

**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**

**COMPLAINT COUNSEL’S OPPOSITION TO NON-PARTY STEVE SINGER’S  
MOTION TO QUASH COMPLAINT COUNSEL’S SUBPOENA *AD TESTIFICANDUM***

Nintendo of America Inc. (“Nintendo”) executive Steve Singer was one of Nintendo’s [REDACTED] of an agreement with Microsoft Corp. (“Microsoft”) that purports to make Activision Blizzard Inc. (“Activision”) games in the *Call of Duty* franchise available on certain Nintendo hardware (the “Agreement”)<sup>1</sup> if Microsoft completes its acquisition of Activision (the “Proposed Transaction”). Whether the Agreement alleviates any of the anticompetitive effects of the Proposed Transaction will be an issue at the evidentiary hearing. Complaint Counsel accordingly subpoenaed Mr. Singer for deposition testimony (the “Singer Subpoena”).<sup>2</sup> After Nintendo refused to accept service and Mr. Singer evaded process for several

---

<sup>1</sup> Exhibit 1.

<sup>2</sup> Exhibit 2.

days, Complaint Counsel effected service on March 30. Mr. Singer moved to quash the subpoena as untimely because it was served after March 3, which he contends is the applicable deadline. Mr. Singer's argument that March 3 was the deadline contradicts the plain meaning of the Scheduling Order. Even if the subpoena were untimely (it is not), there is good cause to require Mr. Singer to testify.

*First*, the Scheduling Order is crystal clear: March 3, 2023 is the "Deadline for issuing . . . subpoenas, *except for discovery directed to witnesses who did not appear on either side's preliminary witness lists.*" Scheduling Order at 1 (emphasis added). [REDACTED]

[REDACTED] [REDACTED]  
[REDACTED]<sup>4</sup> The March 3 deadline for issuing subpoenas does not apply.

*Second*, in the alternative, even if the Singer Subpoena were untimely, there is good cause for nevertheless requiring Mr. Singer to testify. On the one hand, there is no dispute that his testimony "may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent." 16 C.F.R. § 3.31(c)(1). Mr. Singer has unique personal knowledge of the Agreement, [REDACTED]

[REDACTED] The Motion to Quash does not even attempt to argue relevance, undue burden, or unfair prejudice. On the other hand, Nintendo has sought to delay Complaint Counsel's discovery at every turn. Nintendo did not produce documents about the Agreement until March 3 (the day Mr. Singer argues he should have been served).<sup>5</sup> Nintendo and Mr. Singer then refused service of the Singer Subpoena,<sup>6</sup> and Mr. Singer evaded service for

---

<sup>3</sup> Exhibit 3; Exhibit 4.

<sup>4</sup> Exhibit 5.

<sup>5</sup> Exhibit 7 at ¶17.

<sup>6</sup> Exhibit 7 at ¶24.

several days.<sup>7</sup> Even if the Singer Subpoena were untimely (which it is not), there was good cause for any delay. Complaint Counsel respectfully moves the Court to deny Steve Singer's Motion to Quash.

## BACKGROUND

### 1. The Agreement

On December 6, 2022, Nintendo and Microsoft executed a Letter of Intent purporting to bring games from Activision's *Call of Duty* franchise to certain Nintendo hardware. Complaint Counsel did not receive a copy of the Letter of Intent until January 30, 2023, and received it from Microsoft, not Nintendo. On February 10, 2023, Nintendo and Microsoft executed the Agreement. A copy of the Agreement was first produced to Complaint Counsel by Respondents on February 24. Complaint Counsel expects Respondents to argue that the Agreement addresses antitrust concerns with the Proposed Transaction. Complaint Counsel intends to rely on, *inter alia*, the terms of the Agreement itself and relevant testimony from Microsoft and Nintendo witnesses to demonstrate that the Agreement does not resolve the Proposed Transaction's anticompetitive effects.

### 2. Complaint Counsel identified [REDACTED] on its Preliminary Witness List and subpoenaed him on March 3

On January 17, Complaint Counsel served its preliminary witness list. Nintendo's [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

---

<sup>7</sup> Exhibit 11.

<sup>8</sup> Exhibit 3.

PUBLIC

[REDACTED]

[REDACTED]<sup>9</sup> Several times before and after Complaint Counsel [REDACTED]

[REDACTED] Complaint Counsel expressed to Nintendo its need for discovery on the topics included within [REDACTED] *as well as the Agreement* and related information.<sup>10</sup>

Over these repeated discussions, Nintendo maintained that nearly all information uniquely in its possession related to the Agreement was privileged.<sup>11</sup> Contrary to the inaccurate assertion in the Motion to Quash (Motion at 3), [REDACTED]

[REDACTED] Nor could it. [REDACTED]

[REDACTED] the Agreement was not executed until February 10, 2023. As for the Letter of Intent, it was signed on December 6, 2022, and the full quote from [REDACTED] (which the Motion to Quash inexcusably omits) says that [REDACTED]

[REDACTED]

[REDACTED]<sup>12</sup>

### **3. Nintendo first produced documents in response to Complaint Counsel's February 1 Document Subpoena on March 3, 2023**

On February 1, 2023, Complaint Counsel issued a subpoena to Nintendo for documents, including documents relating to the [REDACTED]

[REDACTED]

[REDACTED]<sup>13</sup> Complaint Counsel then spent the next several weeks negotiating Nintendo's response to the subpoena. Finally, on the afternoon of March 3, Nintendo made its first document

---

<sup>9</sup> Exhibit 6.

<sup>10</sup> Exhibit 7 ¶¶ 12, 14 and 15.

<sup>11</sup> Exhibit 7 ¶¶ 12, 14 and 15.

<sup>12</sup> Exhibit 9 at ¶17.

<sup>13</sup> Exhibit 8 at Request 3.

production, including documents confirming [REDACTED]

[REDACTED]<sup>14</sup>

**4. On March 8, Nintendo disclosed [REDACTED] lacked personal knowledge of the Agreement and then delayed identifying a suitable witness**

On March 8, 2023, Nintendo confirmed to Complaint Counsel that [REDACTED]

[REDACTED]<sup>15</sup> A fact witness, of course, needs to have personal knowledge of a matter to testify at the evidentiary hearing. Scheduling Order ¶ 21.

Complaint Counsel made repeated requests to Nintendo to make Mr. Singer available for deposition or identify another witness with personal knowledge of the Agreement.<sup>16</sup> Nintendo instead proposed, *inter alia*, that (1) Complaint Counsel depose [REDACTED]

[REDACTED]<sup>17</sup> (2) Complaint Counsel withdraw [REDACTED]

[REDACTED] and depose no one from Nintendo if Microsoft agreed to [REDACTED]

[REDACTED]<sup>18</sup> and (3) Complaint Counsel depose Mr. Singer instead of [REDACTED], despite the differences in their personal knowledge.<sup>19</sup> Nintendo's proposed horse-trades did everything

but what was required: produce witnesses who could offer testimony based on personal

knowledge that covered *all of* the issues in the case involving Nintendo. For that, [REDACTED]

[REDACTED] and Singer's testimony would be required.

---

<sup>14</sup> Exhibit 7 ¶ 17.

<sup>15</sup> Exhibit 7 ¶ 19.

<sup>16</sup> Exhibit 7 ¶¶ 21-23.

<sup>17</sup> Exhibit 10 at 9.

<sup>18</sup> Exhibit 7 ¶ 18.

<sup>19</sup> Exhibit 7 ¶ 26.

**5. On March 17, Complaint Counsel identified [REDACTED] and attempted to serve him with a subpoena *ad testificandum***

Per the Court's Scheduling Order, Complaint Counsel served [REDACTED] [REDACTED]—on March 17.<sup>20</sup> Complaint Counsel asked Nintendo's counsel to accept service of the Singer Subpoena.<sup>21</sup> Nintendo's counsel refused to acknowledge representing Mr. Singer<sup>22</sup> and declined to accept service on his behalf.<sup>23</sup>

Nintendo and Mr. Singer then resorted to multiple tactics to evade service.<sup>24</sup> At Nintendo's offices in Redmond, Washington, Nintendo's legal representative refused service of the Singer Subpoena.<sup>25</sup> Then, at Mr. Singer's house, two different process servers made six additional unsuccessful attempts to serve him.<sup>26</sup> After a week of attempts, Complaint Counsel effected service on March 30 through delivery of the Singer Subpoena via FedEx in accord with 16 C.F.R. §§ 4.4(a)(1)(iii), 4.4(a)(3), and 4.4(c).<sup>27</sup>

## ARGUMENT

### I. The Singer Subpoena Was Timely

Nintendo and Mr. Singer incorrectly argue the Singer Subpoena is untimely because (according to them) the Scheduling Order prohibits issuing deposition subpoenas after March 3 to [REDACTED]

[REDACTED] Motion at 1, 6. This is simply wrong as a matter of the plain text and meaning of the Scheduling Order.

---

<sup>20</sup> Exhibit 5.

<sup>21</sup> Exhibit 10 at 10, 11.

<sup>22</sup> See Exhibit 10 at 5.

<sup>23</sup> See Exhibit 10 at 6-7, 9-10; Exhibit 7 at ¶ 24.

<sup>24</sup> Exhibit 11.

<sup>25</sup> Exhibit 11.

<sup>26</sup> Exhibit 11.

<sup>27</sup> Exhibit 12.

The Court's Scheduling Order is crystal clear: March 3, 2023 is the "Deadline for issuing . . . subpoenas, *except for discovery directed to witnesses who did not appear on either side's preliminary lists.*" Scheduling Order at 1 (emphasis added). [REDACTED] putting the Singer Subpoena squarely within the plain language of the March 3 deadline exception. Notably, Respondents made no objection to the Singer Subpoena and "take no position on the Motion to Quash."<sup>29</sup>

The exception in the March 3 deadline is critical to ensuring fair and thorough proceedings. Without it, subpoenas would be limited essentially to third parties identified on preliminary witness lists (which were due in January 2023), despite the allowance for adding third parties to witness lists until March 17. The purpose of the exception is to enable both sides to conduct third party discovery to provide the Court a complete picture of the facts and prevent unfair surprise at the evidentiary hearing.

Contrary to Mr. Singer's strained argument (Motion at 6), Paragraph 11 of the Scheduling Order does not override the plain language of the March 3 deadline. Paragraph 11 provides, in relevant part: "[e]ach 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." Scheduling Order at 6 (emphasis added). Paragraph 11 permits—and does not in any way limit—discovery. Its purpose, again, is to ensure the opportunity to take depositions and prevent unfair surprise at trial from later-identified witnesses. If Paragraph 11 had provided that "[e]ach side *may only* depose any witness," then his argument might hold water. But that is not the plain language of Paragraph 11.

---

<sup>28</sup> Exhibit 3; Exhibit 4. Contrary to inaccurate assertions in Nintendo's Motion, [REDACTED]

10 at 3.

<sup>29</sup> Exhibit 13.

Mr. Singer's argument that Paragraph 11 limits who may be deposed after March 3 is nonsensical. Per Mr. Singer's argument, a witness who first appears on a party's updated witness list (because, for example, discovery has unearthed the witness's identity or the relevance of his or her testimony) may not be deposed unless the witness also appears on the other side's updated witness list or submits a declaration. *See* Motion at 6-7. Mr. Singer's interpretation turns a Scheduling Order written to ensure fairness into an invitation to trial by ambush.

## **II. Even if It Were Untimely, there is Good Cause to Enforce the Singer Subpoena**

Even if the Singer Subpoena were late, which it was not, there is good cause to require Mr. Singer to testify.

