

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

**Meta Platforms, Inc.,
a corporation,**

**Mark Zuckerberg,
a natural person,**

and

**Within Unlimited, Inc.,
a corporation.**

DOCKET NO. 9411

**NON-PARTY SONY INTERACTIVE ENTERTAINMENT'S
MOTION FOR *IN CAMERA* TREATMENT OF CERTAIN TRIAL EXHIBITS**

Pursuant to Rule 3.45 of the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.45(b), non-party Sony Interactive Entertainment LLC ("SIE") respectfully moves this Court for *in camera* treatment of certain highly confidential and competitively sensitive information produced by SIE in response to subpoenas from the Federal Trade Commission ("Complaint Counsel") and Meta Platforms, Inc. ("Meta," and together with Mark Zuckerberg and Within Unlimited, Inc., "Respondents"). Complaint Counsel and Respondents have notified SIE that they intend to introduce certain highly confidential SIE documents and testimony as trial exhibits in this matter. As explained here and in the accompanying declaration of Rafael Wyss, Senior Manager of Business Operations at SIE ("Wyss Decl."), attached as Exhibit A, the public disclosure of these materials would significantly harm SIE's competitive position. SIE requests that this Court grant five years of *in camera* treatment for these SIE business materials.¹

¹ SIE previously sought and was granted *in camera* treatment of these same business materials for the same reasons in the preliminary injunction hearing before the Northern District of

I. Confidential Materials

SIE seeks five years² of *in camera* treatment for the following SIE business materials.

Attached as Exhibits B & C are copies of each page of these materials for which SIE requests *in camera* treatment.

Exhibit No.	Description	Date	Bates No.	Portion(s) For <i>In Camera</i> Treatment
PX0081/DX1224	Deposition Transcript of SIE by Rafael Wyss (Exhibit B)	11/17/2022	N/A	4:12,16; 11:1-4; 15:1-16:22; 21:12-19; 24:11-25:1; 26:4-59:12; 70:8-76:10; 80:8-83:2; 85:21-86:11; 87:16-113:12
PX0818/DX1302	Presentation: Competitor Analysis (Exhibit C)	9/14/2021	SIE-META-00000134	Entire Document

II. Legal Standard

In camera treatment of material is appropriate if “its public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment.” 16 C.F.R. § 3.45(b) (2015). A party requesting *in camera* treatment may demonstrate a likelihood of serious competitive injury by showing that the materials at issue are both secret and material to the business. *See Gen. Foods Corp.*, 95 F.T.C. 352, 1980 WL 338997, at *4 (Mar. 10, 1980). This Court has long recognized the necessity of granting *in*

California in *FTC v. Meta Platforms, Inc.*, No. 5:22-cv-04325-EJD (SVK) (N.D. Cal. 2022). *See* Admin. Mot. to Seal, ECF No. 345, and Judge Davila’s Order Granting Non-Party SIE’s Admin. Mot. to Seal, ECF No. 411.

² SIE’s request for five years of *in camera* treatment of the confidential information identified herein is not intended as a limitation if this Court determines that a longer period of *in camera* treatment is warranted. *See McWane, Inc.*, 2012 WL 3862131, at *7-8 (Aug. 17, 2012) (granting a longer period of *in camera* treatment than requested to further administrative efficiency and establish consistent treatment across non-parties).

camera treatment to business records as “[t]here can be no question that the confidential records of businesses involved in Commission proceedings should be protected insofar as possible.”

H.P. Hood & Sons, Inc., 58 F.T.C. 1184, 1961 WL 65882, at *2, *4 (Mar. 14, 1961) (noting that courts generally attempt “to protect confidential business information from unnecessary airing.”).

Further, this Court treats non-party requests for *in camera* treatment with a “special solicitude.”

See Kaiser Aluminum & Chem. Corp., 103 F.T.C. 500, 1984 WL 565325, at *1 (May 25, 1984)

(“As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.”).

