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The Honorable William C. Bryson
United States District Court for the District of Delaware
844 North King Street
Wilmington, DE 19801

REDACTED - PUBLIC VERSION

Re: *Acceleration Bay LLC v. Activision Blizzard Inc.*, C.A. No. 16-453 (WCB)

Dear Judge Bryson:

Activision writes in response to the Court's request that the parties inquire as to the availability of their witnesses for an October 30, 2023 trial setting. (D.I. 767 at 17-18.) Acceleration Bay has already confirmed that its witnesses are available for the October 30 trial date. (See D.I. 765 at 1.)

Party and Third Party Fact Witnesses. Pursuant to the Court's March 28 Order, Activision inquired as to the availability of fact and expert witnesses for trial beginning on October 30. To date, Activision has confirmed the availability for one of its fact witnesses (Pat Griffith), with one additional witness (Patrick Dawson) being tentatively available pending his commitments to an annual industry conference. Activision has not, however, been able to confirm the availability of Kurtis McCathern, who is no longer employed by Activision, or third-party witness Roger Wolfson, who is no longer employed by third party Bungie. For Mr. Wolfson, Activision has conferred with Bungie's outside counsel but they have not been able to confirm his availability, and have indicated that a substitute witness is very likely. Bungie counsel stated that they should have a confirmation regarding Mr. Wolfson's availability, or a substitute witness, in three to four weeks. Finally, although Activision has inquired into other third-party fact witness availability, it has not yet successfully been able to contact them (e.g., Joseph Rumsey). Activision continues to diligently coordinate with the fact witnesses' schedules and availability. However, as of the date of this letter Activision cannot confirm the availability of each of its fact witnesses for an October 30 trial date.

Technical Experts. Activision has also been in contact with its technical expert witnesses, Dr. Macedonia and Dr. Kelly, regarding their availability. Both experts have indicated that they have retired since this case was last set for trial in 2018. In addition, Dr. Macedonia has indicated [REDACTED], and Dr. Kelly has explained that his staff members who assisted him in this case have since moved on to different opportunities in the

The Honorable William C. Bryson

April 5, 2023

Page 2

wake of his retirement. Activision continues to evaluate its technical expert witness availability and options, and will apprise the Court and Acceleration Bay of any updates as quickly as possible. For this additional reason, Activision is unable to confirm the October 30 trial date.¹

If necessary, Activision will work diligently to identify a substitute expert witness(es) for trial. If any substitute expert witnesses are necessary, Activision intends that the substitute witness testimony will not differ substantively from Dr. Macedonia's and Dr. Kelly's disclosed opinions such that the need for any additional expert discovery will be limited or unnecessary. Activision will promptly notify the Court and Acceleration Bay once it determines whether an expert substitution will be required for trial.

Alternative Trial Date(s). Given that Activision has not been able to confirm the availability of five of its anticipated eight trial witnesses, Activision requested a meet and confer with Acceleration Bay to explore alternative trial settings in Q1, 2024. Those initial discussions are scheduled to begin on April 6, 2023 at 1:30pm ET. Once counsel have conferred over alternative trial settings in Q1, 2024, Activision will continue to work diligently in clearing those dates with its anticipated witnesses. Activision respectfully requests leave to file a joint status report in two weeks to offer potential trial dates in the first quarter of 2024.

Activision respectfully submits that a potential three to four month delay in trial setting will result in little to no prejudice to Acceleration Bay, and will actually give the parties more time to address any issues stemming from any witness substitution(s), including any necessary deposition(s). Indeed, the remaining asserted patents at issue have expired, and thus potential damages are no longer accumulating. Any conceivable harm to Acceleration Bay from a small delay in trial can be remedied through prejudgment interest, and is substantially outweighed by the prejudice to Activision if it is unable to fully and fairly present its defense at an expedited trial setting.

Respectfully,

/s/ Jack B. Blumenfeld

Jack B. Blumenfeld (#1014)

JBB/bac

¹ Activision has confirmed the availability of its damages expert, Ms. Cathy Lawton, for the October 30 trial setting.