*First*, motions to quash subpoenas for testimony from non-parties are denied when the testimony sought is relevant to the case and unique to the witness. Non-party witnesses may not quash a subpoena for testimony when "such information is uniquely in the possession of" the non-party and when the witness would have "personal knowledge of facts that bear on key issues . . . and many topics that are relevant to the case." *In re Otto Block HealthCare N. Am. Inc.*, 2018 WL 1836647, at \*2 (F.T.C. Mar. 28, 2018) (denying motion to quash). "Even where a subpoenaed third party adequately demonstrates that compliance with a subpoena will impose a substantial degree of burden, inconvenience, and cost, that will not excuse producing information that appears generally relevant to the issues in the proceeding." *In re Homeadvisor, Inc.*, 2022 FTC LEXIS 109, at \*4 (Sept. 26, 2022) (citations omitted).

Mr. Singer unquestionably has unique, personal knowledge that is relevant to this case. He has worked at Nintendo for more than twenty years and is Senior Vice President for Publisher and Developer Relations, responsible for [REDACTED]

[REDACTED] Above all, the Motion to Quash concedes that Mr. Singer was a [REDACTED] of the Agreement. Motion at



4, 7. Mr. Singer accordingly has unique personal knowledge about the [REDACTED]  
 [REDACTED] Mr. Singer is expected to testify about [REDACTED]  
 [REDACTED]  
 [REDACTED] Mr. Singer also will  
 be able to testify about [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]<sup>30</sup>

*Second*, as discussed above, while Complaint Counsel was diligent in trying to identify and subpoena the appropriate Nintendo witnesses, Nintendo and Mr. Singer’s litigation tactics significantly contributed to any delay in subpoenaing Mr. Singer. Nintendo’s and Mr. Singer’s dilatory tactics should not succeed in excusing their obligation to provide testimony for this Court.

**CONCLUSION**

For the foregoing reasons, this Court should deny the Motion to Quash Complaint Counsel’s subpoena for Mr. Singer’s deposition testimony.

Dated: April 24, 2023

Respectfully submitted,

By: s/James H. Weingarten  
 James H. Weingarten  
 Maria Cirincione  
 Taylor Alexander  
 Kassandra DiPietro  
 Edmund Saw

<sup>30</sup> Exhibit 14. (Jan. 20, 2023 email from [REDACTED]  
 [REDACTED]  
 [REDACTED])

**PUBLIC**

Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580

Telephone: (202) 326-3570  
Email: [jweingarten@ftc.gov](mailto:jweingarten@ftc.gov)  
[mcirincione@ftc.gov](mailto:mcirincione@ftc.gov)  
[talexander@ftc.gov](mailto:talexander@ftc.gov)  
[kdipietro@ftc.gov](mailto:kdipietro@ftc.gov)  
[esaw@ftc.gov](mailto:esaw@ftc.gov)

*Counsel Supporting the Complaint*

# EXHIBIT 1

REDACTED IN ENTIRETY

## EXHIBIT 2

REDACTED IN ENTIRETY

## EXHIBIT 3

REDACTED IN ENTIRETY

## EXHIBIT 4

REDACTED IN ENTIRETY

## EXHIBIT 5

REDACTED IN ENTIRETY

## EXHIBIT 6

REDACTED IN ENTIRETY



# EXHIBIT 7

**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 MARIA CIRINCIONE**

My name is Maria Cirincione, I am over eighteen years of age, and I am a citizen of the United States. I have personal knowledge of the information contained herein. If called as a witness, I could and would testify as follows:

1. I am an attorney, I am a full-time employee of the Federal Trade Commission, I am licensed to practice law in Maryland and the District of Columbia, and I am Complaint Counsel in the above-captioned matter.
2. Below is a high-level chronology of events relevant to Complaint Counsel's Opposition to Non-Party Steve Singer's Motion to Quash Complaint Counsel's Subpoena *Ad Testificandum*.
3. **January 4, 2023** – This Court entered the Scheduling Order in this matter and the discovery period opened.

4. **January 17, 2023** – Complaint Counsel served its preliminary witness list, which included

[REDACTED]

[REDACTED] **Exhibit 3.**

5. **January 19, 2023** – Complaint Counsel (M. Cirincione and T. Alexander) met by phone with Counsel for Nintendo (L. Gordon and B. Argyle). Complaint Counsel disclosed that

[REDACTED] and expressed

interest in discovery regarding the publicly announced Letter of Intent (the “LOI”) entered between Microsoft and Nintendo, [REDACTED]

[REDACTED] Counsel for Nintendo

indicated that internal documents related to the LOI were largely privileged.

6. **January 24, 2023** – Respondents served their joint preliminary witness list. [REDACTED]

[REDACTED] **Exhibit 4.**

7. **January 30, 2023** – Complaint Counsel received from Microsoft a copy of the LOI entered between Microsoft and Nintendo. **Exhibit 15.**

8. **February 1, 2023** – Complaint Counsel issued a Subpoena *Duces Tecum* to Nintendo for documents, including documents related to [REDACTED]

[REDACTED]

[REDACTED] **Exhibit 8.**

9. **February 6, 2023** – Nintendo filed an Agreed upon Motion for an Extension of Time to Move to Limit or Quash Activision’s January 27 Subpoenas *Duces Tecum*.

10. **February 10, 2023** – Nintendo executed a definitive agreement with Microsoft [REDACTED]

[REDACTED] (the “Agreement”) [REDACTED]

[REDACTED] **Exhibit 1. The Agreement** [REDACTED]  
[REDACTED]

11. **February 15, 2023** – Joint meet and confer with Complaint Counsel, Activision, and Nintendo regarding Subpoenas *Duces Tecum* issued to Nintendo by Complaint Counsel and by Activision. Counsel for Nintendo again represented that the internal communications related to the LOI and Agreement were largely privileged.
12. **February 16, 2023** – Nintendo filed an agreed upon Motion for an Extension of Time to Move to Limit or Quash Complaint Counsel’s February 1 and Activision’s January 27 Subpoenas *Duces Tecum*. As of this date, Nintendo had produced no documents in response to Complaint Counsel’s February 1 Subpoena *Duces Tecum*.
13. **February 22, 2023** – Complaint Counsel (M. Cirincione and T. Alexander) met by phone with Counsel for Nintendo (L. Gordon and B. Argyle) to discuss discovery related to the Agreement. L. Gordon represented that [REDACTED]  
[REDACTED] and that internal documents were largely privileged.
14. **February 23, 2023** – Complaint Counsel (M. Cirincione and T. Alexander) met by phone with Counsel for Nintendo (L. Gordon and B. Argyle). In response to Complaint Counsel’s questions, Counsel for Nintendo represented that negotiations for the Agreement were [REDACTED]  
[REDACTED]
15. **February 24, 2023** – Complaint Counsel received the executed Agreement from Respondent Microsoft.

16. **March 3, 2023** – Complaint Counsel [REDACTED]  
[REDACTED] **Exhibit 6.** Nintendo’s Counsel agreed to accept service of process [REDACTED]  
[REDACTED] Nintendo made its first production, which was only 94 documents, including some  
[REDACTED]  
[REDACTED]
17. **March 6, 2023** – Complaint Counsel (M. Cirincione and T. Alexander) met by phone with  
Counsel for Nintendo (L. Gordon and B. Argyle), where Nintendo’s counsel asked if  
Complaint Counsel would drop its request for [REDACTED] deposition if Respondents  
would agree [REDACTED] Complaint Counsel made clear the  
need for testimony [REDACTED]  
[REDACTED] *inter alia*, the Agreement. Complaint Counsel also told Nintendo that [REDACTED]  
[REDACTED] did not obviate the need for deposition testimony given  
these developments between Microsoft and Nintendo.
18. **March 8, 2023** – Complaint Counsel (M. Cirincione and T. Alexander) met by phone with  
Counsel for Nintendo (L. Gordon and B. Argyle). Nintendo’s counsel informed Complaint  
Counsel for the first time that [REDACTED]  
[REDACTED]
19. **March 10, 2023** – Complaint Counsel (M. Cirincione and T. Alexander) met by phone with  
Counsel for Nintendo (L. Gordon). L. Gordon asked Complaint Counsel if the deadline for  
issuing subpoenas was March 3. Complaint Counsel replied that it was not.
20. **March 16, 2023** – Email from T. Alexander to L. Gordon and B. Argyle requesting Nintendo  
to identify a witness with personal knowledge about the Agreement. **Exhibit 10 at 12-13.**

21. **March 17, 2023** – Complaint Counsel (T. Alexander and K. DiPietro) met by phone with Counsel for Nintendo (L. Gordon and B. Argyle) and memorialized the call via email. Complaint Counsel declined Nintendo’s offer to depose [REDACTED] without personal knowledge of the Agreement. Complaint Counsel pointed out the express requirement of the Court’s Scheduling Order requiring that witnesses have personal knowledge and stated that Complaint Counsel intended [REDACTED]. [REDACTED] Complaint Counsel asked whether Counsel for Nintendo would accept service for Mr. Singer. **Exhibit 10 at 11.**
22. **March 17, 2023** – Complaint Counsel added [REDACTED], a third party in this matter, to its updated witness list. Complaint Counsel [REDACTED]. [REDACTED] **Exhibit 5.**
23. **March 23, 2023** – Complaint Counsel (M. Cirincione and T. Alexander) met by phone with Counsel for Nintendo (L. Gordon), and Complaint Counsel again reiterated its need for personal knowledge testimony regarding the Agreement based on the Scheduling Order, to which Nintendo’s Counsel responded that the Agreement and LOI [REDACTED]. [REDACTED] Nintendo’s Counsel also stated they were not authorized by Nintendo to accept service for Mr. Singer and notified Complaint Counsel that they believed the subpoena was out of time. **Exhibit 10 at 6-7.**
24. **March 23, 2023** – Complaint Counsel issued the Subpoena *Ad Testificandum* to Steve Singer (the “Singer Subpoena”), with a courtesy copy sent by email to Counsel for Nintendo (L. Gordon and B. Argyle) and to Respondents. **Exhibit 16; Exhibit 17.**
25. **March 24, 2023** – Process servers began attempting service to Mr. Singer. **Exhibit 11.**

26. **March 27, 2023** – Complaint Counsel (M. Cirincione and T. Alexander) met by phone with Counsel for Nintendo (L. Gordon and B. Argyle). L. Gordon offered to produce Mr. Singer for a deposition [REDACTED]
27. **March 27, 2023** - Respondents subpoenaed [REDACTED], a third party in this matter. **Exhibit 18.**
28. **March 29, 2023** – Complaint Counsel declined the proposal from Nintendo to take Mr. Singer’s deposition in exchange for [REDACTED] and reiterated the need for testimony from a witness with personal knowledge of the topics [REDACTED]  
[REDACTED] Complaint Counsel sent to Counsel for Nintendo (L. Gordon and B. Argyle) and to Respondents a courtesy copy via email of the Singer Subpoena to be served by FedEx at Mr. Singer’s home address, Nintendo’s Redmond, WA offices, and Nintendo’s Counsel’s New York offices. **Exhibit 10 at 5-6; Exhibit 12; Exhibit 19; Exhibit 20.**
29. **March 30, 2023** – The Singer Subpoena was successfully served at Nintendo’s Redmond, WA offices, Mr. Singer’s home, and at Nintendo’s Counsel’s New York offices in accordance with 16 C.F.R. § 4.4(a)(iii) and (c). **Exhibit 12.**
30. **April 10, 2023** – Nintendo produced an additional 64 documents showing [REDACTED]  
[REDACTED] Nintendo produced a total of 319 documents in response to Complaint Counsel’s limited and properly issued discovery requests.
31. **April 13, 2023** – Nintendo confirmed via email that Mr. Singer would not appear for his deposition on April 14, 2023, the date of appearance listed on the Singer Subpoena. **Exhibit**

**21.** Counsel for Microsoft stated they have no position related to the timeliness of the subpoena. **Exhibit 13.**

**32. April 17, 2023** – As of this date, Respondents’ Counsel have not objected to Complaint Counsel’s subpoenas to Nintendo.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 17, 2023.

s/ Maria Cirincione  
Maria Cirincione  
*On behalf of Counsel Supporting the Complaint*



## EXHIBIT 8

REDACTED IN ENTIRETY

## EXHIBIT 9

REDACTED IN ENTIRETY

# EXHIBIT 10

REDACTED IN ENTIRETY

# EXHIBIT 11

PUBLIC

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

Microsoft Corp.