III. Argument

The information that SIE seeks to protect from public disclosure here easily meets the “serious injury” standard. Complaint Counsel’s PX0818 (also Respondents’ DX1302) (Exhibit C) is a September 2021 presentation reflecting SIE’s highly confidential competitive analysis that it used to develop its competitive, marketing, and business strategies for its unreleased PlayStation®VR2 (“PSVR2”) product. This detailed analysis includes SIE’s identification of its closest competitors, assessment of the strengths and weaknesses of PSVR2’s features in comparison to its competitors’ features, an evaluation of PSVR2 and its competitors’ comparative market appeal, SIE’s market segmentation of virtual reality consumers, and information regarding SIE’s PSVR2 software content strategy. Wyss Decl. (Exhibit A) ¶ 4. The SIE deposition transcript marked as PX0081 and DX1224 (Exhibit B), contains testimony on this same detailed analysis. Wyss Decl. (Exhibit A) ¶ 4.

Public disclosure of this sensitive business information would harm SIE’s competitive standing. SIE’s competitors would gain asymmetrical insight into SIE’s strategic thinking and

PSVR2 business strategy, and the public's perception of the PSVR2 could be affected, undermining the time and resources SIE has devoted to its PSVR2 product and business development. Wyss Decl. (Exhibit A) ¶ 6. The harm to SIE that would result from public disclosure of these materials would be both serious and nearly immediate. SIE has announced that the PSVR2 will be commercially launched in February 2023, just one month after the trial scheduled for January 2023. SIE has been preparing for the PSVR2 launch for years, and release of its confidential information at trial could disrupt this imminent launch. Wyss Decl. (Exhibit A) ¶ 6.

SIE has made diligent efforts to maintain the confidentiality of the materials it seeks to protect from public disclosure. The competitive analysis marked as PX0818 and DX1302 (Exhibit C) was internally designated as "Secret," one of the highest levels of confidentiality maintained at SIE. Wyss Decl. (Exhibit A) ¶ 5. Due to their sensitivity, materials designated as "Secret" cannot be disclosed to the public, and access to "Secret" materials within SIE is restricted to a small group of project team members on a need-to-know basis. Wyss Decl. (Exhibit A) ¶ 5. SIE has continued to protect the confidentiality of this material during the course of this litigation, designating SIE's deposition transcript and the documents it produced in discovery before the Northern District of California as "Highly Confidential" as well as securing an agreement that Meta would limit disclosure of DX1302 (Exhibit C) to outside counsel of record only. To SIE's knowledge the contents of the proposed trial exhibits have been treated by all involved parties as highly confidential and competitively-sensitive business information.

SIE seeks *in camera* treatment for five years for a single document reflecting its competitive analysis and deposition testimony relating to that same competitive analysis. Due to the secret nature of this information and its materiality to SIE's business, five years of *in camera*

treatment is necessary to protect SIE from the clearly defined and serious competitive injury that would result from its disclosure. Wyss Decl. (Exhibit A) ¶ 6. Five years of *in camera* treatment is routinely granted for competitively sensitive business records, including documents revealing competitive positioning, strategic plans, and marketing strategies. *See, e.g., Benco Dental Supply Co.*, 2018 WL 5292624, at *6-7 (Oct. 11, 2018) (granting non-party motions for five years of *in camera* treatment of business documents including “strategic business plans” and “business model[s]”); *1-800 Contacts, Inc.*, 2017 WL 1345290, at *4-13 (Apr. 4, 2017) (same); *McWane, Inc.*, 2012 WL 3862131, at *7-8 (Aug. 17, 2012) (same); *ProMedica Health Sys.*, 2011 WL 2258040, at *11 (May 25, 2011) (same).

IV. Conclusion

For the foregoing reasons, SIE respectfully requests that this Court grant its Motion and provide five years of *in camera* treatment of SIE’s information described above and in the Wyss Declaration.

Dated: December 23, 2022

Respectfully submitted,

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*Counsel for Non-Party Sony Interactive
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**UNITED STATES OF AMERICA
 BEFORE THE FEDERAL TRADE COMMISSION
 OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of
Meta Platforms, Inc.,
a corporation,
Mark Zuckerberg,
a natural person,
and
Within Unlimited, Inc.,
a corporation.

DOCKET NO. 9411

[PROPOSED] ORDER GRANTING *IN CAMERA* TREATMENT

Upon consideration of non-party Sony Interactive Entertainment LLC’s (“SIE”) Motion for *In Camera* Treatment of Certain Trial Exhibits, it is hereby:

ORDERED that SIE’s motion is GRANTED, and the portions of the materials identified below shall be subject to *in camera* treatment and will be kept confidential and not placed on the public record of this proceeding for a period of five years.

