

EXHIBIT 1

From: Enzminger, David P. [DEnzminger@winston.com]
Sent: Tuesday, December 29, 2015 8:43 PM
To: Frankel, Aaron; Tomasulo, Mike; Lin, David K.; skraftschik@MNAT.com; Myers, Dana; Blumenfeld, Jack; Cheng, Gino; Kalemeris, Sarah J.; Hodgson, Alissa C
Cc: Andre, Paul; Kobialka, Lisa; Hannah, James; Lee, Hannah; Rovner, Philip A.; Choa, Jonathan A.
Subject: RE: Acceleration Bay Actions

Aaron,

We don't agree that we're at impasse. We don't actually know what your complaint is. The functionality is governed by the source code, which we've made available. Any delay in reviewing that resulted from plaintiff's refusal to submit the court-ordered protective order, plaintiff's original position that it would wait until early January to review the materials, and its failure to designate the consultant in time for him to clear the waivers. Indeed, Mike even asked you the week before the deadline for core technical document production if you desired to review these materials in December, because our clients would be closed for the holidays. A week later you changed your mind, and we scrambled to make source code available anyway. Plaintiff's initial review consisted of only a few hours yesterday, and your reviewer advised us that he would not return today to continue the review even though he was completely free to do so. We simply don't see how you can possibly claim the production of those materials was inadequate since you've barely reviewed any of it. In our view, you should finish reviewing the production before complaining that it is inadequate.

As to the publicly available manuals and the like, we are producing them. Either plaintiff did no due diligence on these materials or you have done so and correctly concluded that those materials are not core technical documents at the level of the accused functionality. Either way, those materials have been available to you since before plaintiff filed the lawsuit. Given all of this, it isn't clear what you think is missing from the productions you've barely reviewed. But I'm happy to discuss it with you.

Finally, with respect to Bungie, despite a reasonably diligent search, Activision has not located core technical documents depicting the accused functionality in Destiny. Those materials are presumably available from Bungie.

From: Frankel, Aaron [mailto:AFrankel@KRAMERLEVIN.com]
Sent: Tuesday, December 29, 2015 9:48 AM
To: Enzminger, David P.; Tomasulo, Mike; Lin, David K.; Kraftschik, Stephen; Myers, Dana; Blumenfeld, Jack; Cheng, Gino; Kalemeris, Sarah J.; Hodgson, Alissa C
Cc: Andre, Paul; Kobialka, Lisa; Hannah, James; Lee, Hannah; 'Philip A. Rovner'; 'Jonathan A. Choa'
Subject: RE: Acceleration Bay Actions

David,

It is clear that the parties are at an impasse. In view of the need to resolve these issues on a timely basis and as the parties have already held a meet and confer and exchanged numerous emails on these issues, Plaintiff will proceed to request a hearing date from the Court.

Since December 20, 2015, Plaintiff has been demanding that Defendants comply with the Scheduling Order by producing core technical documents beyond source code. I have previously articulated to your colleague Mike Tomasulo during a meet and confer the reasons why source code alone is insufficient under the Scheduling Order. Moreover, while we continue to await clearance of our technical expert to access the source code so we can conduct a full review, based on our initial review of the source code

made available, it appears inadequate with respect to the relevant functionality. Additionally, Defendants' unwillingness to make reasonable efforts to clear Plaintiff's technical consultant to begin reviewing the source code has exacerbated the prejudice to Plaintiff from Defendants' improper limitation of its core production to source code.

Defendants' obligations with respect to non-source code documents are not limited to publicly available documents. To the contrary, Plaintiff expects and Defendants have not denied thus far that Defendants have specifications, schematics and other non-source code documents describing the relevant functionality of the accused games, including the peer to peer networking functionality. Moreover, to the extent there are publicly available documents accurately describing the functionality of the accused products, Defendants are obligated to include such documents in their core technical production, and not to simply tell Plaintiff that there are unspecified publicly available documents that may be relevant.

While you have represented that Destiny was produced by Bungie, Plaintiff has provided evidence that Activision is in possession of significant documentation regarding the functionality of Bungie. Activision has not denied that this is the case, and such documentation should have been provided as part of Activision's core document production.

Regards,
Aaron

Aaron M. Frankel
Special Counsel

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From: Enzminger, David P. [DEnzminger@winston.com]
Sent: Monday, December 28, 2015 12:58 PM
To: Frankel, Aaron; Tomasulo, Mike; Lin, David K.; Kraftschik, Stephen; Myers, Dana; Blumenfeld, Jack; Cheng, Gino; Kalemeris, Sarah J.; Hodgson, Alissa C
Cc: Andre, Paul; Kobialka, Lisa; Hannah, James; Lee, Hannah; 'Philip A. Rovner'; 'Jonathan A. Choa'
Subject: RE: Acceleration Bay Actions

Aaron,

This responds to your email last night (Sunday, December 27, 2015).

