

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

In the Matter of)	
)	
Meta Platforms, Inc.,)	DOCKET NO. 9411
)	
Mark Zuckerberg, and)	
)	
Within Unlimited, Inc.)	
)	
Respondents)	

**NON-PARTY PELOTON INTERACTIVE, INC.’S MOTION FOR *IN CAMERA*
TREATMENT**

Pursuant to Rule 3.45 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.45(b), non-party Peloton Interactive, Inc. (“Peloton”) respectfully moves this Court for *in camera* treatment of two competitively-sensitive, confidential business documents (the “Confidential Documents”) and targeted portions of the deposition testimony of Peloton’s Chief Emerging Business Officer, Dion Sanders. Peloton produced the Confidential Documents, among others, and Mr. Sanders testified at deposition, in response to third-party subpoenas by the parties. The Federal Trade Commission (“FTC”) and Respondents have notified Peloton that they may use six of the documents produced by Peloton at the administrative trial in this matter, as well as Mr. Sanders’ deposition testimony. *See* Letter from the Federal Trade Commission dated December 12, 2022 (attached as Exhibit A); Email from Kimberly Hamlett dated December 12, 2022 (attached as Exhibit B). Non-party Peloton seeks protection only with respect to two of the documents and limited portions of Mr. Sanders’ deposition testimony.

All of the materials for which Peloton is seeking *in camera* treatment are confidential business documents or testimony, such that if they were to become part of the public record, Peloton would be significantly harmed in its ability to compete. For the reasons discussed in this

motion, Peloton requests that this Court afford the two confidential business documents at issue *in camera* treatment and certain excerpts of Mr. Sanders' testimony designated in the table below and Exhibit E-1 for a period of five years. In support of this motion, Peloton relies on the Declaration of Steven Estrada ("Estrada Decl."), affixed as Exhibit D, and the sworn deposition testimony of Mr. Sanders ("Sanders Deposition" or "Sanders Dep."), which is provided in two places: (1) certain non-confidential testimony is affixed as Exhibit D-1 to the Declaration of Steven Estrada, and (2) additional confidential testimony is affixed as Confidential Exhibit E-1.

There are only two production documents at issue. The first document, DX1301, affixed as Exhibit E-3, reflects non-party Peloton's detailed internal cost information from 2022, including line by line entries for its production costs. Exhibit D, Estrada Decl. ¶ 7; *see also* Confidential Exhibit E-1, Sanders Dep., at 45:7-16. The second document, PX0839/DX1300, affixed as Exhibit E-2, reflects non-party Peloton's views on competitors in various subsets, including which ones it tracks most closely for various purposes. Exhibit D, Estrada Decl. ¶ 6; *see also* Confidential Exhibit E-1, Sanders Dep., at 30:3-7, 31:3-5, 32:12-20, 64:3-16. Likewise, the Sanders Deposition contains information regarding related to the two Confidential Documents, Peloton's view of the competitive landscape for Peloton's products and offerings, and Peloton's internal and confidential forward-looking business strategy. Exhibit D, Estrada Decl., at ¶ 8; Exhibit D-1, Sanders Dep. 9:5-20, 77:3-78:22. The Confidential Documents and portions of Mr. Sanders' deposition testimony warrant protection from public disclosure given the sensitive business information they contain.

The United States District Court for the Northern District of California, by the Honorable Edward J. Davila, previously granted Peloton's motion for *in camera* treatment of the two Confidential Documents at issue as well as Mr. Sanders' deposition testimony. Northern District

of California. Dkt. 409, No. 5:22-cv-04325-EJD, N.D. Cal. (Dec. 5, 2022), affixed as Exhibit C. The standard in the Northern District of California required a finding that Peloton established “compelling reasons” for sealing “that outweigh the public policies favoring disclosure.” *United States v Bazaarvoice, Inc.*, Case No. 13-cv-00133-WHO, 2014 WL 11297188, at *1 (N.D. Cal. Jan 21, 2014).

The FTC and Meta previously examined Mr. Sanders regarding various topics, including the documents at issue, and each of the parties in this matter has confirmed that they do not object to the relief sought here by non-party Peloton. Peloton submits this Motion requesting *in camera* treatment of the Confidential Documents in their entirety and certain limited portions of Mr. Sanders’ deposition transcripts indicated in the table below and Exhibit E-1 for a period of five years.

I. The Documents for Which Protection is Sought

Peloton seeks *in camera* treatment for the following Confidential Documents and testimony, confidential copies of which are attached as Exhibit E.