Exhibit No.	Description	Date	Bates No.	Portion(s) For <i>In Camera</i> Treatment
PX0081/DX1224	Deposition Transcript of SIE by Rafael Wyss	11/17/2022	N/A	4:12,16; 11:1-4; 15:1-16:22; 21:12-19; 24:11-25:1; 26:4-59:12; 70:8-76:10; 80:8-83:2; 85:21-86:11; 87:16-113:12
PX0818/DX1302	Presentation: Competitor Analysis	9/14/2021	SIE-META-00000134	Entire Document

Date: _____

 D. Michael Chappell
 Chief Administrative Law Judge

PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2023, I filed the foregoing document electronically using the Federal Trade Commission's e-filing system, which will send notification of such filing to:

April Tabor
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Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, D.C. 20580
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The Honorable D. Michael Chappell
Administrative Law Judge
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I also certify that I caused the foregoing document to be served via email to:

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/s/ Everett K. Coraor
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EXHIBIT A

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

**Meta Platforms, Inc.,
a corporation,**

**Mark Zuckerberg,
a natural person,**

and

**Within Unlimited, Inc.,
a corporation.**

DOCKET NO. 9411

**DECLARATION OF RAFAEL WYSS IN SUPPORT OF NON-PARTY SONY
INTERACTIVE ENTERTAINMENT’S MOTION FOR *IN CAMERA* TREATMENT**

I, Rafael Wyss, declare as follows:

1. I am a Senior Manager of Business Operations at Sony Interactive Entertainment (“SIE”). I am more than eighteen years of age. Based on my experience with SIE, I am familiar with SIE’s protection of its trade secrets and other confidential and proprietary business information discussed below. I make this declaration based on personal knowledge, and I could testify competently to the matters set forth herein.

2. I understand that the Federal Trade Commission (“Complaint Counsel”), and Defendants Meta Platforms, Inc., Mark Zuckerberg, and Within Unlimited, Inc. (collectively “Respondents”) intend to introduce certain highly confidential SIE documents (PX0818/DX1302) and testimony (PX0081/DX1224) as trial exhibits. I also understand that SIE intends to file a motion for five years of *in camera* treatment of those exhibits to protect SIE’s confidential information pertaining to the launch of the PlayStation®VR2 (“PSVR2”) virtual

reality headset. I make this declaration in support of that motion.

3. SIE seeks *in camera* treatment for the following documents and deposition testimony:

Document	Portion(s) for <i>In Camera</i> Treatment
PX0818/DX1302 (Presentation: Competitor Analysis)	Entire Document
PX0081/DX1224 (Deposition Testimony of Sony Interactive Entertainment by Rafael Wyss)	4:12,16; 11:1-4; 15:1-16:22; 21:12-19; 24:11-25:1; 26:4-59:12; 70:8-76:10; 80:8-83:2; 85:21-86:11; 87:16-113:12

4. Complaint Counsel’s PX0818 (also Respondents’ DX1302) is a presentation I created dated September 14, 2021. This document contains detailed analysis of SIE’s unreleased PSVR2 virtual reality headset including identification of its closest competitors, assessment of the strengths and weaknesses of PSVR2’s features in comparison to its competitors’ features, an evaluation of PSVR2 and its competitors’ comparative market appeal, SIE’s market segmentation of virtual reality consumers, and information regarding SIE’s PSVR2 software content strategy. The portions of the deposition transcript identified as PX0081 and DX1224 noted above contain testimony on this detailed analysis. This is highly confidential, competitively-sensitive trade secret information, and the public release of this information would cause clearly defined and serious competitive injury to SIE.

5. SIE strictly restricts dissemination of this type of competitive analysis and business strategy analysis for unreleased products and takes steps to preserve its confidentiality and protect SIE’s competitive position. SIE does not share this information with third parties or the public. In recognition of the highly sensitive nature of this analysis, SIE internally designated PX0818/DX1302 as “Secret,” one of the highest levels of confidentiality maintained

at SIE. Only a small group of project team members are permitted access to “Secret” materials on a need-to-know basis.

