PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of **Microsoft Corporation,** **a corporation,** **and** **Activision Blizzard, Inc.,** **a corporation.**	**Docket No. 9412**

RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO COMPEL DISCOVERY RESPONSES FROM RESPONDENTS

Complaint Counsel's Motion to Compel ("Mot.") is based on the false premise that Respondents have failed to comply with the Court's October 26 Order reopening discovery. That Order authorized "*limited* discovery on the Ubisoft and Sony Agreements." October 26 Order at 3 (emphasis added). It did not authorize wide-ranging discovery aimed at reanimating antitrust claims rejected by a federal court and further weakened by agreements guaranteeing Sony access to *Call of Duty* and divesting Activision's cloud streaming rights prior to closing.

Respondents have already complied with almost all of Complaint Counsel's broad discovery requests. Among other things, Respondents have completed productions in response to Complaint Counsel's request for "[a]ll documents relating to the Ubisoft Agreements" and "[a]ll documents relating to the Sony Agreement." Ex. C to Mot. at 7–11. Respondents have also agreed to produce witnesses to testify about dozens of topics and subtopics identified in corporate notices of subpoena, Ex. G to Mot. at 3–4, including topics on every conceivable aspect of the Ubisoft and Sony Agreements, Ex. D to Mot., Topics 1–4, 6–7, 10–11; Ex. E to Mot., Topics 1–4, 6. Complaint Counsel

has not raised any issue with these discovery responses, which alone satisfy Respondents' obligations under the Court's Order.

Throughout its Motion, Complaint Counsel relies on assertions that the Court has already authorized the additional discovery it seeks rather than meaningfully demonstrating the appropriateness of that discovery. That failure to demonstrate relevance should always result in a denial of discovery. But Respondents respectfully assert that Complaint Counsel had an even greater responsibility to demonstrate relevance here—where discovery was reopened for the limited purpose of targeted, narrowly tailored discovery about the Ubisoft and Sony Agreements. As explained below, the discovery sought is not relevant, let alone targeted and narrowly tailored.

ARGUMENT

I. Complaint Counsel's Timeliness Argument Is Meritless

The rule cited by Complaint Counsel purportedly requiring Respondents to move to quash the deposition notices within 10 days is inapplicable. That rule explicitly applies to "the subject of a subpoena." 16 C.F.R. § 3.34(c). Complaint Counsel did not serve *third-party* subpoenas *ad testificandum*; it served notices for *party* depositions. *See* Ex. D to Mot.; Ex. E to Mot. Such notices are governed by a different rule, which allows a party to move for a protective order at any reasonable time and does not impose a 10-day time limit. 16 C.F.R. § 3.33(b); *see also* 16 C.F.R. § 3.31(d). A related rule also allows for the filing of a motion to compel to enforce a notice of deposition, 16 C.F.R. § 3.38(a), which is what Complaint Counsel has done here and on other occasions, *see, e.g.*, *In re Jerk, LLC*, No. 9361, 2014 WL 4252394, at *1 (F.T.C. Aug. 15, 2014). Tellingly, Complaint Counsel has not cited a single case where a party was deemed to have waived its objections to a deposition notice because it did not move to quash within 10 days.

Complaint Counsel's novel timeliness theory would be inefficient and counterproductive, requiring a party receiving a deposition notice to move to quash almost immediately, rather than

allowing parties time to negotiate a resolution and avoid burdening the Court. In this case, Respondents served written objections to Complaint Counsel on December 8. *See* Ex. G to Mot. at 12–18. Complaint Counsel responded in writing on December 11, *see* Ex. G to Mot. at 10–12, and the parties met and conferred on December 13, *see* Ex. G to Mot. at 4–5. On December 15, Complaint Counsel terminated further negotiations, indicating it would file a motion to compel, *see* Ex. G to Mot. at 1, which it did on December 20, *see* Mot. Though the parties were regrettably unable to resolve all areas of disagreement, the meet and confer process was worthwhile, as it narrowed the issues now before the Court.

