



1313 North Market Street  
P.O. Box 951  
Wilmington, DE 19899-0951  
302 984 6000  
[www.potteranderson.com](http://www.potteranderson.com)

**Philip A. Rovner**  
Partner  
Attorney at Law  
[provner@potteranderson.com](mailto:provner@potteranderson.com)  
302 984-6140 Direct Phone  
302 658-1192 Firm Fax

November 20, 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. Electronic Arts Inc.,  
D. Del., C.A. Nos. 16-454-RGA

Dear Judge Andrews:

Acceleration Bay respectfully requests that the Court defer oral argument on the Parties' *Daubert* and summary judgment motions (currently scheduled for December 19, 2018) until the resolution of damages issues in related case, C.A. No. 16-453-RGA (the "*Activision* Action").<sup>1</sup> First, some of the damages issues in this case are moot based on the Court's rulings in the *Activision* Action. Second, the remaining issues may change based on the Court's resolution of Acceleration Bay's damages proffer in the *Activision* Action. Thus, the Court's decision in the *Activision* Action will inform the resolution of parallel issues presented in this Action and waiting for that decision will promote judicial economy.

In the *Activision* Action, the Court ordered that Acceleration Bay may supplement its damages case. C.A. No. 16-453, D.I. 619. Acceleration Bay intends to seek leave from the Court to provide a similar supplemental report in this Action (as well as in the case against Take Two). EA has indicated that it will submit a responsive supplemental damages report and will likely file a further motion challenging Acceleration Bay's supplemental damages case. Thus, the Parties' respective pending *Daubert*/summary judgment motions in this action present numerous damages issues which will likely soon be mooted or, at a minimum, outdated based on supplemental reports and further briefing.

It is neither necessary nor beneficial to have an argument on reports that will be supplemented and motions that will soon be out of date. The Parties agree that the *Activision* Action should go to trial before this case and that the EA trial date should be taken off calendar pending further developments in the *Activision* case. Therefore, there will be no prejudice to EA

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<sup>1</sup> Acceleration Bay moved to preclude the opinions of EA's damages expert under *Daubert* and EA moved for relief on *fourteen* different damages issues. D.I. 437, 425.

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from deferring resolution of the *Daubert*/summary judgment motions until after a decision in the *Activision* Action.

Another reason to defer oral argument in this case is that the Court is still resolving damages issues in the *Activision* Action. The Court's resolution of parallel motions in the *Activision* Action is likely to inform, if not resolve, the parties' similar disputes in this case, as EA itself recently argued in a submission to the Court. D.I. 502.

Accordingly, Acceleration Bay requests a schedule where the Court and parties focus their efforts on resolving the damages issues in the *Activision* Action and getting that case ready for trial. Then, the parties can turn to resolving the parallel issues in this case, rather than waste the resources of the Court and the parties on motions that are soon to be at least partially stale.

Respectfully,

/s/ Philip A. Rovner

Philip A. Rovner (#3215)

cc: All Counsel of Record (Via ECF Filing, Electronic Mail)  
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