

1 PAUL ANDRE (State Bar No. 196585)
pandre@kramerlevin.com
2 LISA KOBIALKA (State Bar No. 191404)
lkobialka@kramerlevin.com
3 JAMES HANNAH (State Bar No. 237978)
jhannah@kramerlevin.com
4 KRAMER LEVIN NAFTALIS & FRANKEL LLP
5 990 Marsh Road
Menlo Park, CA 94025
6 Telephone: (650) 752-1700
7 Facsimile: (650) 752-1800
8 *Attorneys for Defendant*
ACCELERATION BAY LLC

10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

14 ACTIVISION BLIZZARD, INC.,
15 Plaintiffs,
16 v.
17 ACCELERATION BAY LLC,
18 Defendant.

Case No.: 4:16-cv-03375-RS

**DECLARATION OF LISA KOBIALKA IN
SUPPORT OF ACCELERATION BAY
LLC'S MOTION TO DISMISS OR
TRANSFER ACTIVISION BLIZZARD,
INC.'S COMPLAINT UNDER THE FIRST-
TO-FILE RULE, FED. R. CIV. P. 12(b)(3)
AND 28 U.S.C. § 1404**

Date: September 1, 2016
Time: 1:30 p.m.
Courtroom: 3, 17th Floor
Before: Honorable Richard Seeborg

1 I, Lisa Kobialka, declare as follows:

2 1. I am an attorney with the law firm Kramer Levin Naftalis & Frankel LLP, counsel of
3 record for Acceleration Bay LLC (“Acceleration Bay”) for the above referenced matter. I have
4 personal knowledge of the facts stated herein and can testify competently to those facts. I make this
5 declaration in support of Acceleration Bay’s Motion to Dismiss and/or Transfer.

6 2. Attached hereto as **Exhibit 1** is a true and correct copy of the Complaint (without
7 exhibits) of Acceleration Bay against Activision Blizzard, Inc. (“Activision”) in 16-CV-453-RGA,
8 filed June 17, 2016.

9 3. Attached hereto as **Exhibit 2** is a true and correct copy of the Complaint (without
10 exhibits) of Acceleration Bay against Activision in 15-CV-228-RGA, filed March 11, 2015.

11 4. Acceleration Bay filed complaints against Electronic Arts Inc. (15-CV-282-RGA) and
12 Take-Two Interactive Software, Inc., Rockstar Games, Inc., and 2K Sports, Inc. (15-CV-311-RGA) in
13 the District of Delaware on March 30, 2015, and April 13, 2015.

14 5. Judge Andrews related 15-CV-228-RGA, 15-CV-282-RGA and 15-CV-311-RGA for
15 discovery, claim construction and pre-trial activities. Discovery in these actions began in December
16 2015, and the parties have since engaged in extensive document and interrogatory discovery.

17 6. Attached hereto as **Exhibit 3** is a true and correct copy of the Notice of Service of
18 Acceleration Bay’s Initial Infringement Contentions on Activision on March 2, 2016.

19 7. Attached hereto as **Exhibit 4** is a true and correct copy of the Notice of Service of
20 Activision’s Invalidity Contentions on Acceleration Bay on May 6, 2016.

21 8. In the case 15-CV-228-RGA, Judge Andrews and Special Master Terrell together held
22 at least six hearings and issued over ten substantive orders concerning a variety of issues, including
23 discovery disputes, infringement contentions, scheduling, case management and standing.

24 9. Attached hereto as **Exhibit 5** is a true and correct copy of the Order issued by Judge
25 Andrews on June 3, 2016.

26 10. Attached hereto as **Exhibit 6** is a true and correct copy of a June 17, 2016 letter from
27 Acceleration Bay’s counsel to Judge Andrews.

1 11. Attached hereto as **Exhibit 7** is a true and correct copy of the Order issued by Judge
2 Andrews on June 20, 2016.

3 12. Attached hereto as **Exhibit 8** is a true and correct copy of excerpts from Activision's
4 Answer to Acceleration Bay's Amended Complaint in case 15-CV-228-RGA, filed on July 13, 2015.

5 13. Attached hereto as **Exhibit 9** is a true and correct copy of an Exhibit 7 to Activision's
6 Motion to Transfer Venue filed in the District Court of Delaware on July 8, 2016, and is a declaration
7 of Tony Hsu, the Chief Financial Officer of Activision Publishing, Inc., dated July 8, 2016.

8 14. The parties conducted source code review for World of Warcraft and Call of Duty
9 games, two depositions in the Central District of California to accommodate Activision and were
10 scheduling the deposition of Bungie, Inc. as the developer of Destiny, to be held in Washington to
11 accommodate Bungie, Inc.

12
13 I declare under penalty of perjury under the laws of the United States that the foregoing is true
14 and correct. Executed on July 15, 2016 in Menlo Park, California.

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16 By: /s/ Lisa Kobialka
17 Lisa Kobialka
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