

1 Erik R. Puknys (SBN 190926)
erik.puknys@finnegan.com
2 **FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP**
3 3300 Hillview Avenue
Palo Alto, California 94304-1203
4 Telephone: (650) 849-6600
Facsimile: (650) 849-6666

5
6 Smith R. Brittingham IV (*pro hac vice*)
smith.brittingham@finnegan.com
7 Ji Hye Christina Yang (SBN 317039)
christina.yang@finnegan.com
8 **FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, LLP**
9 901 New York Avenue, NW
Washington, DC 20001-4413
10 Telephone: (202) 408-4000
Facsimile: (202) 408-4400

11 *Attorneys for Plaintiff Gamevice, Inc.*

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13 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION**

15
16 GAMEVICE, INC.,

17 Plaintiff,

18 v.

19 NINTENDO CO., LTD., and NINTENDO OF
20 AMERICA INC.,

21 Defendants.

CASE NO. 3:18-cv-1942-RS

**PLAINTIFF GAMEVICE, INC.'S
RESPONSE TO DEFENDANTS'
MOTION TO VACATE**

1 In light of the Federal Circuit’s decision, Plaintiff Gamevice, Inc. takes no position on
2 Nintendo’s Motion Request to Vacate Portions of the Judgment. Gamevice is currently considering
3 filing a petition for writ of certiorari with the U.S. Supreme Court seeking review of the Federal
4 Circuit’s decision, which threatens to create a novel and one-sided loophole to ordinary principles of
5 judicial estoppel and anticipation at the expense of patentholders. Gamevice would of course welcome
6 vacatur of any invalidity ruling against it. But it respectfully submits that Nintendo’s motion is
7 procedurally improper and would cure neither the inconsistency in Nintendo’s prior litigation positions
8 in this case nor the estoppel effect of that inconsistency.

9 At the outset, Nintendo identifies no legal basis to “modify” this Court’s judgment, Mot. 1.
10 The federal rules provide only one mechanism for a district court to alter, as opposed to set aside, its
11 judgment once entered: a party filing a Rule 59 motion to alter or amend the judgment. “The time for
12 doing so is short—28 days from entry of the judgment, with no possibility of an extension.” *Banister*
13 *v. Davis*, 590 U.S. 504, 507-08 (2020); *see* Fed. R. Civ. P. 6(b)(2). No rule or legal principle authorizes
14 a party to untimely seek modification of a judgment in its favor—particularly one it itself sought in
15 disputed litigation—to conform the final judgment to a preferred alternative holding. Nor could the
16 Federal Circuit’s judgment of its own force modify or direct modification of, this Court’s judgment.
17 *See Gamevice, Inc. v. Nintendo Co.*, No. 24-1467, 2026 WL 121450, at *5 (Fed. Cir. Jan. 16, 2026)
18 (affirming and remanding “to permit Nintendo to move” for such relief). The Federal Circuit plainly
19 would have lacked authority to do so because no party appealed this Court’s judgment as to invalidity,
20 *see Granite Mgmt. Corp. v. United States*, 416 F.3d 1373, 1378 (Fed. Cir. 2005); nothing in the Court
21 of Appeals’ decision suggests otherwise. Addressing the Federal Circuit’s unprecedented, extra-
22 jurisdictional suggestion that Nintendo seek modification by motion of the judgment in its favor, in
23 light of Nintendo’s inconsistent arguments in this case, leaves this Court in uncharted waters.

24 Modifying the judgment as Nintendo seeks would also do nothing to cure the inconsistency
25 of Nintendo’s prior litigation positions. Having persuaded this Court to enter a judgment of
26 invalidity, Nintendo now again seeks to obtain advantage from its inconsistent positions by seeking
27 to modify that judgment to a preferred alternative holding. But judicial estoppel binds a party to the
28