Exhibit No.	Document Title/Description	Date	Beginning Bates No. or Page/Line	Ending Bates: No.
PX0084/ DX1228	Deposition Transcript of Dion Camp Sanders (Peloton Interactive, Inc.)	November 22, 2022	25:21-26:14, 27:20-29:8, 30:3-32:20, 45:7-46:2, 47:16-48:8, 49:8-50:21, 54:2-57:15, 61:9-62:5, 63:9-65:3, 65:15-67:2, 68:5-7, 71:10-72:2	
PX0839/ DX1300	Peloton Presentation: Overall Fitness and Wellness Industry	October, 2022	PTON-FTCMETALIT-00594	PTON-FTCMETALIT-00595
DX1301	Peloton Cost Information	September, 2022	PTON-FTCMETALIT-00596	PTON-FTCMETALIT-00596

II. Peloton’s Documents are Secret and Material such that Disclosure Would Result in Serious Injury to Peloton

In camera treatment of material is appropriate when its “public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting” such treatment. 16 C.F.R. § 3.45(b). The proponent demonstrates serious competitive injury by showing that the documents are secret and that they are material to the business. *In the Matter of General Foods Corp.*, 95 F.T.C. 352, 1980 WL 338997, at *4 (1980); *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, at *5 (1999). In this context, courts generally attempt “to protect confidential business information from unnecessary airing.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1961 WL 65882, at *4 (1961). This standard is akin the “compelling reasons” standard in the Northern District of California where Judge Davila determined that the documents and testimony should be filed under seal and considered only *in camera*. Exhibit C; *Hadley v. Kellogg Sales Co.*, No. 16-CV-04955-LHK, 2018 WL 7814785, at *2 (N.D. Cal. Sept. 5, 2018) (“compelling reasons exist to seal information that may cause [] competitive harm if disclosed, such as information about [] business strategies and internal decisionmaking, product formulations, and confidential finances”).

In considering both secrecy and materiality, the Administrative Law Judge may consider: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In the Matter of Bristol-Myers Co.*, 90 F.T.C. 455, 1977 WL 189054, at *2 (1977).

The two Confidential Documents are secret and material to Peloton's business as discussed in detail in the Estrada Decl. (Exhibit D), the excerpts of the Sanders Deposition attached to the Estrada Decl. (Exhibit D-1), and the Confidential Sanders Deposition (Exhibit E-1). In sum, the two Confidential Documents at issue contain information of competitive significance to Peloton, including Peloton's tracking of competitive trends, opportunities and risks, the companies that Peloton most closely tracks as competitors, and Peloton's 2022 sensitive internal cost information. Exhibit D, Estrada Decl. ¶¶ 6-7; Confidential Exhibit E-1, Sanders Dep., at 30:3-7, 31:3-5; 32:12-20, 45:7-16, and 64:3-16. The information in the Confidential Documents contain the strategic business planning information of Peloton, and it would harm Peloton's business interest to have these two documents released to its competitors. Exhibit D, Estrada Decl., at ¶¶ 6-7; Exhibit D-1, Sanders Dep. 77:10-78:22. This information is not publicly known outside Peloton and is not shared widely within the company. Exhibit D, Estrada Decl., at ¶¶ 6-7; Exhibit D-1, Sanders Dep. 77:1-78:22.

Likewise, the Sanders Deposition itself contains information that is secret and material to Peloton's business as discussed in detail in the Estrada Decl. (Exhibit D) and the Sanders Deposition attached to the Estrada Decl. (Exhibit D-1). The Sanders Deposition contains information regarding related to the two Confidential Documents, Peloton's view of the competitive landscape for Peloton's products and offerings, and Peloton's internal and confidential forward-looking business strategy. Exhibit D, Estrada Decl., at ¶8; Exhibit D-1, Sanders Dep. 9:5-20, 77:3-78:22. Information in the Sanders Deposition for which Peloton is requesting *in camera* treatment includes the strategic business planning information of Peloton, and it would harm Peloton's business interest to have this testimony released to its competitors. Exhibit D, Estrada Decl., at ¶8; *see also* Exhibit D-1, Sanders Dep. 77:10-78:22. This

information is not publicly known outside Peloton and is not shared widely within the company. Exhibit D, Estrada Decl., at ¶8; *see also* Exhibit D-1, Sanders Dep. 77:1-78:22.

When Peloton produced the Confidential Documents and made Mr. Sanders available for deposition, Peloton took steps to maintain confidentiality by designating the documents and the transcript as “Highly Confidential” pursuant to the Protective Order in this case. Because of the highly confidential and proprietary nature of the information and its materiality to Peloton’s business, *in camera* treatment is appropriate (as Judge Davila previously determined).

Further, disclosure of the Confidential Documents and the Sanders Deposition will result in the loss of a business advantage to Peloton. *See In re Dura Lube Corp.*, 1999 FTC LEXIS 255 at *7 (Dec. 23, 1999) (“The likely loss of business advantages is a good example of a clearly defined, serious injury.”) On its face, PX0839/DX1300 reflects Peloton’s internal and confidential perspective on the competitive landscape, competitive trends, opportunities and risks, and Peloton would lose the business advantage of developing this information were the document to be made public. Estrada Decl. ¶ 6; *see also* Exhibit E-1, Sanders Dep., at 30:3-7, 31:3-5; 32:12-20, 64:3-16. On its face, DX1301 reflects Peloton’s current year confidential cost information. The document therefore reflects valuable information that bears on Peloton’s revenue strategy and its subsequent business advantage. Estrada Decl. ¶ 7; *see also* Exhibit E-1, Sanders Dep., at 45:7-16. Mr. Sanders’ testimony in PX0084/DX1228 includes testimony related to these highly confidential documents, including an explanation of these documents, Peloton’s view of competitors and the competitive landscape, and Peloton’s internal and confidential forward-looking business plans. Estrada Decl. ¶¶ 6-8; Exhibit D-1, Sanders Dep. 9:5-10:6; 53:8-12; 77:3-78:22. Disclosure of these three documents PX0839/DX1300, DX1301, and

PX0084/DX1228 would represent a loss of serious advantage that Peloton maintains over its competitors. Estrada Decl. ¶ 6-8.

