

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



\_\_\_\_\_  
In the Matter of )  
 )  
RagingWire Data Centers, Inc., )  
a corporation; )  
\_\_\_\_\_ )

Public

DOCKET NO. 9386

**ORIGINAL**

**COMPLAINT COUNSEL’S MOTION TO COMPEL RESPONDENT  
RAGINGWIRE DATA CENTERS, INC.’S RESPONSES TO COMPLAINT COUNSEL’S  
FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION  
(Expedited Briefing Requested)**

Pursuant to FTC Rule 3.38, Complaint Counsel respectfully move the Court to overrule Respondent’s relevance objections and require Respondent to respond fully to Complaint Counsel’s First Set of Interrogatories and First Set of Document Requests (“RFPs”). Wetherill Decl., Ex. A (Interrogatories); Ex. B (RFPs); Ex. C (Interrogatory responses); Ex. D (RFP responses).

Complaint Counsel seeks expedited briefing because Respondent has failed to comply with the January 23, 2020 deadline established in this Court’s December 30, 2019 Order Granting Respondent’s Motion for Extension of Time to Respond to Discovery Requests (“December Order”) (granting 2-week extension until January 23, rather than the requested extension to February 9). *Id.*, Ex. E at 1 (Production Cover Letter) (Respondent only produced 100 documents in response to three out of 10 RFPs). Respondent now claims that the Court’s January 23, 2020 deadline, and Rule 3.37(b) more generally, merely set the date for Respondent to *begin*, rather than *complete*, its document production, and that it is entitled to engage in a production schedule of its own choosing – without any apparent deadline for completing its production, or even an obligation to tell Complaint Counsel when it plans to finish its production. *Id.* at ¶¶15-16.

Given that Respondent has already been granted one extension, that Respondent failed to meet that extension, and that Respondent's dilatory tactics are prejudicial to Complaint Counsel, Complaint Counsel respectfully request the Court to require Respondent to file its response to this motion by January 31, 2020. Otherwise, under the default briefing schedule, Respondent would essentially enjoy the February 9, 2020 discovery extension that this Court specifically declined to grant. 16 C.F.R. §3.22(d). Alternatively, Complaint Counsel respectfully request that the Court issue an immediate order clarifying that its December Order extended Respondent's obligation under FTC Rule 3.37 to respond to the RFPs *in full*, and that all responsive documents not in dispute be produced within 48 hours of the Court's order.

### **BACKGROUND**

Count 1 of the Complaint alleges that, "from at least January 2017 until at least October 2018," Respondent made false and deceptive representations about participating in the EU-U.S. Privacy Shield Framework ("Privacy Shield") and the U.S.-EU Safe Harbor Framework ("Safe Harbor").<sup>1</sup> Compl. ¶¶20-21, 38-39 (challenging misrepresentations about Privacy Shield in Respondent's privacy policy and a misrepresentation about Safe Harbor in Respondent's sales materials). Privacy Shield replaced Safe Harbor in 2016 as one of the few ways in which participating U.S. companies could legally transfer personal information out of the European Union ("EU") in compliance with the EU's privacy law, the General Data Protection Regulation ("GDPR").<sup>2</sup> Compl. ¶¶5-13. Respondent generally admits to making these misrepresentations, but disputes their materiality, in part because it asserts that Privacy Shield and Safe Harbor do not apply to its business operations. *See* Respondent's Answer, at 2-4.

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<sup>1</sup> Counts 2-4 of the Complaint challenge Respondent's misrepresentations related to its compliance with Privacy Shield's substantive privacy requirements.

<sup>2</sup> Although GDPR became effective in May 2018, similar restrictions on cross-border transfers of personal information have been in place since the 1990s. Compl. ¶5.

On December 10, 2019, Complaint Counsel served 6 interrogatories and 10 document requests (“RFPs”) that largely focused on the issue of materiality. Respondent is withholding, primarily on the basis of relevance objections, information and documents 1) otherwise responsive to Interrogatories 5-6 and RFPs 1-4 and 6-8 relating to Safe Harbor and GDPR; and 2) from prior to June 2016 in response to Interrogatory 5 and RFP 6. Wetherill Decl., Ex. C at 2, 4 (Interrogatory Responses); Ex. D at 2, 4 (RFP responses).<sup>3</sup>

Complaint Counsel met and conferred with Respondent’s counsel on January 24, 2020, but could not reach a resolution. *See* Meet and Confer Statement.

### **LEGAL STANDARD**

Under FTC Rule 3.31(c), materials are discoverable if they “may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent,” or if they “appear[] reasonably calculated to lead to the discovery of admissible evidence.” 16 C.F.R. 3.31(c). Information is “relevant” to a matter if it has any “tendency” to make a consequential fact “more or less probable.” FED. R. EVID. 401. There is a “low bar for demonstrating relevance in discovery.” *Johnson v. CoreCivic, Inc.*, No. 18-CV-1051-STA-TMP, 2019 WL 5089086, at \*3 (W.D. Tenn. Oct. 10, 2019).

