

1 [List of Counsel Appears on Signature Page]

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8 CAPCOM CO., LTD. and CAPCOM
ENTERTAINMENT, INC.,

9 Plaintiffs,

10 v.

11 THE MKR GROUP, INC.,

12 Defendant.

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14 THE MKR GROUP, INC.,

15 Counterclaim-Plaintiff and Third-
Party Plaintiff,

16 v.

17 CAPCOM CO., LTD. and CAPCOM
ENTERTAINMENT, INC.,

18 Counterclaim-Defendants,

19 and

20 CAPCOM U.S.A., INC.,

21 Third-Party Defendant.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. 5:08-CV-00904 (RS) (MED)

**STIPULATION AND ~~PROPOSED~~ ORDER
AND JUDGMENT**

WHEREAS, on February 12, 2008, Capcom Co., Ltd. and Capcom Entertainment, Inc. (“Plaintiffs”) filed their Complaint for Declaratory Relief against The MKR Group, Inc. (“MKR”) (the “Declaratory Relief Complaint”) seeking a judicial declaration that Plaintiffs’ video game *Dead Rising* did not infringe MKR’s copyright or trademark rights held in the film *George A. Romero’s Dawn of the Dead* or otherwise incur liability for related state and common law claims;

1 **WHEREAS**, on May 15, 2008, MKR filed its Amended Answer, Counterclaims and
2 Third Party Complaint asserting claims for copyright infringement, violations of the Lanham Act,
3 and related state and common law claims against Plaintiffs and Third-Party Defendant Capcom
4 U.S.A., Inc. (collectively “Capcom”);

5 **WHEREAS**, on October 20, 2008, the Court posted its Order dated October 10, 2008,
6 granting Capcom’s Motion to Dismiss MKR’s Counterclaims in their entirety and with prejudice
7 (the “Order”); and,

8 **WHEREAS**, MKR has agreed to withdraw its Opposition No. 91/175,392 before the
9 Trademark Trial and Appeal Board of the United States Patent and Trademark Office against
10 Capcom Co., Ltd.’s United States Trademark Application Serial No. 78/633,771 for the mark
11 DEAD RISING.

12 Now, therefore, pursuant to a settlement between the parties, **IT IS HEREBY**
13 **STIPULATED, CONSENTED AND AGREED TO** by and between the parties, after
14 consultation with their respective attorneys of record, that (i) in view of the Court’s Order,
15 Capcom’s Declaratory Relief Complaint is dismissed as moot; (ii) Capcom waives its right to
16 seek attorneys’ fees, expenses and costs incurred in relation to the above titled actions; (iii) each
17 party shall bear its own attorney’s fees, expenses and costs incurred in relation to the above titled
18 actions; and (iv) MKR waives its right to appeal the Court’s Order.

19 **SO STIPULATED AND AGREED:**

20 Dated: November 14, 2008

21 FENWICK & WEST LLP

KENYON & KENYON LLP

22 By: /s/ Rodger R. Cole
23 Rodger R. Cole (CSB NO. 178865)
24 Jennifer L. Kelly (CSB No. 193416)
Mary E. Milionis (CSB No. 238827)

By: /s/ Philip J. McCabe
Philip J. McCabe (CSB NO. 201092)
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Jonathan D. Reichman (Pro Hac Vice)
Mimi K. Rupp (Pro Hac Vice)

25 Attorneys for Plaintiffs and Counterclaim-
26 Defendants CAPCOM CO., LTD. and
27 CAPCOM ENTERTAINMENT, INC., and
28 Third-Party Defendant CAPCOM U.S.A., INC.

Attorneys for Defendant, Counterclaim-
Plaintiff and Third-Party Plaintiff
THE MKR GROUP, INC

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ATTESTATION PURSUANT TO GENERAL ORDER 45

I, Philip J. McCabe, attest that concurrence in the filing of this document has been obtained from any signatories indicated by a “conformed” signature (/s/) within this e-filed document.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 14th day of November, 2008 at San Jose, California.

KENYON & KENYON, LLP

By: /s/Philip J. McCabe
Philip J. McCabe
Attorneys for THE MKR GROUP

[PROPOSED] ORDER AND JUDGMENT

Pursuant to the above Stipulation, (i) in view of the Court’s Order, Capcom’s Declaratory Relief Complaint is dismissed as moot; (ii) Capcom waives its right to seek attorneys’ fees, expenses and costs incurred in relation to the above titled actions; (iii) each party shall bear its own attorney’s fees, expenses and costs incurred in relation to the above titled actions; and (iv) MKR waives its right to appeal the Court’s Order.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that judgment be entered in favor of Capcom.

SO ORDERED:

Date: 11/24/08, 2008



Judge Richard Seeborg
United States Magistrate Judge