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Attorneys for Plaintiff/Counter-Defendant, PlayUp Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

PlayUp, Inc., a Delaware Corporation,

Plaintiff,

v.

Dr. Laila Mintas, an individual,

Defendant.

Dr. Laila Mintas, an individual,

Counter-Claimant,

v.

PlayUp, Inc., a Delaware Corporation; PlayUp Ltd., an Australian company; Daniel Simic, an Individual,

Counter-Defendants.

Case No. 2:21-cv-02129-GMN-NJK

**PLAY UP INC.'S
EMERGENCY MOTION TO RESET
BRIEFING SCHEDULE**

Pursuant to Rule 7 of the Federal Rules of Civil Procedure and Local Rule 7-4, Plaintiff PlayUp Inc. (“PlayUp US”), by and through its undersigned counsel, respectfully submits this Emergency Motion to Reset Briefing Schedule (the “Motion”) on the pending motions to dismiss

1 (Dkt Nos. 67 & 68) Defendant Laila Mintas' ("Mintas'") first amended counterclaim (Dkt. No.
2 52), in light of Mintas' recently filed motion for leave to amend to bring a second amended
3 counterclaim (Dkt. No. 78), based upon the following Memorandum of Points and Authorities.

4 Dated April 1, 2022.

5
6 Respectfully submitted,

7 ZUMPANO PATRICIOS POPOK & HELSTEN, PLLC

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Counsel for Plaintiff PlayUp, Inc.

1 **I. PRELIMINARY STATEMENT AND MEMORANDUM OF POINTS AND**
 2 **AUTHORITIES**

3 Mintas' filing this week of a motion for leave to amend her counterclaim a second time in
 4 8 weeks, if granted¹ will render the current first amended counterclaim (Dkt. No. 52) moot and the
 5 briefing already filed against it (or supporting it) stale and wasted. To conserve scarce judicial
 6 resources and avoid wasting time and money, PlayUp US respectfully requests that the Court
 7 amend its Order dated March 21, 2022 setting the current briefing schedule (Dkt. No. 75), and: (a)
 8 grant the respective motions for leave to amend filed by the parties; (b) adjourn the time for PlayUp
 9 US to file its Reply papers to support its original motion to dismiss against the original amended
 10 counterclaim now due on April 8, 2022; (c) allow PlayUp US to instead file an amended motion
 11 to dismiss the new second amended counterclaim with an incorporated brief to address the new
 12 allegations and claims two (2) weeks from the date of the Court's ruling on the parties' respective
 13 motions for leave to amend; and (d) grant Mintas reasonable time after that to file an amended
 14 opposition brief in response, and PlayUp US an appropriate amount of time to reply. This proposed
 15 timetable would apply to the motion to dismiss for lack of personal jurisdiction filed by Daniel
 16 Simic as well.

17 PlayUp US' current request for an amended briefing schedule is further supported by the
 18 procedural history in the case to date:

- 19 1. Mintas had the benefit of reviewing PlayUp US' and Mr. Simic's motions to dismiss (Dkt.
 20 Nos. 67 and 68) before drafting and submitting her motion for leave and the proposed
 21 second amended counterclaim. Dkt. No. 78.
- 22 2. With that knowledge in hand, Mintas has made numerous proposed changes to her

23 _____
 24 ¹ As the Court is aware, leave to amend so early in a case, at the inception of discovery,
 25 before depositions have been taken and a trial has been set, is liberally and routinely granted.
 26 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003); *see Las Vegas Sun,*
 27 *Inc. v. Adelson*, No. 2:19-cv-01667-GMN-BNW, 2022 U.S. Dist. LEXIS 53023, at *38 (D. Nev.
 28 Mar. 23, 2022); *see also Grimshaw v. Target Corp.*, No. 2:20-cv-01068-GMN-EJY, 2021 U.S.
 Dist. LEXIS 184188, at *15 (D. Nev. Sep. 25, 2021); *Claridge v. I-Flow Corp.*, No. 2:18-cv-
 01654-GMN-BNW, 2019 U.S. Dist. LEXIS 148935, at *17 (D. Nev. Aug. 30, 2019). Both sides
 filed timely motions for leave by the Court-ordered deadline of March 28, 2022 (Dkt. Nos. 78 and
 79). It is anticipated that the Court will grant both, replacing the operative pleadings in the case
 with new ones moving forward.

