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11 UNITED STATES DISTRICT COURT  
12 CENTRAL DISTRICT OF CALIFORNIA

13 U.S. EQUAL EMPLOYMENT  
14 OPPORTUNITY COMMISSION,

15 Plaintiff,

16 v.

17 ACTIVISION BLIZZARD, INC.,  
18 BLIZZARD ENTERTAINMENT, INC.,  
19 ACTIVISION PUBLISHING, INC., and  
20 KING.COM, INC., and DOES ONE  
21 through TEN, inclusive,

22 Defendants.

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

**OBJECTION TO PROPOSED  
CONSENT DECREE AND  
REQUEST FOR FAIRNESS  
HEARING**

1           Objector files this objection to the proposed Amended Consent Decree.

2           Objector is an individual worker who is covered by the Proposed Amended  
3 Consent Decree, hereinafter (“PACD”). She files this objection because she  
4 believes that the PACD is woefully inadequate in several regards. It does not  
5 resolve all of the problems raised by the initial PACD. It clarifies, moreover, one  
6 of the most serious problems in the PACD that would require the covered  
7 employees to waive their rights under state law. This is an unprecedented position  
8 by the Equal Employment Opportunity Commission to force employees as a  
9 condition of receiving benefits under a federal law to waive their rights under state  
10 law.

11           Objector requests the Court hold a full fairness hearing to allow any  
12 objectors, including the Department of Fair Employment and Housing to fully  
13 explain to the Court their objections.

14           Objector worked for Defendants for the period of August 2019 to December  
15 of 2021 when she quit because of the harassment and retaliation. Once the DFEH  
16 lawsuit became known, she began organizing and speaking out over workplace  
17 problems and the need to encourage Diversity, Equity and Inclusion. She suffered  
18 direct harassment and retaliation from supervisors. For example, one supervisor  
19 made efforts to get her fired. Another encouraged stalking on her twitter account.  
20 All of this was in direct retaliation for her support of DEI. Ultimately, she quit  
21 because of the retaliation and harassment.

22           These objections are even more critical given the recent announcement that  
23 the defendants are being purchased by Microsoft for a total cost of 68.7 billion  
24 dollars. This leaves open the question whether Microsoft is committed to insuring  
25 that any consent decree be complied with and enforced. It also points out the  
26 insignificant amount of the proposed consent decree. Eighteen million dollars is  
27 less than 0.03 percent of the total cost of the purchase by Microsoft. Given the  
28 scope of these violations and the need to insure compliance with federal law, the

1 purchase by Microsoft should be evaluated and Microsoft must be forced to commit  
2 to insuring that all the provisions of any consent decree are complied with.

3 The following are particular objections to the PACD:

4 1. The employees were not consulted prior to the agreement of the  
5 PACD. The EEOC standards regarding consent decrees require communication  
6 with employees who are affected by the PACD before entering into any proposed  
7 settlement. This was not done here.

8 2. The proposed settlement amount of \$18,000,000 is woefully  
9 inadequate. This would provide the maximum settlement for only 60 workers.  
10 There are well more than 10,000 potential workers who are subject to this Consent  
11 Decree. If any significant number of workers receive the maximum under federal  
12 law, there would be little or nothing available for many other workers adversely  
13 affected. Objectors have no idea how the EEOC got to that number other than its  
14 claim that it is a settlement number. That number pales to insignificance to the 68.7  
15 billions of dollars which Microsoft is paying for the defendants.

16 3. It is now clear from the proposed waivers and releases that the PACD  
17 is an attempt to preempt the parallel suit brought by the Department of Fair  
18 Employment and Housing raising issues under California law. Concededly,  
19 California law provides for much stronger remedies. The DFEH has made it clear  
20 that they will aggressively and effectively pursue that litigation. The DFEH has  
21 now appealed from the order of this court prohibiting it from intervening. From the  
22 circumstances it appears that the initial proposed consent decree as well as the  
23 PACD were suddenly entered into in order to avoid the DFEH's involvement.

24 4. The PACD refers in several parts to retaliation. We are concerned that  
25 retaliation is encompassed within claims under both federal and state laws, such as  
26 the National Labor Relations Act, the Fair Labor Standards Act and so on.

27 5. Although the defendants are described at page 5: 23-26, the list of  
28 defendants does not include now the parent company Microsoft. See also page 3:1-

1 9 (limiting the Consent Decree to defendants and subsidiaries). This needs to be  
2 amended.

3 6. Potential claimants date from September 1, 2016 and continuing. See  
4 page: 16-18. This includes any individual and is a continuing group of employees  
5 who are expanding. Thus, the \$18,000,000 becomes less valuable as the group of  
6 employees expands.

