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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

FEDERAL TRADE COMMISSION,)	
)	
)	
Petitioner,)	
)	Misc. No.
v.)	
)	
CLEAR SOURCE RESEARCH, LLC,)	
)	
Respondent.)	

**PETITION OF THE FEDERAL TRADE COMMISSION FOR AN ORDER TO
ENFORCE A CIVIL INVESTIGATIVE DEMAND**

Preamble

Petitioner, the Federal Trade Commission (“FTC” or “Commission”) petitions this Court, pursuant to Sections 16 and 20 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 56, 57b-1, and 28 U.S.C. §§ 1337 and 1345, and Fed. R. Civ. P. 81(a)(5), for an order requiring respondent, Clear Source Research LLC (“Clear Source”), to produce responses to written interrogatories and to document requests, and a sworn verification as to these responses, in response to a Commission Civil Investigative Demand (“CID”), a type of administrative compulsory process, issued to Clear Source on February 28, 2011. The CID was issued in the course of a non-public investigation concerning possible violations by Clear Source of Section 521 of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6821, with respect to obtaining customer information from financial institutions under false pretenses, an illegal practice known as “pretexting.”

Clear Source’s absolute failure to comply with the CID is impeding the Commission’s investigation. The Commission serves as the primary administrative law enforcement agency for Section 521 and related sections of the Gramm-Leach-Bliley Act. 15 U.S.C. § 6822.

The Declaration under penalty of perjury of Robin Eichen, which verifies the allegations of this Petition, is attached hereto as Petition Exhibit (Pet. Exh.) 1.

Petition Allegations

In support of its Petition, the Commission alleges as follows:

1. The Commission is an administrative agency of the United States, organized and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.* The Commission is authorized and directed by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prohibit unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce.

2. Section 521 of the Gramm-Leach-Bliley Act states, among others, that “It shall be a violation of this subchapter for any person to obtain or attempt to obtain, or cause to be disclosed or attempt to cause to be disclosed to any person, customer information of a financial institution relating to another person” under a variety of false pretenses. 15 U.S.C. § 6821. The Gramm-Leach-Bliley Act further provides that “[C]ompliance with this subchapter shall be enforced by the Federal Trade Commission in the same manner and with the same power and authority as the Commission has under the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*) to enforce compliance with such Act.” 15 U.S.C. § 6822. The Fair Debt Collection Practices Act provides “All of the functions and powers of the Commission under the [FTC Act] are available to the Commission to enforce compliance by any person with this subchapter” 15 U.S.C. § 1692l.

3. Section 3 of the FTC Act, 15 U.S.C. § 43, empowers the Commission to prosecute any inquiry necessary to its duties in any part of the United States. Section 6 of the Act, 15 U.S.C. § 46, empowers the Commission to gather and compile information concerning, and to investigate from time to time, the organization, business, conduct, practices and management of, any person, partnership or corporation engaged in or whose business affects

commerce, with certain exceptions not relevant here. Section 20 of the FTC Act, 15 U.S.C. § 57b-1, empowers the Commission to require by CID the production of documents or other information relating to any Commission law enforcement investigation.

4. This Court also has jurisdiction to enforce the Commission's duly issued CIDs, including the CID issued to Respondent, under Section 20(e) of the FTC Act, which provides, in pertinent part:

Whenever any person fails to comply with any civil investigative demand duly served upon him under this section, or whenever satisfactory copying or reproduction of material requested pursuant to the demand cannot be accomplished and such person refuses to surrender such material, the Commission, through such officers or attorneys as it may designate, may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person, a petition for an order of such court for the enforcement of this section.

15 U.S.C. § 57b-1(e).

5. Clear Source is a limited liability company located at 603 N. Main Street, #350, Webb City, Missouri, 64870. Pet. Exh. 1, ¶ 3. Mark Higgins is the owner and sole full-time employee. Pet. Exh. 1, ¶ 7. Clear Source is engaged in, and its business affects, "commerce" as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44. Clear Source "resides, is found, or transacts business" within the Western District of Missouri.

6. On July 16, 2009, the Commission issued a "Resolution Directing Use of Compulsory Process in a Non-Public Investigation of Unnamed Persons, Partnerships, Corporations, or Others Engaged in Acts or Practices in Violation of Title V of the Gramm-Leach-Bliley Act and/or Section 5 of the FTC Act." The resolution authorized all compulsory process available to the Commission to be used to investigate, among other things, "whether unnamed persons, partnerships, corporations, or others have engaged in or are engaging in acts

or practices in violation of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809, 6821-6827 and/or Section 5 of the FTC Act, 15 U.S.C. § 45, as amended. Such investigation shall, in addition, determine whether Commission action to obtain redress of injury to consumers or others would be in the public interest.” Pet. Exh. 2.

7. On February 28, 2011, pursuant to the authority of the investigatory resolution, the Commission issued a CID to Clear Source requiring it to answer interrogatories and produce documents relating to the subject matter of the investigation, and required full compliance by April 1, 2011. Pet. Exh. 1, ¶ 4; Pet. Exh. 2. The CID was served on Clear Source on March 5, 2011. Pet. Exh. 1, ¶ 4. Instruction B of the CID required Clear Source to contact FTC staff to meet and confer within ten days of service or by March 10. Pet. Exh. 2.

8. Consistent with Instruction B, staff repeatedly attempted to contact Clear Source but received no response until the deadline of April 1, 2011. On that day, an unidentified individual responded by voicemail, stating that his son had been hospitalized and he had been traveling to assist with his son’s care. The individual requested additional information about the CID and requested that the FTC staff call back. Pet. Exh. 1, ¶ 5. After additional unsuccessful attempts to contact Clear Source, FTC staff sent a letter by certified mail stating that if staff did not hear from Clear Source by April 8, it would refer the matter for enforcement. Pet. Exh. 1, ¶

6

9. On April 8, FTC staff called Clear Source, spoke with a person who identified himself as Mark Higgins, the previously unidentified individual who had responded on April 1, and arranged a call for April 11. Pet. Exh. 1, ¶ 7. On April 11, Mr. Higgins identified himself as owner and sole full-time employee of Clear Source. *Id.* He stated that he had not responded to the CID due to his son’s medical treatment. *Id.* FTC staff explained in detail each interrogatory

and document specification in the CID and Mr. Higgins indicated that he understood these terms and agreed to produce the documents and information specified. Pet. Exh. 1, ¶ 8. FTC staff further indicated that Mr. Higgins could request an extension of time to respond, and the staff and Mr. Higgins discussed potential dates for such extensions. *Id.* On April 11, 2011, Mr. Higgins sent staff an e-mail requesting an extension of time to respond. Pet. Exh. 1, ¶ 8; Pet. Exh. 4. On April 12, 2011, the staff responded by e-mail and granted the request, establishing a series of new deadlines that ended on May 9, 2011. Pet. Exh. 1, ¶ 8; Pet. Exh. 5. These deadlines were consistent with the discussions and agreement between staff and Mr. Higgins on April 11, 2011 and with Mr. Higgins's request for an extension. Pet. Exh. 1, ¶ 8.

10. Clear Source produced no documents or information in response to any of the deadlines established in the April 12, 2011 extension. FTC staff has been unable to have further direct contact with Mr. Higgins or with Clear Source. Mr. Higgins has not responded to repeated voicemails and e-mails. Pet. Exh. 1, ¶¶ 9, 12. Out of concern this lack of response could be due to Mr. Higgins's son's claimed medical treatment or due to the recent tornados in Joplin, MO, staff made additional efforts in June to contact Mr. Higgins through calls, e-mails, and a certified mail letter. Pet. Exh. 1, ¶ 10. Staff has only received the return receipt from its mailing, indicating that the certified letter was received at Clear Source on June 16, 2011. Pet. Exh. 1, ¶ 11.

11. Clear Source has not objected to the CID on any ground, and has not petitioned the Commission to quash or limit the CID, as provided in FTC Rule 2.7(d)(1), 16 C.F.R. § 2.7(d)(1). Pet. Exh. 1, ¶ 13.