Claimant

Case No.: 9142

vs.

Activision Blizzard, Inc.

Respondent

AFFIDAVIT OF DUE DILIGENCE

I, Miguel Fernandez, a Private Process Server, having been duly authorized to make service of the Deposition Subpoena, Order Entering Joint Stipulation Governing the Taking of Remote Depositions, and Stipulation and Order Governing the Taking of Remote Depositions in the above entitled case, hereby depose and say:

That I am over the age of eighteen years and not a party to or otherwise interested in this matter.

That after due search, careful inquiry and diligent attempt(s), I have been unable to serve Steve Singer with the above named process.

That on March 24, 2023 at 1:30 PM, I attempted to serve Steve Singer at Nintendo of America, Inc., [REDACTED] On this occasion, I spoke to a legal representative of Nintendo of America, Inc. who stated that they do not accept service of legal documents at this location.

That on March 28, 2023 at 7:35 PM, I attempted to serve Steve Singer at [REDACTED] On this occasion, although I observed [REDACTED] I received no answer at the door.

That on March 31, 2023 at 7:52 PM, I attempted to serve Steve Singer at [REDACTED] On this occasion, although I observed [REDACTED] I received no answer at the door.

I solemnly affirm under the penalties of perjury that the contents of this document are true to the best of my knowledge, information, and belief.

*[Handwritten Signature]*  
Executed On 4/11/23



*[Handwritten Signature]*  
Miguel Fernandez

Client Ref Number: N/A  
Job #: 1616190

*esp* 3/28/26

PUBLIC

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

Microsoft Corp.

Claimant

Case No.: 9142

vs.

Activision Blizzard, Inc.

Respondent

**AFFIDAVIT OF DUE DILIGENCE**

I, Leslie Alexander, a Private Process Server, having been duly authorized to make service of the Deposition Subpoena, Order Entering Joint Stipulation Governing the Taking of Remote Depositions, and Stipulation and Order Governing the Taking of Remote Depositions in the above entitled case, hereby depose and say:

That I am over the age of eighteen years and not a party to or otherwise interested in this matter.

That after due search, careful inquiry and diligent attempt(s), I have been unable to serve Steve Singer with the above named process.

That on March 27, 2023 at 4:28 PM, I attempted to serve Steve Singer at [REDACTED] On this occasion, although I heard [REDACTED] I received no answer at the door. In addition, I observed a package addressed to Steve Singer at the front door. Accordingly, I left my contact information affixed to the door.

That on March 27, 2023 at 6:12 PM, I attempted to serve Steve Singer at [REDACTED] On this occasion, although I heard [REDACTED] and my contact information was no longer affixed to the door, I received no answer after knocking and ringing the doorbell.

That on March 29, 2023 at 2:08 PM, I attempted to serve Steve Singer at [REDACTED] On this occasion, again, I observed [REDACTED] but received no answer at the door. In addition, I observed that the the packages at the door were gone. Accordingly, I again left my contact information affixed to the door at this time.

That on March 29, 2023 at 6:03 PM, I attempted to serve Steve Singer at [REDACTED] On this occasion, again, I observed [REDACTED] and my contact information was still affixed, I received no answer at the door.

I solemnly affirm under the penalties of perjury that the contents of this document are true to the best of my knowledge, information, and belief.

*[Signature]*  
4/11/23

Executed On



*[Signature]*

Leslie Alexander

Client Ref Number: N/A  
Job #: 1616190

eaq 3/28/26

Photos for service attempts on Steve Singer (#1616190).

- 03/24/23 at 1:30 PM at Nintendo of America, Inc., [REDACTED]

Order # : 431142

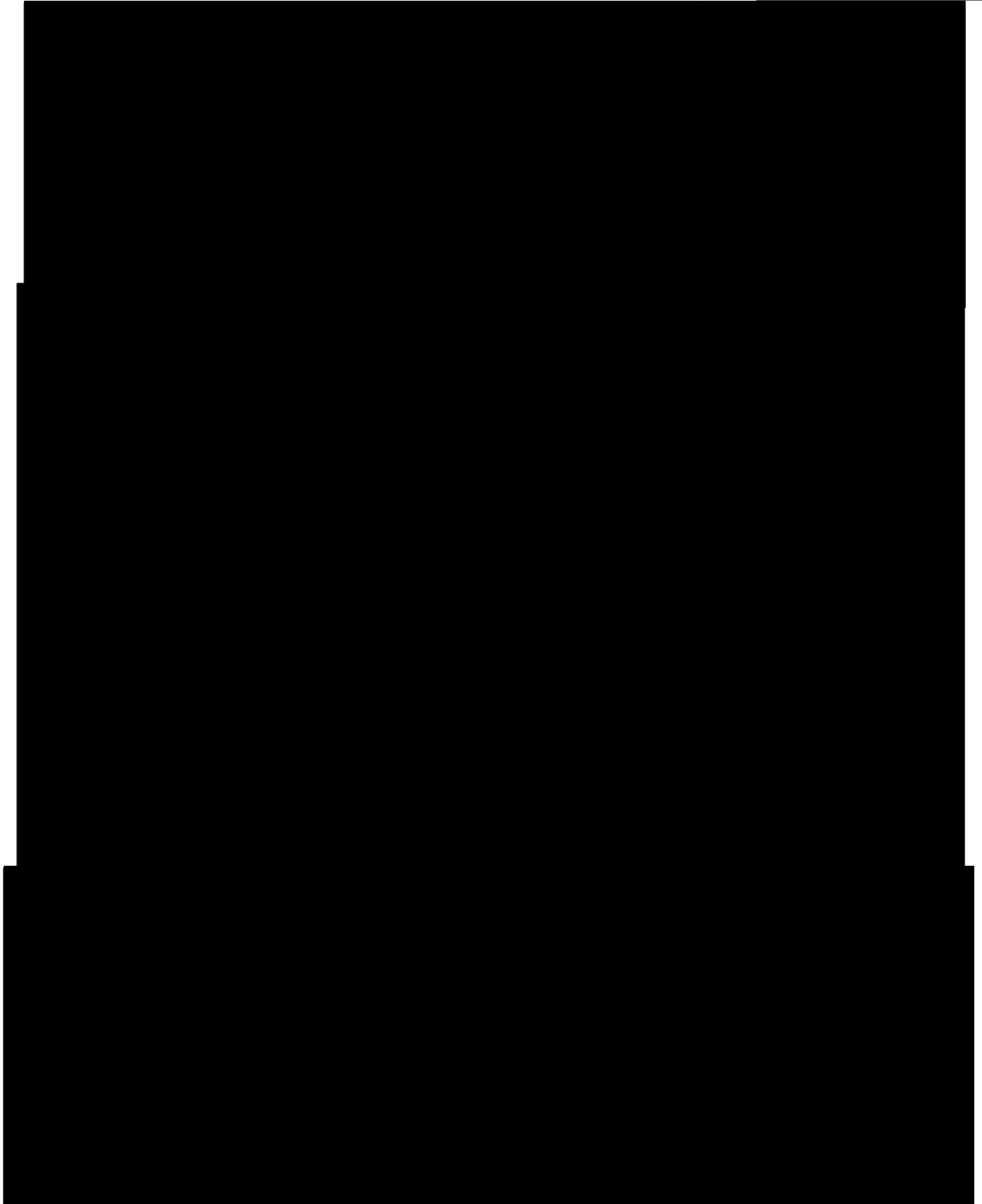
Date : 03/24/23 01:30 PM



- 03/27/23 at 4:28 PM at [REDACTED]

Order # : 431142

Date : 03/27/23 04:28 PM





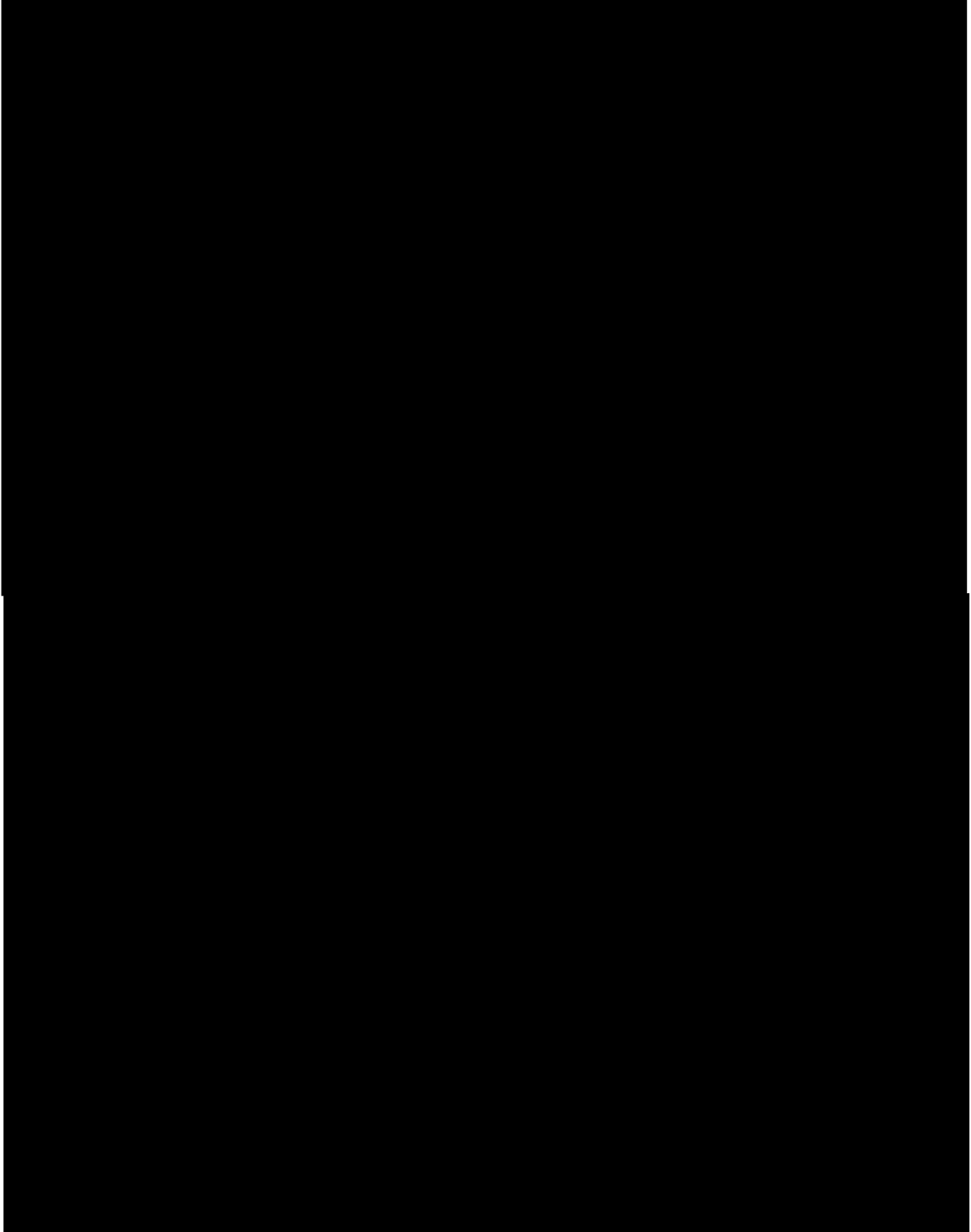
- 03/27/23 at 6:12 PM at [REDACTED]

