

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ACCELERATION BAY LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 16-453 (RGA)
	)	
ACTIVISION BLIZZARD, INC.,	)	<b>PUBLIC VERSION</b>
	)	
Defendant.	)	
	)	
ACCELERATION BAY LLC,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 16-454 (RGA)
v.	)	
	)	
ELECTRONIC ARTS INC.,	)	
	)	
Defendant.	)	
	)	
ACCELERATION BAY LLC,	)	
	)	
Plaintiff,	)	
	)	C.A. No. 16-455 (RGA)
v.	)	
	)	
TAKE-TWO INTERACTIVE SOFTWARE,	)	
INC., ROCKSTAR GAMES, INC., and 2K	)	
SPORTS, INC.,	)	
	)	
Defendants.	)	

**PLAINTIFF ACCELERATION BAY LLC'S  
OBJECTIONS TO SPECIAL MASTER ORDER NO. 6**

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Pursuant to Rule 53(f)(2) of the Federal Rules of Civil Procedure, Plaintiff Acceleration Bay respectfully requests that the Court overrule in part the Special Master's July 17, 2017 Order No. 6 (Ex. A, D.I. 227, the "Order").<sup>1</sup>

**I. NATURE AND STAGE OF THE PROCEEDINGS**

Acceleration Bay timely submits these objections to the Order as to its finding that Acceleration Bay must produce documents responsive to certain of Defendants' Requests For Production ("RFP"). Specifically, Acceleration Bay objects to being require to produce (i) an unredacted copy of its litigation funding agreement with Hamilton Capital, as the Court previously determined that the redacted portions of the agreement were not relevant, (ii) its reports to Hamilton Capital, which are irrelevant and work product, (iii) financial records evidencing its sources of funding which are irrelevant and (iv) proof of its initial payment to Boeing for the asserted patents, which is not in dispute. As to the other categories of documents, Acceleration Bay produced its responsive documents or confirmed that it has none.

These documents are not relevant to any claims or defenses in these cases. Instead, these discovery requests are part of Defendants' attempt to tar Acceleration Bay as a supposed non-practicing entity and obtain an unfair tactical advantage through discovery into Acceleration Bay's litigation budget and strategy, which are not relevant and protected work product.

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<sup>1</sup> All docket citations are to C.A. No. 16-453-RGA, and are representative of filings in the related cases.

## II. OBJECTIONS

The Court reviews the Special Master's Order *de novo*. Fed. R. Civ. P. 53(f).<sup>2</sup>

Acceleration Bay respectfully objects to the Order on the following grounds:

(1) the Order is contrary to the Court's prior ruling that Acceleration Bay need not produce an unredacted copy of the litigation funding agreement between Acceleration Bay and Hamilton Capital. In any event, the agreement is not relevant;

(2) the Order requires Acceleration Bay to produce its exchanges with Hamilton Capital, which are not relevant, contain work product and are subject to common interest immunity;

(3) the Order requires Acceleration Bay to produce information regarding the sources of its funding, which are irrelevant and have already been established through discovery; and

(4) the Order requires Acceleration Bay to produce proof of payment to Boeing for the asserted patents, despite the fact that such payment has already been established.

### A. **The Order is Contrary to the Court's Prior Ruling Regarding the Hamilton Capital Loan Agreement**

Acceleration Bay objects to the Order requiring production of an unredacted copy of the agreement between Acceleration Bay and its litigation funder, Hamilton Capital (the "Loan Agreement"), because the redacted information was already determined to be irrelevant. Specifically, the Court denied Defendants' prior request for an unredacted copy of the Loan Agreement after reviewing the redacted portions *in-camera*, which are directed to specific details of the financial arrangement between Hamilton Capital and Acceleration Bay. Specifically, during a hearing on this same issue in February 2016, the Court found that the redacted portions of the Loan Agreement are not relevant: "my impression is . . . with the things that are proposed

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<sup>2</sup> Acceleration Bay submits these objections pursuant to the Order Appointing Special Master. C.A. No. 15-228-RGA, D.I. 94 at ¶ 6. In accordance with that Order, Acceleration Bay submits herewith an Appendix containing the transcript from the hearing before the Special Master (Ex. B) and the materials submitted by the parties in connection with the hearing.

to be redacted ... and there are some places where there are some words that are redacted around the numbers, and I'm fine with that, because ... they're words that have the effect of the numbers, and they are irrelevant to your issue"). Ex. D at Ex. G-4 (2/12/16 Hearing Tr.) at 56:19-57:2. Indeed, the Court found that the only potential relevance of the Loan Agreement was to Defendants' standing defense, which was addressed by production of the redacted copy of the Loan Agreement and is no longer an issue in the case. *Id.* at 54:1-55:12, 57:4-11 ("That's kind of hard for me to imagine what else could be relevant.")<sup>3</sup>

The Court's ruling that the Loan Agreement should be produced in redacted form is consistent with the consensus view that details of litigation financing arrangements are not discoverable because they are not relevant and because the specific details of litigation financing are work product. *See, e.g., Charge Injection Techs., Inc. v. E.I. DuPont De Nemours & Co.*, C.A. No. 07C-12-134-JRJ, 2015 WL 1540520, at \*5 (Del. Super. Ct. Mar. 31, 2015) ("the redacted payment terms in the [litigation] Financing Agreement are entitled to work product protection"); *Miller UK Ltd. v. Caterpillar, Inc.*, 17 F. Supp. 3d 711, 721 (N.D. Ill. 2014) (finding funding agreement between a plaintiff and its third-party litigation financier was not relevant in a trade secrets case: "The terms of [plaintiff]'s actual funding agreement would seem to have no apparent relevance to the claims or defenses in this case, as required by Rule 26 as a precondition to discovery."); *Kaplan v. S.A.C. Capital Advisors, L.P.*, No. 12-CV-9350 (VM), 2015 WL 5730101, at \*3-5 (S.D.N.Y. Sept. 10, 2015) (documents related to litigation funding agreement between class action plaintiffs and their financiers were not discoverable because they were not relevant to any "non-speculative" issue in the case). Thus, Acceleration Bay already

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<sup>3</sup> A copy of the redacted Loan Agreement is submitted herewith as Exhibit D at Ex. G-3. To the extent it will be helpful to the Court's resolution of these objections, Acceleration Bay will provide a copy of the unredacted Loan Agreement to the Court for *in camera* inspection.

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