12. The CID is within the Commission's authority, the information and documents sought are reasonably relevant to the Commission's investigation, and the CID does not impose

an unreasonable burden on Clear Source. Further, Clear Source's failure to comply with the CID greatly impedes the Commission's ongoing investigation, forces the Commission to expend additional public resources, and makes it impossible to assess the legality of Clear Source's practices. It also prevents the Commission from completing its investigation in a timely manner. Pet. Exh. 1, ¶ 14.

Prayer for Relief

WHEREFORE, the Commission invokes the aid of this Court and prays:

- a. For the immediate issuance of an order directing Clear Source to show cause why it should not comply in full with the subpoena and CID;
- b. For a prompt determination of this matter and an order requiring Clear Source to fully comply with the CID within ten (10) days of such order;
- c. For such other relief as this Court deems just and proper.

Petition Exhibit 1

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

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Petitioner,)	
)	Misc. No.
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CLEAR SOURCE RESEARCH, LLC,)	
)	
Respondent.)	

DECLARATION OF ROBIN E. EICHEN

Pursuant to 28 U.S.C. § 1746, I declare as follows:

1. I am an attorney employed by the U.S. Federal Trade Commission (“FTC” or “Commission”), in New York, N.Y. I am assigned to the FTC’s investigation of Clear Source Research, LLC (“Clear Source”) and possible instances of pretexting – the practice of obtaining an individual’s bank account balances or other “customer

information of a financial institution” under false pretenses in violation of Section 521 of the Gramm Leach Bliley Act, 15 U.S.C., Subchapter II, §§ 6821-6827, in connection with Clear Source’s sale of individual consumers’ financial information to its clients without individual consumers’ consent.

2. I am authorized to execute a declaration verifying the facts that are set forth in the Petition of the Federal Trade Commission for an Order Enforcing Subpoena *Duces Tecum* and Civil Investigative Demand Issued in Furtherance of a Law Enforcement Investigation. I have read the petition and exhibits thereto (hereinafter referred to as “Pet. Exh.”), and verify that Pet. Exh. 2 through Pet. Exh. 8 are true and correct copies of the original documents. The facts set forth herein are based on my personal knowledge or information made known to me in the course of my official duties.
3. Clear Source is a limited liability company located at 603 N. Main Street, #350, Webb City, Missouri, 64870. Clear Source performs bank and brokerage account searches for its clients, including the search subject’s bank name, address, and phone number; any alternate address the subject has on file with the bank; whether the account is a savings or checking account; whether it is a joint, business or personal account; and the account balance at the time of the search.
4. On February 28, 2011, the Commission issued a Civil Investigative Demand (“CID”) to Clear Source, requiring it to answer interrogatories and produce documents relating to the subject matter of the investigation, and required full compliance by April 1, 2011 (Pet. Exh. 2). Specifically, the CID contains twenty-five written interrogatory specifications and twenty document production requests, including all sub-parts, and seeks information relating to Clear Source’s business, its practices relating to obtaining customer

information from financial institutions, and its compliance with the Gramm-Leach-Bliley Act, among others. Instruction B of the CID required Clear Source to contact FTC staff to meet and confer within ten days of service or by March 10. *Id.* The CID was served on Clear Source on March 5, 2011.

5. When Clear Source failed to contact FTC staff, I left voicemail messages for Clear Source on March 25, 29 and 31 at 866-553-2888, the phone number listed in Clear Source's marketing materials. On April 1, the date that Clear Source's CID response was due, a then-unidentified man left a message on my voicemail stating that he had been unavailable to answer the CID because his son was hospitalized, and he had been traveling to assist with his son's care. He asked that we call back to clarify what was requested by the CID. I returned the call and left several additional voicemail messages within the week, but received no response.
6. On April 5, FTC staff sent a letter to Clear Source via Certified Mail and facsimile stating that unless we heard from Clear Source by April 8, we would refer the matter to our Office of the General Counsel, recommending court enforcement. The return receipt was signed by Adysen Mertens on April 11. (The April 5 letter and Certified Mail receipt and return receipt collectively are Pet. Exh. 3).
7. On April 8, I called the above-listed phone number for Clear Source and reached Mark Higgins, the previously unidentified man who had left the message on my office voicemail on April 1, and arranged to speak with him at a scheduled time on April 11. On April 11, Mr. Higgins stated that he had not responded to the CID because his son had been sick and was hospitalized 5 ½ hours away in Western Kansas. Mr. Higgins stated that he maintains a small office in Webb City, Missouri, Clear Source's address, but that

he stores the documents for the business in his home garage in Pittsburg, Kansas.

According to Mr. Higgins, except for one part-time employee, he is the sole owner and employee of Clear Source.

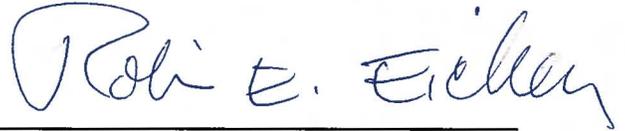
8. During that telephone conversation, I explained in detail each interrogatory and document specification in the CID and asked Mr. Higgins whether he understood the information and documents that he needed to provide in response to the CID. Mr. Higgins indicated that he understood the terms of the CID and agreed to provide the documents and information specified. I also informed Mr. Higgins that Clear Source could request an extension of the deadlines for responding to the CID in writing, and discussed some extended dates for Clear Source's responses. On April 11, Mr. Higgins sent FTC staff an email requesting an extension of time for Clear Source to respond to the CID. (Pet. Exh. 4). FTC staff responded by email the next day, granting the extension of time requested. (Pet. Exh. 5). Clear Source was given: (1) a two-week extension until April 25 to respond to the FTC's interrogatories; (2) a three-week extension to produce a written response to the FTC's document demands and samples of documents responsive to each specification; and (3) a four-week extension until May 9 to produce the remainder of documents related to the interrogatories and other responsive documents. *Id.* These deadlines were consistent with our discussion on April 11 and with Mr. Higgins's request for an extension.
9. Clear Source produced no documents or information in response to any of the deadlines established in the April 12, 2011 extension. When no response to the CID was received, I placed two calls to Clear Source's phone number on May 15 and left voicemail messages both times, but the messages were not returned. On May 17, I sent an email to

Clear Source at the email address that Mr. Higgins provided, stating that if we did not hear from him by the end of the week, we would proceed to commence court proceedings to compel Clear Source to respond to the CID. (Pet. Exh. 6).

10. Out of concern that Clear Source might need additional time due to Mr. Higgins' claim that his son was hospitalized and the recent tornados in Joplin, MO, FTC staff made additional efforts to contact Mr. Higgins, telephoning on June 3 and sending him an email the same day asking him to call us if he needed additional time to respond to the CID. (A copy of this email is Pet. Exh. 7).
11. On June 13, we sent another letter to Clear Source via Certified Mail, email and facsimile, stating that we were referring Clear Source's failure to respond to the CID to the FTC's Office of General Counsel to seek court enforcement of the CID. We received a receipt indicating that the letter had been received at Clear Source on June 16, 2011. (A copy of the letter, Certified Mail form and return receipt are Pet. Exh. 8).
12. Other than this return receipt, we have not received any response to our emails, phone messages, or letters, nor do we anticipate receiving a response.
13. Clear Source has not objected to the CID on any ground, and has not petitioned the Commission to quash or limit the CID, as provided in FTC Rule 2.7(d)(1), 16 C.F.R. § 2.7(d)(1).
14. Clear Source's failure to comply with the CID has burdened, delayed, and impeded the Commission's investigation and forced the Commission to expend additional public resources. This failure prevents the Commission from assessing the legality of Clear Source's practices and prevents the Commission from completing its investigation in a timely manner.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 11, 2011.

A handwritten signature in cursive script that reads "Robin E. Eichen". The signature is written in black ink and is positioned above a horizontal line.

