

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

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

**ORDER DENYING MOTION OF NON-PARTY STEVE SINGER
TO QUASH SUBPOENA *AD TESTIFICANDUM***

I.

On April 13, 2023, non-party Steve Singer (“Singer”) filed a motion to quash a subpoena *ad testificandum* (“Deposition Subpoena”) served on him by Federal Trade Commission (“FTC”) Complaint Counsel on March 30, 2023 (“Motion”). On April 17, 2023, Complaint Counsel filed an opposition to the Motion (“Opposition”). For the reasons set forth below, the Motion is DENIED.

II.

Singer argues that the Deposition Subpoena should be quashed as untimely because it was served after the deadline for the issuance of certain discovery set forth in the January 4, 2023 Scheduling Order issued in this case. Specifically, the Scheduling Order set March 3, 2023 as the deadline for “issuing document requests, interrogatories and subpoenas, except for discovery directed to witnesses who did not appear on either side’s preliminary lists and discovery for purposes of authenticity and admissibility of exhibits.” Scheduling Order at 1 (emphasis added).

Exhibits to Complaint Counsel’s Opposition demonstrate that Singer did not appear on either side’s preliminary witness list. Opposition Exs. 3-4. Accordingly, by the plain language of the Scheduling Order, the March 3, 2023 deadline does not apply to the issuance of the Deposition Subpoena. Thus, Singer’s argument that the Deposition Subpoena should be quashed as untimely under the Scheduling Order is rejected.

Singer further argues that the Deposition Subpoena should be quashed because he is beyond the scope of permissible deponents under Additional Provision 11 of the Scheduling Order, which provides in relevant part:

Each side may depose any witness who (i) is listed on either side's preliminary witness list; (ii) is listed on the other side's updated witness list; or (iii) provides a declaration or affidavit offered by the other side.

Singer asserts that he was not listed on either side's preliminary witness list, was not subsequently listed on the updated witness lists for either Respondent Microsoft Corp. or Activision Blizzard, Inc., and has not provided a declaration or affidavit for either Respondent. Therefore, according to Singer, he is exempt from any deposition by Complaint Counsel. Complaint Counsel contends that, in using the phrase, "may depose," Additional Provision 11 permits, but does not limit, depositions.

Singer's interpretation of Additional Provision 11 is rejected. The language of Additional Provision 11 is permissive, not limiting. Moreover, Singer does not deny that he has knowledge that is relevant to this case. To interpret Additional Provision 11 in the manner urged by Singer would unnecessarily exempt from discovery a person with relevant knowledge and would conflict with the discovery rules.

III.

As set forth above, the Motion is DENIED, and it is hereby ORDERED that the April 7, 2023 discovery deadline in the Scheduling Order is lifted for the limited purpose of completing the deposition of Singer. In this regard, it is noted that, according to the Motion, Singer is unavailable until April 24, 2023 due to long-planned travel. To facilitate the prompt completion of the Singer deposition, Singer and the parties are directed to work together in good faith to set the deposition of Singer to commence on the first practicable date on or after April 24, 2023. Absent a showing of good cause, the deposition shall be completed no later than May 8, 2023.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: April 20, 2023