7 7. The proposed consent decree contains a broad non admission clause.  
8 See also broad statement at page 4:1-9. These statements effectively absolve the  
9 defendants of any moral or legal responsibility for their action over what is alleged  
10 to have been more than five years of misconduct. See page 8:1-3. Given the scope  
11 of the violations, the number of employees, the public nature of this company and  
12 the purchase by Microsoft, its non admissions clause should be stricken.  
13 Defendants need to own up to their conduct by admitting that there have been  
14 substantial and serious violations of work place norms over many years. This  
15 limitation is also contained further at page 4:14-16. The release which has now  
16 been provided to the Court and the public makes it clear that it covers any state law  
17 claim. See Attachment C, page 74 to the Declaration of Taylor Markey, Document  
18 51-3. The release states:

19 I am releasing any claims of sexual harassment,  
20 pregnancy discrimination, or related retaliation, whether  
21 currently known or unknown to me, that were asserted or  
22 could have been asserted against release parties... under  
any other applicable federal, state or local law that exists  
at the time I signed this Release...

23 The above discussion of the release now clarifies that any claimant must release his  
24 or her claim under any state or local law or any other federal law which is not  
25 administered by the EEOC. This is a fundamental flaw in the PACD and the  
26 release.

27 8. The claims processing procedure does not include the process to  
28 advertise the proposed settlement so that former or current employees whose

1 mailing address may not be up to date, or otherwise may not receive mail notice can  
2 learn of their rights under the PACD. See page: 14:16-15:21.

3 9. The claim form, Attachment B to the Declaration of Taylor Markey,  
4 page 56-72 is daunting to say the least. In no way can an individual worker  
5 reasonably fill out this claim form without assistance from either the EEOC, the  
6 DFEH or a private attorney. We recognize that there must be some information  
7 provided as part of a claim process, but to demand employees who are subject to  
8 adverse discrimination to detail the discrimination suffered and subject the  
9 employee to all of the other questions is unreasonable. It is designed to effectively  
10 foreclose any claims to only those employees or former employees who have access  
11 to legal assistance in filling out this form. For example, the Claim Form states:

12 To be considered for inclusion in the settlement, you must  
13 complete and return this Claim Form...

14 Claimants will take that to mean they must fill it out completely. If they leave  
15 anything blank, or cannot explain something, it will be incomplete.

16 Claimants cannot possibly, for example, know who their particular employer  
17 was. See page 2 of the Claim Form. They are not likely to have all the detailed  
18 information in paragraph 3. The Claim Form is just so detailed as to be an  
19 insurmountable burden and barrier on employees who were discriminated against.  
20 Some of these employees who may well have not worked for the company for  
21 three, four or five years would not have records or not have a clear memory of the  
22 discrimination they suffered.

23 Another process needs to be developed and/or the Consent Decree needs to  
24 provide direct assistance by the EEOC or private attorneys in filling out these  
25 Claim Forms.

26 10. The specific relief provided for at page 21:25-27 should be amended to  
27 require the reclassification terminations as voluntary recognition for all claimants  
28 whether or not eligible to receive any funds. The fact that they file a Claim Form or

1 otherwise identified should be sufficient enough to require the reclassification to  
2 “voluntary resignation.”

3 11. PACD does not provide any control over the hiring of the “EEO  
4 consultant,” or the “EEO Coordinator.” The EEOC should have some control and  
5 review over who is hired. See PACD page 23:3-27:14.

6 12. We usually object to any automatic expiration of a Consent Decree. It  
7 should expire only upon court approval, see page 9:6-9. It is an unprecedented  
8 provision where there has been more than five years of deliberate and highly  
9 offensive conduct by many managers and supervisors. There is simply no reason to  
10 believe that over a three year period everything will be rectified so that the Consent  
11 Decree can expire. There is no harm to the defendants to continue the Consent  
12 Decree for a longer period of time, particularly if they intend to take measures  
13 which will comply with the law and the Consent Decree.

14 13. The Claims Administrator has provided too much responsibility  
15 without specific direction. In particular, the Claims Administrator is charged with  
16 “responding to Information Requests from Potential Claimants...” page 12:20.  
17 This does not rectify the daunting Claim Form. If there is going to be a person at  
18 the claim administrator who will assist claimants in filling out the form, it should be  
19 very clear that person needs to be trained, probably needs to be a private attorney or  
20 a specific designated person from the EEOC.

21 14. The claims processing procedure provides for the establishment of a  
22 website. See PACD page 13:13-19. Claimant should be advised of the location of  
23 the website.

24 15. Furthermore, the information provided should not be limited to  
25 “general information.” Specific information regarding the rights of employees  
26 should be included. There should be included information about the rights of  
27 employees to be free from retaliation under federal and state laws.