Finally, Peloton’s status as a third party is relevant to the treatment of its documents. The FTC has held that “[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible.” *H.P. Hood & Sons*, 1961 WL 65882, at *2. This is especially so in the case of a third party, which deserves “special solicitude” in its request for in camera treatment for its confidential business information. *See In re Kaiser Aluminum & Chem. Corp.*, 103 FTC 500, 1984 WL 565325, at *1 (1984) (“As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.”). Peloton’s third-party status therefore weighs in favor of granting *in camera* status to the Confidential Documents and the Sanders Deposition.

III. Conclusion

For the reasons set forth above and in the accompanying Estrada Declaration, Peloton respectfully requests that this Court grant *in camera* treatment for the Confidential Documents in full and portions of the Sanders Deposition as requested in the table above and Exhibit E-1 for a period of five years.

Dated: December 23, 2022

Respectfully,

/s/ Benjamin. R. Nagin
Benjamin R. Nagin
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
Ph: (212) 839-5911 / Fx: (212) 839-5599
bnagin@sidley.com

Laura B. Collins
SIDLEY AUSTIN LLP
1501 K. St. NW

Washington, D.C. 20005
Ph: (202) 736-8678 / Fx: (202) 736-8711
laura.collins@sidley.com

Counsel for non-party PELOTON
INTERACTIVE, INC.

STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for Non-party Peloton Interactive, Inc. (“Peloton”) notified counsel for the parties via email on or about December 20, 2022 that it would be seeking *in camera* treatment of the Confidential Documents and portions of Mr. Sanders’ testimony. Both counsel for the Federal Trade Commission and Respondents indicated that they do not object to Peloton’s motion.

Dated: December 23, 2022

/s/ Benjamin R. Nagin
Benjamin R. Nagin
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
Ph: (212) 839-5911 / Fx: (212) 839-5599
bnagin@sidley.com

Laura B. Collins
SIDLEY AUSTIN LLP
1501 K. St. NW
Washington, D.C. 20005
Ph: (202) 736-8678 / Fx: (202) 736-8711
laura.collins@sidley.com

Counsel for non-party PELOTON
INTERACTIVE, INC.

EXHIBIT A



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

**PUBLIC RECORD
REDACTED**

Bureau of Competition
Mergers II Division

December 12, 2022

VIA EMAIL TRANSMISSION

Peloton Interactive, Inc.
c/o Benjamin R. Nagin and Laura Collins
Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019
bnagin@sidley.com
laura.collins@sidley.com

RE: *In the Matter of Meta Platforms, Inc., Mark Zuckerberg, and Within Unlimited, Inc., Docket No. 9411*

Dear Ben and Laura:

By this letter we are providing formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the documents and testimony referenced in the enclosed Attachment A into evidence in the administrative trial in the above-captioned matter.

The administrative trial is scheduled to begin on January 19, 2023. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants *in camera* status (i.e., non-public/confidential).

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R. §§ 3.45 and 4.10(g). If you do not file an *in camera* motion, your documents will not receive *in camera* treatment and may be publicly disclosed. Judge Chappell may order that materials be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re Otto Bock Healthcare N. Am.*, 2018 WL 3491602 at *1 (July 2, 2018); and *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (Apr. 23, 2004). For your convenience, we included, as links in the cover email, an example of a third-party

motion (and the accompanying declaration or affidavit) for *in camera* treatment that was filed and granted in an FTC administrative proceeding. If you choose to move for *in camera* treatment, you must provide a copy of the document(s) for which you seek such treatment to the Administrative Law Judge.

Also, please be advised, if you intend to file an *in camera* motion, you will need credentials for the Commission's electronic filing system and a Notice of Appearance. The Notice of Appearance must be approved by the Office of the Secretary and can take up to twenty-four ("24") hours to issue. As such, you will need to file your Notice of Appearance at least one day prior to the day on which you intend to file your *in camera* motion. I have attached an e-filing checklist to assist with this process.

Please be aware that under the current Scheduling Order **the deadline for filing motions seeking *in camera* treatment is December 23, 2022**. A copy of the September 2, 2022 Scheduling Order can be found at <https://www.ftc.gov/legal-library/browse/cases-proceedings/221-0040-metazuckerbergwithin-matter>. If you have any questions, please feel free to contact me at (202) 326-3324.