Robin E. Eichen

Petition Exhibit 2



CIVIL INVESTIGATIVE DEMAND

1. TO
Clear Source Research, LLC
603 N. Main Street, #350
Webb City, MO 64870

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED
 You are required to appear and testify.

LOCATION OF HEARING	YOUR APPEARANCE WILL BE BEFORE
	DATE AND TIME OF HEARING OR DEPOSITION

- You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.
- You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

APR 01 2011

3. SUBJECT OF INVESTIGATION
See attached resolution.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN
David W. Dulabon/Michael Marino
Federal Trade Commission, Northeast Region
One Bowling Green, Suite 318
New York, NY 10004

5. COMMISSION COUNSEL
David W. Dulabon
Federal Trade Commission, Northeast Region
One Bowling Green, Suite 318
New York, NY 10004
(212) 607-2814

DATE ISSUED
2/25/11

COMMISSIONER'S SIGNATURE
J. Tom Row

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by DMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NON-PUBLIC INVESTIGATION OF UNNAMED PERSONS, PARTNERSHIPS, CORPORATIONS, OR OTHERS ENGAGED IN ACTS OR PRACTICES IN VIOLATION OF TITLE V OF THE GRAMM-LEACH-BLILEY ACT AND/OR SECTION 5 OF THE FTC ACT

File No. 002 3284

Nature and Scope of Investigation:

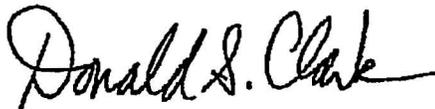
To determine whether unnamed persons, partnerships, corporations, or others have engaged in or are engaging in acts or practices in violation of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809, 6821-6827 and/or Section 5 of the FTC Act, 15 U.S.C. § 45, as amended. Such investigation shall, in addition, determine whether Commission action to obtain redress of injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory process available to it be used in connection with this investigation for a period not to exceed five (5) years from the date of issuance of this resolution. The expiration of this five (5) year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five (5) year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five (5) year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; and FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.*, and supplements thereto.

By direction of the Commission.



Donald S. Clark
Secretary

Issued: July 16, 2009

**CIVIL INVESTIGATIVE DEMAND
SCHEDULE FOR
PRODUCTION OF DOCUMENTS/ANSWERS TO WRITTEN INTERROGATORIES**

I. DEFINITIONS

As used in this Civil Investigative Demand ("CID"), the following definitions shall apply:

- A. "And," as well as "or," shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any specification in the Schedule all information that otherwise might be construed to be outside the scope of the specification.
- B. "Any" shall be construed to include the word "all," and the word "all" shall be construed to include the word "any."
- C. "CID" shall mean this Civil Investigative Demand, the attached Resolution and the Schedule, including the Definitions, Instructions, and Specifications.
- D. "Company" shall mean Clear Source Research, LLC, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates and all directors, officers, employees, agents, consultants and other persons working for or on behalf of the foregoing.
- E. The terms "customer" "customer information of a financial institution" and "financial institution" shall have the same meanings as set out in Sections 527(1), 527(2) and 527(4) of the Gramm-Leach-Bliley Act, respectively, 15 U.S.C. §§ 6827(1), 6827(2) and 6827(4).
- F. "Data broker" shall mean any person who obtains or attempts to obtain, or causes to be disclosed or attempts to cause to be disclosed to any person, customer information of a financial institution relating to another person.
- G. "Document" shall mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including but not limited to any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book or label. "Document" shall also include **Electronically Stored Information**.
- H. "Electronically Stored Information" or "ESI" shall mean the complete original and

any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any electronically created or stored information including but not limited to electronic mail, instant messaging, videoconferencing, and other electronic correspondence (whether active, archived, or in a deleted items folder), word processing files, spreadsheets, databases, and sound recordings, whether stored on cards, magnetic or electronic tapes, disks, computer files, computer or other drives, cell phones, Blackberry, PDA, or other storage media, and such technical assistance or instructions as will transform such ESI into a reasonably usable form.

- I. **"Each"** shall be construed to include **"every,"** and **"every"** shall be construed to include **"each."**
- J. **"FTC"** or **"Commission"** shall mean the Federal Trade Commission.
- K. **"GLBA"** shall mean the Gramm-Leach-Bliley Act, 15 U.S.C. § 6821, *et seq.*
- L. **"Identify"** or **"the identity of"** shall be construed to require identification of (a) natural persons by name, title, present business affiliation, present business address and telephone number, or if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, identities of natural persons who are officers, directors or managers of the business or organization, and contact persons, where applicable.
- M. **"Referring to"** or **"relating to"** shall mean discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.
- N. **"You"** and **"Your"** shall mean the person or entity to whom this CID is issued and includes the Company.

II. INSTRUCTIONS

- A. **Sharing of Information:** The Commission often makes its files available to other civil and criminal federal, state, local, or foreign law enforcement agencies. The Commission may make information supplied by you available to such agencies where appropriate pursuant to the Federal Trade Commission Act and 16 C.F.R. § 4.11(c) and (j). Information you provide may be used in any federal, state, or foreign civil or criminal proceeding by the Commission or other agencies.
- B. **Meet and Confer:** You must contact David W. Dulabon at (212) 607-2814 as soon as possible to schedule a meeting (telephonic or in person) to be held within ten (10) days after receipt of this CID in order to confer regarding your production of documents and/or information.

- C. **Applicable time period:** Unless otherwise directed in the specifications, the applicable time period for the request shall be from January 1, 2008, until the date of full and complete compliance with this Civil Investigative Demand.
- D. **Claims of Privilege:** If any material called for by this CID is withheld based on a claim of privilege or any similar claim, the claim must be asserted no later than the return date of this CID. In addition, pursuant to 16 C.F.R. § 2.8A(a), submit, together with the claim, a schedule of the items withheld stating individually as to each item:
1. the type, specific subject matter, date, and number of pages of the item;
 2. the names, addresses, positions, and organizations of all authors and recipients of the item; and
 3. the specific grounds for claiming that the item is privileged.

If only some portion of any responsive material is privileged, all non-privileged portions of the material must be submitted. A petition to limit or quash this CID shall not be filed solely for the purpose of asserting a claim of privilege. 16 C.F.R. § 2.8A(b).

- E. **Document Retention:** You shall retain all documentary materials used in the preparation of responses to the specifications of this CID. The Commission may require the submission of additional documents at a later time during this investigation. Accordingly, you should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether you believe such documents are protected from discovery by privilege or otherwise. See 15 U.S.C. § 50; see also 18 U.S.C. §§ 1505, 1519.
- F. **Petitions to Limit or Quash:** Any petition to limit or quash this CID must be filed with the Secretary of the Commission no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition shall set forth all assertions of privilege or other factual and legal objections to the CID, including all appropriate arguments, affidavits, and other supporting documentation. 16 C.F.R. § 2.7(d).
- G. **Modification of Specifications:** If you believe that the scope of the required search or response for any specification can be narrowed consistent with the Commission's need for documents, you are encouraged to discuss such possible modifications of this request, including any modifications of definitions and instructions, with David W. Dulabon (212) 607-2814. All such modifications must be agreed to in writing by an Associate Director, Regional Director, or Assistant Regional Director. 16 C.F.R. § 2.7(c).
- H. **Certification:** A responsible corporate officer or a duly authorized manager of Clear Source Research, LLC shall certify that the responses to this CID are complete. This

certification shall be made in the form set out on the back of the CID form, or by a declaration under penalty of perjury as provided by 18 U.S.C. § 1746.

