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REDACTED - PUBLIC VERSION

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January 12, 2016

The Honorable Richard G. Andrews  
United States District Court  
844 North King Street  
Wilmington, DE 19801

VIA ELECTRONIC FILING

Re: Acceleration Bay – C.A. Nos. 15-228 (RGA); 15-282 (RGA) and 15-311 (RGA)

Dear Judge Andrews:

Plaintiff initiated its discovery motion over the holidays before it had even started to inspect the source code materials produced by Defendants.<sup>1</sup> When it filed its letter, Plaintiff had spent less than eight hours reviewing the source code materials produced by EA and had just begun to review the source code materials produced by Take-Two. Had Plaintiff reviewed the materials provided and conducted a proper meet and confer, instead of rushing to Court charging contempt before it had reviewed anything, it would have seen that Defendants produced the very documents Plaintiff alleges are missing, including [REDACTED] to the extent they could be found. And Defendants have continued to produce technical documents even though Plaintiff—since beginning to inspect the source code materials—has not identified a single deficiency with those materials.

**I. Defendants Have Complied With Their Initial Discovery Requirements.**

The Default Standard provision regarding “core technical documents” did not require Defendants to complete production of all technical documents by December 16, 2015. The Scheduling Order provides a separate date—September 14, 2016—for “substantial” completion of document production. Rather, the Default Standard (§4 and fn. 3) explicitly provides that the production of core technical documents is “initial” and can be supplemented. As Judge Robinson explained: It is “supposed to be a starting point ... to help people focus the continuation of discovery. It's not supposed to be the end game.” DX1, *Afluo, LLC v. Adobe Sys. Inc.*, C.A. No. 12-1459-SLR, Tr. at 14 & 19 (D. Del. Nov. 6, 2013). The Default Standard is satisfied by production of “core technical documents related to the accused product(s), sufficient to show how the accused product(s) work(s).” See, e.g., DX2, Chief Judge Stark’s Revised Patent Form Scheduling Order at 3 (June 2014). Defendants have done so. Plaintiff cites no case supporting its position that Defendants were required to produce all technical documents by December 16 or that a defendant timely producing source code in a software case could be held in contempt for violating the initial discovery requirements.

**A. The source code materials constitute the core technical documents for the accused products.**<sup>2</sup>

<sup>1</sup> Defendants are Activision|Blizzard, Inc. (“Activision”), Electronic Arts Inc. (“EA”), and Take-Two Interactive Software, Inc., Rockstar Games, Inc., and 2K Sports, Inc. (“Take-Two”). Defendants’ exhibits are designated as: “DX\_”, “ACTX\_”, “EAX\_” and “T2X\_”; and Plaintiff’s as “PX\_”.

<sup>2</sup> Two of the accused games, *Destiny* and *Crysis 3*, were developed by third parties. Activision and EA, respectively, publish those games and the third party developers have the core technical documents. Although that is publicly available information, Plaintiff waited until January to serve

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[REDACTED]

[REDACTED] and their production discharged Defendant's initial discovery requirements. *See, e.g., DX3, CyberFone Sys., LLC v. Cellco Partnership*, C.A. No. 11-827-SLR, Tr. at 34 (D. Del. Sept. 20, 2012) (Source code is "where the rubber meets the road in a software case.").

**B. Defendants also produced "operation manuals, product literature, schematics, and specifications" that were located after a reasonable search.** [REDACTED]

[REDACTED] Plaintiff's contention that Defendants did not produce such documents is inexplicable. Plaintiff's motion acknowledges EA's production includes such documents, and, in fact, during Plaintiff's inspection of EA's source code materials, MS Word and PowerPoint were installed on the source code inspection computer at the request of Plaintiff's counsel just so he could view such documents.

**C. Defendants are not withholding "core technical documents."** [REDACTED]

[REDACTED]

**D. Plaintiff's complaints about burdens of inspecting source code are irrelevant and incorrect.** Plaintiff, before even inspecting all of the code, argues both that the source code materials produced by Defendants are (1) too burdensome to review and (2) incomplete because they are "unlikely" to "fully disclose[] the accused network topology and functionality." Plaintiff's burden arguments are irrelevant; its incompleteness arguments are unfounded. Indeed, Plaintiff had not even commenced its review of the source code materials before it initiated this motion, it spent less than a day reviewing the source code materials for EA and Take-Two before it filed its letter, and it has yet to raise a single complaint about the sufficiency of any Defendant's actual production of source code.

discovery on these entities. [REDACTED]

[REDACTED]

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**II. Plaintiff's Motion Is Premature And Unreasonable.**

Plaintiff made clear before it had reviewed anything that it was going to raise this issue with the Court. Plaintiff declined to inspect the documents produced to it and then to raise any issues with Defendants before seeking relief, and then misrepresented Defendants' production. [REDACTED]

[REDACTED]

[REDACTED]

**III. Defendants Have Not Refused To Produce Any Documents And Plaintiff Has Identified No Specific Deficiencies In Defendants' Production.**

Defendants complied with their Core Technical Document production obligations. Further, Defendants informed Plaintiff that they would continue to make reasonable inquiries for and produce technical documents, and they have been doing so. Additional productions were made after Defendants resumed operations on January 4, 2016. (DX5-6).

**IV. Plaintiff's Motion Should Be Denied.**

Defendants confirmed the production of technical documentation that Plaintiff claimed to be missing without reviewing the materials that were produced. Defendants are prepared to continue discussing any issues raised by Plaintiff after it has reviewed their documents. But Defendants should not be ordered to produce undefined and undescribed additional technical documents. Defendants respectfully request the Court deny Plaintiff's requested relief and award costs to Defendants.

Plaintiff should also not be given additional time beyond February 17 for its initial infringement contentions. Plaintiff should already have good-faith infringement contentions prepared as part of its basic pre-filing due diligence under *Octane Fitness*. The games themselves and the produced [REDACTED] are everything Plaintiff needs to prepare its initial infringement contentions, and it has not shown that it needs anything more.

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Respectfully,

*/s/ Jack B. Blumenfeld*

Jack B. Blumenfeld (#1014)

JBB/dlw

Enclosures

cc: Clerk of Court (Via Hand Delivery; w/ encl.)  
All Counsel of Record (Via Electronic Mail; w/ encl.)

**TABLE OF EXHIBITS****DEFENDANTS' JOINT EXHIBITS**

Ex. No.	Document Name
DX1	<i>Afluo, LLC v. Adobe Sys. Inc.</i> , C.A. No. 12-1459-SLR, Tr. (D. Del. Nov. 6, 2013)
DX2	Chief Judge Stark's Revised Patent Form Scheduling Order (Jun. 2014)
DX3	<i>Cyberfone Sys., LLC v. Cellco Partnership</i> , C.A. No. 11-827-SLR, Tr. (D. Del. Sept. 20, 2012)

**ACTIVISION CONFIDENTIAL EXHIBITS**

Ex. No.	Document Name

**EA CONFIDENTIAL EXHIBITS**

Ex. No.	Document Name

**TAKE-TWO CONFIDENTIAL EXHIBITS**

Ex. No.	Document Name