Sincerely,

/s/ Lincoln Mayer
Lincoln Mayer
Counsel Supporting the Complaint

Attachment

Attachment A

PX No.	BegBates	EndBates	Description	Date	Sponsoring Witness
PX0084	PX0084		Deposition Transcript of Dion Camp Sanders (Peloton Interactive, Inc.) (November 22, 2022)	11/22/2022	Dion Camp Sanders; Peloton
PX0839	PTON-FTCMETALIT-00594	PTON-FTCMETALIT-00595	Peloton Presentation: Overall Fitness and Wellness Industry	10/28/2022	Peloton; Dion Camp Sanders

EXHIBIT B

Collins, Laura

From: Hamlett, Kimberly V. <khamlett@kellogghansen.com>
Sent: Monday, December 12, 2022 12:24 PM
To: Collins, Laura; Nagin, Benjamin
Cc: Webster, James M.; Hartman, Jacob E.
Subject: In re Meta Platforms, Inc., et al., Dkt. 9411 (F.T.C.) - Notice

EXTERNAL EMAIL - Use caution with links and attachments.

Counsel,

Pursuant to the Scheduling Order in *In re Meta Platforms, Inc., et al.*, Dkt. 9411 (F.T.C.), I write to provide notice that Meta anticipates the documents listed below—which are on Meta’s exhibit list in the N.D. Cal. preliminary injunction proceeding, and which have been designated as Confidential, Highly Confidential, or Highly Confidential Outside Counsel Only in that proceeding—will be on Meta’s exhibit list in the Part 3 administrative proceeding before Administrative Law Judge Chappell.

N.D. Cal. Meta’s Exhibit No.
DX1228
DX1296
DX1297
DX1298
DX1299
DX1300
DX1301

This email provides notice that, under the Scheduling Order, motions for *in camera* treatment of these likely trial exhibits are due on December 23, 2022. It further provides notice of the “strict standards for motions for *in camera* treatment for evidence to be introduced at trial” in Part 3 administrative proceedings, as “set forth in 16 C.F.R. § 3.45; in *In re Otto Bock Healthcare North American*, 2018 WL 3491602 at *1 (July 2, 2018); and *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017).” Scheduling Order, ¶ 13.

Best,
Kim

Kimberly Varadi Hamlett

Kellogg, Hansen, Todd, Figel, & Frederick, P.L.L.C.
1615 M Street, N.W. | Suite 400 | Washington, DC 20036 | (202) 326-7962

NOTICE: This transmission is intended only for the use of the addressee and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify the sender immediately via reply e-mail, and then destroy all instances of this communication. Thank you.

EXHIBIT C

**PUBLIC RECORD
REDACTED**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

META PLATFORMS, INC., et al.,

Defendants.

Case No. 5:22-cv-04325-EJD

~~[PROPOSED]~~ ORDER GRANTING NON-PARTY PELOTON INTERACTIVE, INC.'S REQUEST TO MAINTAIN CONFIDENTIALITY DESIGNATIONS AND FOR *IN CAMERA* REVIEW

**PUBLIC RECORD
REDACTED**

1 This matter came before the undersigned Judge of the above-entitled Court upon Non-Party
2 Peloton Interactive, Inc. (“Peloton”) Request to Maintain Confidential Designations of Materials
3 Used at Trial (“Request”). Having considered the Request and all other papers filed concerning that
4 request, and all other pertinent documents and pleadings filed in this action, it is hereby ORDERED
5 that:

6 1) Peloton’s Request is GRANTED:

7 2) The documents produced by Peloton and Bates-labeled PTON-FCMETALIT-00594-
8 00596 (and marked as Plaintiff’s Exhibit No. PX0839 and Defendants’ Exhibit Nos. DX1300 and
9 DX1301) shall maintain their designation as “HIGHLY CONFIDENTIAL FTC v. Meta Platforms,
10 Inc., et al. Case No. 5:22-cv-04325- EJD” pursuant to the August 24, 2022 Protective Order (ECF
11 No. 80) and be treated accordingly at trial, including being granted in camera review;

12 3) If the parties file any of the documents referenced in paragraph 2 of this Order, those
13 documents shall be filed under seal;

14 4) The testimony appearing in the November 22, 2022 deposition transcript of Dion Sanders
15 shall maintain its designation as “HIGHLY CONFIDENTIAL FTC v. Meta Platforms, Inc., et al.
16 Case No. 5:22-cv-04325- EJD” pursuant to the August 24, 2022 Protective Order and be treated
17 accordingly at trial, including being granted in camera review;

18 5) If the parties file any of the deposition designations referenced in paragraph 4 of this
19 Order, they shall be filed in redacted form with the confidential or highly confidential portions filed
20 under seal.

21 IT IS SO ORDERED

22
23 DATED: December 5, 2022



24 Honorable Edward J. Davila
25 United States District Court Judge
26
27
28

EXHIBIT D

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

_____)	
In the Matter of)	
)	
Meta Platforms, Inc.,)	DOCKET NO. 9411
)	
Mark Zuckerberg, and)	
)	
Within Unlimited, Inc.)	
)	
Respondents)	
_____)	

DECLARATION OF STEVEN ESTRADA IN SUPPORT OF NON-PARTY PELOTON INTERACTIVE, INC.’S MOTION FOR *IN CAMERA* TREATMENT

I, Steven Estrada, hereby declare as follows:

1. I am the Senior Managing Legal Director, Litigation & IP at Non-Party Peloton Interactive, Inc. (“Peloton”). I make this declaration in support of Non-Party Peloton’s Motion for *in Camera* Treatment (the “Motion”). I have personal knowledge of the matters stated herein and, if called upon to do so, could competently testify about them.