6. Disclosure of the highly confidential information contained in PX0818/DX1302 and PX0081/DX122 could enable SIE’s competitors to gain insight into SIE’s strategic thinking and PSVR2 business strategy, and could impact the public’s perception of PSVR2, providing an unwarranted advantage to competitors and causing competitive harm to SIE, including potentially having a substantial and immediate impact on SIE’s imminent PSVR2 market launch planned for February 2023. Because SIE would experience a clearly defined and serious injury if this competitive analysis were publicly disclosed, SIE respectfully requests five years of *in camera* treatment for PX0818/DX1302 and PX0081/DX1224.

7. The proposed redactions are narrowly tailored to redact only SIE’s competitively sensitive analysis and business strategy information, and are necessary to protect SIE from the competitive harm that would result from their disclosure.

8. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed on December 15, 2022, in London, United Kingdom.

By _____

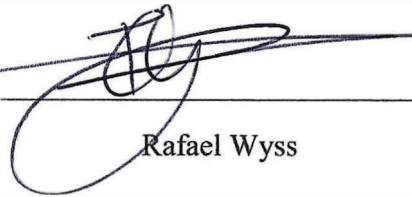

Rafael Wyss

EXHIBIT B

Document for which partial *in camera* treatment is requested

**DOCUMENT REDACTED
IN PUBLIC VERSION**

PUBLIC

11/17/2022

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Highly Confidential - Under the Protective Order

Rafael Wyss 30(b)(6)

Page 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

_____)
Federal Trade Commission,)
)
Plaintiff,)
)
-against-)
)
Meta Platforms, Inc., et al.,)
)
Defendant.)
_____)

CASE NO.
3:22-cv-04325-ejd

HIGHLY CONFIDENTIAL

UNDER THE PROTECTIVE ORDER
VIDEO-RECORDED REMOTE 30(b)(6) DEPOSITION OF
SONY INTERACTIVE ENTERTAINMENT
BY: RAFAEL WYSS
Zoom Recorded Videoconference
11/17/2022
3:01 p.m. (GMT)

REPORTED BY: AMANDA GORRONO, CLR
CLR NO. 052005-01

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

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1 I N D E X

2

3 WITNESS EXAMINATION BY PAGE

4 RAFAEL WYSS MR. BEIM 8, 105

5 MR. ROGERS 70

6

7 E X H I B I T S

8 EXHIBIT DESCRIPTION PAGE

9 Meta Oculus Quest Product Announcement

10 Exhibit 23 Bates No. SIE-META-00000086 -

11 -00000107..... 25

█ █ █

13 Exhibit 24 SIE-META-00000134 - 00000162..... 34

14 Meta Work up a sweat with great fitness

15 Exhibit 25 games for PS4 and PS5*..... 63

█ █ █

17 PX818 PX0818-001 - 029..... 70

18

19 R E Q U E S T S

20 DESCRIPTION PAGE

21 Designation of Outside Counsel Only on Documents

22 Discussed..... 8

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1 Q. At this point in time in 2016, who
2 did Sony view as the major competitor to the PS
3 VR?

4 MR. ROGERS: Objection; vague.

5 A. At the time -- I'm hesitating
6 because I'm trying to put in chronological order
7 the release of major VR platforms. I would
8 speculate that the platforms that were considered
9 as competitors at that point were Oculus and HTC
10 VIVE.

[REDACTED]

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1 ■ [REDACTED]

2 MR. BEIM: Dan, can we pull up Tab

3 1.

4 (Tech complies.)

5 BY MR. BEIM:

6 Q. And, Mr. Wyss, if you'll need to
7 download this or, or, you know, see it on your
8 own device, that's fine.

9 A. I can see it.

10 THE TECH: Counsel, did you want to
11 mark this as Exhibit 1; is that correct?

12 MR. BEIM: Yes, that's right. This
13 is SIE-META-86.

14 (Whereupon, Exhibit 23, Oculus Quest
15 Product Announcement Bates No.

16 SIE-META-00000086 - -00000107, was marked for
17 identification.)

18 MR. BEIM: Dan, could you go to PDF
19 Page 3.

20 (Tech complies.)

21 BY MR. BEIM:

22 Q. Mr. Wyss, this is a slide deck you

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13 BY MR. BEIM:

14 Q. So we talked earlier about how Sony
15 has its own app store for the PlayStation and for
16 the PS VR and PS VR2 or it will.