Complaint Counsel also cannot claim any prejudice from Respondents' decision to engage in negotiations instead of running directly to Court. The parties have agreed that the noticed depositions will occur on January 10 (Activision)[1] and 17 (Microsoft), more than a month after Respondents served their written objections. *See* Ex. G to Mot. at 1–2. If Complaint Counsel really believed that resolving these issues sooner was imperative, it would not have waited until December 20—12 days after Microsoft served its objections and 5 days after Complaint Counsel ended negotiations—to file its Motion. Complaint Counsel, in fact, does not attempt to assert that it has been prejudiced in any way, making the only conceivable purpose of Complaint Counsel's timeliness argument to get the Court to rule in its favor without addressing texhe merits.

II. Respondents Should Not Be Required To Produce Documents And Provide Testimony About The Merger Agreement Extension[2]

Complaint Counsel's request for documents and testimony related to the extension of the termination date in the Merger Agreement is based on an incorrect assumption about the purported relevance of that discovery. The only basis for relevance Complaint Counsel has ever suggested is

[1] Activision has offered to move its deposition to a later date if Complaint Counsel would prefer.

[2] This section addresses RFP 5 to Microsoft; RFP 4 to Activision; Microsoft Deposition Topic 8; and Activision Deposition Topic 7.

that discovery of the Merger Agreement negotiations is appropriate because Complaint Counsel assumes that those negotiations must have referenced the "contours of a potential [cloud divestiture]." Mot. at 9. Putting aside that Complaint Counsel has not explained why it should be entitled to *all communications* relating to the Merger Agreement extension based on speculation that *some such communications* may have touched on a potentially relevant topic, that speculation is incorrect. As explained in a sworn declaration, discussions about the Merger Agreement extension did not involve any discussion of the Ubisoft Agreement or any other potential cloud divestiture. *See* Declaration of Keith Dolliver at ¶ 6, attached hereto as Exhibit 1.

Even if the Merger Agreement extension negotiations had involved discussions of the Ubisoft Agreement, however, those communications would already be captured by other discovery requests served by Complaint Counsel, to which Respondents are responding in full. *See In re OSF Healthcare Sys.*, No. 9349, 2012 FTC LEXIS 30, at *6 (F.T.C. Feb. 13, 2012) (denying a motion to compel the production of documents as "unreasonably cumulative or duplicative," where the respondents were already in possession of those documents). Among other things, Respondents have completed productions in response to Complaint Counsel's request for *all documents* related to the Ubisoft Agreement and agreed to produce a witness to testify about the Ubisoft Agreement. *See* Ex. C to Mot. at 7–10; Ex. D to Mot., Topics 1–4, 6–7, 10; Ex. E to Mot., Topics 1–4, 6. Complaint Counsel asserts that this discovery is insufficient because the documents produced by Respondents do not include any communications about the Merger Agreement extension. Mot. at 4. But that is unsurprising because, as noted, the Merger Agreement extension negotiations did not include any discussion of a potential cloud divestiture.

Respondents also disagree with Complaint Counsel's assertion that the Court already resolved this issue. Complaint Counsel suggests that Respondents, in their opposition to Complaint Counsel's motion to reopen discovery, somehow conceded that the Merger Agreement extension was relevant.

Not so. Respondents expressly stated in that briefing, as here, that the Merger Agreement extension is irrelevant. Resp. Microsoft's Opp. Compl. Counsel's Mot. Extend Fact Disc. Allow Disc. re Resps.' Agmt. Ubisoft Ent. SA & Sony Interactive Ent. LLC, at 6 (Oct. 20, 2023) ("Complaint Counsel also suggests that it needs discovery into Respondents' negotiation to extend the deadline for completing the transaction, but Complaint Counsel does not even try to explain the relevance of such an inquiry.").

In any event, the Court, in its October 26 Order reopening discovery, did not mention the Merger Agreement extension, nor did it need to do so. The Court "grant[ed] additional time for limited discovery on the Ubisoft and Sony Agreements" because, in relevant part, "there [was] no dispute as to the *relevance of the agreements*." *See* October 26 Order at 3 (emphasis added). To reopen discovery, the Court had no cause to decide whether that relevance also encompassed the Merger Agreement extension. Respondents, of course, fully intend to abide by all Court orders, but respectfully maintain that this issue has not been resolved, and that the Court should not permit discovery into the Merger Agreement extension because it is irrelevant and beyond the scope of Court's October 26 Order.

