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June 22, 2018

**BY CM/ECF & HAND DELIVERY**

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

Re: *Acceleration Bay LLC v. Take-Two. et al.*  
D. Del., C.A. No. 16-455-RGA

As directed by the Court, the parties conferred regarding a schedule for completion of the *Take Two* action, but were unable to reach agreement. Acceleration Bay proposes the following schedule to conserve the resources of the parties and the Court and to most efficiently resolve Acceleration Bay's claims against Take Two:

Deadline	Proposed
Reply Expert Reports	December 14, 2018
Close of Expert Depositions	January 16, 2019
Opening Summary Judgment/ <i>Daubert</i> Briefs	January 23, 2019 (25 page limit)
Opposition Summary Judgment/ <i>Daubert</i> Briefs	February 13, 2019 (25 page limit)
Reply Summary Judgment/ <i>Daubert</i> Briefs	February 20, 2019 (10 page limit)
Trial	May 6, 2019 or May 13, 2019 (agreed by the parties, subject to the Court's approval)

The premise of Acceleration Bay's proposed schedule is that the completion of the *Take Two* case should be guided by the Court's resolution of summary judgment and *Daubert* motions and the October 29, 2018 trial in in the *Activision* case. Acceleration Bay's proposed schedule provides for reply expert reports to be served about one month after the conclusion of that trial, with summary judgment and *Daubert* motions to be fully briefed close to three months before the proposed start of the *Take Two* trial.

The *Activision* motions will likely implicate numerous aspects of the *Take Two* case including validity, infringement, claim construction and damages — and the trial in *Activision*, including the Court's rulings on the plethora of issues that will come up during the trial, will

The Honorable Richard G. Andrews

June 22, 2018

Page 2

likely further resolve or narrow many issues that will impact the *Take Two* case. In particular, various arguments that would otherwise be raised in the parties' summary judgment and *Daubert* briefs may be rendered moot by the Court's rulings in the *Activision* case or, at a minimum, these rulings will focus the issues in dispute.

120 pages of total briefing per side should be more than sufficient in the *Take Two* case for summary judgment and *Daubert* motions. A page limitation to focus the issues being briefed makes sense for the *Take Two* case given (i) Activision's and EA's decision to raise nearly every issue for trial in their briefing with conclusory arguments, which only led to a further hearing and briefing, (ii) the parties to the *Activision* case having already submitted over 300 pages of summary judgment and *Daubert* briefing and an additional 250 pages of briefing in the *EA* case; and (iii) that there will be no validity summary judgment or *Daubert* motions as those have already been briefed in the *Activision* case (with the parties submitting over 65 pages of briefing on validity issues). The issues in the *Take Two* case will likely overlap and, with rulings from the *Activision* case, *Take Two* will necessarily need to focus the issues to be raised on summary judgment and *Daubert*.

*Take Two*'s proposed schedule seems designed to place an undue burden on Acceleration Bay and the Court and is not an attempt to be judicially efficient. *Take Two* proposes exchanging reply expert reports on July 18, 2018, with depositions to follow shortly thereafter and summary judgment and *Daubert* motions in August, which is likely not enough time for the Court to issue orders on the pending summary judgment and *Daubert* motions in the *Activision* case (or in the *EA* case, where summary judgment and *Daubert* are now fully briefed). Furthermore, there is no need for such a compressed schedule as the parties agree that the *Take Two* trial should take place in May 2019. In contrast, it was necessary to submit summary judgment and *Daubert* briefing in the *EA* case without waiting until the conclusion of the *Activision* motion practice and trial because the *EA* trial was then scheduled to begin two months after the *Activision* trial. Now, almost seven months separate the proposed dates for the *Take Two* trial from the *Activision* trial. Finally, *Take Two* seeks 250 pages of briefing, which is excessive and unnecessary for the reasons discussed above.

Thus, in the interest of judicial economy and to conserve the parties' resources, Acceleration Bay respectfully requests that the Court set a case schedule in the *Take Two* action that schedules expert discovery, including the conclusion of expert reports and expert depositions, and summary judgment and *Daubert* motion practice after the conclusion of the *Activision* trial.

Respectfully,

/s/ Philip A. Rovner

Philip A. Rovner (#3215)

cc: All Counsel of Record  
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