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Attorneys for Proposed Intervenor,
Department of Fair Employment and Housing

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

U.S. EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff,

v.

ACTIVISION BLIZZARD, INC.,
BLIZZARD ENTERTAINMENT,
INC., ACTIVISION PUBLISHING,
INC., and KING.COM, INC., and
DOES ONE through TEN, inclusive,

Defendants.

Case No. 2:21-CV-07682 DSF-JEM

**PROPOSED INTERVENOR
CALIFORNIA DEPARTMENT OF
FAIR EMPLOYMENT AND
HOUSING’S OBJECTIONS TO
EVIDENCE RE DKT. 15 AND
REQUEST THAT PRIVILEGED
DOCUMENTS BE STRUCK**

Judge: Hon. Dale S. Fischer

Action Filed: September 27, 2021

1 Proposed Intervenor California Department of Fair Employment and Housing
2 (“DFEH”) objects to evidence submitted by Plaintiff U.S. Equal Employment
3 Opportunity Commission (“EEOC”) in opposition to DFEH’s *Ex Parte* Application
4 (ECF Dkt. 13).

5 EEOC filed documents in the public record, and submitted additional
6 documents under seal, which are privileged and confidential.

7 Specifically, paragraph 13 of the Declaration of Rosa Viramontes (ECF Dkt.
8 15-7) quotes from emails that were labeled “PRIVILEGED & CONFIDENTIAL
9 EEOC/DFEH Investigation of Activision Blizzard” and “PRIVILEGED and
10 CONFIDENTIAL, *subject to government privileges and attorney-client/ work-*
11 *product privileges*” by DFEH. *See* Declaration of Janette Wipper (“Wipper Decl.”)
12 ¶ 17, filed herewith. DFEH has not waived the privilege and objects to the
13 disclosure of these communications to the Court and the public.

14 EEOC concedes the privileged nature of the documents. It
15 contemporaneously filed an Application for Leave to File Documents Under Seal
16 (ECF Dkt. 15), which acknowledges that the filing contains evidence “protected by
17 attorney-client privilege, the attorney work product doctrine, and deliberative
18 process privilege, which EEOC cannot publicly disclose or else risk damaging its
19 institutional mandate.” *Id.* DFEH contends no such evidence may be disclosed by
20 EEOC and submitted to the Court under various applicable privileges. *See* Cal.
21 Evid. Code, § 1040 *et seq.*; Cal. Gov’t. Code § 11180 *et seq.*; *see also* 42 U.S.C. §
22 2000e-5(b); Cal. Evid. Code, § 952.

23 After reviewing the filing on October 9, 2021, DFEH requested that the
24 offending documents be removed from the public record. Wipper Decl. ¶ 14, Exh.
25 B; Declaration of Christian Schreiber (“Schreiber Decl.”) ¶ 3, Exh. A. EEOC did
26 not respond to the request by the time of this filing. Wipper Decl. ¶ 14. Instead,
27 EEOC *re-filed* the documents as part of its Notice of Errata. ECF Dkt. 16.
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As of the time of this filing, EEOC has not provided DFEH unredacted copies of the redacted documents it seeks to file under seal.

DFEH request that the Court strike the Viramontes Declaration and any additional material provided to the Court as part of its Application to File Documents Under Seal without reviewing same.

Date: October 11, 2021

Respectfully submitted,
OLIVIER SCHREIBER & CHAO LLP
/s/ Christian Schreiber
Christian Schreiber

*Attorneys for Proposed Intervenor
Department of Fair Employment and
Housing*