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May 11, 2018

The Honorable Richard G. Andrews
United States District Court
for the District of Delaware
844 North King Street
Wilmington, DE 19801

VIA ELECTRONIC FILING

Re: *Acceleration Bay LLC v. Take-Two Interactive Software, Inc., et al.*
C.A. No. 16-455 (RGA)

Dear Judge Andrews:

Take Two submits that the Court should deny Acceleration Bay's request to stay the schedule in this case for the next eight months until after the expected trial in the Electronic Arts case early next year. (D.I. 420.) There is a five-month window in all three Acceleration Bay cases now, making it an appropriate time to finish up the remaining activities in this case. Given that Acceleration Bay filed these three cases close in time and pursued them on the same schedule through fact discovery, it should not be permitted to stay the Take Two case to see how Acceleration Bay's arguments and expert testimony play out in the Activision and Electronic Arts cases and then adjust its arguments and presentation in the Take Two case.

First, Acceleration Bay's proposed schedule is simply an attempt to avoid an orderly consideration of Take Two's forthcoming summary judgment motions. The delay Acceleration Bay seeks is purely for its own tactical advantage and not for any convenience to the parties or the Court. In fact, moving the scheduled expert discovery, summary judgment motions and Daubert motions into a two to three month window between the EA and Take Two trials is inconvenient for everyone. The proposed schedule would force Take Two's lawyers and experts to "double track" by preparing for expert discovery in this case at the same time that those same lawyers and experts are at the EA trial; and Take Two would be prejudiced by not receiving summary judgment and Daubert rulings until just before trial. The proposed schedule would also burden the Court by providing only a very short time for evaluation of the parties' summary judgment and Daubert motions.

Second, Acceleration Bay claims there will be a simplification of issues and conservation of the Court's resources by avoiding supplemental expert reports. But Acceleration Bay does not identify any specific issues that will be simplified, nor has Acceleration sought leave to provide any supplemental expert reports. In fact, because of the Special Master's discovery rulings on

both infringement and damages issues, it would be very difficult for Acceleration Bay to establish grounds for leave to file supplemental expert reports. Acceleration Bay filed three cases against three unrelated companies. The rulings or outcomes of the Activision and EA trials would not constitute grounds for Acceleration Bay to advance new theories or submit new expert reports.[1]

Fact discovery is complete, and the parties are discussing a trial sometime in April 2019. Expert discovery should be completed promptly so that the parties can file their summary judgment and Daubert motions and the Court will have sufficient time to consider those motions. Delaying those motions would only serve to put additional pressure on the parties and the Court.

Accordingly, Acceleration Bay's request for an eight-month stay should be denied.

Respectfully,

/s/ Jack B. Blumenfeld

Jack B. Blumenfeld (#1014)

JBB/dlw
cc: Clerk of Court (Via Hand Delivery)
All Counsel of Record (Via Electronic Mail)

[1] Moreover, the hearing on the parties' joint invalidity summary judgment motion (as well as on Activision's summary judgment and Daubert motions) is set for May 17, 2018. The hearing next week is certainly not grounds to continue dates until 2019. We also note that Acceleration Bay refused Take Two's offer to extend dates for briefing of the Take Two summary judgment and Daubert motions as long as they would be completed by October 1, so as not to interfere with Activision trial preparation. Acceleration Bay's refusal of Take Two's offer confirms that itsimply wants to forestall summary judgment as opposed to streamlining issues or making the case more convenient for the Court or the parties.