17 Does Sony make decisions about what
18 VR apps are available on the store?

19 MR. CORAOR: Object to form. Object
20 to scope.

21 A. Sony, we are -- I think the answer
22 is yes, inasmuch as we've covered previously,

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11 Q. Okay. I'm going ask you about
12 the -- the titles that were referenced in Tab 4.
13 I actually don't know if this got an exhibit
14 number, but it was Tab 4 of Meta's exhibits.

15 THE TECH: That was Exhibit 25,
16 Counsel.

17 MR. ROGERS: Okay. Thanks.

18 BY MR. ROGERS:

19 Q. And I think the ones that were
20 reference were Beat Saber, Creed, Box VR, Sprint
21 Vector, Superhot, and Yoga Master.

22 Do you recall that? Oh, and Just

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█ [REDACTED]

█ [REDACTED]

3 Q. Okay. So in the case of the Quest
4 2, what is the total cost of ownership?

5 A. So in the case of the Oculus -- in
6 the case of the Oculus Quest 2, the total cost of
7 ownership would be the purchase of the headset
8 itself, which is coming with two controllers in
9 the box as well. So that's the cost of
10 ownership, and then there's access to content.

11 Q. Okay. And then for the PS VR, would
12 the total cost of ownership include the price of
13 the PS VR headset plus the PS4 console?

14 A. So for the combined total cost of
15 ownership for PS VR2, it's, it's the PS VR2
16 headset which is distributed by the same
17 controllers and the box as well and a PS5
18 console.

19 Q. Okay. And you answered my next
20 question. I was actually wondering about the
21 total cost of ownership for the existing PS VR.

22 A. So the total cost of ownership for

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1 A. Current price of a PS5 console in
2 the, in the US is 499 for a standard edition.
3 That means the PS5 with a disk drive. For the
4 digital edition without a disk drive, it is 399.

5 Q. And which edition is the PS VR2
6 designed to work with?

7 A. The -- both. The only difference
8 between the two SKUs is the presence or not of a
9 disk drive.

10 Q. Okay. And so the total cost of
11 ownership for the PS VR2 will be the combination
12 of the 499 for the PS VR2 plus the cost of one of
13 these consoles; is that right?

14 A. Correct.

15 MR. ROGERS: Okay. And if you --
16 actually if we could go back to the main page
17 here. The overall page, yeah, and if we go
18 to the left and blow up that yellow box on
19 the left.

20 (Tech complies.)

21 [REDACTED]

[REDACTED]

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12 Q. Okay. Okay. And let me ask about
13 the Valve.

14 Do you know roughly how the total
15 cost of ownership for the PS VR compares to the
16 total cost of ownership for a Valve headset?

17 MR. CORAOR: Object to form.

18 A. I cannot recall the exact pricing
19 for Valve Index. That was at the time -- I think
20 it was in the vicinity of 799 for a headset and
21 went up from there.

22 Adding to that is then the cost of a

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1 PC, which can range from, I guess -- but this is
 2 speculation to -- in today's market to get a PC
 3 that's equivalent performance of a PS5 you're
 4 looking at 6, \$700. But PC VRs generally for the
 5 enthusiast market is skewing much higher with
 6 more graphics cards which then can go into an
 7 overall gaming PC or rig, as they are referred
 8 to, being several thousand dollars.

9 Q. And would the total cost of
 10 ownership for an HTC VIVE headset also include
 11 the cost of those PCs?

12 A. Correct. The HTC VIVE PRO also
 13 tethered headset that relies on a PC to render
 14 its content.

15 Q. Okay. Return to 011, please.

16 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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13 MR. BEIM: Okay. I pass the
14 witness.

15 MR. ROGERS: Just one moment. I
16 don't think I have any other questions.

17 Counsel, do you have an URL
18 associated with the -- your Exhibit 25?

19 MR. BEIM: Yes, I do.

20 MR. ROGERS: Can you provide that,
21 please?

22 MR. BEIM: Absolutely.

EXHIBIT C

Document for which *in camera* treatment is requested in its entirety

**DOCUMENT EXCLUDED
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CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the original filing, and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

Dated: January 4, 2023

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