- I. **Scope of Search:** This CID covers documents in your possession or under your actual or constructive custody or control including, but not limited to, documents in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, and other agents and consultants, whether or not such documents were received from or disseminated to any person or entity.
- J. **Document Production:** You shall produce the documentary material by making all responsive documents available for inspection and copying by the Commission's staff at your principal place of business. Alternatively, you may elect to send all responsive documents to Michael W. Marino, Federal Trade Commission-Northeast Region, One Bowling Green, Suite 318, New York, NY 10004. Because postal delivery to the Commission is subject to delay due to heightened security precautions, please use a courier service such as Federal Express or UPS. Notice of your intended method of production shall be given by mail or telephone to David W. Dulabon at (212) 607-2814 or Robin E. Eichen at (212) 607-2803 at least five days prior to the date of return.
- K. **Document Identification:** Documents that may be responsive to more than one specification of this CID need not be submitted more than once; however, your response should indicate, for each document submitted, each specification to which the document is responsive. If any documents responsive to this CID have been previously supplied to the Commission, you may comply with this CID by identifying the document(s) previously provided and the date of submission. Documents should be produced in the order in which they appear in your files and without being shuffled or otherwise rearranged; if documents are removed from their original folders, binders, covers, or containers in order to be produced, then the documents shall be identified in a manner so as to clearly specify the folder, binder, cover, or container from which such documents came. In addition, number by page all documents in your submission and indicate the total number of documents in your submission.
- L. **Production of Copies:** Unless otherwise stated, legible photocopies may be submitted in lieu of original documents, provided that the originals are retained in their state at the time of receipt of this CID. Further, copies of original documents may be submitted in lieu of originals only if they are true, correct, and complete copies of the original documents; provided, however, that submission of a copy shall constitute a waiver of any claim as to the authenticity of the copy should it be necessary to introduce such copy into evidence in any Commission proceeding or court of law; and provided further that you shall retain the original documents and produce them to Commission staff upon request. Copies of marketing materials and advertisements shall be produced in color, and copies of other materials shall be produced in color if necessary to interpret them or render them intelligible.
- M. **Submission of Electronically Stored Information ("ESI"):** The following guidelines

refer to any ESI you submit. But, before submitting any ESI, you must confirm with the FTC that the proposed formats and media types that contain such ESI will be acceptable to the government.

1. Magnetic and other electronic media types accepted
 - (a) CD-R CD-ROMs formatted to ISO 9660 specifications.
 - (b) DVD-ROM for Windows-compatible personal computers.
 - (c) IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data.

Note: Other types of tape media used for archival, backup or other purposes such as 4mm & 8mm DAT and other cassette, mini-cartridge, cartridge, and DAT/helical scan tapes, DLT or other types of media accepted only with prior approval.

2. File and record formats

- (a) E-mail: The FTC accepts MS Outlook PST files, MS Outlook MSG files, Lotus Notes NSF files. Any other electronic submission of email accepted only with prior approval.
- (b) Scanned Documents: Image submissions accepted with the understanding that unreadable images will be resubmitted in original, hard copy format in a timely manner. Scanned Documents must adhere to the following specifications:
 - (i) All images must be multi-page, 300 DPI-Group IV TIFF files named for the beginning bates number.
 - (ii) If the full text of the Document is available, that should be provided as well. The text should be provided in one file for the entire Document or email, named the same as the first TIFF file of the document with a *.TXT extension.

Note: Single-page, 300 DPI-Group IV TIFF files may be submitted with prior approval if accompanied by an acceptable load file such as a Summation or Concordance image load file which denotes the appropriate information to allow the loading of the images into a Document management system with all Document breaks (document delimitation) preserved. OCR accompanying single-page TIFF submissions should be located in the same folder and named the same as the corresponding TIFF page it was extracted from, with a *.TXT extension.

- (c) Other ESI files: The FTC accepts word processing Documents in ASCII text, WordPerfect version X3 or earlier, or Microsoft Word 2003 version or earlier. Spreadsheets should be in MS Excel 2003 (*.xls) version or earlier. Database files should be in MS Access 2003 or earlier. PowerPoint presentations may be submitted in MS PowerPoint 2003 or earlier. Other proprietary formats for PC files should not be submitted without prior approval. Files may be submitted using the compressed ZIP format to reduce size and ease portability. Adobe Acrobat PDF (*.pdf) may be submitted where the normal business practice storage method is PDF.

Note: Database files may also be submitted with prior approval as delimited ASCII text files, with field names as the first record, or as fixed-length flat files with appropriate record layout. For ASCII text files, field-level documentation should also be provided and care taken so that delimiters and quote characters do not appear in the data. The FTC may require a sample of the data to be sent for testing.

3. Security

- (a) All submissions of ESI to the FTC must be free of computer viruses. In addition, any passwords protecting Documents or files must be removed or provided to the FTC.
- (b) Magnetic media shall be carefully packed to avoid damage and must be clearly marked on the outside of the shipping container: **MAGNETIC MEDIA - DO NOT X-RAY, MAY BE OPENED FOR POSTAL INSPECTION.**

- N. **Sensitive Personally Identifiable Information**: If any material called for by these requests contains sensitive personally identifiable information of any individual, please contact us before sending those materials to discuss ways to protect that information during production.

For purposes of these requests, sensitive personally identifiable information includes: an individual's Social Security number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver's license number or other state identification number, or a foreign country equivalent, passport number, financial account number, credit card number, or debit card number.

- O. **Information Identification**: Each specification and sub-specification of this CID shall be answered separately and fully in writing under oath. All information submitted shall be clearly and precisely identified as to the specification(s) or sub-specification(s) to which it is responsive.

- P. **Certification of Records of Regularly Conducted Activity:** Attached is a Certification of Records of Regularly conducted Activity, which may reduce the need to subpoena the Company to testify at future proceedings in order to establish the admissibility of documents produced in response to this CID. You are asked to execute this Certification and provide it with your response.

III. SPECIFICATIONS FOR WRITTEN INTERROGATORIES

- A. State the Company's complete legal name and all other names under which it does or has done business, its corporate mailing address, its principal place of business, all addresses from which it does or has done business, and the dates and states of its incorporation.
- B. State the structure, organization, and makeup of the Company; identify all current owners, officers, directors, managers, supervisors, independent contractors, and employees of the Company; and list all of the Company's office locations.
- C. Identify all former employees and independent contractors of the Company since January 1, 2007.
- D. List all the products and services offered and/or sold by the Company, including, but not limited to, those products and services related to the offer, sale, provision, purchase, or acquisition of, or search for, customer information of a financial institution. Include a separate description of each product and service you list. In your response:
1. If you provide the product or service only to particular type(s) of clients, describe the type(s) to whom you provide each product or service; and
 2. Describe how your clients access the Company's services and explain the flow of data from the initial request made to the Company to the furnishing of information to the client.
- E. With respect to the Company's offer, sale, provision, purchase, or acquisition of, or search for, customer information of a financial institution during the applicable time period:
1. State and describe in detail how the Company obtains bank account balance, bank account numbers, and other customer information of a financial institution for clients purchasing such information from the Company;
 2. Set forth and describe any and all databases, records, or other sources of information used, in whole or in part, for procuring customer information of financial institutions;
 3. Identify all individuals or entities that the Company utilizes, employs, contracts, or interacts with to obtain customer information of a financial institution,

including, but not limited to, bank account balance and bank account numbers of customers for clients purchasing such information from the Company;

4. Describe the nature of any communications between the Company and any financial institution to obtain customer information of a financial institution, including, but not limited to, bank account balance and bank account numbers of customers for clients purchasing such information from the Company;
5. Identify all individuals whose customer information of a financial institution was obtained. In your response, also state the following:
 - a. The name of the financial institution from which the information was obtained;
 - b. The address of the financial institution from which the information was obtained;
 - c. The type of customer information provided, purchased, acquired, or searched for by the Company for each individual, including, but not limited to, bank account balances, bank account numbers, debits, credits, and all other transactions; and
 - d. The purpose for which the search was conducted.
6. Identify any individuals or entities for which the Company specifically declined or refused to perform searches or provide customer information of financial institutions, and describe the circumstances surrounding the decision not to provide service;
7. Identify all financial institutions from which the Company was not able to obtain customer information for whatever reason and state the reason why the Company was not able to obtain such customer information of a financial institution;
8. Identify all clients for which the Company has performed searches for customer information of financial institutions;
9. Set forth and describe all categories of searches of customer information of a financial institution offered by the Company, including but not limited to:
 - (a) asset searches; and
 - (b) bank account locator searches.