2. Peloton is an interactive fitness platform, and it pioneered connected, technology-enabled fitness, and the streaming of immersive, instructor-led boutique classes to its members. Its instructors teach classes across a variety of fitness and wellness disciplines, including indoor cycling, indoor/outdoor running and walking, rowing, yoga, Pilates, Barre, strength training, stretching, meditation, and floor cardio. It maintains a vast and constantly updated library of thousands of original fitness and wellness programs. In order to provide these services to its members, and to determine what services and content to provide, Peloton invests in content creation, in identifying and tracking its competitors, and in making plans for the future. Peloton’s business interests would be significantly harmed if its competitors were to learn

detailed information about its investments, which competitors Peloton is tracking the most closely, Peloton's costs to produce its offerings, or Peloton's future business plans.

3. I have reviewed and am familiar with the documents Peloton produced in the above-captioned matter in response to third-party subpoenas from the Federal Trade Commission and Respondents, and the testimony provided by Mr. Dion Sanders, Chief Emerging Business Officer at Peloton, pursuant to a Rule 30(b)(6) deposition notice in connection with this matter. Attached here to as Exhibit D-1 is a true and correct copy of excerpts from the transcript of the November 22, 2022 deposition of Dion Sanders, pages 1, 7-10, 53, 77-78, 80, the signature page, and the errata sheet.

4. Given my position at Peloton, I am familiar with the type of information contained in the documents and testimony at issue and its competitive significance to Peloton. Based on my review of the documents and the transcript, my knowledge of Peloton's business, and my familiarity with the confidentiality protection afforded this type of information by Peloton, I submit that the disclosure of these documents to the public and to competitors of Peloton would cause serious competitive injury to Peloton.

5. The FTC and Respondents have informed Peloton that they intend to use six of the documents that Peloton produced in response to third-party subpoenas at the administrative hearing in this matter as well as the deposition testimony of Mr. Sanders. Of these documents, PX0839/DX1300, and DX1301 are particularly sensitive and contain confidential business information. The FTC and Respondents have also informed Peloton that they intend to use the deposition testimony provided by Mr. Dion Sanders in response to a subpoena in this matter, marked as PX0084/DX1228, and portions of Mr. Sanders' testimony that contain confidential

business information. As described in the Motion, Peloton seeks *in camera* protection of the following documents for a period of five years:

Exhibit No.	Document Title/Description	Date	Beginning Bates No. or Page/Line	Ending Bates: No.
PX0084/ DX1228	Deposition Transcript of Dion Camp Sanders (Peloton Interactive, Inc.)	November 22, 2022	25:21-26:14, 27:20-29:8, 30:3-32:20, 45:7-46:2, 47:16-48:8, 49:8-50:21, 54:2-57:15, 61:9-62:5, 63:9-65:3, 65:15-67:2, 68:5-7, 71:10-72:2	
PX0839/ DX1300	Peloton Presentation: Overall Fitness and Wellness Industry	October, 2022	PTON-FTCMETALIT-00594	PTON-FTCMETALIT-00595
DX1301	Peloton Cost Information	September, 2022	PTON-FTCMETALIT-00596	PTON-FTCMETALIT-00596

6. PX0839/DX1300 is an internal document maintained by non-party Peloton regarding Peloton’s tracking of competitive trends, opportunities and risks, and it identifies the companies that Peloton most closely tracks as competitors. Tracking this information and staying on top of trends helps maintain Peloton’s business advantage. Peloton’s internal, confidential views of the competitive landscape are competitively sensitive and confidential business information that could be used to harm Peloton’s business interests, including causing serious competitive injury. This information is kept confidential within the company and is only shared as needed.

7. DX1301 is an internal document maintained by non-party Peloton regarding Peloton’s internal production cost information for 2022, broken out by category, which is valuable information that bears on Peloton’s revenue strategy and its subsequent business advantage. Peloton’s internal cost information is competitively sensitive and confidential

business information that could be used to harm Peloton’s business interests, including causing serious competitive injury. This information is kept confidential within the company and is only shared as needed.

8. PX0084/DX1228 is the November 2022 Deposition Transcript of Dion Camp Sanders, and the transcript contains information regarding related to these highly confidential documents, Peloton’s view of the competitive landscape for Peloton’s products and offerings, and Peloton’s internal and confidential forward-looking business strategy. This is competitively sensitive and confidential business information that could be used to harm Peloton’s business interests, including causing serious competitive injury. This information is kept confidential within the company and is only shared as needed.

9. These documents are material to Peloton’s business and disclosure would result in serious competitive injury. These documents are competitively sensitive.

I declare under penalty of perjury that the foregoing is true and correct. Executed December 23, 2022 in New York, New York.

DocuSigned by:
Steve Estrada
7DEA6E6961F2454...