Order # : 431142

Date : 03/27/23 06:10 PM



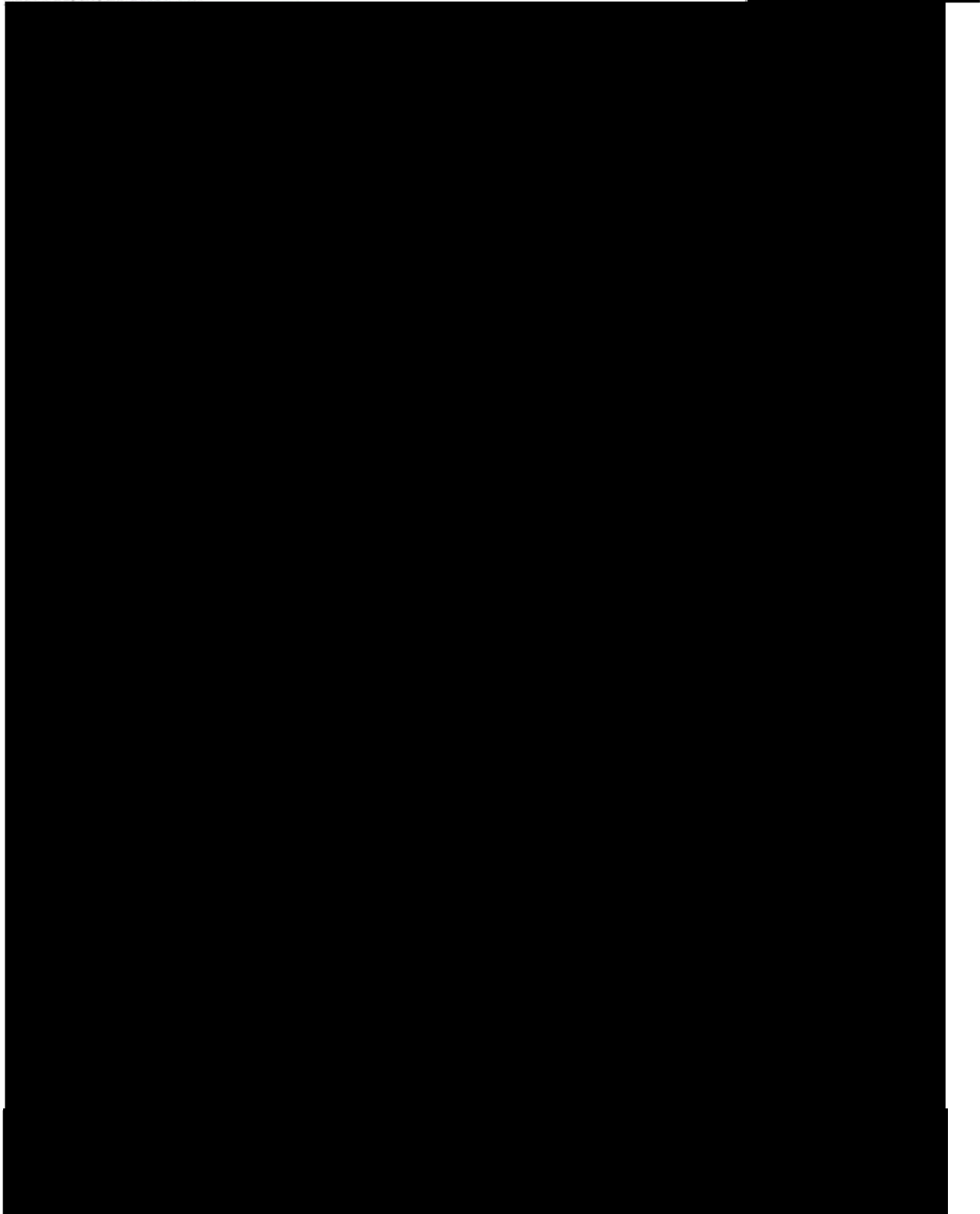
- 03/28/23 at 7:35 PM at [REDACTED]  
Order # : 431142  
Date : 03/28/23 07:32 PM [REDACTED]



- 03/29/23 at 2:08 PM at [REDACTED]

Order # : 431142

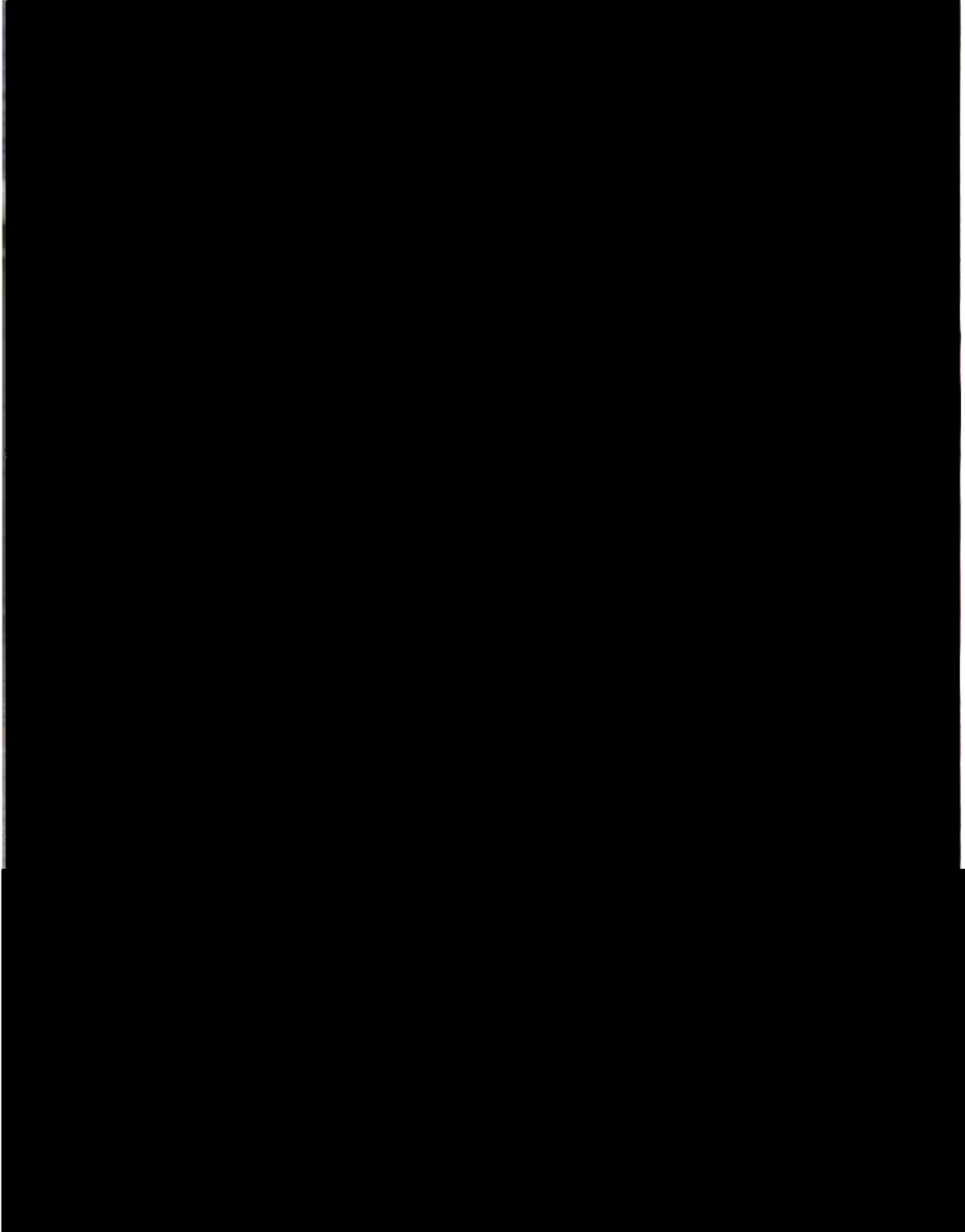
Date : 03/29/23 02:07 PM



- 03/29/23 at 6:03 PM at [REDACTED]

Order # : 431142

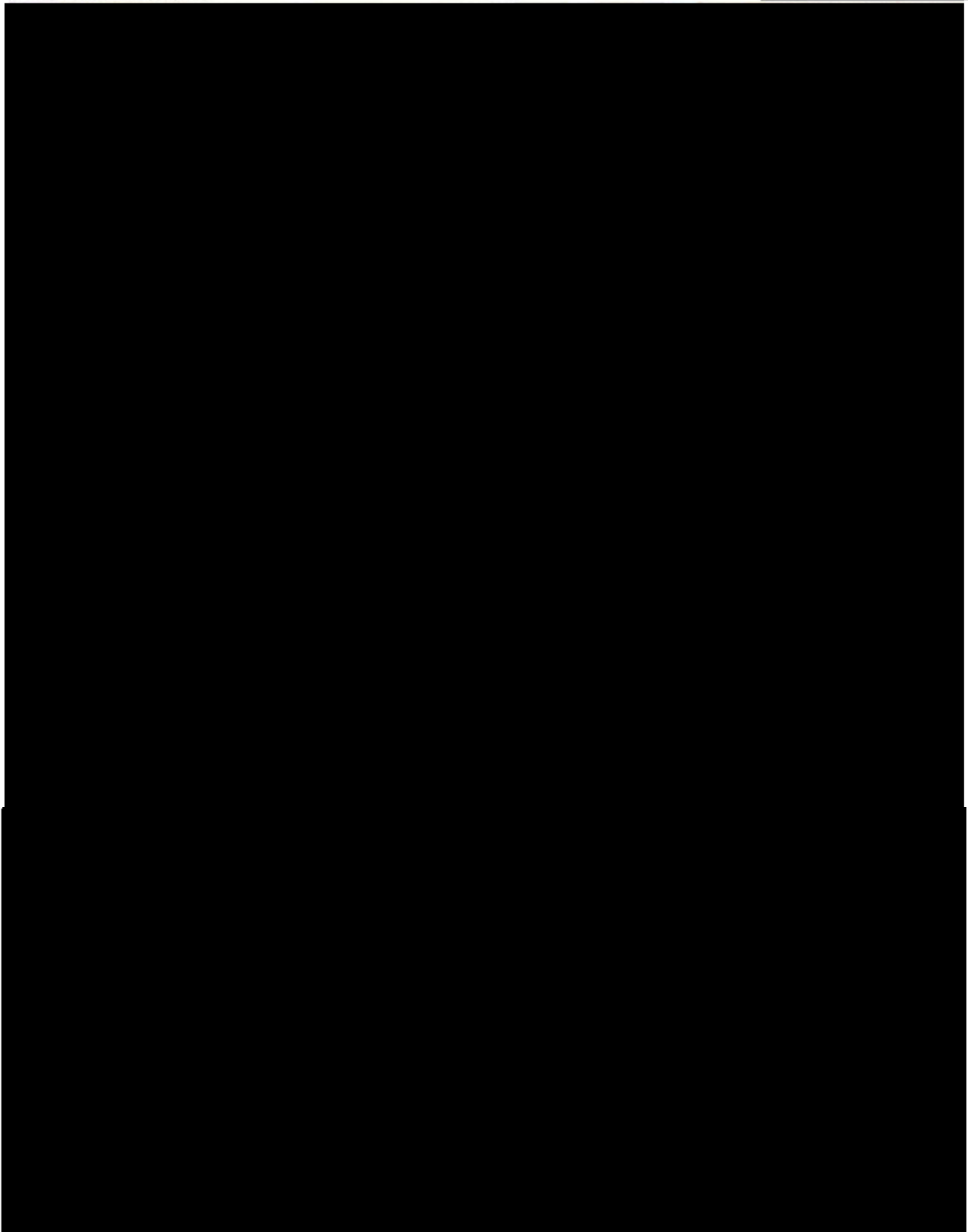
Date : 03/29/23 06:01 PM



- 03/31/23 at 7:52 PM at [REDACTED]

Order # : 431142

Date : 03/31/23 07:51 PM



# EXHIBIT 12

**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 DEVON ALLEN**

My name is Devon Allen, I am over eighteen years of age, and I am a citizen of the United States. I have personal knowledge of the information contained herein. If called as a witness, I could and would testify as follows:

1. I am a Litigation Support Specialist, am a full-time employee of the Federal Trade Commission, and am supporting Complaint Counsel in the above-captioned matter.
2. On March 29, 2023, following our customary protocol, I prepared three Subpoena *Ad Testificandum* packages for Steve Singer of Nintendo of America Inc. (“Nintendo”) at the request of J. Weingarten and M. Cirincione. The only difference between the three packages was the delivery address located in Box 1 on each of the Subpoena Forms.