For each such category identified, state (1) who, within or on behalf of the Company, conducts the searches; (2) what information is provided to the client; and (3) what steps, if any, the Company takes to ascertain the use to which the

client puts the information supplied by the Company;

10. Identify the persons responsible for the Company's compliance with Section 521 of the GLBA, 15 U.S.C. § 6821, and related obligations; and
11. Describe in detail any policies, practices, and procedures implemented by the Company to ensure compliance with the GLBA. In your response, state what specific steps are taken by the Company to ensure compliance with the GLBA whenever a search for customer information of financial institutions is undertaken.

F. For each response to a specification or subspecification in the Specifications for Documentary Material, identify the Company's employees or individuals who are most knowledgeable about and can best discuss the content and use of the documents produced.

IV. SPECIFICATIONS FOR DOCUMENTARY MATERIAL

A. Produce all documents and ESI from January 1, 2010 to the present that concern, reflect, or relate to the Company's offer, sale, provision, purchase or acquisition of, or search for, customer information of a financial institution, including but not limited to:

1. All documents and ESI relating to asset searches; asset discovery; bank account searches; or any other searches for customer information of a financial institution;
2. All documents and ESI constituting or reflecting contract(s) or agreement(s) between the Company and any other party, including but not limited to any data broker or any financial institution, relating to the provision of customer information of financial institutions, and amendments and/or other revisions to such contract(s) or agreement(s);
3. All documents and ESI relating to orders or requests to the Company for customer information of a financial institution, including, but not limited to, copies of judgments or court orders;
4. All documents and ESI relating to orders or requests by the Company for customer information of a financial institution, including, but not limited to, copies of judgments or court orders;
5. All correspondence between the Company and any party relating to orders or requests for customer information of a financial institution;
6. For each search request for customer information of financial institutions received by the Company,

- a. all documents and ESI relating to the name(s), address(es), and all other identifying information, except Social Security numbers, on the subject(s) of the requested search;
 - b. all documents and ESI relating to the results of the search;
 - c. all other documentation with respect to that search, including, but not limited to, the identity of the individual who placed each order and the purpose of the order; and
 - d. all documents and ESI relating to any credit reports of individuals whose customer information was the subject of a search request;
- 7. All advertisements;
 - 8. All financial records and accounting data, including but not limited to all invoices and other billing records for services performed; and
 - 9. All other documents and ESI that relate to the Company's provision of customer information of financial institutions.
- B. Produce all documents and ESI relating to any policies, practices, and procedures implemented by the Company to ensure compliance with the GLBA.
 - C. Produce all documents and ESI relating to disputes and/or complaints about the Company's use or provision of customer information of financial institutions, including, but not limited to, complaints received by the Company in connection with its provision of such information.
 - D. Produce all documents and ESI relating to the methods used by the Company or any data broker in obtaining any customer information of any financial institution.
 - E. Produce all documents and ESI relating to the number of search requests received by the Company or placed by the Company for customer information of financial institutions.
 - F. Produce all documents and ESI relating to 15 U.S.C. § 6821, the section of the GLBA regarding privacy protection for customer information of financial institutions.
 - G. Produce all documents and ESI identified, referenced or otherwise cited to in your responses to the Specifications for Written Interrogatories contained in this Civil Investigative Demand.

CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY

Pursuant to 28 U.S.C. § 1746

1. I, _____, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by _____ and attached hereto.
3. The documents produced and attached hereto by _____ are originals or true copies of records of regularly conducted activity that:
 - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
 - b) Were kept in the course of the regularly conducted activity of _____; and
 - c) Were made by the regularly conducted activity as a regular practice of _____.

I certify under penalty of perjury that the foregoing is true and correct.

Executed on _____, 2011.

Signature

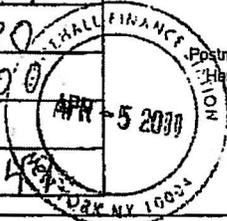
Petition Exhibit 3

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Sent To
 Clear Source Research, LLC
 Street, Apt. No.,
 or PO Box No. 603 N. MAIN Street, #350
 City, State, ZIP+4 WEBB CITY, MO 64870

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature X <i>A. M. G. [Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>
<p>1. Article Addressed to:</p> <p>Clear Source Research, LLC 603 N. Main Street, #350 Webb City, MO 64870</p>	<p>B. Received by (Printed Name) C. Date of Delivery <i>Adyson Morbey</i> <i>4-11-11</i></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>2. Article Number (Transfer from service label)</p>	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>7011 0110 0000 8553 1278</p>	

PS Form 3811, February 2004

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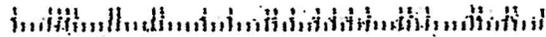
• Sender: Please print your name, address, and ZIP+4 in this box •

FEDERAL TRADE COMMISSION
ATTN: Robin Eichen, Esq.
One Bowling Green Suite 318
New York, New York 10004-1415

RECEIVED

APR 14 2011

FEDERAL TRADE COMMISSION
NEW YORK



Facsimile Cover Sheet



FEDERAL TRADE COMMISSION

Northeast Region
One Bowling Green - Suite 318
New York, New York 10004
(212) 607-2829

NOTICE! This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that reading, disseminating, distributing or copying this communication is strictly prohibited. If you have received this communication in error, please IMMEDIATELY notify the sender by telephone and return the original message to us at the above address by mail. Thank

TO: Clear Source Research, LLC

Tel. # : (866) 553-2888 _____ Fax # : (213) 232-3711

FROM: Robin E. Eichen

Tel. # : (212) 607-2803 Fax # : (212) 607-2822

SUBJECT: The FTC Civil Investigative Demand served on March 5, 2011

DATE: April 5, 2011

TIME: 2:00 PM

NO. OF PAGES TO FOLLOW:

MESSAGE: See accompanying letter re: failure to respond.



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
NORTHEAST REGION

One Bowling Green
Suite 318
New York, NY 10004
(212) 607-2829

Leonard L. Gordon
Regional Director

April 5, 2011

Via Facsimile at 213-232-3711 and Certified U.S. Mail

Clear Source Research, LLC
603 N. Main Street, #350
Webb City, MO 64870

Dear Sir:

You have failed to timely comply with the attached Civil Investigative Demand ("CID") issued by the Federal Trade Commission ("FTC") to Clear Source Research, LLC ("Clear Source"). According to the United States Postal Inspection Service's tracking records, the attached CID was delivered to your office on March 5, 2011, and signed for by "A. Mertens." As specified by the CID, your response was due by April 1, 2011. On March 25, 29, and 31, 2011, FTC staff attorney, Robin Eichen called and left messages on the voicemail for (866)553-2888, the phone number listed on Clear Source's order form. On April 1, 2011, an unidentified man stated that he has been unavailable because his son is hospitalized and he has been traveling. Robin Eichen has returned this call on two occasions on April 4, 2011 and once on April 5, 2011, with no response.

Unless you contact this office by **April 8, 2011** to make arrangement to provide responsive materials to the attached CID, I will refer this matter to our Office of the General Counsel with a recommendation for court enforcement. If you wish to avoid a court enforcement proceeding, you should contact staff attorney **Robin Eichen**, at 212-607-2803, concerning this matter.

Very truly yours,

Leonard L. Gordon
Director

Petition Exhibit 4

Eichen, Robin E.

From: Clear Source <contact@clearsourcedata.com>
Sent: Monday, April 11, 2011 3:56 PM
To: Eichen, Robin E.
Subject: Request

Robin,

I respectfully request an extension of time in relation to the CID my company (Clear Source Research) has received. I was unable to appropriately respond to the CID in the time frame on the paperwork due to the fact that my oldest son has been hospitalized. I have had to make medical decisions and have been doing a lot of traveling to facilitate his treatment. In fact, I have had to send him to a facility over 5 ½ hours away in Western Kansas.

