

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

GREE, INC.,

Plaintiff,

v.

SUPERCELL OY,

Defendant.

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Case Nos. 2:19-cv-00070-JRG-RSP
2:19-cv-00071-JRG-RSP
2:19-cv-00161-JRG-RSP
2:19-cv-00172-JRG-RSP
2:19-cv-00200-JRG-RSP
2:19-cv-00237-JRG-RSP

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.

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