

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET
P.O. BOX 1347
WILMINGTON, DELAWARE 19899-1347

(302) 658-9200
(302) 658-3989 FAX

JACK B. BLUMENFELD
(302) 351-9291
(302) 425-3012 FAX
jblumenfeld@mnat.com

January 17, 2019

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. Electronic Arts Inc.*; C.A. No. 16-454 (RGA);
Acceleration Bay LLC v. Take Two Interactive Software, Inc.; C.A. No. 16-455 (RGA)

Dear Judge Andrews:

We write on behalf of Defendants Electronic Arts Inc. and Take Two Interactive Software, Inc. regarding a proposed schedule, as set forth in the Court's December 10, 2018 Order pertaining to damages issues in these cases. (EA D.I. 513; Take Two D.I. 448) (the "Damages Order"). After it issued multiple orders striking various portions of Plaintiff's damages case in the Activision case, the Court continued the Activision trial indefinitely and issued a Case Management Order in that Action which, among other things, provided Plaintiff a "final opportunity" to present "an admissible damages case." Following that Order, the Court entered the stipulated Damages Order in these cases. In the Damages Order, the Court:

1. Took the pre-trial conference and trial dates in the EA and Take-Two Actions off calendar indefinitely;
2. Struck Plaintiff's damages theories based on the *Uniloc* jury verdict;
3. Allowed Acceleration Bay to serve a single supplemental expert report from Mr. Parr, which must be "substantially similar" to the supplemental damages report Mr. Parr provided in the Activision Action.
4. Ordered the parties to follow the procedures set forth in the October 30, 2018 Case Management Order in the Activision Action (16-453 D.I. 619); and
5. Ordered the parties to meet and confer and submit a proposed schedule.

The Honorable Richard G. Andrews
January 17, 2019
Page 2

The parties have submitted their proposed schedules in a joint stipulation filed yesterday (EA D.I. 518; Take Two D.I. 451). The sole dispute is when to start the process. Defendants request that the process begin now. Plaintiff prefers to wait until the Court issues its Order regarding the admissibility of its damages theories in the Activision case.

There is no need for the delay Plaintiff seeks. The Court gave Plaintiff one “final” opportunity to present an admissible damages case and required that Plaintiff’s damages theories be “substantially similar” to those it presented in the Activision case. Allowing Plaintiff to wait until it receives Activision’s motion and the Court’s rulings will inevitably lead to Plaintiff changing its damages theories again. Indeed, this has already been the case. In the Activision case alone, the Court issued four rulings against Plaintiff’s damages case. Instead of presenting narrower or more reasonable theories, Plaintiff changed its damages expert, completely changed its theories, and substantially *increased* its damages demands from the damages set forth in the inadmissible report of Dr. Meyer. As Plaintiff’s lead counsel explained, Plaintiff intends to offer serial damages cases until such time as the Court stops it from doing so. (Oct. 19, 2018 Tr: 109:7-11 (“THE COURT: In any event, I take it from what you're telling me that you'll keep coming up with new damages theories if the ones that are already being suggested are for some reason unacceptable. MR. ANDRE: Your Honor, that's exactly right.”)).

The Court’s Damages Order is clear: it gives Plaintiff one last chance to present an admissible damages case – something that it has so far been unable to do. There is no reason to delay the process. The Court should enter Defendants’ proposed schedule.

Respectfully,

/s/ Jack B. Blumenfeld

Jack B. Blumenfeld (#1014)

JBB/bac

cc: Clerk of Court (via hand delivery)
All Counsel of Record (via electronic mail)