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October 24, 2018

BY CM/ECF & HAND DELIVERY

The Honorable Richard G. Andrews
U.S. District Court for the District of Delaware
U.S. Courthouse
844 North King Street
Wilmington, DE 19801

Re: *Acceleration Bay LLC v. Activision Blizzard Inc.*
D. Del., C.A. No. 16-453-RGA

Dear Judge Andrews:

In response to the Court's inquiry earlier today, Acceleration Bay respectfully requests that the Court bifurcate damages and proceed with the trial on liability as scheduled. Doing so will promote judicial economy and conserve the resources of the Court and the parties.

Resolving liability now will either confirm that the Court needs to resolve damages issues (should Acceleration Bay prevail on its infringement claims) or moot the question of damages (should the jury find there is no infringement). Conversely, deferring next week's trial will not obviate the need for a trial on liability at a later date. For example, if the Court continues the trial and subsequently finds that Acceleration Bay is precluded from presenting its damages claims, Acceleration Bay would still be entitled to present its infringement claims, including to support its claims for willful infringement, an award of attorney's fees and for an accounting of infringing sales and revenues.

Bifurcating damages would result in no prejudice to Activision. Indeed, if anything, Activision should support a bifurcated trial in light of its claim that the large damages numbers could prejudice the jury. Bifurcation would also moot Activision's contention that it is surprised by Acceleration Bay's damages claims. A bifurcated trial would eliminate those concerns and afford Activision ample time to fully consider Acceleration Bay's damages claims. Moreover, to the extent the Court identifies any concerns with Acceleration Bay's damages case, bifurcation would provide an opportunity for Acceleration Bay to address those concerns through supplemental reports.

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Finally, proceeding with the trial on liability would conserve the parties' resources. Both sides are prepared to try liability on Monday. Acceleration Bay, a small company with limited resources, and likely Activision as well, have already borne the expense to bring large numbers of fact witnesses, company representatives, expert witnesses and counsel to Delaware, and made non-refundable payments for blocks of hotel rooms, rental cars, computer equipment and other expenses necessary for trial. Continuing the trial would result in forfeiture of those significant resources.

Should Your Honor have any further questions, counsel are available at the Court's convenience.

Respectfully,

/s/ Philip A. Rovner

Philip A. Rovner (#3215)

Enclosure

cc: All Counsel of Record

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