- a. One Subpoena package was directed to the personal home of Steve Singer, at [REDACTED]  
[REDACTED] We obtained this address from Capitol Process Services, Inc. at a cost of \$250.
  - b. One Subpoena package was directed to the workplace of Steve Singer, at Nintendo of America Headquarters, at [REDACTED]
  - c. One Subpoena package was directed to counsel of record for Nintendo and was addressed to Leonard Gordon, Venable LLC, 151 W. 42nd Street, 49th Floor, New York, NY 10036.
3. On March 29, 2023, I directed our Document Processing Group to prepare the three subpoena packages referenced above for transmission, including to be printed, affixed with an official FTC seal, and inserted into FedEx envelopes with the appropriate FedEx labels for overnight delivery.
  4. On March 29, 2023, I received FedEx notifications that each of the three packages were tendered to FedEx. *See* the notifications attached to this declaration.
  5. On March 30, 2023, I received FedEx notifications that each of the three packages were delivered to the addresses detailed above and signed on delivery as detailed below. *See* the notifications attached to this declaration.
    - a. Mr. Singer's home address: signed for by [REDACTED]
    - b. Nintendo's Redmond, WA offices: signed for by [REDACTED]
    - c. Nintendo's Counsel's NY offices: signed for by [REDACTED]



**PUBLIC**

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 17, 2023.

*s/ Devon Allen*

Devon Allen  
*On behalf of Counsel Supporting the Complaint*

**PUBLIC**

**Allen, Devon**

---

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, March 29, 2023 6:13 PM  
**To:** Allen, Devon  
**Subject:** FedEx Shipment [REDACTED]. This shipment was tendered to FedEx Express

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged



Hi. This shipment was  
tendered to FedEx Express  
on Wed 3/29/2023.

Adult Signature Required

**ON TIME**

**Estimated delivery date**

Thu, 03/30/2023  
before 12:00pm

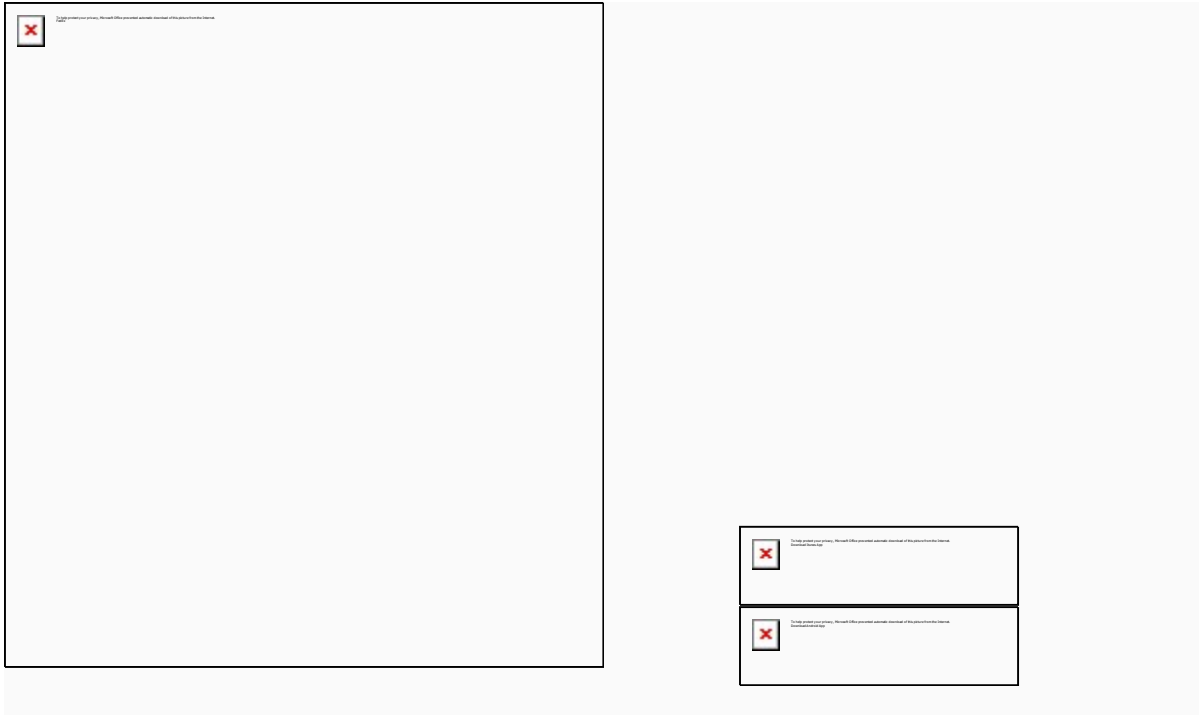


**PICKED UP**  
**ALEXANDRIA, VA**

**MANAGE DELIVERY**

<b>TRACKING NUMBER</b>	[REDACTED]
<b>FROM</b>	Federal Trade Commission 400 7th Street SW WASHINGTON, DC, US, 20024
<b>TO</b>	Steve Singer [REDACTED] [REDACTED]
<b>PURCHASE ORDER NUMBER</b>	1029
<b>REFERENCE</b>	Docket 9412 - Singer Home
<b>SHIPPER REFERENCE</b>	Docket 9412 - Singer Home
<b>SHIP DATE</b>	Wed 3/29/2023 05:55 PM
<b>PACKAGING TYPE</b>	FedEx Envelope
<b>ORIGIN</b>	WASHINGTON, DC, 20024
<b>DESTINATION</b>	[REDACTED]
<b>SPECIAL HANDLING</b>	Deliver Weekday Residential Delivery ASR
<b>STANDARD TRANSIT</b>	Thu, 03/30/2023 by 12:00pm
<b>NUMBER OF PIECES</b>	1
<b>TOTAL SHIPMENT WEIGHT</b>	0.50 LB
<b>SERVICE TYPE</b>	FedEx Priority Overnight

**PUBLIC**



**FOLLOW FEDEX**



 Please do not respond to this message. This email was sent from an unattended mailbox.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above.

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.

© 2023 Federal Express Corporation. The content of this message is protected by copyright and trademark laws under U.S. and international law. Review our [privacy policy](#). All rights reserved.

Thank you for your business.

**PUBLIC**

**Allen, Devon**

---

**From:** TrackingUpdates@fedex.com  
**Sent:** Thursday, March 30, 2023 4:40 PM  
**To:** Allen, Devon  
**Subject:** FedEx Shipment [REDACTED]: Your package has been delivered

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged



Hi. Your package was delivered Thu, 03/30/2023 at 11:42am.



Delivered to [REDACTED]

Received by [REDACTED]

**OBTAIN PROOF OF DELIVERY**

**TRACKING NUMBER** [REDACTED]

**FROM** Federal Trade Commission  
400 7th Street SW  
WASHINGTON, DC, US, 20024

**PUBLIC**

**TO** Steve Singer  
 [REDACTED]  
 [REDACTED]

**DOOR TAG NUMBER** [REDACTED]

**PURCHASE ORDER NUMBER** 1029

**REFERENCE** Docket 9412 - Singer Home

**SHIPPER REFERENCE** Docket 9412 - Singer Home

**SHIP DATE** Wed 3/29/2023 05:55 PM

**DELIVERED TO** Residence

**PACKAGING TYPE** FedEx Envelope

**ORIGIN** WASHINGTON, DC, US, 20024

**DESTINATION** [REDACTED]

**SPECIAL HANDLING** Deliver Weekday  
 Residential Delivery  
 ASR

**NUMBER OF PIECES** 1

**TOTAL SHIPMENT WEIGHT** 0.50 LB

**SERVICE TYPE** FedEx Priority Overnight



## Get the FedEx<sup>®</sup> Mobile app

Create shipments, receive tracking alerts, redirect packages to a FedEx retail location for pickup, and more from the palm of your hand  
 - **Download now.**



**FOLLOW FEDEX**



 Please do not respond to this message. This email was sent from an unattended mailbox.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above.

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.

© 2023 Federal Express Corporation. The content of this message is protected by copyright and trademark laws under U.S. and international law. Review our [privacy policy](#). All rights reserved.

Thank you for your business.



March 31, 2023

**PUBLIC**

Dear Customer,

The following is the proof-of-delivery for tracking number: [REDACTED]

---

**Delivery Information:**

---

<b>Status:</b>	Delivered	<b>Delivered To:</b>	Residence
<b>Signed for by:</b>	[REDACTED]	<b>Delivery Location:</b>	[REDACTED]
<b>Service type:</b>	FedEx Priority Overnight		
<b>Special Handling:</b>	Deliver Weekday; Residential Delivery; Adult Signature Required		[REDACTED]
		<b>Delivery date:</b>	Mar 30, 2023 11:42

---

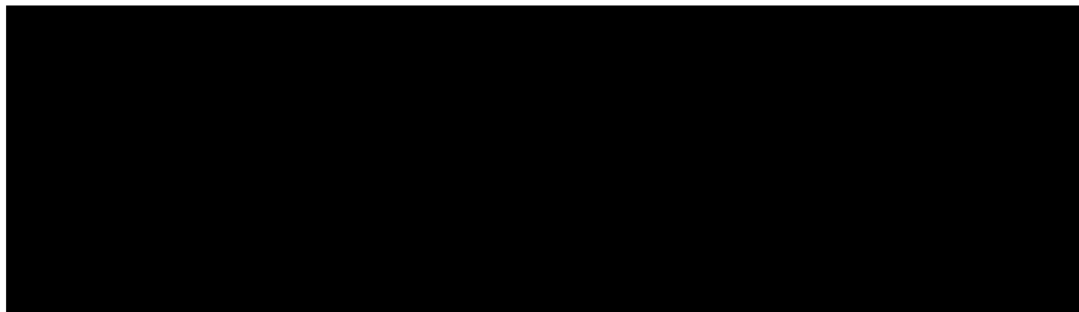
**Shipping Information:**

---

<b>Tracking number:</b>	[REDACTED]	<b>Ship Date:</b>	Mar 29, 2023
		<b>Weight:</b>	0.5 LB/0.23 KG

<b>Recipient:</b> Steve Singer, [REDACTED]	<b>Shipper:</b> Devon Allen, Federal Trade Commission 400 7th Street SW WASHINGTON, DC, US, 20024
--	--

<b>Reference</b>	Docket 9412 - Singer Home
<b>Purchase Order</b>	1029



Thank you for choosing FedEx



**Allen, Devon**

---

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, March 29, 2023 7:51 PM  
**To:** Allen, Devon  
**Subject:** FedEx Shipment [REDACTED]. This shipment was tendered to FedEx Express

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged



Hi. This shipment was  
tendered to FedEx Express  
on Wed 3/29/2023.