### **ARGUMENT**

Complaint Counsel’s narrowly tailored requests are reasonably calculated to lead to the discovery of admissible evidence in support of the Complaint’s allegations and disproving Respondent’s defenses. Respondent’s relevance objections appear to be based upon its misunderstanding that materiality can only be shown by evidence of actual reliance. This is not the law. *See, e.g., F.T.C. v. Wilcox*, 926 F. Supp. 1091, 1099 (S.D. Fla. 1995). Any evidence

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<sup>3</sup> The broad redactions tentatively marked in this Motion reflect the fact that Respondent designated every page of their discovery responses, including their general objections, as “Confidential” under the Protective Order.

tending to show that Respondent's misrepresentations concern information consumers find important is relevant. *See, e.g., Kraft*, 970 F.2d at 324 (information about Respondent's intent and conduct supported finding that subject matter of misrepresentation was material).

As described below, responsive information and documents relating to Safe Harbor and GDPR, as well as the limited information and documents sought before June 2016 concerning Respondent's decision to participate, or continue to participate, in Safe Harbor and/or Privacy Shield ("Participation Decision"), are relevant and must be produced.

#### **I. DISCOVERY RELATED TO SAFE HARBOR AND GDPR IS RELEVANT**

To prove the Complaint's deception allegations, Complaint Counsel must show that Respondent's misrepresentations about participating in the "EU-U.S. Privacy Shield Framework and/or the Safe Harbor Framework from at least January 2017 until at least October 2018," Compl. ¶37, were material—that is, they relate to "information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product." *Cliffdale Assocs.*, 103 F.T.C. 110, 165 (1984); *see also Kraft, Inc.*, 114 F.T.C. 40, 112-12 (1991) (materiality not limited to purchase decisions; consumer conduct could be affected in other ways, such as decreasing their milk consumption in reliance on calcium-related claim).

Interrogatories 5-6, and RFPs 1-4 and 6-8 seek information and documents relating to Safe Harbor, Privacy Shield, and/or GDPR that are highly relevant to the resolution of this matter. RFPs 1-4 seek representations, advertisements and customer communications relating to Safe Harbor (among other things), including customized versions of the specific sales materials challenged in Paragraph 21 of the Complaint; Interrogatories 5 and 6 seek information about Respondent's decision to join Safe Harbor and any contention that such Safe Harbor misrepresentations are immaterial. The face of the Complaint establishes the relevance of these

discovery requests: Complaint Paragraphs 21 and 37 explicitly challenge as deceptive Respondent's misrepresentations about Safe Harbor in certain sales materials. *See* Wetherill Decl. at Ex. C and D (discovery responses not raising relevance objection to same requests as they pertain to Privacy Shield misrepresentations described in Complaint Paragraphs 20 and 37).

Moreover, Safe Harbor-related discovery is also relevant to proving the materiality of Respondent's Privacy Shield misrepresentations because Privacy Shield replaced Safe Harbor as a lawful mechanism for transferring personal data from the EU. Compl. ¶8. For example, discovery indicating that customers cared about Safe Harbor is likely to lead to admissible evidence that they also care about the framework that replaced Safe Harbor, Privacy Shield.

***Redacted***

Thus, discovery on why Respondent decided to participate in Safe Harbor, and continued to participate in that framework for so many years, is likely to lead to key admissible evidence on Respondent's understanding of the importance of its Privacy Shield certification to its customers, and its defense that Privacy Shield and Safe Harbor do not apply to its business operations. Accordingly, Respondent should be required to produce information responsive to Interrogatory 5, which asks for the identity of individuals involved in its Participation Decision, and RFPs 6-7, asking for documents, regardless of date, about Respondent's Participation Decision, and monies Respondent spent to participate in those frameworks.

Discovery related to GDPR is likewise relevant to the materiality of Respondent's misrepresentations because Privacy Shield is a tool for complying with GDPR. Compl. ¶ 5-14. Evidence tending to show that Respondent's customers care about GDPR compliance would make it more likely that they would consider information about the accuracy of Respondent's

Privacy Shield representations to be important. *See* Wetherill Decl., Ex. F at ¶¶5-6 (Customer declaration explaining that, as part of complying with its own obligations under GDPR, it considers the “accuracy of a [service provider’s] representations about being a Privacy Shield participant [to be] a big deal”). This discovery is also likely to lead to additional admissible evidence: these customers—even if they did not explicitly discuss Privacy Shield with Respondent—may have reviewed Respondent’s privacy policy and considered the Privacy Shield misrepresentations contained therein to be important. *See id.* at Ex. F, ¶4 (noting that part of its vendor vetting process includes reviewing the company’s privacy policy).