III. Respondents Should Not Be Required To Provide A Witness To Testify About Potential Alternative Cloud Divestiture Agreements That Were Never Executed[3]

The Court's October 26 Order, in relevant part, permitted Complaint Counsel to take "limited discovery on the Ubisoft . . . Agreement[]." *See* October 26 Order at 3. Respondents have complied with that Order, including agreeing to provide a witness to testify about all relevant aspects of the Ubisoft Agreement and the impact of its divestiture of Activision's cloud streaming rights. This includes testimony about the terms of the Ubisoft Agreement, the payment scheme under the Ubisoft Agreement, any models or analyses about the impact of the Ubisoft Agreement, and communications

[3] This section addresses Microsoft Deposition Topics 2(d) and 5; and Activision Deposition Topics 2(d) and 5.

with Ubisoft and third parties about the Ubisoft Agreement. Ex. D to Mot., Topics 1–4, 6–7, 10; Ex. E to Mot., Topics 1–4, 6; Ex. G to Mot. at 3–4, 12–18.

Complaint Counsel, however, has improperly sought to expand the scope of discovery to include *potential* acquirers and *proposed* terms that are not part of the *executed* Ubisoft Agreement. *See* 16 C.F.R. § 3.31(c)(2)(iii) (providing that requested discovery "shall be limited" when the "burden and expense of the proposed discovery . . . outweigh its likely benefit"). Complaint Counsel asserts without explanation that this discovery is warranted because it provides "context" for understanding the Ubisoft Agreement. Mot. at 7. But Complaint Counsel has not provided a single example of a relevant proposed term or communication with a prospective buyer that would provide meaningful context. This sort of broad, searching discovery is inconsistent with the Court's October 26 Order, which authorized *limited* discovery on the Ubisoft Agreement.

Complaint Counsel is also incorrect in suggesting that Respondents' agreement to produce documents in response to RFPs 2(a) (requesting communications with Ubisoft) and 2(b) (requesting documents analyzing or discussing alternative purchasers to Ubisoft) means that Respondents have conceded the relevance of the proposed deposition topics. Respondents objected to these Requests as "overly broad, disproportionate to the needs of this administrative action, and outside the scope of the Court's October 26, 2023 Order," but (as a compromise) agreed to produce all documents responsive to these requests "[s]ubject to and without waiving the foregoing objections." Ex. C to Mot. at 9–10. Respondents should not be penalized for seeking to work productively with Complaint Counsel. To the contrary, Complaint Counsel's failure to identify a single relevant document in Respondents' productions confirms that additional discovery on these topics via deposition is unnecessary and would be unreasonably cumulative and duplicative, *cf. In re N. Texas Specialty Physicians*, No. 9312, 2004 FTC LEXIS 12, at *4 (F.T.C. Jan. 21, 2004) (denying a motion to compel

interrogatory responses where "the burden of deriving or ascertaining the answers from the documents produced [was] substantially the same" for the requesting party).

IV. Activision Should Not Be Compelled To Provide Corporate Testimony In Response To Several Deposition Topics Identical To Those Served On Microsoft[4]

The Court should reject Complaint Counsel's request to compel Activision to provide corporate testimony on Activision Topics 1 (terms of Ubisoft Agreement), 3 (payment provisions of Ubisoft Agreement), 4 (analysis of Ubisoft Agreement's impact), and 7 (plans to license Activision content for cloud streaming) for three independent reasons.

First, Complaint Counsel inappropriately seeks duplicative testimony from Microsoft and Activision. 16 C.F.R. § 3.31(c)(2)(i) (providing that requested discovery "shall be limited" when the discovery sought is "unreasonably cumulative or duplicative"). Activision Topics 1, 3, 4, and 7 are identical to Microsoft Topics 1, 3, 4, and 8. *Compare* Ex. D to Mot., Topics 1, 3, 4, 8 *with* Ex. E to Mot., Topics 1, 3, 4, 7. Microsoft has already agreed to produce a witness to testify about each of these topics, and Complaint Counsel has made no serious attempt to justify the need for duplicative testimony. Instead, Complaint Counsel relies on the Court's October 26 Order. Mot. at 6–7. But that Order only authorized Complaint Counsel to serve corporate deposition notices on both Microsoft and Activision; it did not authorize Complaint Counsel to serve *duplicative* notices with *identical* topics.

