

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

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

Friday, April 14, 2017  
9:00 a.m., Discovery Dispute Hearing

Richards, Layton & Finger, P.A.  
920 North King Street, Suite 2  
Wilmington, Delaware 19801

BEFORE: SPECIAL MASTER Allen M. Terrell

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APPEARANCES :

POTTER ANDERSON & CORROON LLC  
BY: PHILIP ROVNER, ESQ.

-and-

KRAMER LEVIN NAFTALIS & FRANKEL LLP  
BY: PAUL ANDRE, ESQ.  
BY: AARON FRANKEL, ESQ.

On behalf of Plaintiff

MORRIS, NICHOLS, ARSHT & TUNNELL LLP  
BY: JACK BLUMENFELD, ESQ.

-and-

WINSTON & STRAWN LLP  
BY: KATHLEEN BARRY, ESQ.

On behalf of Defendants

PHILIPS, GOLDMAN, McLAUGHLIN & HILL,  
P.A.  
BY: MEGAN HANEY, ESQ.

On behalf of Boeing

1 THE SPECIAL MASTER: So we're on  
2 the record. For the record, I'm Allen Terrell,  
3 Special Master, in the case of Acceleration Bay  
4 LLC vs. Activision Blizzard, Inc, Civil Action  
5 No. 16-453 and the related cases 16-454 and  
6 16-455. This is a hearing on Plaintiff's Motion  
7 to Compel and on Defendants' Motion to Compel.

8 We're going to begin by counsel  
9 identifying themselves around the table for the  
10 sake of the court reporter and this record.

11 MR. ANDRE: Paul Andre for  
12 Plaintiff.

13 MR. FRANKEL: Aaron Frankel for  
14 Plaintiff and with us is Phil Rovner also for  
15 the Plaintiff.

16 MR. BLUMENFELD: Jack Blumenfeld  
17 for the Defendants along with Kathleen Barry.

18 MS. HANEY: And Megan Haney also  
19 for the Defendants and I'm just here for the  
20 Boeing motion.

21 THE SPECIAL MASTER: We will begin  
22 by agreement among the parties to consider the  
23 first item being the Motion of Defendant to  
24 Compel compliance with the Rule 45 subpoena to

1 the Boeing company. On behalf of Defendants is  
2 Ms. Haney. You can go ahead.

3 MS. HANEY: Actually, I believe  
4 that Ms. Barry will do the arguments for  
5 Defendants.

6 THE SPECIAL MASTER: Is that  
7 right?

8 MS. BARRY: Yes.

9 THE SPECIAL MASTER: Let me also  
10 tell counsel that I've read all of your briefs  
11 and exhibits and I have suggested that we have  
12 some reasonable limitations on time as we  
13 proceed. But do your best and if you need more  
14 time, I assure you can have it.

15 MS. BARRY: Thank you, Your Honor,  
16 and counsel for the Plaintiff for the courtesy  
17 of doing the Boeing motion first since Ms. Haney  
18 is co-counsel with us with regards to the Boeing  
19 motion. As an initial matter on the Boeing  
20 motion, Boeing has agreed to have this motion  
21 heard before the Special Master in the  
22 procedures that are set up here for the Special  
23 Master.

24 So we have two issues that we are

1 moving to compel Boeing on at this point. The  
2 first issue is we are seeking an order requiring  
3 Boeing to provide a privilege log for any  
4 documents that have been withheld on the basis  
5 of privilege. And in response to that, Boeing  
6 has made a couple of arguments.

7 First of all, Boeing has said that  
8 they are not required to by reason of the  
9 protective order. We don't believe that is  
10 correct. As an initial matter, the scheduling  
11 order, which was issued after the protective  
12 order, provides a requirement that -- and  
13 supersedes the protective order and provides  
14 that all withheld documents with some limited  
15 exceptions must be logged in full compliance  
16 with Rule 26(b)(5)(a). I would direct the  
17 Special Master to Paragraph 19 of the scheduling  
18 order.

19 Second, even if the scheduling  
20 order, which was signed by Judge Andrews several  
21 days after the protective order, is not the  
22 governing provision, the provision of the  
23 protective order with regard to third parties as  
24 the third parties may designate documents as

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