IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

NON-PARTY SONY INTERACTIVE ENTERTAINMENT AMERICA, LLC.'S
UNOPPOSED MOTION TO INTERVENE

Originally filed under seal on August 25, 2017
Public Redacted Version filed on September 8, 2017

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Pursuant to Rule 24 of the Federal Rules of Civil Procedure, Sony Interactive Entertainment America LLC ("Sony") respectfully moves this Court for leave for Sony to intervene in this action for the limited purpose of challenging Plaintiff Acceleration Bay LLC's ("Acceleration Bay" or "Plaintiff") request for documents containing highly confidential information of Sony as petitioned in an August 16, 2017 letter brief ("Plaintiff's Letter Brief"). This Motion should be granted because Acceleration Bay has moved to compel the production from Defendants, Activision Blizzard, Inc. ("Activision"), Electronic Arts Inc. ("EA"), and Take-Two Interactive Software, Inc. ("Take-Two") (collectively "Defendants"), of unredacted versions of their highly confidential agreements with Sony. Sony has an interest in protecting its confidential information and Defendants cannot adequately represent Sony's interests.[1]

Sony also respectfully requests that the Special Master extend the deadline for Sony to respond to Plaintiff's Letter Brief until two business days after the Special Master rules on Sony's Motion to Intervene and that the Special Master hear argument on Plaintiff's Motion to Compel on September 6, 2017 rather than August 31, 2017. Acceleration Bay and Defendants are unopposed to Sony's request to intervene and also are unopposed to the scheduling adjustments requested by Sony.

SUMMARY OF ARGUMENT

Plaintiff has moved to preclude Defendants from relying upon their agreements with Sony or for the Court to Order that "these agreements should be produced in their entity and without any redactions." Plaintiff's Letter Brief at 1, 5. Plaintiff attached to its motion redacted

[1] Acceleration Bay originally requested that Defendants "be precluded from relying upon their Agreements with Sony" and requested only in the "alternative" that Sony's information be "produced in their entirety and without any redactions." Plaintiff's Letter Brief at 1, 5. Though Acceleration Bay has since modified its request for information with a willingness to now accept some redactions, it nonetheless still seeks Sony's highly confidential financial terms with Defendants.

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versions of four highly confidential agreements between Sony and Defendants. *See id.* at Exs. 1, 5, 8 and 9. Since Plaintiff filed its brief in support of its motion to compel, Defendants' motion to dismiss all claims related to games used on Sony platforms was granted. (D.I. 237.) Notwithstanding the material change in scope of the relevant products at issue in the case, Plaintiff continues to seek sensitive financial terms between Sony and Defendants. Sony has an interest in being heard in this proceeding because the information that Plaintiff seeks is highly confidential trade-secret information of Sony and Sony could be irreparably harmed if its highly confidential trade-secret information were to be produced. Defendants cannot adequately represent Sony's interests. Sony is uniquely positioned to explain why the information at issue is highly confidential and proprietary to Sony and the steps it takes to maintain the confidentiality of this information.

FACTS

The information redacted in the four highly confidential agreements attached to Plaintiff's Letter Brief includes "specific financial terms such as royalty rates." Plaintiff's Letter Brief at 2. Sony treats this information as highly confidential trade-secrets and considers it extremely important to protect this information from disclosure. One of these agreements is with EA, a second is with Activision and the other two are with Take-Two. All three companies are competitors of each other.

ARGUMENT

Fed. R. Civ. P. 24 provides for two types of intervention: (1) intervention as a matter of right and (2) permissive intervention. Fed. R. Civ. P. 24(a)-(b). Sony easily meets the requirements for both types of intervention.

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I. Sony Is Permitted to Intervene as a Matter of Right Under Fed. R. Civ. P. 24(a)(2)

Rule 24(a)(2) permits intervention as a matter of right when a party "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2). "Courts construe Rule 24 liberally in favor of intervention." *Merck Sharp & Dohme Corp. v. Teva Pharm. USA, Inc*., 2015 WL 5163035, at *2 (D. Del. Sept. 3, 2015).

Intervention as of right is appropriate under Rule 24(a)(2) when: (1) the application is timely; (2) the applicant has a significant protectable interest in the litigation; (3) the interest may be affected or impaired, as a practical matter, by the disposition of the action; and (4) the interest is not adequately represented by an existing party in the litigation. *See Benjamin ex rel. Yock v. Dep't of Pub. Welfare of Pa*., 701 F.3d 938, 948 (3d Cir. 2012); *Mountain Top Condo. Ass'n v. Dave Stabbert Master Builder, Inc.*, 72 F.3d 361, 366 (3d Cir. 1995). Although a party seeking intervention must meet all four requirements, "a very strong showing that one of the requirements is met may result in a lesser showing of another requirement." *Harris v. Pernsley*, 820 F.2d 592, 596 n.6 (3d Cir. 1987). Here, Sony's application to intervene meets all four requirements.

A. Sony's Motion Is Timely

The timeliness of a request to intervene "is determined by the totality of the circumstances." *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 314 (3d Cir. 2005) (citing and quoting *U.S. v. Alcan Aluminum, Inc.*, 25 F.3d 1174, 1181 (3d Cir.1994)).

Plaintiff filed its Letter Brief on August 16, 2017. On August 23, 2017, Sony wrote the Court seeking permission to intervene and requesting guidance regarding whether a formal

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motion to intervene was necessary. That same day, the Court responded that Sony should file a Motion to Intervene as soon as possible. Sony's Motion is filed two days after the Court's guidance and nine days after Plaintiff's Letter Brief. Sony has, therefore, promptly filed its Motion after the need for it arose.

There is no prejudice to the parties from Sony intervening as Sony seeks to intervene only for a limited purpose and any extension of time to allow Sony to respond to Plaintiff's Letter Brief will be short and will not impact the case schedule. Neither Plaintiff nor Defendants oppose Sony's requested intervention.

B. Sony Has a Significant Protectable Interest in Responding to Plaintiff's Letter Brief

To justify intervention as of right, a movant must also show that it has a "significantly protectable" interest in the litigation. *Kleissler v. U.S. Forest Serv*., 157 F.3d 964, 969 (3d Cir. 1998); *Mountain Top*, 72 F.3d at 366. "That observation, however, has not led to a 'precise and authoritative definition' of the interest that satisfies Rule 24(a)(2)." *Kleissler*, 157 F.3d at 969 (quoting *Mountain Top*, 72 F.3d at 366). "In defining the contours of a 'significantly protectable' legal interest," the Third Circuit has held that "the interest must be a legal interest as distinguished from interests of a general and indefinite character." *Mountain Top*, 72 F.3d at 366 (internal quotes omitted). "Proposed intervenors need not have an interest in every aspect of the litigation. They are entitled to intervene as to specific issues so long as their interest in those issues is significantly protectable." *Id.* at 368.

Sony has such an interest. Sony has a "significantly protectable" interest in protecting the confidentiality of its trade-secret information contained in its agreements with Defendants. *See Taro Pharms U.S.A., Inc. v. Perrigo Israel Pharms, Ltd.*, 2015 WL 7737310, at *2 (Dec. 1,

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