Second, Activision does not have knowledge of the information sought by Complaint Counsel. Courts routinely decline to require organizations to provide corporate testimony regarding information about which they are "not (and ha[ve] no reason to be) knowledgeable." *See Mitchell v. Atkins*, 2019 WL 6251044, at *2 (W.D. Wash. Nov. 22, 2019); *accord In re Body Sci. LLC Pat. Litig.*, 2014 WL 12644298, at *1 (D. Mass. Oct. 31, 2014); *In re Ski Train Fire of Nov. 11, 2000*

[4] This section addresses Activision Deposition Topics 1, 3, 4, and 7.

Kaprun Austria, 2006 WL 1328259, at *9 (S.D.N.Y. May 16, 2006). Microsoft, not Activision, led the negotiations with Ubisoft, and Activision has no insight into how Microsoft determined the payment provisions of the Ubisoft Agreement. Schnakenberg Decl. ¶ 5-6, attached hereto as Exhibit 2; Ex. E to Mot., Topics 1 and 3. Activision did not model or otherwise assess the "impact or potential impact of the Ubisoft Agreements." *Id.* ¶ 7; Ex. E to Mot., Topic 4. And Activision is unaware of any "Plans or potential Plans" to license Activision's content for cloud gaming. *Id.* ¶ 9; Ex. E to Mot., Topic 7.

Third, Complaint Counsel did not properly meet and confer with Activision's counsel on this issue. *See* 16 C.F.R. § 3.21(a). To the best of Activision's counsel's recollection, Complaint Counsel never raised any concern with Activision's decision not to designate an Activision witness for these topics, York Decl. ¶ 6, attached hereto as Exhibit 3, nor did Complaint Counsel ever indicate that it would move to compel on this issue, *id.* ¶ 7. Had the parties properly exhausted this issue, Activision could have explained its lack of knowledge on Activision Topics 1, 3, 4, and 7, potentially avoiding the need for the Court to resolve this issue.

CONCLUSION

For the foregoing reasons, the Motion to Compel should be denied.

Dated: January 2, 2024

Respectfully submitted,

By: */s/ Steven C. Sunshine*

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CERTIFICATE OF SERVICE

I hereby certify that on January 2, 2024, I caused a true and correct copy of the foregoing to be filed electronically using the FTC's E-Filing System and served the following via email:

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The Honorable D. Michael Chappell
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I also certify that I caused the forgoing document to be served via email to:

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Counsel Supporting the Complaint

/s/ Beth Wilkinson

Beth Wilkinson
Counsel for Microsoft Corp.

PUBLIC

EXHIBIT 1

PUBLIC

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of **Microsoft Corp.,** **a corporation;** **and** **Activision Blizzard, Inc.** **a corporation.**	**Docket No. 9412**

DECLARATION OF KEITH DOLLIVER IN SUPPORT OF RESPONDENTS' RESPONSE TO COMPLAINT COUNSEL'S MOTION TO COMPEL DISCOVERY RESPONSES FROM RESPONDENTS

I, Keith Dolliver, declare as follows:

1. I am the Vice President, Deputy General Counsel, of Corporate, External, and Legal Affairs at Microsoft Corp. ("Microsoft"). I submit this declaration in support of Respondents' Response to Complaint Counsel's Motion to Compel Discovery Responses from Respondents. In my role, I have personal knowledge of Microsoft's negotiations with third parties, including the information at issue here.
2. I have personal knowledge of the facts set forth below, and I can and would competently testify to such facts if called to do so.
3. I understand that Complaint Counsel is seeking corporate deposition testimony, pursuant to FTC Rule of Practice 3.33(c)(1), regarding negotiations to extend the termination date for Microsoft's acquisition of Activision Blizzard, Inc. ("Activision"), from July 18, 2023 to October 18, 2023.
4. I was directly involved in the negotiations over the extension of the termination date for

Microsoft's acquisition of Activision.