Steven Estrada

EXHIBIT D-1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FEDERAL TRADE COMMISSION,)
 Plaintiff,)
 -against-) Case No.
) 5:22-cv-04325-EJD
 META PLATFORMS, INC., et al.,)
 Defendants.)
 _____)

HIGHLY CONFIDENTIAL

UNDER THE PROTECTIVE ORDER

VIDEO-RECORDED DEPOSITION OF DION SANDERS

November 22, 2022

12:02 p.m. (PST)

Reported by: Eileen Mulvenna, CSR/RMR/CRR

Job No. 13566

DIGITAL EVIDENCE GROUP

1730 M Street, NW, Suite 812

Washington, D.C. 20036

(202) 232-0646

1 THE VIDEOGRAPHER: We are on the
2 record.

3 This is the remote video deposition of
4 Mr. Dion Sanders in the matter of the Federal
5 Trade Commission versus Meta Platforms, Inc.,
6 et al., in the United States District for the
7 Northern District of California, San Jose
8 Division.

9 My name is Billy Fahnert. I am the
10 videographer technician today. The court
11 reporter is Eileen Mulvenna. We are here on
12 behalf of Digital Evidence Group.

13 Today's date is November 22, 2022, and
14 the time is 12:02 p.m. Pacific Standard Time.

15 All parties have stipulated to the
16 witness being sworn in remotely.

17 Will counsel please identify
18 yourselves for the record, and then the
19 witness will be sworn in.

20 MR. HARTMAN: Jake Hartman of Kellogg
21 Hansen for Meta.

22 MR. MAYER: And Lincoln Mayer from the

1 Federal Trade Commission for plaintiff.

2 MR. FITZPATRICK: Chris Fitzpatrick
3 from Hogan Lovells for defendant, Within
4 Unlimited, Inc.

5 MR. NAGIN: Good afternoon. Benjamin
6 Nagin, N-A-G-I-N, from Sidley Austin, on
7 behalf of Peloton Interactive, Inc., and the
8 witness, Mr. Sanders. And I'm joined, though
9 off camera, by my colleague, Laura Collins,
10 also of Sidley Austin.

11 DION SANDERS,

12 having been duly sworn by Eileen Mulvenna,
13 a Notary Public of the State of New York,
14 was examined and testified as follows:

15 EXAMINATION

16 BY MR. HARTMAN:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. Can you please state your full name
20 for the record?

21 A. Sure. It's Dion Sanders.

22 Q. And where do you work, Mr. Sanders?

1 A. Peloton.

2 Q. And are you testifying today as a
3 corporate representative for Peloton?

4 A. I am, yes.

5 Q. Are you prepared to testify on behalf
6 of Peloton about the features, capabilities, and
7 pricing of Peloton's products and offerings and the
8 ways in which Peloton believes it differentiates its
9 products from its competitors?

10 A. Yes.

11 Q. Are you also prepared to testify about
12 the competitive landscape for Peloton's products and
13 offerings?

14 A. Yes.

15 Q. Are you prepared to testify on behalf
16 of Peloton regarding product and business
17 development strategy, including strategy for
18 developing content released in a regular cadence and
19 the costs associated with that development?

20 A. Yes.

21 Q. And are you also prepared today to
22 testify on behalf of Peloton regarding Peloton's

1 plans to enter or expand into virtual reality,
2 augmented reality, or mixed reality, including
3 through partnerships or joint ventures?

4 MR. MAYER: Object to form.

5 Please proceed, Mr. Sanders.

6 THE WITNESS: Okay. Yes.

7 BY MR. HARTMAN:

8 Q. What is your current role with
9 Peloton?

10 A. I am the chief emerging business
11 officer.

12 Q. And how long have you been at Peloton
13 overall?

14 A. I started in January 2019, so coming
15 up on four years.

16 Q. Can you briefly describe Peloton's
17 products and offerings?

18 A. Yeah, sure. So Peloton offers a suite
19 of connected fitness products. So a Peloton Bike,
20 Bike+, Tread, Tread+, the Peloton Rower and the
21 Peloton Guide, which are connected fitness hardware
22 products. And then we sell a subscription that

1 THE VIDEOGRAPHER: Yeah, let me go off
2 the record.

3 We are going off the record. The time
4 is 12:53.

5 (Recess from the record.)

6 THE VIDEOGRAPHER: We are back on the
7 record. The time is 1:07.

8 MR. HARTMAN: Thank you. And, sorry,
9 before we -- before I formally pass the
10 witness, if we can just go ahead and mark the
11 document we looked at, PTON-FTCMETALIT-00596
12 as Exhibit Meta 46, that would be great.

13 (Meta Exhibit 46, Bates Nos.
14 PTON-FTCMETALIT-00427-445, Shareholder
15 Letter, received and marked.)

16 MR. HARTMAN: And with that, I will
17 turn it over to my colleague, Mr. Mayer.

18 MR. MAYER: Thank you, Mr. Hartman.

19 EXAMINATION

20 BY MR. MAYER

21 Q. And good afternoon, Mr. Sanders.

22 A. How are you doing?

1 EXAMINATION

2 BY MR. NAGIN

3 Q. Mr. Sanders, do you recall being asked
4 a few questions about this document marked as
5 Meta 46 for identification?

