korean, thus also requiring the services of a
23 translator.

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1 The parties are not presently aware of any other issues affecting the status or
2 management of the case.

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4 DATED: May 3, 2012

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8 By: 
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11 DATED: May 3, 2012

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