

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY, LLC :
:
Plaintiff, : No. 16-453-RGA
:
v. :
:
ACTIVISION BLIZZARD, INC. :
:
Defendant. :
ACCELERATION BAY, LLC :
: No. 16-454-RGA
Plaintiff, :
v. :
:
ELECTRONIC ARTS, INC., :
:
Defendant. :
ACCELERATION BAY, LLC :
: No. 16-455-RGA
Plaintiff, :
v. :
:
TAKE-TWO INTERACTIVE :
SOFTWARE, INC., ROCKSTAR :
GAMES, INC. and 2K SPORTS, :
INC., :
Defendants. :

Friday, April 14, 2017
9:00 a.m., Discovery Dispute Hearing

Richards, Layton & Finger, P.A.
920 North King Street, Suite 2
Wilmington, Delaware 19801

BEFORE: SPECIAL MASTER Allen M. Terrell

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APPEARANCES :

POTTER ANDERSON & CORROON LLC
BY: PHILIP ROVNER, ESQ.

-and-

KRAMER LEVIN NAFTALIS & FRANKEL LLP
BY: PAUL ANDRE, ESQ.
BY: AARON FRANKEL, ESQ.

On behalf of Plaintiff

MORRIS, NICHOLS, ARSHT & TUNNELL LLP
BY: JACK BLUMENFELD, ESQ.

-and-

WINSTON & STRAWN LLP
BY: KATHLEEN BARRY, ESQ.

On behalf of Defendants

PHILIPS, GOLDMAN, McLAUGHLIN & HILL,
P.A.
BY: MEGAN HANEY, ESQ.

On behalf of Boeing

1 THE SPECIAL MASTER: So we're on
2 the record. For the record, I'm Allen Terrell,
3 Special Master, in the case of Acceleration Bay
4 LLC vs. Activision Blizzard, Inc, Civil Action
5 No. 16-453 and the related cases 16-454 and
6 16-455. This is a hearing on Plaintiff's Motion
7 to Compel and on Defendants' Motion to Compel.

8 We're going to begin by counsel
9 identifying themselves around the table for the
10 sake of the court reporter and this record.

11 MR. ANDRE: Paul Andre for
12 Plaintiff.

13 MR. FRANKEL: Aaron Frankel for
14 Plaintiff and with us is Phil Rovner also for
15 the Plaintiff.

16 MR. BLUMENFELD: Jack Blumenfeld
17 for the Defendants along with Kathleen Barry.

18 MS. HANEY: And Megan Haney also
19 for the Defendants and I'm just here for the
20 Boeing motion.

21 THE SPECIAL MASTER: We will begin
22 by agreement among the parties to consider the
23 first item being the Motion of Defendant to
24 Compel compliance with the Rule 45 subpoena to

1 the Boeing company. On behalf of Defendants is
2 Ms. Haney. You can go ahead.

3 MS. HANEY: Actually, I believe
4 that Ms. Barry will do the arguments for
5 Defendants.

6 THE SPECIAL MASTER: Is that
7 right?

8 MS. BARRY: Yes.

9 THE SPECIAL MASTER: Let me also
10 tell counsel that I've read all of your briefs
11 and exhibits and I have suggested that we have
12 some reasonable limitations on time as we
13 proceed. But do your best and if you need more
14 time, I assure you can have it.

15 MS. BARRY: Thank you, Your Honor,
16 and counsel for the Plaintiff for the courtesy
17 of doing the Boeing motion first since Ms. Haney
18 is co-counsel with us with regards to the Boeing
19 motion. As an initial matter on the Boeing
20 motion, Boeing has agreed to have this motion
21 heard before the Special Master in the
22 procedures that are set up here for the Special
23 Master.

24 So we have two issues that we are

1 moving to compel Boeing on at this point. The
2 first issue is we are seeking an order requiring
3 Boeing to provide a privilege log for any
4 documents that have been withheld on the basis
5 of privilege. And in response to that, Boeing
6 has made a couple of arguments.

7 First of all, Boeing has said that
8 they are not required to by reason of the
9 protective order. We don't believe that is
10 correct. As an initial matter, the scheduling
11 order, which was issued after the protective
12 order, provides a requirement that -- and
13 supersedes the protective order and provides
14 that all withheld documents with some limited
15 exceptions must be logged in full compliance
16 with Rule 26(b)(5)(a). I would direct the
17 Special Master to Paragraph 19 of the scheduling
18 order.

19 Second, even if the scheduling
20 order, which was signed by Judge Andrews several
21 days after the protective order, is not the
22 governing provision, the provision of the
23 protective order with regard to third parties as
24 the third parties may designate documents as

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