6 A. Yes.

7 Q. Does Meta 46 reflect internal
8 confidential information of Peloton?

9 A. Yes.

10 Q. Does Meta 46 reflect strategic
11 business planning information of Peloton?

12 A. Yes.

13 Q. Does Peloton maintain the con- --
14 well, let me ask -- does Peloton maintain the
15 information reflected in 46 as confidential?

16 A. Yes.

17 Q. And could it harm Peloton's business
18 interest to have the information set forth in
19 Meta 46 released to Peloton's competitors?

20 A. Yes.

21 MR. NAGIN: I'd ask the exhibit
22 manager now to pull up what was marked as

1 Meta Exhibit 43 for identification. And I
2 believe it was also marked as PX0839. It has
3 the Production Nos. PTON-FTCMETALIT-00594
4 through 595.

5 BY MR. NAGIN:

6 Q. I'm going to ask the same series of
7 questions, Mr. Sanders, and then I think everyone
8 can go home.

9 Does Meta Exhibit 43 reflect internal
10 confidential information of Peloton?

11 A. Yes.

12 Q. Does Meta 43 reflect the strategic
13 business planning information of Peloton?

14 A. Yes.

15 Q. Does Peloton maintain the document and
16 information marked as 43 as confidential within its
17 own files?

18 A. Yes.

19 Q. And could it harm Peloton's business
20 interest to have Meta Exhibit 43 released to its
21 competitors?

22 A. Yes.

1 STATE OF NEW YORK)
2)
3 COUNTY OF WESTCHESTER)
4)

ss:

5 I, EILEEN MULVENNA, CSR/RMR/CRR, a
6 Certified Court Reporter, Registered Merit Reporter,
7 Certified Realtime Reporter, and Notary Public in
8 and for the State of New York, do hereby certify:

9 That I reported the taking of the
10 deposition of the witness, DION SANDERS,
11 commencing on the 22nd day of November, 2022, at the
12 hour of 12:02 p.m. (Pacific Time).

13 That prior to being examined, the witness
14 was duly sworn by me to testify to the truth, the
15 whole truth, and nothing but the truth.

16 That I thereafter transcribed my said
17 shorthand notes into typewriting and that the
18 typewritten transcript of said deposition is a
19 complete, true and accurate transcription of my
20 said shorthand notes taken down at said time, and
21 that a request has been made to review the
22 transcript.

I further certify that I am not a relative
or employee of an attorney or counsel of any of the
parties, nor a relative or employee of any attorney
or counsel involved in said action, nor a person
financially interested in the action.

IN WITNESS WHEREOF, I have hereunto
set my signature this 22nd day of November, 2022.

EILEEN MULVENNA, CSR/RMR/CRR

1 Digital Evidence Group, L.L.C.
1730 M Street, NW, Suite 812
2 Washington, D.C. 20036
(202) 232-0646

3
4 SIGNATURE PAGE

Case: Federal Trade Commission v. Meta Platforms, Inc., et al
5 Witness Name: Dion Sanders 30(b)(6)
Deposition Date: November 22, 2022

6
I do hereby acknowledge that I have read
7 and examined the foregoing pages
of the transcript of my deposition and that:

8
9 (Check appropriate box):

() The same is a true, correct and
10 complete transcription of the answers given by
me to the questions therein recorded.

11 (X) Except for the changes noted in the
attached Errata Sheet, the same is a true,
12 correct and complete transcription of the
13 answers given by me to the questions therein
14 recorded.

I declare under penalty of perjury that the foregoing is true and correct. Executed November 30, 2022.

15 11/30/2022

16 _____

17 DATE

DocuSigned by:

Dion Sanders

51923709F82040B...

17 _____

WITNESS SIGNATURE

21 _____

22 DATE

21 _____

NOTARY

DEPOSITION OF DION SANDERS
 (November 22, 2022)

ERRATA SHEET

Page:Line	Currently Reads	Should Read	Reason
3:7	SHAWN ULRICK, ESQUIRE	SHAWN ULRICK	Mistyped
6:10-12	Exhibit 46 (Meta)Bates Nos. PTON-FTCMETALIT-00427-445, Shareholder Letter	Exhibit 46 (Meta)Bates Nos. PTON-FTCMETALIT-00596, Spreadsheet	Mistyped
22:1	experiences gamify . . .		Unclear if “gamify” is a correct transcription
53:14-15	PTON-FTCMETALIT-00427-445, Shareholder Letter , received and marked.)	PTON-FTCMETALIT-00596, Spreadsheet , received and marked.)	Mistyped

I, Dion Sanders, have read the foregoing deposition dated November 22, 2022, and hereby affix my signature that the same is true and correct, except as noted above.