Adult Signature Required

**ON TIME**

**Estimated delivery date**

Thu, 03/30/2023  
before 10:30am

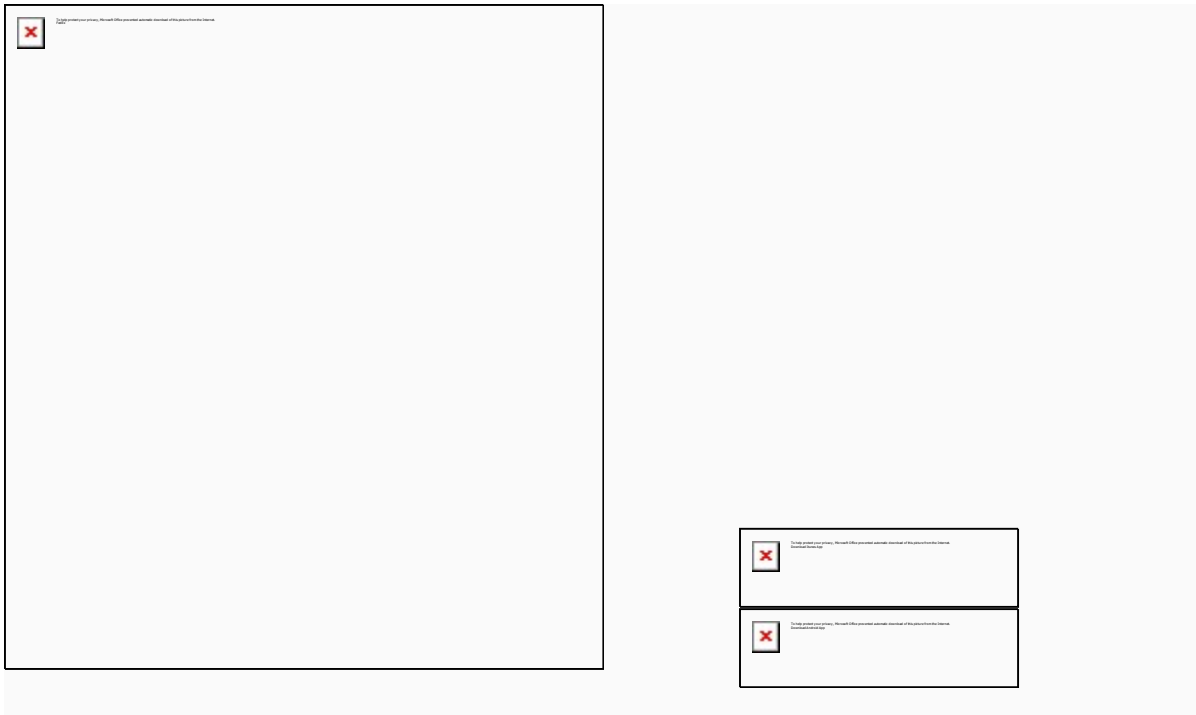


**PICKED UP**  
**ALEXANDRIA, VA**

**MANAGE DELIVERY**

<b>TRACKING NUMBER</b>	██████████
<b>FROM</b>	Federal Trade Commission 400 7th Street SW WASHINGTON, DC, US, 20024
<b>TO</b>	Nintendo of America Inc. c/o Steve Singer ██████████ ██████████
<b>PURCHASE ORDER NUMBER</b>	1029
<b>REFERENCE</b>	Docket 9412 - Singer HQ Nin.
<b>SHIPPER REFERENCE</b>	Docket 9412 - Singer HQ Nin.
<b>SHIP DATE</b>	Wed 3/29/2023 05:55 PM
<b>PACKAGING TYPE</b>	FedEx Envelope
<b>ORIGIN</b>	WASHINGTON, DC, 20024
<b>DESTINATION</b>	██████████
<b>SPECIAL HANDLING</b>	Deliver Weekday ASR
<b>STANDARD TRANSIT</b>	Thu, 03/30/2023 by 10:30am
<b>NUMBER OF PIECES</b>	1
<b>TOTAL SHIPMENT WEIGHT</b>	0.50 LB
<b>SERVICE TYPE</b>	FedEx Priority Overnight

**PUBLIC**



**FOLLOW FEDEX**



Please do not respond to this message. This email was sent from an unattended mailbox.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above.

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.

© 2023 Federal Express Corporation. The content of this message is protected by copyright and trademark laws under U.S. and international law. Review our [privacy policy](#). All rights reserved.

Thank you for your business.

**Allen, Devon**

---

**From:** TrackingUpdates@fedex.com  
**Sent:** Thursday, March 30, 2023 12:47 PM  
**To:** Allen, Devon  
**Subject:** FedEx Shipment [REDACTED]: Your package has been delivered



Hi. Your package was delivered Thu, 03/30/2023 at 9:39am.



Delivered to [REDACTED]

Received by [REDACTED]

**OBTAIN PROOF OF DELIVERY**

**TRACKING NUMBER** [REDACTED]

**FROM** Federal Trade Commission  
400 7th Street SW  
WASHINGTON, DC, US, 20024

**TO** Nintendo of America Inc.  
c/o Steve Singer  
[REDACTED]  
[REDACTED]

**PUBLIC**

**PURCHASE ORDER NUMBER** 1029

**REFERENCE** Docket 9412 - Singer HQ Nin.

**SHIPPER REFERENCE** Docket 9412 - Singer HQ Nin.

**SHIP DATE** Wed 3/29/2023 05:55 PM

**DELIVERED TO** Shipping/Receiving

**PACKAGING TYPE** FedEx Envelope

**ORIGIN** WASHINGTON, DC, US, 20024

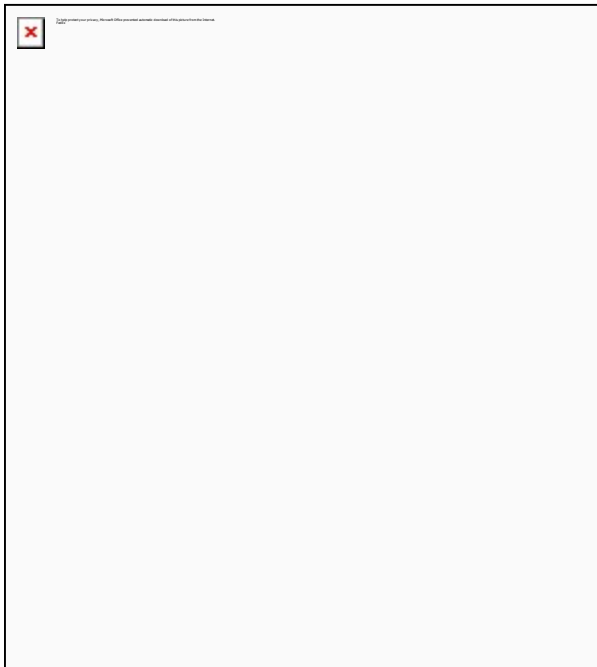
**DESTINATION** [REDACTED]

**SPECIAL HANDLING** Deliver Weekday  
ASR

**NUMBER OF PIECES** 1

**TOTAL SHIPMENT WEIGHT** 0.50 LB

**SERVICE TYPE** FedEx Priority Overnight



## Get the FedEx<sup>®</sup> Mobile app


Create shipments, receive tracking alerts, redirect packages to a FedEx retail location for pickup, and more from the palm of your hand  
- **Download now.**



**FOLLOW FEDEX**

**PUBLIC**



 Please do not respond to this message. This email was sent from an unattended mailbox.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above.

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.

© 2023 Federal Express Corporation. The content of this message is protected by copyright and trademark laws under U.S. and international law. Review our [privacy policy](#). All rights reserved.

Thank you for your business.



March 31, 2023

**PUBLIC**

Dear Customer,

The following is the proof-of-delivery for tracking number: [REDACTED]

---

**Delivery Information:**

---

<b>Status:</b>	Delivered	<b>Delivered To:</b>	Shipping/Receiving
<b>Signed for by:</b>	[REDACTED]	<b>Delivery Location:</b>	[REDACTED]
<b>Service type:</b>	FedEx Priority Overnight		
<b>Special Handling:</b>	Deliver Weekday; Adult Signature Required		[REDACTED]
		<b>Delivery date:</b>	Mar 30, 2023 09:39

---

**Shipping Information:**

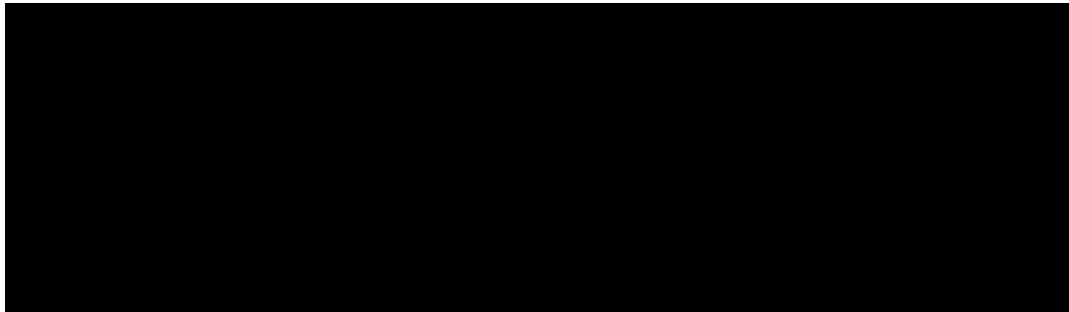
---

<b>Tracking number:</b>	[REDACTED]	<b>Ship Date:</b>	Mar 29, 2023
		<b>Weight:</b>	0.5 LB/0.23 KG

**Recipient:**  
c/o Steve Singer, Nintendo of America Inc.  
[REDACTED]

**Shipper:**  
Devon Allen, Federal Trade Commission  
400 7th Street SW  
WASHINGTON, DC, US, 20024

<b>Reference</b>	Docket 9412 - Singer HQ Nin.
<b>Purchase Order</b>	1029



Thank you for choosing FedEx

**Allen, Devon**

---

**From:** TrackingUpdates@fedex.com  
**Sent:** Wednesday, March 29, 2023 6:11 PM  
**To:** Allen, Devon  
**Subject:** FedEx Shipment [REDACTED]. This shipment was tendered to FedEx Express

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged



Hi. This shipment was  
tendered to FedEx Express  
on Wed 3/29/2023.

Adult Signature Required

**ON TIME**

**Estimated delivery date**

Thu, 03/30/2023  
before 10:30am



**PICKED UP**  
**ALEXANDRIA, VA**



**MANAGE DELIVERY**

<b>TRACKING NUMBER</b>	██████████
<b>FROM</b>	Federal Trade Commission 400 7th Street SW WASHINGTON, DC, US, 20024
<b>TO</b>	Venable LLC c/o Leonard Gordon 151 W. 42nd Street 49th Floor NEW YORK, NY, US, 10036
<b>PURCHASE ORDER NUMBER</b>	1029
<b>REFERENCE</b>	Docket 9412 - Singer Counsel
<b>SHIPPER REFERENCE</b>	Docket 9412 - Singer Counsel
<b>SHIP DATE</b>	Wed 3/29/2023 05:55 PM
<b>PACKAGING TYPE</b>	FedEx Envelope
<b>ORIGIN</b>	WASHINGTON, DC, 20024
<b>DESTINATION</b>	NEW YORK, NY, US, 10036
<b>SPECIAL HANDLING</b>	Deliver Weekday ASR
<b>STANDARD TRANSIT</b>	Thu, 03/30/2023 by 10:30am
<b>NUMBER OF PIECES</b>	1
<b>TOTAL SHIPMENT WEIGHT</b>	0.50 LB
<b>SERVICE TYPE</b>	FedEx Priority Overnight

**PUBLIC**



**FOLLOW FEDEX**



Please do not respond to this message. This email was sent from an unattended mailbox.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above.

