

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ACCELERATION BAY LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 16-454 (RGA)
)	
ELECTRONIC ARTS INC.,)	
)	
Defendant.)	
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ACCELERATION BAY LLC,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 16-455 (RGA)
)	
TAKE-TWO INTERACTIVE SOFTWARE,)	
INC., ROCKST AR GAMES, INC., AND)	
2K SPORTS, INC.)	
)	
Defendants.)	
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PROPOSED STIPULATED ORDER REGARDING DAMAGES ISSUES

WHEREAS, Acceleration Bay’s damages expert, Dr. Christine Meyer, offered a damages report in C.A. No. 16-453 (RGA) (the “Activision Action”), C.A. No. 16-454 (RGA) (the “EA Action”) and C.A. No. 16-455 (RGA) (the “Take Two Action”) (the “Acceleration Bay Actions”), each of which relied on a jury verdict in *Uniloc USA, Inc. v. EA*, No. 6:13-cv-00259-RWA (E.D. Tex. Dec. 15, 2014);

WHEREAS, on August 29, 2018, in the Activision Action, the Court issued an Order striking the portion of Dr. Meyer’s report which relied on that jury verdict (D.I. 578 at 27-28);

WHEREAS, after continuing the trial in the Activision Action indefinitely, the Court issued a Case Management Order in that Action which, among other things, provided Plaintiff “a final opportunity to present [] an admissible damages case” and set forth a procedure for the

Parties in that Action to follow, including supplemental expert discovery, a detailed proffer, and additional motion practice (16-453-RGA, D.I. 619);

WHEREAS, in an Order dated November 26, 2018 in the EA Action (D.I. 509), the Court stated that it did “not intend to change [its] position that Plaintiffs expert's opinion based on the *Uniloc USA, Inc. v. EA*, No. 6:13-cv-00259-RWA (E.D. Tex. Dec. 15, 2014), jury verdict is inadmissible,” denied the Parties’ joint request to continue the trial in the EA Action “subject to reconsideration” at the summary judgment hearing in the EA action set for December 20, 2018, limited the December 20 hearing to “summary judgment motions,” and Ordered that “if Plaintiff intends to offer any damages theories in this case other than the ones it currently has, it needs to meet-and-confer with Defendant and file any necessary motion no later than December 7, 2018;”

WHEREAS, in an Order dated November 28, 2018 in the Activision Action (D.I. 630), the Court permitted Acceleration Bay to submit a supplemental damages report from a new damages expert;

WHEREAS, EA, Take Two and Plaintiff met and conferred, and Plaintiff stated that it seeks leave to serve a single supplemental expert report in the EA Action and in the Take Two Action, which will be from Mr. Russell Parr, pertain to the issue of damages, and be substantially similar to the supplemental damages report Mr. Parr is providing in the Activision Action conformed to the specific facts of these actions (i.e., the damages methodologies presented in the Parr report in these actions will be the same as the damages methodologies presented in the Activision Action);

WHEREAS, subject to this Court’s approval and the conditions below, EA and Take Two do not oppose Plaintiff’s request to provide a single supplemental damages report in each of

the EA Action and in the Take Two Action provided that (i) the Parties have sufficient time to follow the same procedures set forth in the Activision Action and (ii) the trials can be rescheduled in a manner that preserves the original order for the trials, namely: Activision first, then EA, and then Take Two;

WHEREAS, on November 28, 2018, the Court entered a schedule in the Activision Action whereby the expert discovery and briefing will not be concluded until mid-April 2019 (16-453, D.I. 630);

WHEREAS, the trials in the EA and Take Two Actions are currently scheduled for March 4, 2019 and November 4, 2019;

WHEREAS, given these trial dates, there is not sufficient time for the Parties to complete supplemental expert reports, take depositions, follow the procedures set forth in the Activision Case Management Order (D.I. 619), or maintain the original trial schedule without moving both trial dates;

WHEREAS, given the existing trial dates and foregoing scheduling issues, Acceleration Bay, EA and Take Two believe that good cause exists for the relief set forth below; and

WHEREAS, given the foregoing, the holidays and the March 4, 2019 trial date for the EA Action, the Parties respectfully request that the Court reconsider its denial of the Joint Request to continue the March 4, 2019 trial date and respectfully request that the Court enter this Proposed Stipulated Order which provides the parties with sufficient time to follow the procedures Ordered by the Court for the Activision Action;

THEREFORE, IT IS ORDERED THAT:

1. The pre-trial conference and trial dates in the EA and Take-Two Actions are taken off calendar indefinitely;

2. Plaintiff's damages theories based on the *Uniloc* jury verdict are stricken;
3. Acceleration Bay may serve a single supplemental expert report, from Mr. Parr, in each of the EA Action and the Take Two Action, which shall be substantially similar to the supplemental damages report Mr. Parr is providing in the Activision Action conformed to the specific facts of these actions (i.e., the damages methodologies presented in the Parr report in these actions will be the same as the damages methodologies presented in the Activision Action).
4. The parties shall follow the procedures set forth in the October 30, 2019 Case Management Order in the Activision Action (16-453 D.I. 619), i.e., Acceleration Bay will serve a supplemental damages expert report, EA and Take Two will serve responsive reports, Acceleration Bay will serve a proffer of the damages case it intends to offer in each of the EA and Take Two Actions, and the parties will have an opportunity to take depositions and present further briefing;
5. The parties will meet and confer regarding the schedule for these procedures and submit a proposed schedule within fourteen days of the entry of this Order.

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SO ORDERED this _____ day of _____, 2018

United States District Judge