I will, as per our conversation today, begin to get the answers to the in Specifications for Written Interrogatories on page 7 of the CID compiled and to you within the 2 week time frame we discussed, as well as the samples of the reports to you within the 3 week time frame we discussed as well.

Thank you for taking the time to go through the CID with me today. I know we were only able to highlight the various parts, but it doesn't seem as daunting now.

Sincerely,

Mark Higgins
Clear Source Research
866-553-2888 Phone
866-596-5627 Phone
213-232-3711 Fax

Petition Exhibit 5

Eichen, Robin E.

From: Gordon, Leonard
Sent: Tuesday, April 12, 2011 8:59 AM
To: 'contact@clearsourcedata.com'
Cc: Eichen, Robin E.; Dulabon, David W.
Subject: Clear Source Research, LLC Extension of Time

Mr. Higgins:

In response to your April 11, 2011 request for an extension of time to respond to the Federal Trade Commission's Civil Investigative Demand ("CID"), the FTC hereby grants Clear Source Research, LLC ("Clear Source") an extension until **Monday, April 25, 2011** to respond to the Interrogatories contained in the CID. The FTC hereby grants Clear Source a further extension until **Monday, May 2, 2011** to produce a written response to the FTC's Document Demands and samples of documents responsive to each specification, and an extension until **Monday, May 9, 2011** to produce the remainder of the documents related to the Interrogatories and any other responsive documents.

Please contact FTC staff attorney Robin E. Eichen at (212) 607-2803 should you wish to discuss the CID further.

LLG

Leonard L. Gordon
Director, Northeast Regional Office
Federal Trade Commission
One Bowling Green, Suite 318
New York, NY 10004
212-607-2801
917-208-3146 (cell)
lgordon@ftc.gov

Petition Exhibit 6

Eichen, Robin E.

From: Eichen, Robin E.
Sent: Tuesday, May 17, 2011 6:22 PM
To: 'Clear Source'
Cc: Dulabon, David W.
Subject: Clear Source Research CID response not received
Importance: High

Tracking: **Recipient** **Delivery** **Read**
 'Clear Source'
 Dulabon, David W. Delivered: 5/17/2011 6:22 PM Read: 5/17/2011 6:37 PM

Mr. Higgins:

We have not received your company's responses to the Federal Trade Commission's Civil Investigative Demands. If they were lost in transit, please let us know immediately. Under the extension granted by Leonard Gordon, our Regional Director, you were required to respond to the FTC's written interrogatories no later than April 25, 2011. In addition, you were required to provide us with a written response to the FTC's document demands and samples of responsive documents by May 2, 2011. Finally, you were required to provide us with the remainder of the responsive documents no later than May 9, 2011.

If we do not hear from you this week, we will proceed to commence court proceedings to compel you to respond to our CIDs.

Please call me at the phone number below at your earliest opportunity.

Robin E. Eichen
Federal Trade Commission
One Bowling Green
Suite 318
New York, NY 10004
phone: 212-607-2803
facsimile: 212-607-2822
reichen@ftc.gov

Petition Exhibit 7

Eichen, Robin E.

From: Dulabon, David W.
Sent: Friday, June 03, 2011 11:49 AM
To: 'contact@clearsourcedata.com'
Cc: Dulabon, David W.; Eichen, Robin E.
Subject: Clear Source Research, LLC - FTC Civil Investigative Demand Follow-Up

Importance: High

Mr. Higgins,

I am the lead attorney on a non-public, confidential investigation that resulted in the issuance of a Civil Investigative Demand ("CID") by the Federal Trade Commission ("FTC") to Clear Source Research, LLC ("Clear Source").

The initial due date for Clear Source's response to the FTC's CID was April 1, 2011. After a series of communications between you and my colleague, Robin Eichen, the FTC granted Clear Source additional time to respond to the CID, via our Regional Director Leonard Gordon. On April 12, 2011, the FTC granted Clear Source the following extensions: (1) an extension until Monday, April 25, 2011 to respond to the Interrogatories contained in the CID; (2) an extension until Monday, May 2, 2011 to produce a written response to the FTC's Document Demands and samples of documents responsive to each specification; and (3) an extension until Monday, May 9, 2011 to produce the remainder of the documents related in the Interrogatories and any other responsive documents.

A full month has almost passed since the last extended deadline listed above, but we have not yet received any response from Clear Source. Ms. Eichen and I have left numerous messages with Clear Source since May 9, 2011, but no one from Clear Source has returned our calls.

Ms. Eichen did inform me that you were not able to respond to the CID in the time frame required due to the fact that your son has been hospitalized. We are mindful of the personal commitments you have at this time, and we wish you and your son all the best. We also are mindful of the severe weather your region of the country has experienced over the past month, and we hope that you have not been negatively impacted by the recent storms.

In light of the personal commitments you have relating to your son's hospitalization and in the event the recent storms in your area impacted you and Clear Source, we are more than happy to grant additional time for you to respond to the FTC's CID. We simply ask that you either call me (212-607-2814) or Ms. Eichen (212-607-2803) or send me an email (ddulabon@ftc.gov) to let us know the current status of Clear Source's responses to the FTC's CID and how much additional time Clear Source may need to respond to the CID. We respectfully request that you call or email us by Friday, June 10, 2011, so we can arrange any further revised deadlines.

Also, if you have any further questions about the CID or require clarification on what the CID requires, we are more than happy to discuss this with you, as well.

Thank you very much for your attention to this matter. We wish you all the best in your personal matters, and we look forward to hearing from you soon.

David W. Dulabon
Federal Trade Commission-Northeast Region
Alexander Hamilton U.S. Custom House
One Bowling Green, Suite 318
New York, NY 10004
(212) 607-2814 (Direct)
(212) 607-2822 (Fax)

Petition Exhibit 8

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Sent To Clear Source Research, LLC ATTN: MARIS HIGGINS

Street, Apt. No., or PO Box No. 603 N. MAIN ST. #350

City, State, ZIP+4 WEBB CITY, MO 64870

PS Form 3800, August 2006 See Reverse for Instructions

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1. Article Addressed to:
Clear Source Research, LLC
603 N. Main Street, #350
Webb City, MO 64870
ATTN: Mark Higgins

COMPLETE THIS SECTION ON DELIVERY

A. Signature
 A. McERTAIN Agent
 Addressee

B. Received by (Printed Name) *Alysen McERTAIN* C. Date of Delivery *10-15-11*

D. Is delivery address different from Item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

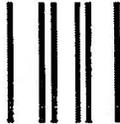
2. Article Number (transfer from service label) **7011 0110 0000 8553 1308**

PS Form 3811, February 2004

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Robin Eichen, Esq.
FEDERAL TRADE COMMISSION
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FEDERAL TRADE COMMISSION

Northeast Region
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(212) 607-2829

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TO: Clear Source Research, LLC

Tel. # : (866) 553-2888 _____ Fax # : (213) 232-3711

FROM: Robin E. Eichen

Tel. # : (212) 607-2803 Fax # : (212) 607-2822

SUBJECT: The FTC Civil Investigative Demand served on March 5, 2011

DATE: June 13, 2011

TIME: 2:45 PM

NO. OF PAGES TO FOLLOW:

MESSAGE: See accompanying letter re: failure to respond.

*** TX REPORT ***

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
NORTHEAST REGION

One Bowling Green
Suite 318
New York, NY 10004
(212) 607-2829

Leonard L. Gordon
Regional Director

June 13, 2011

Via Facsimile at 213-232-3711 and Certified U.S. Mail

Clear Source Research, LLC
603 N. Main Street, #350
Webb City, MO 64870
Attention: Mark Higgins

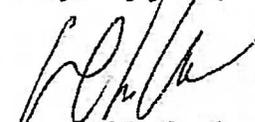
Dear Mr. Higgins:

You have failed to timely comply with the attached Civil Investigative Demand ("CID") issued by the Federal Trade Commission ("FTC") to Clear Source Research, LLC ("Clear Source"). Upon your request for an extension of time to answer the CID, we agreed to extend your time until: (a) April 25 to respond to the Interrogatories contained in the CID; (b) May 2 to produce a written response to the FTC's Document Demands and samples of documents responsive to each specification; and (c) May 9 to produce the remainder of the documents related to the Interrogatories and other responsive documents.