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.

© 2023 Federal Express Corporation. The content of this message is protected by copyright and trademark laws under U.S. and international law. Review our [privacy policy](#). All rights reserved.

Thank you for your business.

**PUBLIC**

**Allen, Devon**

---

**From:** TrackingUpdates@fedex.com  
**Sent:** Thursday, March 30, 2023 2:20 PM  
**To:** Allen, Devon  
**Subject:** FedEx Shipment [REDACTED]: Your package has been delivered

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged



Hi. Your package was delivered Thu, 03/30/2023 at 1:25pm.



Delivered to 151 W 42ND ST, NEW YORK, NY 10036

Received by [REDACTED]

**OBTAIN PROOF OF DELIVERY**

**TRACKING NUMBER** [REDACTED]

**FROM** Federal Trade Commission  
400 7th Street SW  
WASHINGTON, DC, US, 20024

**TO** Venable LLC  
c/o Leonard Gordon

**PUBLIC**

151 W. 42nd Street  
49th Floor  
NEW YORK, NY, US, 10036

**PURCHASE ORDER NUMBER** 1029

**REFERENCE** Docket 9412 - Singer Counsel

**SHIPPER REFERENCE** Docket 9412 - Singer Counsel

**SHIP DATE** Wed 3/29/2023 05:55 PM

**DELIVERED TO** Receptionist/Front Desk

**PACKAGING TYPE** FedEx Envelope

**ORIGIN** WASHINGTON, DC, US, 20024

**DESTINATION** NEW YORK, NY, US, 10036

**SPECIAL HANDLING** Deliver Weekday  
ASR

**NUMBER OF PIECES** 1

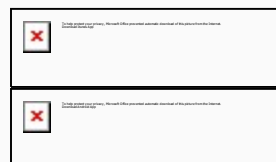
**TOTAL SHIPMENT WEIGHT** 0.50 LB

**SERVICE TYPE** FedEx Priority Overnight



## Get the FedEx<sup>®</sup> Mobile app

Create shipments, receive tracking alerts, redirect packages to a FedEx retail location for pickup, and more from the palm of your hand  
- **Download now.**



---

**FOLLOW FEDEX**



 Please do not respond to this message. This email was sent from an unattended mailbox.

All weights are estimated.

To track the latest status of your shipment, click on the tracking number above.

Standard transit is the date and time the package is scheduled to be delivered by, based on the selected service, destination and ship date. Limitations and exceptions may apply. Please see the FedEx Service Guide for terms and conditions of service, including the FedEx Money-Back Guarantee, or contact your FedEx Customer Support representative.

© 2023 Federal Express Corporation. The content of this message is protected by copyright and trademark laws under U.S. and international law. Review our [privacy policy](#). All rights reserved.

Thank you for your business.



March 31, 2023

**PUBLIC**

Dear Customer,

The following is the proof-of-delivery for tracking number: [REDACTED]

**Delivery Information:**

<b>Status:</b>	Delivered	<b>Delivered To:</b>	Receptionist/Front Desk
<b>Signed for by:</b>	[REDACTED]	<b>Delivery Location:</b>	151 W 42ND ST
<b>Service type:</b>	FedEx Priority Overnight		
<b>Special Handling:</b>	Deliver Weekday; Adult Signature Required		NEW YORK, NY, 10036
		<b>Delivery date:</b>	Mar 30, 2023 13:25

**Shipping Information:**

<b>Tracking number:</b>	[REDACTED]	<b>Ship Date:</b>	Mar 29, 2023
		<b>Weight:</b>	0.5 LB/0.23 KG

**Recipient:**  
 c/o Leonard Gordon, Venable LLC  
 151 W. 42nd Street  
 49th Floor  
 NEW YORK, NY, US, 10036

**Shipper:**  
 Devon Allen, Federal Trade Commission  
 400 7th Street SW  
 WASHINGTON, DC, US, 20024

<b>Reference</b>	Docket 9412 - Singer Counsel
<b>Purchase Order</b>	1029

Thank you for choosing FedEx

# EXHIBIT 13

**PUBLIC**

**From:** [apastan-contact](#)  
**To:** [Weingarten, James](#); [abohanon-contact](#); [Abell, James](#); [Beth Wilkinson -contact](#); [SteveSunshine-contact](#); [JuliaYork-contact](#)  
**Subject:** RE: FTC/Xbox/ABK Weekly Call  
**Date:** Thursday, April 13, 2023 11:38:54 AM

---

Respondents take no position on the Motion to Quash.

---

**From:** Weingarten, James <[jweingarten@ftc.gov](mailto:jweingarten@ftc.gov)>  
**Sent:** Thursday, April 13, 2023 11:23 AM  
**To:** Anastasia Pastan <[apastan@wilkinsonstekloff.com](mailto:apastan@wilkinsonstekloff.com)>; Alysha Bohanon <[abohanon@wilkinsonstekloff.com](mailto:abohanon@wilkinsonstekloff.com)>; Abell, James <[jabell@ftc.gov](mailto:jabell@ftc.gov)>; Beth Wilkinson <[bwilkinson@wilkinsonstekloff.com](mailto:bwilkinson@wilkinsonstekloff.com)>; SteveSunshine-contact <[steve.sunshine@skadden.com](mailto:steve.sunshine@skadden.com)>; JuliaYork-contact <[julia.york@skadden.com](mailto:julia.york@skadden.com)>  
**Subject:** RE: FTC/Xbox/ABK Weekly Call

Are Respondents taking any position with respect to the Motion to Quash the Singer Subpoena?

James H. Weingarten  
Deputy Chief Trial Counsel  
Federal Trade Commission  
Bureau of Competition  
(202) 326-3570  
[jweingarten@ftc.gov](mailto:jweingarten@ftc.gov)

---

**From:** Anastasia Pastan <[apastan@wilkinsonstekloff.com](mailto:apastan@wilkinsonstekloff.com)>  
**Sent:** Thursday, April 13, 2023 11:12 AM  
**To:** Weingarten, James <[jweingarten@ftc.gov](mailto:jweingarten@ftc.gov)>; abohanon-contact <[abohanon@wilkinsonstekloff.com](mailto:abohanon@wilkinsonstekloff.com)>; Abell, James <[jabell@ftc.gov](mailto:jabell@ftc.gov)>; Beth Wilkinson -contact <[bwilkinson@wilkinsonstekloff.com](mailto:bwilkinson@wilkinsonstekloff.com)>; SteveSunshine-contact <[steve.sunshine@skadden.com](mailto:steve.sunshine@skadden.com)>; JuliaYork-contact <[julia.york@skadden.com](mailto:julia.york@skadden.com)>  
**Subject:** RE: FTC/Xbox/ABK Weekly Call

James,

Respondents agreed that depositions could take place out of time, and that we would take no position on Nintendo's motion to quash the Singer subpoena. We will maintain that position going forward, but do not join Complaint Counsel's position that the Singer subpoena is timely.

Best,  
Anastasia



**PUBLIC****Anastasia Pastan** | Counsel**WILKINSON STEKLOFF LLP**

2001 M Street NW, 10th Flr, Washington, DC 20036

Direct: (202) 804-4239 | Fax: (202) 847-4005

[apastan@wilkinsonstekloff.com](mailto:apastan@wilkinsonstekloff.com)[wilkinsonstekloff.com](http://wilkinsonstekloff.com)

Pronouns: She/Her/Hers

The information contained in this communication is confidential, may be attorney-client privileged and constitute protected work product, may constitute inside information, and is intended only for the use of the intended addressee. It is the property of Wilkinson Stekloff LLP. Unauthorized use, disclosure or copying of this communication or any part thereof is strictly prohibited and may be unlawful. If you have received this communication in error, please notify us immediately by return email and destroy this communication and all copies thereof, including all attachments.

---

**From:** Weingarten, James <[jweingarten@ftc.gov](mailto:jweingarten@ftc.gov)>**Sent:** Thursday, April 13, 2023 10:22 AM**To:** Alysha Bohanon <[abohanon@wilkinsonstekloff.com](mailto:abohanon@wilkinsonstekloff.com)>; Abell, James <[jabell@ftc.gov](mailto:jabell@ftc.gov)>; Beth Wilkinson <[bwilkinson@wilkinsonstekloff.com](mailto:bwilkinson@wilkinsonstekloff.com)>; SteveSunshine-contact <[steve.sunshine@skadden.com](mailto:steve.sunshine@skadden.com)>; JuliaYork-contact <[julia.york@skadden.com](mailto:julia.york@skadden.com)>; Anastasia Pastan <[apastan@wilkinsonstekloff.com](mailto:apastan@wilkinsonstekloff.com)>**Subject:** RE: FTC/Xbox/ABK Weekly Call

Counsel:

We previously discussed Nintendo's intention to move to quash the FTC's subpoena to depose Steve Singer. Nintendo filed its motion on Monday. As you know, the FTC is seeking testimony related to, inter alia, the agreement Microsoft signed with Nintendo. Previously, Complaint Counsel and Respondents had agreed not to challenge the timeliness of each side's notices of third parties depositions so long as the depositions fell within a reasonable time of the close of fact discovery. It is our understanding, therefore, that Respondents agree that Complaint Counsel's subpoena of Mr. Singer's deposition is timely. If our understanding is incorrect, please advise by 5pm Eastern today (April 13).

Sincerely,  
James

James H. Weingarten  
Deputy Chief Trial Counsel  
Federal Trade Commission  
Bureau of Competition

**PUBLIC**

(202) 326-3570

[jweingarten@ftc.gov](mailto:jweingarten@ftc.gov)

-----Original Appointment-----

**From:** Alysha Bohanon <[abohanon@wilkinsonstekloff.com](mailto:abohanon@wilkinsonstekloff.com)>

**Sent:** Monday, January 9, 2023 3:53 PM

**To:** Alysha Bohanon; Weingarten, James; Abell, James; Beth Wilkinson -contact; SteveSunshine-contact; JuliaYork-contact; apastan-contact

**Subject:** FTC/Xbox/ABK Weekly Call

**When:** Monday, April 10, 2023 4:00 PM-5:00 PM (UTC-05:00) Eastern Time (US & Canada).

**Where:** <https://wilkinsonstekloff.zoom.us/j/82224427085>

Alysha Bohanon is inviting you to a scheduled Zoom meeting.

