

1 James H. Weingarten, DC Bar No. 985070
Peggy Bayer Femenella, DC Bar No. 472770
2 James Abell, DC Bar No. 990773
Cem Akleman, FL Bar No. 107666
3 Meredith R. Levert, DC Bar No. 498245
Jennifer Fleury, NY Bar No. 5053178
4 James Gossmann, DC Bar No. 1048904
Federal Trade Commission
600 Pennsylvania Avenue, NW
5 Washington, DC 20580
Tel: (202) 326-3570
6 *jweingarten@ftc.gov; pbayer@ftc.gov;*
jabell@ftc.gov; cakleman@ftc.gov;
7 *jfleury@ftc.gov; mlevert@ftc.gov;*
jgossmann@ftc.gov

8 Erika Wodinsky, Cal. Bar No. 091700
9 90 7th Street, Suite 14-300
San Francisco, CA 94103
10 Tel: (415) 848-5190
ewodinsky@ftc.gov

11 [Additional counsel identified on signature page in accordance with Local Rule 3-4(a)(1)]

12 Attorneys for Plaintiff Federal Trade Commission

13
14 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
15 **SAN FRANCISCO DIVISION**

16 **FEDERAL TRADE COMMISSION,**

17 Plaintiff,

18 v.

19 **MICROSOFT CORP.**

20 and

21 **ACTIVISION BLIZZARD, INC.,**

22 Defendants.
23

Case No. 3:23-cv-2880-JSC

**PLAINTIFF FEDERAL TRADE
COMMISSION'S NOTICE OF INTENT
TO OPPOSE DEFENDANTS' MOTION
FOR EXPEDITED CASE
MANAGEMENT CONFERENCE**

24
25
26
27
28 **PLAINTIFF'S NOTICE OF INTENT TO OPPOSE DEFENDANTS' MOTION FOR EXPEDITED CASE
MANAGEMENT CONFERENCE**
CASE No. 3:23-CV-2880

1 Plaintiff Federal Trade Commission respectfully submits this Notice that it intends to
2 file an opposition to Defendants’ Motion for Expedited Case Management Conference (the
3 “Motion”). Plaintiff is filing this Notice for two reasons:

4 *First*, Defendants’ request relief that would require the parties to file a “joint case
5 management statement” with the Court today. Mot. at 12 (Proposed Order). Plaintiff
6 respectfully requests the opportunity to respond if the Court is inclined to grant any part of
7 Defendants’ Motion.

8 *Second*, and relatedly, Defendants failed to comply with Local Rule 16-2(d)(2) before filing
9 their Motion. Plaintiff first received notice of the relief Defendants request in the Motion when
10 the Motion was filed and served via ECF. This further prejudices Plaintiff’s ability to respond to
11 a Motion seeking relief the same day it was filed. Defendants’ statement that “Plaintiff Federal
12 Trade Commission has declined to join a request for an expedited Initial Case Management
13 Conference,” Mot. at 8, is incorrect in suggesting that the parties conferred about the Motion.
14 On Tuesday, June 13, before the Court issued its Order granting a temporary restraining order
15 and setting the hearing for June 22-23 (Dkt. No. 37), Defendants provided Plaintiff a draft joint
16 motion for an expedited case management conference that was very different from the Motion
17 filed today. *See* Fleury Decl. at Ex. A. Plaintiff declined to join that draft motion. *See* Fleury
18 Decl. at Ex. B. Defendants have not communicated with Plaintiff since the Court issued its
19 Order of June 13 and never sought to meet and confer with Plaintiff about the relief requested in
20 the Motion filed today.

21 Plaintiff intends to file an opposition to the Motion by 2:00 p.m. Pacific Time tomorrow,
22 June 15, 2023. Plaintiff needs that time to respond to the substance of the Motion, not least
23 Defendants’ claim that “time is of the essence” because the deal “has a termination of date of
24 July 18,” which ignores the fact that the United Kingdom Competition and Markets Authority
25 has issued orders barring the transaction. Mot. at 3. Plaintiff’s counsel is available for a
26 conference with the Court at the Court’s convenience.

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

Dated: June 14, 2023

Respectfully submitted,

/s/ James H. Weingarten
James H. Weingarten
Peggy Bayer Femenella
James Abell
Cem Akleman
J. Alexander Ansaldo
Michael T. Blevins
Amanda L. Butler
Nicole Callan
Maria Cirincione
Kassandra DiPietro
Jennifer Fleury
Michael A. Franchak
James Gossmann
Ethan Gurwitz
Meredith R. Levert
David E. Morris
Merrick Pastore
Stephen Santulli
Edmund Saw

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Tel: (202) 326-3570

Erika Wodinsky

Federal Trade Commission
90 7th Street, Suite 14-300
San Francisco, CA 94103

*Counsel for Plaintiff Federal Trade
Commission*