Date: 11/30/2022

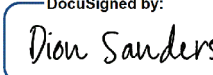
DocuSigned by:

 51923709F82040B...
 Dion Sanders

EXHIBIT E

Exhibit E

Peloton Interactive, Inc. is requesting *in camera* treatment of the following documents:

Hearing Exhibit No.	Document Title/Description	Date	Beginning Bates No. or Page/Line	Ending Bates: No.	Attached Here As
PX0084 DX1228	Deposition Transcript of Dion Camp Sanders (Peloton Interactive, Inc.)	November 22, 2022	25:21-26:14, 27:20-29:8, 30:3-32:20, 45:7-46:2, 47:16-48:8, 49:8-50:21, 54:2-57:15, 61:9-62:5, 63:9-65:3, 65:15-67:2, 68:5-7, 71:10-72:2		Exhibit E-1
PX0839 DX1300	Peloton Presentation: Overall Fitness and Wellness Industry	October, 2022	PTON-FTCMETALIT-00594	PTON-FTCMETALIT-00595	Exhibit E-2
DX1301	Peloton Cost Information	September, 2022	PTON-FTCMETALIT-00596	PTON-FTCMETALIT-00596	Exhibit E-3

Pursuant to 16 C.F.R. § 3.45(b), Peloton requests that the following parties are notified in the event that the Commission intends to disclose in-camera information in a final decision:

Benjamin R. Nagin
 SIDLEY AUSTIN LLP
 787 Seventh Avenue
 New York, NY 10019
 Ph: (212) 839-5911 / Fx: (212) 839-5599
 bnagin@sidley.com

Laura B. Collins
 SIDLEY AUSTIN LLP
 1501 K. St. NW
 Washington, D.C. 20005
 Ph: (202) 736-8678 / Fx: (202) 736-8711
 laura.collins@sidley.com

EXHIBIT E-1

**{Confidential - Redacted
in Entirety}**

PUBLIC RECORD - REDACTED

EXHIBIT E-2

**{Confidential - Redacted
in Entirety}**

EXHIBIT E-3

**{Confidential - Redacted
in Entirety}**

CERTIFICATE OF SERVICE

I, Benjamin R. Nagin, declare under penalty of perjury under the laws of the State of New York that the following is true and correct. On December 23, 2022, I caused to be served the following documents on the parties listed below by the manner indicated:

- **NON-PARTY PELOTON INTERACTIVE, INC.’S MOTION FOR *IN CAMERA* TREATMENT (PUBLIC VERSION AND NON-PUBLIC VERSION)**
- **[PROPOSED] ORDER**

The Office of the Secretary: (via the Federal Trade Commission’s e-filing system and electronic mail)

April J. Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Suite CC-5610
Washington, D.C. 20580
ElectronicFilings@ftc.gov

The Office of the Administrative Law Judge (via the Federal Trade Commission’s e-filing system and electronic mail)

D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W., Room H-110
Washington, D.C. 20580

Federal Trade Commission — Washington, DC (via electronic mail)

Lincoln Mayer
Federal Trade Commission
400 7th St, SW
Washington, DC 20024
lmayer@ftc.gov

Counsel for Meta Platforms, Inc. (via electronic mail)

Michael Moiseyev
Weil, Gotshal & Manges LLP
2001 M Street, NW, Suite 600
Washington, DC 20036
Telephone: (202) 682-7235
michael.moiseyev@weil.com
Meta.ALJ.Case-Weil.KH@weil.com

Counsel for Mark Zuckerberg (via electronic mail)

Geoffrey M. Klineberg
Kellogg, Hansen, Todd, Figel & Frederick, PLLC
Sumner Square
1615 M Street, NW, Suite 400
Washington, DC 20036
(202) 326-7928
gklineberg@kellogghansen.com
ZUCKERBERG-ALJ@lists.kellogghansen.com

Counsel for Within Unlimited, Inc. (via electronic mail)

Logan M. Breed.
Hogan Lovells US LLP
855 Main St., Suite 200
Columbia Square, 555 Thirteenth St., NW
Washington, D.C. 20004
Telephone: (202) 637-5600
Facsimile: (202) 637-5910
logan.breed@hoganlovells.com
WithinFTC9411@hoganlovells.com

/s/ Benjamin R. Nagin

Benjamin R. Nagin

**PUBLIC RECORD -
REDACTED**

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

In the Matter of)	
Meta Platforms, Inc.,)	
Mark Zuckerberg, and)	
Within Unlimited, Inc.)	
Respondents)	
)	DOCKET NO. 9411

[PROPOSED] ORDER

Upon consideration of Non-Party Peloton Interactive, Inc.’s (“Peloton’s”) Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following documents are to be provided *in camera* treatment for five years from the date of this Order in their entirety.

Exhibit No.	Document Title/Description	Date	Beginning Bates No. or Page/Line	Ending Bates: No.
PX0084 DX1228	Deposition Transcript of Dion Camp Sanders (Peloton Interactive, Inc.)	November 22, 2022	25:21-26:14, 27:20-29:8, 30:3-32:20, 45:7-46:2, 47:16-48:8, 49:8-50:21, 54:2-57:15, 61:9-62:5, 63:9-65:3, 65:15-67:2, 68:5-7, 71:10-72:2	
PX0839 DX1300	Peloton Presentation: Overall Fitness and Wellness Industry	October, 2022	PTON-FTCMETALIT-00594	PTON-FTCMETALIT-00595
DX1301	Peloton Cost Information	September, 2022	PTON-FTCMETALIT-00596	PTON-FTCMETALIT-00596

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date: _____