5. I was also aware of negotiations for the divestiture of cloud streaming rights to Activision games, which eventually culminated in the sale of those rights to Ubisoft Entertainment, S.A.
6. The negotiations over the extension of the termination date for Microsoft's acquisition of Activision did not involve any discussion of a potential cloud divestiture. Rather, the negotiations over the extensions were entirely independent of the negotiations for any divesture of cloud streaming rights to Activision games.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to best of my knowledge and belief.

Executed on 29 December, 2023, in Redmond, Washington.

Keith Dolliver

EXHIBIT 2

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of **Microsoft Corp.,** **a corporation;** **and** **Activision Blizzard, Inc.** **a corporation.**	**Docket No. 9412**

DECLARATION OF CHRIS SCHNAKENBERG IN SUPPORT OF RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO COMPEL DISCOVERY RESPONSES FROM RESPONDENTS

I, Chris Schnakenberg, hereby declare under penalty of perjury that the following is true and correct:

1. I am Senior Vice President of Global Platform Strategy and Partner Relations for Activision Blizzard, Inc. ("Activision"). I submit this declaration in support of Respondents' Opposition to Complaint Counsel's Motion to Compel Discovery Responses From Respondents. Unless otherwise stated, the matters set forth below are based on my knowledge as a representative of Activision and, if called as a witness, I could and would testify competently thereto.

2. In making this declaration, I do not intend to—and am not authorized to—waive any applicable privilege or protection from discovery, including the attorney-client privilege and the work product protection.

3. I am the businessperson at Activision who had the most insight into the evolution of the Ubisoft Agreements, but I (and hence the company) cannot speak to many of the topics in

Complaint Counsel's Second Notice of Deposition to Activision because Activision had limited involvement in discussions around those topics.

4. I understand that Activision had indicated its willingness to prepare a witness to provide corporate testimony on Topics 2(a)-(c), 6 and 9 in Complaint Counsel's Second Notice of Deposition to Activision.

5. With respect to Topic 1 in Complaint Counsel's Second Notice of Deposition to Activision, I can confirm that while Activision is aware of "[t]he terms of the Ubisoft Agreements," Activision is not a party to the Sony Agreement or Microsoft's agreements with Boosteroid, Nvidia, Nware, and Ubitus related to cloud streaming, and therefore cannot provide testimony on how the Ubisoft Agreements "will operate in conjunction with" the other "Cloud Streaming Agreements and the Sony Agreement." Following the closing of the transaction on October 13, 2023, certain Activision personnel have been involved in Microsoft working group discussions about implementation of the Ubisoft and Sony agreements from a technical perspective, but I would not expect those Activision personnel to have unique information about this topic that is not also known to Microsoft.

6. With respect to Topic 3 in Complaint Counsel's Second Notice of Deposition to Activision, seeking testimony on "[h]ow the payment and pricing provisions in the Ubisoft Agreements were determined and their anticipated effects, including the $72 million one-time payment from Ubisoft to Microsoft and the pricing mechanisms set forth in Section 7.1 and Exhibits 5-A and 5-B to the agreement entitled Divestiture of Activision Blizzard Cloud Game Streaming Rights," Activision lacks insight into how Microsoft determined the payment and

pricing provisions of the Ubisoft Agreement and what those provisions' "anticipated effects" will be.

7. With respect to Topic 4 in Complaint Counsel's Second Notice of Deposition to Activision, which seeks testimony about "[a]ny models, analyses, assessments, or Plans relating to the impact or potential impact of the Ubisoft Agreements or any terms therein (including the pricing and payment terms) on Microsoft's gaming business, Activision's gaming business, the Transaction valuation, the gaming business of any Cloud Gaming providers, the gaming business of any Subscription Service providers, or on Microsoft's other Cloud Streaming Agreements," I can confirm that Activision did not model or otherwise assess the impact or potential impact of the Ubisoft Agreements.

8. With respect to Topic 5 in Complaint Counsel's Second Notice of Deposition to Activision, seeking testimony about "[n]egotiations with or consideration of any alternative potential purchasers (i.e., other than Ubisoft) of the rights to stream Activision's games via Cloud Gaming," Activision did not "negotiat[e] with" or "consider[]" any such alternative potential purchaser.

