

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC,)	
)	C.A. No. 16-453-RGA
Plaintiff,)	
)	PUBLIC VERSION
v.)	
)	
ACTIVISION BLIZZARD, INC.,)	
)	
Defendant.)	

**PLAINTIFF ACCELERATION BAY LLC'S
RESPONSE TO ACTIVISION'S OBJECTIONS TO SPECIAL MASTER ORDER NO. 3**

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Dated: June 19, 2017
Public Version dated: June 26, 2017

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Acceleration Bay respectfully requests that the Court overrule Activision's objections to Special Master Order No. 3 (D.I. 155, the "Order"), in which the Special Master declined to issue sanctions under Federal Rule of Civil Procedure 37(b)(2) in connection with granting Activision's motion to compel supplementation of Acceleration Bay's responses to certain interrogatories relating to infringement.

Activision's Objections offer little analysis beyond incorporating by reference their letter briefing to the Special Master. *See* D.I. 174. In response, Acceleration Bay incorporates by reference its letter brief in opposition to Activision's motion to compel, and, in particular, the section explaining why sanctions are not warranted, even if the Special Master ordered supplementation. *See* Acceleration Bay's Opposition Letter Brief at 4-6.¹

Activision's Objections presume that the Special Master found that Acceleration Bay had failed to comply with prior orders regarding the interrogatories at issue. The premise is incorrect. *See* Acceleration Bay's Opposition Letter Brief at 1-4. Moreover, the Special Master made no such finding in granting Activision's Motion. Rather, the Special Master found that further supplementation was appropriate given the stage of the case:

Plaintiff insists that its infringement claims need only meet a "notice" standard when responding to initial interrogatories as to its infringement claims. *Even if the Special Master accepts Plaintiff's contention as to the law, concerns remain as to the sufficiency of Plaintiff's disclosures as the parties approach the fact discovery cut off.* On February 17, 2017, Judge Andrews indicated that the Special Master should resolve as much as possible for the parties to adhere to the Scheduling Order. During that hearing on February 17, 2017, Defendants counsel argued that they still didn't have adequate infringement contentions from

¹ In violation of this Court's order, Activision did not submit with its objections the relevant part of the record on which it relies. *See* Order Appointing Special Master (C.A. No. 15-228, D.I. 94) at ¶ 6 (requiring an objecting party to submit "any relevant portion of the record made before Mr. Terrell which pertains specifically to the objections."). The transcript of the hearing before the Special Master at issue is Exhibit G to Plaintiff Acceleration Bay LLC's Appendix in Support of Objections To Special Master Order No. 3 (D.I. 173) and Acceleration Bay's Opposition Letter Brief is Exhibit F.

Plaintiff. The Court stated that there comes a time when the Plaintiff cannot add new products and that the Defendants need to get a fixed target to try the case. (Trans. p. 11). *With the parties scheduled for a July 10, 2017 claim construction (“Markman”) hearing, it is appropriate for Plaintiff to be as specific as possible to its infringement claims in its supplemental interrogatory responses.*

D.I. 155 at 5 (emphasis added). Thus, there has been no finding that Acceleration Bay failed to comply with a prior order, and no basis to award sanctions under Federal Rule of Civil Procedure 37(b)(2).

The only other argument advanced by Activision in its Objections is that sanctions are necessary because Plaintiff submitted objections to the Order. This theory is entirely meritless, because, notwithstanding Acceleration Bay’s objections in-part to the Order, Acceleration Bay complied with the Order by providing detailed supplemental responses to the interrogatories at issue and hundreds of pages of detailed claim charts.

For these reasons, and as set forth in Acceleration Bay’s Letter Brief in Opposition to Activision’s Motion to Compel, the Court should overrule Activision’s objections.

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