It is remarkable that Plaintiff threatens Defendants with a motion to compel and for contempt for failing to produce core technical documents even before it has begun to review the source code materials that constitute the bulk of Defendants' core technical document production. We have consistently advised you that the source code is the key document on how the games operate at the level of the patent. Not only have we made that available to you, your team is beginning its review of that material this morning.

The suggestion that Defendants should be held in contempt for failing to produce publicly available operations manuals and product literature is especially odd. We presume that Plaintiff reviewed them before it filed these suits as part of its basic pre-filing due diligence under *Octane Fitness*. Moreover, we directed you specifically to these public materials as part of the core technical document production. If Plaintiff has not obtained these public materials to which we directed your attention, we will produce copies of those materials.

The suggestion that Defendants should be held in contempt for failing to produce "schematics and specifications" is without merit. As Mr. Tomasulo has repeatedly advised you, the games are governed by their source code that we have agreed to make available, and your team is beginning its review today. As the case proceeds, Defendants will of course continue to produce documents, including technical documents.

As we believe you know, Destiny is designed and operated by Bungie. Thus, Bungie is the appropriate source of accurate information regarding the accused features of Destiny. Activision advised Plaintiff of this as early as November 12 in its supplemental initial disclosures. Again, it is remarkable that Plaintiff threatens a motion to compel and for contempt against Activision when it has not sought the discovery from the party that created and operates the game.

In any event, it seems to us that it would make more sense for Plaintiff focus its energies on reviewing the source code materials Defendants have made available and pursuing whatever additional discovery it needs, rather than making threats of discovery and contempt motions before it has even reviewed those materials.

David P. Enzminger

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& STRAWN
LLP

From: Frankel, Aaron [<mailto:AFrankel@KRAMERLEVIN.com>]

Sent: Sunday, December 27, 2015 6:52 PM

To: Enzminger, David P.; Tomasulo, Mike; Lin, David K.; Kraftschik, Stephen; Myers, Dana; Blumenfeld, Jack; Cheng, Gino; Kalemeris, Sarah J.; Hodgson, Alissa C

Cc: Andre, Paul; Kobialka, Lisa; Hannah, James; Lee, Hannah; 'Philip A. Rovner'; 'Jonathan A. Choa'

Subject: RE: Acceleration Bay Actions

David,

We reached out to David Lin with the name of the attorney conducting the source code review and to work out the logistical details.

We disagree that we have not specified the relief we will be seeking from the Court. Plaintiff identified the requested relief during my meet and confer with Mike and in the correspondence exchanged between the parties. In particular, Plaintiff will be seeking an order compelling Defendants to comply with the Scheduling Order by producing "core technical documents related to the accused product(s) and accused networking functionalities (to the extent such documents exist), *including but not limited to operation manuals, product literature, schematics, and specifications.*" Plaintiff also will seek production of core technical documents for the accused Destiny product. Plaintiff will seek further relief in view of the prejudice to its ability to meet its deadline to provide infringement contentions, such as limiting the infringement contentions to publicly available information and/or modifying the deadline for the production of infringement contentions. Finally, Plaintiff will be moving for contempt because Defendants have failed to comply with their obligations under the Scheduling Order.

As noted in my previous email, I remain available to further discuss these issues.

Regards,
Aaron

Aaron M. Frankel
Special Counsel

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From: Enzminger, David P. [DEnzminger@winston.com]
Sent: Thursday, December 24, 2015 3:19 PM
To: Frankel, Aaron; Tomasulo, Mike; Lin, David K.; Kraftschik, Stephen; Myers, Dana; Blumenfeld, Jack; Cheng, Gino; Kalemeris, Sarah J.; Hodgson, Alissa C
Cc: Andre, Paul; Kobialka, Lisa; Hannah, James; Lee, Hannah; 'Philip A. Rovner'; 'Jonathan A. Choa'
Subject: RE: Acceleration Bay Actions

Aaron,
My colleague, David Lin, will respond concerning logistics for your review. But failing anything more specific, please come to our Los Angeles office (address below), and we will get you set up for the review. Before Monday, please let us know the names of the people coming so we can advise building security to expedite your ability to get up to our reception floor (38th).

The message does not advise us of the "relief you will be seeking from the Court" or a description of any prejudice. The record seems well developed. The only issue is one of the plaintiff's creation by (1) failing to comply with a Court's order

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