9. With respect to Topic 7 in Complaint Counsel's Second Notice of Deposition to Activision, seeking corporate testimony about "[p]lans or potential Plans, whether by Ubisoft, Activision, Microsoft, or otherwise, to offer or license Activision content for Cloud Gaming," Activision did not have any plans to offer or license Activision content for Cloud Gaming prior to being acquired by Microsoft. With respect to Microsoft's or Ubisoft's plans to offer or license Activision content for Cloud Gaming, Microsoft and Ubisoft are likely better-placed to answer those questions.

Executed on January 2, 2024 in Santa Monica, CA

DATED: January 2, 2024 By: /s/ *Christopher Schnakenberg*

EXHIBIT 3

PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of **Microsoft Corp.,** **a corporation;** **and** **Activision Blizzard, Inc.** **a corporation.**	**Docket No. 9412**

DECLARATION OF JULIA K. YORK IN SUPPORT OF RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO COMPEL DISCOVERY RESPONSES FROM RESPONDENTS

I, Julia K. York, hereby declare under penalty of perjury that the following is true and correct:

1. I am an attorney duly licensed to practice law in the District of Columbia. I am a partner in the law firm of Skadden, Arps, Slate, Meagher & Flom LLP, counsel for Activision Blizzard, Inc. ("Activision") in connection with the above-captioned matter. I submit this declaration in support of Respondents' Opposition to Complaint Counsel's Motion to Compel Discovery Responses From Respondents. In my role, I have personal knowledge about the Federal Trade Commission's ("FTC" or the "Commission") investigation into the transaction between Microsoft Corporation ("Microsoft") and Activision, this administrative action, and the investigations of worldwide regulators into the transaction.

2. Unless otherwise stated, the matters set forth below are based on my personal knowledge and, if called as a witness, I could and would testify competently thereto.

3. In making this declaration, I do not intend to—and am not authorized to—waive any applicable privilege or protection from discovery, including the attorney-client privilege and the work product protection.

4. On November 27, 2023, Complaint Counsel served corporate deposition notices on Activision and Microsoft by e-mail.

5. On December 8, 2023, Microsoft's counsel informed Complaint Counsel via email that, with respect to the corporate deposition notices issued to Microsoft and Activision, "[m]any of the topics in each notice are identical and do not seek any information specific to Microsoft or Activision," and therefore Respondents "do not think it is efficient to have more than one witness testify about these topics and only intend to identify one witness to testify." Microsoft's counsel also informed Complaint Counsel that Respondents would follow up with a proposed "list of topics for our identified witnesses at a later date."

6. Later on December 8, 2023, Respondents met and conferred with Complaint Counsel regarding the corporate deposition topics. At the meeting, Complaint Counsel stated that it was their position that the time allotted for each deposition is seven hours, but to the best of my recollection, Complaint Counsel did not specifically object to Respondents designating one witness to provide testimony about the topics that appear in both notices "which are identical and do not seek any information specific to Microsoft or Activision." On that call, Microsoft's counsel again informed Complaint Counsel that Respondents would follow up at a later date with proposed deposition dates and list of topics for each company's designated witnesses.

7. On December 13, 2023, Microsoft's counsel identified via email the deposition topics for which it would designate a Microsoft witness to provide corporate testimony. It also

informed Complaint Counsel that Respondents would only designate an Activision witness on Activision Corporate Deposition Topic 2(a)-(c), Activision Topic 6 and Activision Topic 9 because "[a]ny testimony from an Activision witness on the remaining topics would be duplicative of Microsoft's testimony, and preparing a witness on those issues would be a waste of resources." Complaint Counsel did not seek to meet and confer with Respondents about this proposal and instead, on December 15, 2023, informed Respondents via email that they "intend[ed] to move to enforce the Court's October 26 Order." Complaint Counsel did not indicate that they would seek to move to compel Activision to provide corporate testimony on the topics which are identical to topics in the Microsoft notice and for which Microsoft had already agreed to designate a Microsoft witness.

8. To the best of my recollection, Complaint Counsel did not at any point during the meet-and-confer process object to Respondents designating an Activision witness for only three corporate testimony topics and are now raising this issue for the first time in their motion to compel.

Executed on January 2, 2024 in Washington, D.C.

DATED: January 2, 2024

By: /s/ *Julia K. York*

Counsel for Activision Blizzard, Inc.