

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., ROCKSTAR GAMES, INC. and	)	
2K SPORTS, INC.,	)	
	)	
Defendants.	)	

**PROPOSED STIPULATED ORDER REGARDING CASE MANAGEMENT**

WHEREAS, on December 7, 2018, the Court entered a Stipulated Order which, among other things:

- took the trial dates off calendar for C.A. No. 16-454 (RGA) (the “EA Action”) and C.A. No. 16-455 (RGA) (the “Take-Two Action”);
- authorized Acceleration Bay to “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)”; and

- ordered the parties to “follow the procedures set forth in the October 30, 2018 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” (EA Action D.I. 513; Take-Two Action D.I. 448);

WHEREAS, on January 17, 2019, the Court Ordered that the Parties would begin the foregoing procedures 30 days (in the EA Action) and 40 days (in the Take-Two Action) “after the Court rules on the parties' damages motions in the Activision Action.” (the “Scheduling Order,” EA Action, D.I. 521, Take-Two Action, D.I. 455);<sup>1</sup>

WHEREAS, the Court issued an Opinion and Order on damages issues in C.A. No. 16-453 (RGA) (the “Activision Action”) (the “Damages Order,” Activision Action, D.I. 693);

WHEREAS, Acceleration Bay has moved for reconsideration of the Damages Order in the Activision case;

WHEREAS, the parties in the Activision case have presented a Status Report in the Activision case stating their very different positions on the status of the case and the impact of the Damages Order, with Acceleration stating that the case is “ready to proceed to trial” and that “Acceleration Bay will present a fact-based damages case based on the already developed fact record and evidence with expert support” and Activision stating that “Acceleration failed in its

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<sup>1</sup> Specifically, the Scheduling Order provides that thirty days after the Damages Order Acceleration Bay is to serve a supplemental damages expert report in the EA Action and forty days after the Damages Order Acceleration Bay is to serve a supplemental damages expert report in the Take-Two Action, with EA and Take-Two to then serve responsive supplemental damages expert reports, followed by the exchange of damages proffers, depositions and briefing on damages issues.

‘final opportunity’ to disclose an admissible damages case that it can present to the jury” and that “[e]ntry of judgment of no damages is therefore appropriate.” (Activision Action D.I. 694);

WHEREAS, the parties in the EA and Take-Two Actions also have very different positions regarding how the Damages Order impacts the EA and Take-Two Actions;

WHEREAS, the Court has ruled on the Parties’ summary judgment motions in the EA Action, but has not yet ruled on Take-Two’s Motion for Summary Judgment of Noninfringement in the Take-Two Action; and

WHEREAS, the Parties met and conferred and agree that it would conserve the resources of the Court and of the parties to defer addressing damages issues until such time as the damages issues in the Activision Action are fully resolved and the Court has had an opportunity to rule on Take-Two’s Motion for Summary Judgment of Noninfringement;

IT IS HEREBY STIPULATED by the parties, subject to the approval of the Court, that the deadlines in the Scheduling Order in the EA Action and the Take-Two Action are taken off calendar until after both the conclusion of the resolution of damages issues in the Activision Action and the Court issues a ruling on Take-Two’s Motion for Summary Judgment of Noninfringement. Upon the conclusion of the resolution of damages issues in the Activision Action and the issuance of a ruling on Take-Two’s Motion for Summary Judgment of Noninfringement, the parties will submit a Joint Report to the Court with proposals on how the damages issues should proceed in the EA and Take-Two Actions.

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*/s/ Philip A. Rovner*

*/s/ Jack B. Blumenfeld*

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*Attorneys for Defendants*

September 24, 2019

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2019.

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UNITED STATES DISTRICT JUDGE