28

1           16. The provisions for the evaluation of claims are inadequate. There is a  
2 complete lack of specificity and clarity. There is no basis for claimants to  
3 understand what information precisely the EEOC will evaluate in determining the  
4 nature and extent of their claim and the remedy. See PACD page 16:6-17. There  
5 needs to be a process by which claimants are advised of the status of their claims  
6 and allowed additional input if necessary to establish the basis of their claims or to  
7 clarify their claims. An attorney or other designated person should be responsible  
8 for contacting potential claimants to clarify their claims to get additional  
9 information.

10           17. The PACD provides for a one time consultation with a private attorney  
11 “at the rate of \$450/per hour, for each Eligible Claimant.” See PACD page 17:13-  
12 14. There is no competent attorney who can either give advice in an hour or likely  
13 charges \$450 an hour for any such interview. In fact, it would be malpractice to  
14 give advice based upon such a short conversation. This is a useless provision. If it  
15 is going to be meaningful, it needs to be substantially expanded so as to allow  
16 individual claimants the right to consult a private attorney and have that charged to  
17 the defendants. A reasonable cap given the nature and extent of these allegations  
18 would be fifteen hours. Perhaps a cap of \$6,500.00.

19           18. The PACD provides for workplace policies and procedures and limited  
20 review. Those workplace policies and procedures should be made public for  
21 comment by individual claimants or current workers. See PACD page 30-32.

22           19. The confidentiality language at page 34:5-8 of the PACD would limit  
23 the right of complainants to talk about the investigations to other workers. This  
24 right to talk about these investigations is protected by the National Labor Relations  
25 Act. The language needs to be amended to make it clear that nothing prohibits  
26 employees from talking about workplace investigations with other employees.

27           20. Two hours of training of “human resources (“HR”) employees” is  
28 woefully inadequate. See PACD page 35:17.

1           21. Defendants should provide training of all workers about how to  
2 respond to illegal and improper conduct. This should include bystander training  
3 and other relevant training for all employees. The training should include how to  
4 respond to retaliation and where there are resources for such retaliation. The  
5 Consent Decree should similarly provide for signs and links to other organizations  
6 which can assist workers as they encounter further retaliation or harassment other  
7 than just the EEOC.

8           22. An Employer representative should be required to read a summary of  
9 the Consent Decree to workers on a regular basis.

10          23. The Consent Decree fails to provide any standards by which claimants  
11 can understand what they will receive and how much. There is no oversight or  
12 supervision other than the EEOC, which has already reached a woefully inadequate  
13 settlement.

14          24. The Consent Decree most prominently attempts to wipe out and  
15 eliminate any state law claims as a condition of receiving relief under a federal law.  
16 This is contrary to the position the EEOC has taken in other litigation and is  
17 inconsistent with the right of states to enforce their own laws to rectify and remedy  
18 such unlawful conduct.

19 Dated: February 10, 2022

WEINBERG, ROGER & ROSENFELD  
A Professional Corporation

*David A. Rosenfeld*

20 By: \_\_\_\_\_ DAVID A. ROSENFELD

21 Attorneys for Objector Jessica Gonzalez

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23  
24 152496\1244737



1 **PROOF OF SERVICE**

2 I am a citizen of the United States and resident of the State of California. I  
3 am employed in the County of Alameda, State of California, in the office of a  
4 member of the bar of this Court, at whose direction the service was made. I am  
5 over the age of eighteen years and not a party to the within action.

6 On February 10, 2022, I served the following documents in the manner  
7 described below:

8 **OBJECTION TO PROPOSED CONSENT DECREE AND REQUEST FOR**  
9 **FAIRNESS HEARING**

- 10  (BY U.S. MAIL) I am personally and readily familiar with the business  
11 practice of Weinberg, Roger & Rosenfeld for collection and processing of  
12 correspondence for mailing with the United States Postal Service, and I  
13 caused such envelope(s) with postage thereon fully prepaid to be placed in  
14 the United States Postal Service at Emeryville, California.
- 15  BY ELECTRONIC SERVICE: By electronically mailing a true and correct  
16 copy through Weinberg, Roger & Rosenfeld’s electronic mail system from  
17 dtaylor@unioncounsel.net to the email addresses set forth below.

18 On the following part(ies) in this action:

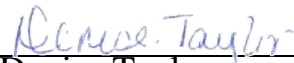
19

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14 I declare under penalty of perjury under the laws of the United States of  
15 America that the foregoing is true and correct. Executed on February 10, 2022, at  
16 Emeryville, California.

18   
19 \_\_\_\_\_  
20 Denise Taylor