1 pleading, adding additional allegations that we presume she believes cure jurisdictional
2 allegation deficiencies, and some new federal claims alleging that this gaming executive
3 who was paid salary and in equity, is entitled to relief under the Fair Labor Standards Act,
4 29 U.S.C. § 206. Dkt. No. 78.

- 5 3. As a result of this filing (which will likely be the new operative pleading for Mintas),
6 PlayUp US' and Mr. Simic's current motions to dismiss and Mintas' Oppositions (Dkt.
7 Nos. 76 and 77) are all stale and would need to be substantially revised to address the new
8 allegations and claims.
- 9 4. The proposed amended order and relief will serve dual purposes: (a) it will ensure that the
10 Court does not waste its time and focuses only on fully-briefed motions to dismiss directed
11 at the right pleading; and (b) it allows the parties to efficiently recycle what they can from
12 the recent round of briefing (Dkt. Nos. 67 and 68; Dkt. Nos. 76 and 77), while
13 supplementing them to address the new allegations and claims.
- 14 5. Only in this way will the Court be in a position to render complete rulings on the fully
15 briefed motions to dismiss the second amended counterclaim, including all issues properly
16 raised, argued and preserved.
- 17 6. If the relief sought herein is not granted, it will necessarily result in PlayUp US working to
18 finish and file two (2) Reply briefs and a separate motion to dismiss for PlayUp Ltd. based
19 on a soon-to-be-outdated pleading so that they can be filed on the current April 8, 2022 due
20 date.
- 21 7. Prior to filing this Motion, the undersigned conducted a meet and confer with opposing
22 counsel on March 30, 2022. *See* Declaration of Amanda J. Brookhyser attached hereto as
23 **Exhibit 1**. During the call, we proposed that both sides stipulate to the granting of the
24 motions for leave to amend and agree to a reasonable new briefing schedule for the
25 supplemental and new briefing resulting from Mintas' new filing. *Id.* At the conclusion
26 of the call, opposing counsel indicated that she needed to speak to her client about it, and
27 would do so when she was scheduled to talk to Mintas two (2) days later (today, April 1,
28 2022). *Id.*

1 **II. CONCLUSION**

2 WHEREFORE, PlayUp US respectfully requests that this Honorable Court amend its prior
3 Order (Dkt. No. 75) to: (a) adjourn the current briefing schedule on the motion to dismiss the first
4 amended counterclaim until such time as the Court rules on the pending motions for leave to amend
5 timely filed by the parties (Dkt. Nos. 78 and 79); (b) set a new briefing schedule if the motion for
6 leave is granted: (i) allowing PlayUp US and Mr. Simic to amend and supplement their original
7 motions to dismiss to address the new claims and allegations in the second amended counterclaim,
8 (ii) providing for the same right for Mintas for her Opposition briefs, and (iii) providing for a new
9 date for PlayUp US and Mr. Simic to file their Replies; (c) adjourn the time for PlayUp Ltd.
10 (PlayUp US' parent company based in Australia) to file its motion to dismiss for lack of personal
11 jurisdiction currently scheduled to be filed on April 8, 2022; and (d) for such other and further
12 relief as the Court deems proper.

13 Dated the 1st day of April, 2022.

14 Respectfully submitted,

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Counsel for Plaintiff PlayUp, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on April 1, 2022, I filed the foregoing **PLAY UP, INC.’S EMERGENCY MOTION TO RESET BRIEFING SCHEDULE** with the Clerk of the Court, using the Court’s ECF system, which will automatically send notice of the filing to counsel of record.

/s/ Amanda J. Brookhyser

**ZUMPANO PATRICIOS
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