Join Zoom Meeting

<https://wilkinsonstekloff.zoom.us/j/82224427085>

Meeting ID: 822 2442 7085

One tap mobile

+13052241968,,82224427085# US

+13092053325,,82224427085# US

Dial by your location

+1 305 224 1968 US

+1 309 205 3325 US

+1 312 626 6799 US (Chicago)

+1 646 931 3860 US

+1 929 205 6099 US (New York)

+1 301 715 8592 US (Washington DC)

+1 346 248 7799 US (Houston)

+1 360 209 5623 US

+1 386 347 5053 US

+1 507 473 4847 US

+1 564 217 2000 US

+1 669 444 9171 US

+1 669 900 6833 US (San Jose)

+1 689 278 1000 US

+1 719 359 4580 US

+1 253 205 0468 US

+1 253 215 8782 US (Tacoma)

Meeting ID: 822 2442 7085

Find your local number: <https://wilkinsonstekloff.zoom.us/u/k007p7Y3S>

Join by SIP

[82224427085@zoomcrc.com](mailto:82224427085@zoomcrc.com)

Join by H.323

[162.255.37.11](tel:162.255.37.11) (US West)

[162.255.36.11](tel:162.255.36.11) (US East)

[115.114.131.7](tel:115.114.131.7) (India Mumbai)

[115.114.115.7](tel:115.114.115.7) (India Hyderabad)

[213.19.144.110](tel:213.19.144.110) (Amsterdam Netherlands)

[213.244.140.110](tel:213.244.140.110) (Germany)

[103.122.166.55](tel:103.122.166.55) (Australia Sydney)

[103.122.167.55](tel:103.122.167.55) (Australia Melbourne)

[149.137.40.110](tel:149.137.40.110) (Singapore)

[64.211.144.160](tel:64.211.144.160) (Brazil)

[149.137.68.253](tel:149.137.68.253) (Mexico)

[69.174.57.160](tel:69.174.57.160) (Canada Toronto)

[65.39.152.160](tel:65.39.152.160) (Canada Vancouver)

[207.226.132.110](tel:207.226.132.110) (Japan Tokyo)

[149.137.24.110](tel:149.137.24.110) (Japan Osaka)

Meeting ID: 822 2442 7085

# EXHIBIT 14

REDACTED IN ENTIRETY

# EXHIBIT 15

REDACTED IN ENTIRETY

# EXHIBIT 16

**PUBLIC**

**From:** [Cirincione, Maria](#)  
**To:** [Gordon, Leonard L.](#); [Argyle, Benjamin P.](#)  
**Cc:** [Alexander, Taylor](#); [Chen, Qing Yu](#); [Smith, Esther](#); [Miller, David](#)  
**Subject:** Complaint Counsel's Subpoena to Steve Singer of Nintendo of America Inc.  
**Date:** Thursday, March 23, 2023 5:20:11 PM  
**Attachments:** [2023.03.23 CC's SAT to Nintendo \(Singer\).pdf](#)

---

Len and Benjamin,

Please find attached a courtesy copy of Complaint Counsel's Subpoena to Steve Singer of Nintendo of America Inc., which will be served on Mr. Singer by process server.

Kind regards,  
Maria

# EXHIBIT 17



**PUBLIC**

**From:** [Allen, Devon](#)  
**To:** [Beth Wilkinson -contact](#); [rkilaru-contact](#); [abohanon-contact](#); [apastan-contact](#); [rsokoloff@wilkinsonstekloff.com](#); [ghill-contact](#); [sneuman-contact](#); [tbuzzelli@wilkinsonstekloff.com](#); [MichaelMoiseyev-contact](#); [MeganGranger-contact](#); [roy.gilchrist@weil.com](#); [Christine.Kim@weil.com](#); [SteveSunshine-contact](#); [MariaRaptis-contact](#); [JuliaYork-contact](#); [MichaelSheerin-contact](#); [Jaime.Harn@skadden.com](#); [Robert.Hochberg@skadden.com](#); [Michael.Hohmann@skadden.com](#); [tbuzzelli@wilkinsonstekloff.com](#); [csandler@wilkinsonstekloff.com](#)  
**Cc:** [Weingarten, James](#); [Bayer Femenella, Peggy](#); [Abell, James](#); [Alexander, Taylor](#); [DiPietro, Kassandra](#); [Cirincione, Maria](#); [Martin, Teresa](#); [Wint, Corene](#); [Smith, Esther](#); [Chen, Qing Yu](#)  
**Subject:** In the Matter of Microsoft Corp./Activision Blizzard, Inc. (Dkt. No. 9412) - Complaint Counsel's Subpoena Ad Testificandum  
**Date:** Thursday, March 23, 2023 3:39:56 PM  
**Attachments:** [2023.03.23 CC's SAT to Nintendo \(Singer\).pdf](#)

---

Dear Counsel:

Complaint Counsel provides electronic service of a subpoena *ad testificandum* issued today in the above-referenced matter. Please contact me if you are unable to access the attachment.

Sincerely,

Devon Allen  
Litigation Support Specialist  
Federal Trade Commission  
(202) 326-2154  
[dallen1@ftc.gov](mailto:dallen1@ftc.gov)

## EXHIBIT 18

REDACTED IN ENTIRETY

# EXHIBIT 19

**PUBLIC**

**From:** [Allen, Devon](#)  
**To:** [Beth Wilkinson -contact](#); [rkilaru-contact](#); [abohanon-contact](#); [apastan-contact](#); [rsokoloff@wilkinsonstekloff.com](#); [ghill-contact](#); [sneuman-contact](#); [tbuzzelli@wilkinsonstekloff.com](#); [MichaelMoiseyev-contact](#); [MeganGranger-contact](#); [roy.gilchrist@weil.com](#); [Christine.Kim@weil.com](#); [SteveSunshine-contact](#); [MariaRaptis-contact](#); [JuliaYork-contact](#); [MichaelSheerin-contact](#); [Jaime.Harn@skadden.com](#); [Robert.Hochberg@skadden.com](#); [Michael.Hohmann@skadden.com](#); [tbuzzelli@wilkinsonstekloff.com](#); [csandler@wilkinsonstekloff.com](#)  
**Cc:** [Weingarten, James](#); [Bayer Femenella, Peggy](#); [Abell, James](#); [Alexander, Taylor](#); [DiPietro, Kassandra](#); [Cirincione, Maria](#); [Martin, Teresa](#); [Wint, Corene](#); [Smith, Esther](#); [Chen, Qing Yu](#)  
**Subject:** In the Matter of Microsoft Corp./Activision Blizzard, Inc. (Dkt. No. 9412) - Complaint Counsel's Subpoenas Ad Testificandum  
**Date:** Wednesday, March 29, 2023 2:45:46 PM  
**Attachments:** [2023.03.29 CC's SAT to Singer \(Nintendo HO\).pdf](#)  
[2023.03.29 CC's SAT to Singer \(Home\).pdf](#)  
[2023.03.29 CC's SAT to Singer \(Counsel\).pdf](#)

---

Dear Counsel:

Complaint Counsel provides electronic service of subpoenas *ad testificandum* issued today in the above-referenced matter. Please contact me if you are unable to access the attachments.

Sincerely,

Devon Allen  
Litigation Support Specialist  
Federal Trade Commission  
(202) 326-2154  
[dallen1@ftc.gov](mailto:dallen1@ftc.gov)

## EXHIBIT 20

REDACTED IN ENTIRETY

# EXHIBIT 21

**PUBLIC**

**From:** [Argyle, Benjamin P.](#)  
**To:** [Cirincione, Maria](#); [Gordon, Leonard L.](#)  
**Cc:** [Alexander, Taylor](#); [Miller, David](#); [Smith, Esther](#); [Chen, Qing Yu](#); [Prapaisilp, Jay V.](#); [Munoz, Michael A.](#)  
**Subject:** RE: Singer Subpoena - April 14, 2023 Appearance Date  
**Date:** Thursday, April 13, 2023 5:10:24 PM

Maria-

We confirm that Mr. Singer will not be appearing tomorrow. Your interpretation of Rule 3.34 is inconsistent with ours.

Sincerely-  
Benjamin

Please note our new street address effective March 27, 2023. All other information is the same.

[Benjamin P. Argyle, Esq. | Venable LLP](#)  
t 212.503.0665 | f 212.307.5598  
151 W. 42nd Street, 49th Floor, New York, NY 10036

[BPArgyle@Venable.com](mailto:BPArgyle@Venable.com) | [www.Venable.com](http://www.Venable.com)

**From:** Cirincione, Maria <[mcirincione@ftc.gov](mailto:mcirincione@ftc.gov)>  
**Sent:** Thursday, April 13, 2023 12:58 PM  
**To:** Gordon, Leonard L. <[LLGordon@Venable.com](mailto:LLGordon@Venable.com)>; Argyle, Benjamin P. <[BPArgyle@Venable.com](mailto:BPArgyle@Venable.com)>  
**Cc:** Alexander, Taylor <[talexander@ftc.gov](mailto:talexander@ftc.gov)>; Miller, David <[dmiller1@ftc.gov](mailto:dmiller1@ftc.gov)>; Smith, Esther <[esmith1@ftc.gov](mailto:esmith1@ftc.gov)>; Chen, Qing Yu <[qchen@ftc.gov](mailto:qchen@ftc.gov)>  
**Subject:** Singer Subpoena - April 14, 2023 Appearance Date

**Caution: External Email**

Counsel:

While you have filed a motion to quash Mr. Singer’s deposition subpoena, the subpoena directed to him is still in force and includes April 14, 2023 as the date for Mr. Singer to appear. Please respond by 4:00PM today to confirm that Mr. Singer is not going to appear for his scheduled deposition tomorrow.

Thank you,

Maria

\*\*\*\*\*  
This electronic mail transmission may contain confidential or privileged information. If you believe you have received this message in error, please notify the sender by reply transmission and delete the message without copying or disclosing it.  
\*\*\*\*\*

**PUBLIC****CERTIFICATE OF SERVICE**

I hereby certify that on April 24, 2023, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580  
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to:

Leonard. L. Gordon  
Benjamin P. Argyle  
Venable LLP  
151 W. 42nd Street, 49th Floor  
New York, NY 10036  
(212) 307-5500  
LLGordon@Venable.com  
BPArgyle@Venable.com

Michael A. Munoz  
Jay V. Prapaisilp  
Venable LLP  
600 Massachusetts Ave., N.W.  
Washington, D.C. 20001  
(202) 344-4000  
MAMunoz@Venable.com  
JVPrapaisilp@Venable.com

*Counsel for Non-Parties Steve Singer  
and Nintendo of America Inc.*

Beth Wilkinson  
Rakesh Kilaru  
Alysha Bohanon  
Anastasia Pastan  
Grace Hill

Steven Sunshine  
Julia K. York  
Jessica R. Watters  
Skadden, Arps, Slate, Meagher & Flom LLP  
1440 New York Ave, NW  
Washington, DC 20005  
(202) 371-7860  
steve.sunshine@skadden.com  
julia.york@skadden.com  
jessica.watters@skadden.com

Maria Raptis  
Matthew M. Martino  
Michael Sheerin  
Evan R. Kreiner  
Andrew D. Kabbes  
Bradley J. Pierson  
Skadden, Arps, Slate, Meagher & Flom LLP  
One Manhattan West  
New York, NY 10001  
(212) 735-2425  
maria.raptis@skadden.com  
matthew.martino@skadden.com  
michael.sheerin@skadden.com  
evan.kreiner@skadden.com  
andrew.kabbes@skadden.com



**PUBLIC**

Sarah Neuman  
Kieran Gostin  
Wilkinson Stekloff LLP  
2001 M Street, NW  
Washington, DC 20036  
(202) 847-4010  
bwilkinson@wilkinsonstekloff.com  
rkilaru@wilkinsonstekloff.com  
abohanon@wilkinsonstekloff.com  
apastan@wilkinsonstekloff.com  
ghill@wilkinsonstekloff.com  
sneuman@wilkinsonstekloff.com  
kgostin@wilkinsonstekloff.com

Mike Moiseyev  
Megan Granger  
Weil, Gotshal & Manges LLP  
2001 M Street, NW  
Washington, DC 20036  
(202) 682-7235  
michael.moiseyev@weil.com  
megan.granger@weil.com

*Counsel for Microsoft Corporation*

bradley.pierson@skadden.com

*Counsel for Activision Blizzard, Inc.*

By: s/ James H. Weingarten  
James H. Weingarten

*Counsel Supporting the Complaint*