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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. Electronic Arts, Inc.*,
D. Del., C.A. No. 16-454-RGA

Dear Judge Andrews:

Acceleration Bay respectfully requests that the Court modify the briefing schedule in the *Electronic Arts* action to move the date for submission of opening summary judgment and *Daubert* briefs to May 31, 2018, about four weeks after the expected conclusion of the *Activision* trial. Currently, opening summary judgment and *Daubert* briefs are due on March 23, 2018, with briefing not scheduled to conclude until April 27, 2018, three days before the start of the *Activision* trial.¹

Submitting summary judgment and *Daubert* briefs in the *Electronic Arts* case before the conclusion of the *Activision* trial risks wasting the parties' and the Court's time and resources. Developments in the *Activision* case are very likely to impact, and may moot, many of the issues that the parties will likely address in the *Electronic Arts* case. The parties submitted over 250 pages of briefing on summary judgment and *Daubert* motions in the *Activision* case, covering a wide range of issues including validity, infringement and damages. Many of the issues raised in these motions will overlap with the issues that will be briefed in the *Electronic Arts* case. For example, the parties have submitted dozens of pages of briefing seeking to exclude each other's damages experts, and many of these arguments at least partially apply in the *Electronic Arts* case. Thus, the Court's resolution of the *Activision* motions may significantly narrow or resolve the issues in the *Electronic Arts* case, reducing the amount of necessary briefing. Submitting

¹ Electronic Arts declined to participate in a joint call with chambers to request guidance regarding how best to present this request. To the extent the Court prefers more formal briefing on this issue, Acceleration Bay is prepared to provide it on an expedited briefing schedule so that the Court may consider this issue in advance of the current March 23, 2018 due date for opening briefs.

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summary judgment and *Daubert* motions in the *Electronic Arts* case before the Court has resolved the *Activision* motions is not an efficient use of time and resources.

Additionally, given that briefing in the *Electronic Arts* case is currently scheduled to be completed on the last business day before the start of the *Activision* trial, the Court is unlikely to decide those motions prior to the conclusion of the *Activision* trial. The outcome of the *Activision* trial, and the Court's rulings during that trial, may further narrow and inform the *Electronic Arts* motions, which is another reason to defer them until June.

During the parties' meet and confer, Electronic Arts' only objection was that Electronic wanted to make sure that the Court has sufficient time to consider the parties' motions in advance of the *Electronic Arts* trial. However, the *Electronic Arts* trial is not set to begin until August 27, 2018, well after of the conclusion of briefing proposed by Acceleration Bay. If the Court believes that is not sufficient time, then Acceleration Bay requests the Court set a deadline for some time after the *Activision* trial, sufficient for the Court's calendar. Such an extension will allow the parties to present the Court with more focused briefing on any remaining issues before the *Electronic Arts* trial.

Thus, in the interest of judicial economy, Acceleration Bay respectfully requests that the Court move the date for opening summary judgment and *Daubert* briefs in the *Electronic Arts* case to May 31, 2018.

Respectfully,

/s/ Philip A. Rovner

Philip A. Rovner (#3215)

cc: All Counsel of Record
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