The deadlines for your responses, as extended, have long since passed, and we have not heard from you in response to our repeated phone and email messages to your office.

This matter has now been referred to our Office of the General Counsel with a recommendation for court enforcement. If you wish to avoid a court enforcement proceeding, you should contact staff attorney **Robin Eichen**, at 212-607-2803, concerning this matter.

Very truly yours,



Leonard L. Gordon
Director

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

FEDERAL TRADE COMMISSION,)	
)	
)	
Petitioner,)	
)	Misc. No.
v.)	
)	
CLEAR SOURCE RESEARCH, LLC,)	
)	
Respondent.)	

**MEMORANDUM IN SUPPORT OF PETITION OF THE
FEDERAL TRADE COMMISSION FOR AN ORDER TO ENFORCE
CIVIL INVESTIGATIVE DEMAND**

Petitioner, the Federal Trade Commission (“FTC” or “Commission”), pursuant to Section 20 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 57b-1, petitions this Court for an Order requiring Respondent, Clear Source Research, LLC (“Clear Source”), to comply with a civil investigative demand (“CID”). The CID was issued in the course of a non-public investigation concerning possible violations by Clear Source of Section 521 of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6821, with respect to obtaining customer information from financial institutions under false pretenses, an illegal practice known as “pretexting.” Clear Source’s absolute failure to respond to the CID greatly impedes the Commission's ongoing investigation.

This proceeding is properly instituted by a petition and order to show cause (rather than by complaint and summons) and is summary in nature; discovery or evidentiary hearings may be granted only upon a showing of exceptional circumstances. *See, e.g., FTC v. Carter*, 636 F.2d 781, 789 (D.C. Cir. 1980); *FTC v. MacArthur*, 532 F.2d 1135, 1141-42 (7th Cir. 1976); *United States v. Litton Industries, Inc.*, 462 F.2d 14, 17 (9th Cir. 1972); *see also United States v. Markwood*, 48 F.3d 969, 981-82 (6th Cir. 1995); *Appeal of FTC Line of Business Report Litigation*, 595 F.2d 685, 704-05 (D.C. Cir. 1978). Because the CID was lawfully issued, the information and documents sought are relevant to the Commission’s investigation, and responding to the CID would not unduly burden Clear Source, the Court should (1) order Clear Source to show cause why it should not fully comply, and (2) thereafter enforce the CID. *See, e.g., Fresenius Medical Care v. United States*, 526 F.3d 372, 375 (8th Cir. 2008).

JURISDICTION

The Commission is an administrative agency of the United States, organized and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.* The Commission is authorized and directed by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prohibit unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. The Commission is also authorized and directed by Section 522 of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6822, to use the powers and authority granted it by the FTC Act to enforce the requirements of that Act.

The authority of the Commission to issue a CID, and the jurisdiction and venue of this Court to enter an order enforcing it, are conferred by Section 20(c) of the FTC Act, 15 U.S.C. § 57b-1(c), which empowers the Commission to issue CIDs to compel, *inter alia*, the production of documentary evidence and responses to written interrogatories. Sections 20(e) and (h) of the FTC Act, 15 U.S.C. §§ 57b-1(e) and (h), authorize the Commission to invoke the aid of the district courts to enforce a CID in any jurisdiction in which the recipient of a CID “resides, is found, or transacts business.” They also authorize the Commission to seek enforcement of a CID in its own name using its own counsel. *Id.*

In this case, venue and jurisdiction are proper under Section 20(e) because Clear Source is found, and transacts business, in this district. Pet. Exh. 1, ¶ 3.¹

STATEMENT OF FACTS

Clear Source is a limited liability company located at 603 N. Main Street, #350, Webb City, Missouri, 64870. Pet. Exh. 1, ¶ 3. Mark Higgins is the owner and sole full-time employee of Clear Source. Pet. Exh. 1, ¶ 7. In the ongoing investigation, the Commission seeks to determine whether Clear Source has engaged in pretexting in violation of Section 521 of the Gramm-Leach-Bliley Act, 15

¹ Exhibits to the Commission’s Petition are referred to as “Pet. Exh.”

U.S.C. § 6821, in connection with Clear Source's sale of individual consumers' financial information to its clients without individual consumers' consent. Pet. Exh. 1, ¶ 1.

On March 5, 2011, the Commission served Clear Source with the CID that is the subject of this proceeding. Pet. Exh. 1, ¶ 4. The CID directed the production of certain documents and responses to written interrogatories, with a return date of April 1, 2011. Pet. Ex. 1, ¶ 4; Pet. Exh. 2. The instant CID was issued pursuant to the authority of a Commission resolution dated July 16, 2009. Pet. Exh. 2. The 2009 resolution directed that compulsory process be used to investigate, among other things, "whether unnamed persons, partnerships, corporations, or others have engaged in or are engaging in acts or practices in violation of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809, 6821-6827 and/or Section 5 of the FTC Act, 15 U.S.C. § 45, as amended. Such investigation shall, in addition, determine whether Commission action to obtain redress of injury to consumers or others would be in the public interest." Pet. Exh. 2. Including all sub-parts, the CID contains twenty-five written interrogatory specifications and twenty document production requests. The information sought concerns Clear Source's business, its practices relating to obtaining customer information from financial institutions, and its compliance with the Gramm-Leach-Bliley Act, among others. Pet. Exh. 2.

The return date for the responses to the CID was April 1, 2011. Pet. Exh 1, ¶ 4; Pet. Exh. 2. At Mr. Higgins's request, this return date was extended in a series of deadlines ending on May 9, 2011. Pet. Exh. 1, ¶ 8. Clear Source has not objected to the CID on any ground, and has not petitioned to quash or limit the CID as provided in FTC Rule 2.7(d)(1), 16 C.F.R. § 2.7(d)(1). Pet. Exh. 1, ¶ 13. Nonetheless, Clear Source has not produced any of the information or documents required by the CID. Pet. Exh 1, ¶¶ 9, 12. Indeed, since providing the requested extension of time, FTC staff has not been able to speak directly with Mr. Higgins regarding the failure of Clear Source to respond to the CID. Pet. Exh. 1, ¶¶ 9-12.

ARGUMENT

I. THE SCOPE OF ISSUES CONSIDERED IN PROCEEDINGS TO ENFORCE COMPULSORY PROCESS IS NARROW.

Although “the court's function is ‘neither minor nor ministerial,’ the scope of issues which may be litigated in a [compulsory process] enforcement proceeding must be narrow, because of the important governmental interest in the expeditious investigation of possible unlawful activity.” *FTC v. Texaco, Inc.*, 555 F.2d 862, 872 (D.C. Cir. 1977) (*en banc*) (internal citation omitted). This Court’s role in a CID enforcement proceeding is thus limited to determining whether the Commission demonstrates that: (1) the CID was issued pursuant to lawful authority; (2) the CID was issued for a lawful purpose; (3) the CID requests information relevant to the lawful purpose; and (4) the information sought is not unreasonable. *See Fresenius Medical Care*, 526 F.3d at 375; *see also United States v. McDonnell Douglas Corp.*, 751 F.2d 220, 226 (8th Cir. 1984) (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 65-53 (1950); *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 208-09 (1946)); *Blue Ribbon Quality Meats, Inc. v. FTC*, 434 F. Supp. 159, 162 (W.D. Mo. 1976). “The showing of reasonable cause required to support an application for enforcement of a subpoena duces tecum ‘is satisfied ... by the court's determination that the investigation is authorized by Congress, is for a purpose Congress can order, and the documents sought are relevant to the inquiry.’” *Donovan v. Shaw*, 668 F.2d 985, 989 (8th Cir. 1982) (quoting *Oklahoma Press Publishing Co. v. Walling*, 327 U.S. 186, 209 (1946)).

