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to respond to the Subpoena and totaled nine printed pages. SIE is in the process of analyzing Microsoft's response, but cannot resolve this process in the time remaining.

SIE believes that negotiations have been productive and expects that further negotiations may resolve nearly all issues. Microsoft agreed that it also believes further negotiations are likely to narrow or eliminate most disputes. Yet Microsoft has offered to extend SIE's time to negotiate the scope of the documents requests and has refused to extend SIE's time to negotiate the scope of custodial collections (i.e., whose documents will be collected and reviewed for responsiveness), a position that Microsoft only conveyed to SIE after close of business last night, February 1. The issues of custodians and scope are intertwined, however, and cannot realistically be carved into separate negotiations and, if necessary, separate motions to quash. Moreover, Microsoft's attempt to force SIE to simultaneously negotiate parts of its subpoena while litigating others would both inefficiently subject the Court to piecemeal motions and distract SIE from focusing on reaching as reasonable a resolution as possible on the substance of the Subpoena.² As a result, absent an extension, SIE will now likely be forced to file a broad motion to limit or quash the Subpoena tomorrow, February 3, 2023, even though both Microsoft and SIE believe that many of the issues that will be addressed in the motion would ultimately be resolved in the next seven days were there an extension.

Indeed, Microsoft has already delayed resolution of the Subpoena issues by refusing to agree to a single, reasonable extension of time, and instead forcing SIE to file motions for extension of time (including this one) within the span of 14 days. By contrast – and consistent with normal discovery practice before this Court – Activision agreed to a single reasonable

² Microsoft's fragmented proposal is also inconsistent with the approach preferred by Rule 3.34(c) of the Rules of Practice, which indicate that motions to quash are expected to "set forth *a* assertions of privilege or other factual and legal objections to the subpoena, including *a* appropriate arguments, affidavits and other supporting documentation." 16 C.F.R. § 3.34(c) (emphasis added).

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multi-week extension to February 13, 2023 for third party Nvidia, Doc. No. 606798, and the FTC agreed to a single reasonable multi-week extension to February 15, 2023 for SIE, Doc. No. 606810. Microsoft is singling out SIE for unreasonable micro-extensions of two or three days at a time, distracting SIE from focusing its efforts on substantively responding to the Subpoena.

If Microsoft wanted a rapid response to its Subpoena that could have been negotiated in its unrealistically short deadlines, it should have served a narrowly tailored one focusing on the ultimate issue in this case: whether Microsoft's acquisition of Activision Blizzard, Inc., ("Activision") may lessen competition. Instead, Microsoft chose to lard up its staggeringly broad Subpoena with completely irrelevant requests, such as requests for all documents related to performance reviews and evaluations of all Sony gaming leadership or management (No. 13), all documents relating to SIE's gaming business sent to, received from, or exchanged with other Sony entities (No. 17), and executed copies of every content licensing agreement SIE has entered into with any third-party publisher over the past 11 years (No. 35), to name just a few.

Nonetheless, despite Microsoft's unreasonably broad Subpoena and infeasibly short deadlines, SIE has been diligently working with Microsoft and simply needs seven more days to complete that process. As a show of good faith, SIE has already begun producing material responsive to Microsoft's requests even while negotiations are ongoing. SIE believes that in one week's time most issues will have been resolved and both sides will have a clear picture of which disputes, if any, will require the Court's intervention. It simply makes no sense to force SIE to file a motion to quash now given the status of negotiations.

Pursuant to the January 4, 2023 Scheduling Order, Microsoft has until April 7, 2023, to complete fact discovery, and, therefore, SIE does not believe the requested extension of seven days will delay the progress of these proceedings.

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WHEREFORE, for good cause shown, SIE respectfully requests that Your Honor grant the requested relief pursuant to 16 C.F.R. § 4.3(b).

Dated: February 2, 2023

Respectfully submitted,

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CLEARY GOTTlieb STEEN & HAMILTON LLP

C N -Pa S I ac
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**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,**

Respondents.

DOCKET NO. 9412

**[PROPOSED] ORDER GRANTING MOTION FOR EXTENSION OF TIME TO MOVE
TO LIMIT OR QUASH SUBPOENA**

On February 2, 2023, non-party Sony Interactive Entertainment LLC (“SIE”) filed a Motion for Extension of Time to Move to Limit or Quash or Otherwise Respond to a subpoena (“Motion”) served by Respondent Microsoft Corp. (“Microsoft”) on January 17, 2023.

Under FTC Rule of Practice 3.34(c), any motion to limit or quash a subpoena must be filed within the earlier of ten days of service of the subpoena or the time for compliance therewith. SIE states that it seeks a fourth extension of time in order to continue its negotiations with Microsoft regarding the subpoena, thereby narrowing potential discovery disputes.

FTC Rule 4.3(b) authorizes the Administrative Law Judge, except in circumstances not here presented, to extend any time limit prescribed by the rules “[f]or good cause shown.” 16 C.F.R. § 4.3(b). Based on the representation in the Motion, SIE has demonstrated good cause for the requested extension. Accordingly, the Motion is GRANTED and it is hereby ORDERED that SIE’s deadline for filing any motion to limit or quash or otherwise respond to the subpoena

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ORDERED:

Date: February _____, 2023

D. Michael Chappell
Chief Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2023, I filed the foregoing document electronically using the Federal Trade Commission's e-filing system, which will send notification of such filing to:

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The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
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I also certify that I caused the foregoing document to be served via email to:

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CLEARY GOTTlieb STEEN & HAMILTON LLP

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

In the Matter of

Microsoft Corp.

a corporation,

Activision Blizzard

a corporation,

Respondents.

DECLARATION OF CHRISTOPHER J. MURPHY
NON-PARTY JOINT MOTION TO DISMISS

MOTION

I, Christopher J. Murphy, declare as follows:

1. I am an attorney admitted to practice in the State of Maryland from the Georgetown University Law Center in 2002 and in California in 2000. I am the head of the Discovery & Innovation Technology group at Cleary Gottlieb & Hamilton LLP (“Cleary Gottlieb”). I am counsel to the party, Sony Interact Entertainment LLC (“SIE”) in this action.

2. Before joining Cleary Gottlieb, I worked for the U.S. Patent and Trademark Office where I advised clients on the usage of advanced technology and processes for patent protection.

3. As director of the Discovery & Innovation Technology group, I lead a team that focuses on the development of new technologies and their application to the gaming industry. In this capacity, I advise clients on intellectual property and technology matters, including the use of discovery procedures with government regulators and opposing counsel.

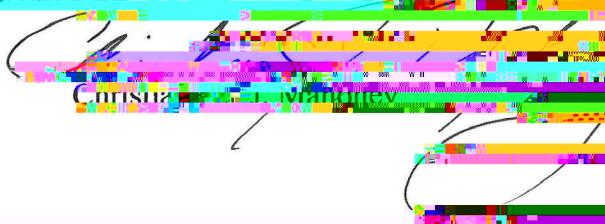
16. Based on

related

producing

I declare

Executed



Christina M. Kennedy