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13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **SOUTHERN DIVISION**

16 UNILOC 2017 LLC,
17 Plaintiff,
18 v.
19 INFOR, Inc.,
20 Defendant.
21

22 _____
23 UBISOFT, INC.
24 Plaintiff,
25 v.
26 UNILOC 2017, LLC,
27 Defendant.
28

CASE NO. 8:19-cv-01150-DOC-KES
(CONSOLIDATED)

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
UBISOFT’S MOTION FOR
JUDGMENT ON THE PLEADINGS
AS TO UNILOC’S
COUNTERCLAIMS OF
INFRINGEMENT**

Judge: Hon. David O. Carter
Date Filed: November 23, 2020
Hearing Date: December 21, 2020
Time: 8:30 AM
Location: Ronald Reagan Federal
Building, Courtroom 9D

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1
2 **I. INTRODUCTION**

3 Uniloc 2017 LLC’s (“Uniloc”) allegations of infringement against Ubisoft, Inc.
4 (“Ubisoft”) accuse a server network provided by Akamai of practicing the asserted
5 claims of U.S. Patent Nos. 6,324,578 and 7,069,293 (referred to herein as the ’293 and
6 ’578 Patents or “Asserted Patents”).¹ Uniloc has previously sued Akamai for
7 infringement of the same patents—several times—ultimately resulting in an ultimate
8 dismissal with prejudice.

9 In particular, Uniloc’s infringement allegations against Ubisoft, Inc. (“Ubisoft”) are predicated on Ubisoft’s use of a third-party server network—called a Content Delivery Network (“CDN”)—to distribute computer programs. See **Ex. A**, *Uniloc’s ’293 Patent Infringement Contentions*; **Ex. B**, *Uniloc’s ’578 Patent Infringement Contentions*. Here, that CDN is provided by a third party—Akamai Technologies, Inc. (“Akamai”)—which Uniloc has repeatedly and unsuccessfully sued for infringing the ’578 and ’293 Patents. See **Ex. C**, *Memo ISO Motion for Judgment on the Pleadings, Uniloc 2017 LLC v. Akamai Techs., Inc.*, No. 1:19-cv-11276-RGS, ECF No. 28, at 1 (D. Mass. Oct. 18, 2019) (the “Akamai Litigation”). At the conclusion of the Akamai Litigation, the Court admonished Uniloc for its repeat filings, held that Akamai cannot be sued for infringing the ’578 or ’293 Patents, and handed Uniloc a dismissal with prejudice:
20

21 Akamai refuses to stipulate to a dismissal. Unless Uniloc wishes to engage
22 in a Sisyphean labor of suing Akamai and paying for the defense, Uniloc
23 has no choice but to notice a dismissal under Fed. R. Civ. P. 41. Because
24 a previous incarnation of the Uniloc corporate soul has already noticed the
25 dismissal of identical claims against Akamai in 2017, this second dismissal
26 perforce “operates as an adjudication on the merits,” Fed. R. Civ. P.
27 41(a)(1)(B), that is, with prejudice.

28 ¹ The ’578 Patent expired on December 14, 2018, while the ’293 Patent expires February 3, 2021.

1 **Ex. G.**, *Order, Uniloc 2017 LLC v. Akamai Techs., Inc.*, No. 1:19-cv-11276-RGS, ECF
2 No. 44 (D. Mass. Dec. 12, 2019).

3 Despite this adjudication on the merits, Uniloc now attempts an end-run around
4 the Court’s order by targeting Akamai’s customers—in this case, Ubisoft. But the law
5 is clear: Uniloc cannot circumvent the adjudication of its dismissal with prejudice from
6 the Akamai Litigation by targeting Akamai’s customers on the exact same patents that
7 Uniloc unsuccessfully asserted against Akamai. For at least these reasons, Uniloc’s
8 claim for infringement of the ’578 and ’293 Patent against Ubisoft is barred and fails as
9 a matter of law. Ubisoft therefore respectfully requests judgment on the pleadings
10 pursuant to Fed. R. Civ. P. 12(c).

11 **II. LEGAL STANDARD**

12 Like the standard for Rule 12(b)(6) motions to dismiss, the court may grant a Rule
13 12(c) judgment on the pleadings when “‘taking all the allegations in the pleading as true,
14 the moving party is entitled to judgement as a matter of law.’” *Neev v. Abbott Med.*
15 *Optics, Inc.*, No. SACV 15-01992 JVS (JCGx), 2016 WL 9175925, at *1 (C.D. Cal. Aug
16 .8, 2016) (quoting *McSherry v. City of Long Beach*, 423 F.3d 1015, 1021 (9th Cir. 2005)
17 In addition to the pleadings, courts may also consider “matters subject to judicial notice
18 when deciding Rule 12(c) motions.” *Id.* (citing *Buraye v. Equifax*, 625 F. Supp. 2d 894,
19 897 (C.D. Cal. 2008)).

20 **III. FACTUAL BACKGROUND**

21 **A. The Akamai Litigation**

22 On June 7, 2019, Uniloc filed a lawsuit accusing Akamai of infringing the ’293
23 and ’578 patents through its “making, using, offering for sale, and/or selling” its CDN.
24 **Ex. D**, *Uniloc’s Complaint, Uniloc 2017 LLC v. Akamai Techs., Inc.*, No. 1:19-cv-
25 11276-RGS, ECF No. 1 at 4, 6 (D. Mass. June 7, 2019). Specifically, as to the ’578
26 Patent, Uniloc alleged that Akamai infringed because its CDN incorporated “software
27 and associated architecture for installing an application program having configurable
28

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