The government’s burden to demonstrate that these requirements have been satisfied requires only a “minimal showing” and can be demonstrated by an affidavit of an investigating agent. *United States v. Norwood*, 420 F.3d 888, 892 (8th Cir. 2005) (quoting *United States v. Moon*, 616 F.2d 1043, 1046 (8th Cir. 1980)). Here, as set forth in the accompanying declaration of Robin E. Eichen, Pet. Exh.

1, the Commission has readily demonstrated that the requirements for enforcement are satisfied.

II. THE CIVIL INVESTIGATIVE DEMAND SHOULD BE ENFORCED.

A. The Civil Investigative Demand Was Issued Pursuant to Lawful Authority.

The Commission's authority to issue the CID is clear. *See* 15 U.S.C. §§ 43, 57b-1, 6822. Also without doubt is the Commission's authority to investigate acts and practices that may violate § 5(a) of the FTC Act. *See FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089-90 (D.C. Cir. 1992); *FTC v. Ken Roberts Co.*, 276 F.3d 583, 586-87 (D.C. Cir. 2001); *Carter*, 636 F.2d at 787-88. The Commission's authority to issue the CID and investigate acts or practices that may violate the Gramm-Leach-Bliley Act is equally clear under 15 U.S.C. § 6822, which, by reference to the Fair Debt Collection Practices Act, provides that "All of the functions and powers of the Commission under the [FTC Act] are available to the Commission to enforce compliance by any person with this subchapter." 15 U.S.C. § 1692l (cited in 15 U.S.C. § 6822).

Further, the CID was issued pursuant to lawful authority because it was issued consistent with FTC regulations and procedures. The CID was issued pursuant to a valid Commission resolution authorizing the issuance of compulsory process for possible violations of the Gramm-Leach-Bliley Act and the FTC Act. Pet. Exh. 2. The CID was signed by a Commissioner and was served by the Commission's Secretary, as provided in the Commission's Rules. *See* 16 C.F.R. § 2.7. The procedural requirements for the CID were therefore followed.

B. The CID Was Issued for a Lawful Purpose.

The purpose of an FTC investigation is defined by the compulsory process resolution that authorizes the CID. *Invention Submission Corp.*, 965 F.2d at 1088; *Texaco*, 555 F.2d at 874. The purpose of this investigation, as defined by the supporting compulsory process resolution, is to determine "whether unnamed persons, partnerships, corporations, or others have engaged in or are

engaging in acts or practices in violation of Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801-6809, 6821-6827 and/or Section 5 of the FTC Act, 15 U.S.C. § 45, as amended. Such investigation shall, in addition, determine whether Commission action to obtain redress of injury to consumers or others would be in the public interest.” Pet. Exh. 2. This is a lawful purpose because Congress has authorized the FTC to serve as the primary administrative enforcer for Section 521 of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6821-6822, and the sole enforcer for the FTC Act. Nor can there be an argument that the resolution is invalid. The resolution was issued on July 16, 2009 and remains in effect for a period of five years from the date of issuance. Pet. Exh. 2. Thus, the resolution provides a lawful and valid purpose for the CID.

C. The CID Seeks Information That is Reasonably Relevant to the Commission’s Investigation.

The CID in this case is designed to determine whether Clear Source is engaged in pretexting, the practice of obtaining customer information of a financial institution under false pretenses in violation of Section 521 of the Gramm-Leach-Bliley Act.. Pet. Exh. 1, ¶ 1. To this end, the CID requests information about such topics as Clear Source’s business, its practices relating to searching for and obtaining customer information from financial institutions, its communications and relationships with clients and with financial institutions, and its compliance with the Gramm-Leach-Bliley Act, among others.

Plainly, the information sought by the CID is reasonably relevant to the Commission’s investigation, as it is designed to assist the Commission in ascertaining whether “the law is being violated in some way and . . . to determine whether or not to file a complaint.” *Invention Submission Corp.*, 965 F.2d at 1090. As set forth in the accompanying declaration of the Commission’s attorney, Ms. Eichen, the Commission, through specific interrogatories and document requests, seeks to

ascertain whether or not Clear Source is violating the Gramm-Leach-Bliley Act by obtaining customer information from financial institutions under false pretenses. Pet. Exh. 1, ¶ 4; Pet. Exh. 2. This information is “reasonably relevant to an authorized investigation.” *Fresenius Medical Care*, 526 F.3d at 375 (citing *EEOC v. Technocrest Sys., Inc.*, 448 F.3d 1035, 1040 (8th Cir. 2006)).

D. The Information Sought is not Unreasonable.

The CID contains twenty-five written interrogatory specifications and twenty document production requests. The information sought concerns Clear Source’s business, its practices relating to obtaining customer information from financial institutions, and its compliance with the Gramm-Leach-Bliley Act, among others. These demands are clearly stated and are not unreasonable.

Moreover, Clear Source or Mr. Higgins have not claimed that the CID is unreasonable. As Ms. Eichen’s declaration states, she and Mr. Higgins had a telephone conference in which she explained the CID specifications and Mr. Higgins indicated that he understood them and agreed to comply with them. Pet. Exh. 1, ¶ 8. In a follow-up e-mail to Ms. Eichen, Mr. Higgins thanked Ms. Eichen for reviewing the CID and stated that the CID “doesn’t seem as daunting now,” an indication that Mr. Higgins understood the CID requirements.² Pet. Exh. 4.

Considering the plain text of the CID and the fact that Mr. Higgins indicated to FTC staff that he understood and agreed to the specifications, the information sought by the CID is not unreasonable.

² Even if Clear Source objected to the CID as unreasonable or burdensome, these objections could not properly be presented to the Court in the instant proceeding because its opportunity to seek administrative relief from the Commission (a predicate to seeking judicial relief) has passed. *See FTC v. O’Connell Assocs., Inc.*, 828 F. Supp. 165, 168 (E.D.N.Y. 1993); Commission Rule 2.7(d)(1), 16 C.F.R. § 2.7(d)(1) (petitions to quash or limit subpoena “shall be filed with the Secretary of the Commission within twenty (20) days after service of the subpoena . . . , or, if the return date is less than twenty (20) days after service, prior to the return date.”). Clear Source did not file a petition to quash or limit the CID within the period of time prescribed by the Commission’s Rules. Pet. Exh. 1, ¶ 13.

CONCLUSION

For all the foregoing reasons, this Court should enter an order requiring Clear Source, within ten calendar days of the entry of this Court's order compelling compliance, to provide complete responses to the CID's written interrogatories and document requests, and a sworn certificate of compliance in the form provided in Pet. Exh. 2.

Respectfully submitted,

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General Counsel

JOHN F. DALY
Deputy General Counsel for Litigation

LESLIE RICE MELMAN
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Attorneys for Petitioner Federal Trade Commission

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI**

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Plaintiff **Federal Trade Commission**
(s):

County of Residence: Greene

County Where Claim For Relief Arose: Jasper

Plaintiff's Atty(s):

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Defendant **Clear Source Research, LLC**
(s):

County of Residence: Jasper

Defendant's Atty(s):

II. Basis of Jurisdiction: **1. U.S. Gov't Plaintiff**

III. Citizenship of Principal
Parties (Diversity Cases Only)

Plaintiff:- N/A
Defendant:- N/A

IV. Origin : **1. Original Proceeding**

V. Nature of Suit: **890 Other Statutory Actions**

VI.Cause of Action: **15 U.S.C. Sections 56, 57b-1**

VII. Requested in Complaint

Class Action:

Dollar Demand:

Jury Demand: **No**

Signature: Cynthia J. Hyde

Date: 7/19/2011

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Revised: 05/09/06