

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ACCELERATION BAY LLC.)	
)	
Plaintiff,)	
)	
V,)	C.A. No. 15-228 (RGA)
)	
ACTIVISION BLIZZARD, INC.,)	
)	
Defendant.)	
)	
ACCELERATION BAY LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 15-282 (RGA)
)	
ELECTRONIC ARTS INC.,)	
)	
Defendant.)	
)	
ACCELERATION BAY LLC,)	
)	
Plaintiff.)	
)	
v.)	
)	
TAKE-TWO INTERACTIVE)	C.A. No. 15-311 (RGA)
SOFTWARE, INC., ROCKSTAR GAMES,)	
INC. and 2K SPORTS, INC.,)	
)	
Defendants.)	

SPECIAL MASTER ORDER NO. 3

Today defendants have requested an 'emergency' conference tomorrow to postpone the scheduled hearing on plaintiff's motion to compel discovery. For the reasons below, I decline to hold such emergency conference and require defendants to respond as follows:

I was advised on May 20th that the parties had agreed on a schedule for briefing and hearing plaintiff's motion. On May 27th I believe defendants received plaintiff's brief. Defendants now want to postpone the hearing because the plaintiff did not disclose issues and failed to 'meet and confer'. While I do consider such efforts of counsel to resolve discovery disputes to be important and necessary, I had reason to believe that such efforts had been fruitless; thus, giving rise to plaintiff's motion.

It is difficult to understand why defendants did not recognize these alleged problems before agreeing on the briefing and hearing schedule or promptly after getting plaintiff's brief. I would appreciate defendants' response to my concern.

Nevertheless, if defendants sincerely believe that progress can be made to resolve some or all of the issues in plaintiff's motion, I would be pleased to learn that. Thus, I suggest that the parties confer as soon as possible as to having a substantive 'meet and confer' to resolve these discovery issues. Defendants can advise me as to the outcome of such an effort to now have a 'meet and confer'. If there is no such 'meet and confer', defendants should be prepared to respond plaintiff's brief as scheduled. Nothing herein should preclude defendants from raising in their brief the points and issues in their e mail today if plaintiff won't participate in a meaningful 'meet and confer'.

Whether now or in their responsive brief, the defendants should address a central point in plaintiff's brief which appears to be that defendants had agreed previously to make much of the discovery that is sought in plaintiff's motion. Maybe a useful response from defendants would be a chart listing the specific discoveries sought by plaintiff, next a column indicating whether defendants had agreed, and if not a column indicating the extent of discovery offered by

defendants. A final column could set forth defendants' position as to why the objected to discovery should not be ordered.

Finally, defendants now or in their brief need to respond to the legal basis for plaintiff's motion, which is that the George-Pacific case makes much of the sought discovery relevant to calculating damages, assuming that liability is determined. The two Delaware cases by Judge Longobardi seem consistent with the George-Pacific case. Do defendants dispute the applicability of Georgia-Pacific, or do they contend that some or all of discovery is too detailed to be encompassed by Georgia-Pacific?

I will await hearing from the defendants and will continue to hold the Hearing of June 8th on my calendar pending considering defendants' response to this Order.

Dated: June 2, 2016

/s/ Allen M. Terrell, Jr.

Special Master Allen M. Terrell, Jr.