Because discovery related to Safe Harbor and GDPR is reasonably calculated to lead to the discovery of admissible evidence, this Court should require Respondent to provide such information and documents in response to Interrogatories 5-6, and RFPs 1-4 and 6-8.

## **II. RESPONDENT’S OBJECTIONS TO THE DISCOVERY TIMEFRAME ARE WITHOUT MERIT**

Complaint Counsel’s discovery requests include one interrogatory and one RFP that seek information and documents *prior* to June 2016: Interrogatory 5 asks Respondent to identify the employees, and describe their role, who were involved in its Participation Decision; and RFP 6 seeks all documents, regardless of date, relating to the Participation Decision. Respondent argues that these requests do not seek relevant information and are unduly burdensome. *See* Wetherill Decl., ¶14; Ex. C at 9 (“irrelevant to the claims and defenses in this action, overly broad, and unduly burdensome”); Ex. D at 7 (same).

As a preliminary matter, seeking discovery for a timeframe before or after an alleged violation is permissible when it may shed light on claims, defenses, or relief at issue in a particular matter. *See LabMD, Inc.*, Dkt. No. 9357, 2013 WL 6327986, at \*6 (F.T.C. Nov. 22, 2013) (holding that information about Respondent’s conduct after the alleged violations was

relevant and therefore discoverable); *see also Miner, Ltd. v. Keck*, 2019 WL 2869063, at \*2 (M.D. Fl. July 3, 2019) (“The relevant time frame [of discovery requests] depends upon the information being sought.”).

Here, as previously discussed, *supra* at 5, discovery about why Respondent decided to participate in Safe Harbor and Privacy Shield are highly relevant to the question of Respondent’s understanding of the importance of its certifications to its customers and its defense that Privacy Safe Harbor and Privacy Shield do not apply to its business operations.

Additionally, neither discovery request is unduly burdensome. Indeed, Interrogatory 5 only seeks the identity and role of individuals involved in Respondent’s Participation Decision. RFP 6 is narrowly tailored to seek documents, regardless of date, related to Respondent’s Participation Decision. Given the significance of this discovery, *see supra* at p. 5, and the limited number of custodians whose files would need to be searched in response to this narrowly tailored RFP, this request is not unduly burdensome.

For the above reasons, this Court should order Respondent to provide responsive information and documents prior to June 2016 for these two requests.

### **III. EXPEDITED BRIEFING IS NECESSARY**

Expedited briefing is necessary here because Respondent is unabashedly disregarding the deadlines set in the December Order. Rule 3.37(b) requires parties to respond to requests for production of documents within 30 days except in case of a valid objection. 16 C.F.R. § 3.37(b); *see also Jerk, LLC*, Dkt. No. 9361, 2014 WL 7183807, at \*3 (F.T.C. Dec. 8, 2014) (Respondent’s “objections and responses were due within 30 days” under Rule 3.37(b)). Respondent failed to comply with the December Order, and has declined to provide a production

schedule. *See supra* at 2. Having failed to obtain its requested 30-day extension, Respondent is now interpreting the Court's order as a free pass to produce documents whenever it wants.

The absurdity of Respondent's interpretation of the Court's December Order is manifest: it completely vitiates the concept of discovery deadlines. It is also contrary to Respondent's own position when it was seeking its extension. Complaint Counsel specifically asked Respondent's counsel if its motion for an extension was to *begin*, or to *complete*, its document production within 30 days, and counsel responded that it was to complete its production in the allotted time. Wetherill Decl., Ex. F.

Importantly, Respondent's dilatory tactics are prejudicial to Complaint Counsel because it delays our ability to identify key customers from whom Complaint Counsel can pursue third-party discovery on the disputed issue of materiality. It will also impose a substantial burden on third parties who will, in turn, have less time to respond to any such third-party discovery. *See* Wetherill Decl. ¶¶19-22.

### **CONCLUSION**

For the foregoing reasons, the Court should grant Complaint Counsel's Motion and issue an Order compelling Respondent to provide all responsive discovery relating to Safe Harbor, GDPR and the full timeframe specified in the Requests on a rolling basis, to be completed by or before February 10, 2020.

Complaint Counsel also requests that the Court issue an expedited briefing schedule for this motion and require Respondent's response by January 31, 2020, or alternatively, to immediately issue an order clarifying its December Order and requiring Respondent to produce all responsive documents not in dispute within 48 hours.

Dated: January 27, 2020

Respectfully submitted,

/s/ Linda Kopp  
Linda Holleran Kopp  
Robin L. Wetherill  
Division of Privacy and Identity Protection  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Mailstop CC-8402  
Washington, DC 20580  
Telephone: (202) 326-2267 (Kopp)  
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Electronic mail: lkopp@ftc.gov (Kopp)  
*Complaint Counsel*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 30, 2019, I caused the foregoing document to be filed electronically through the Office of the Secretary's FTC E-filing system, which will send notification of such filing to:

April S. Tabor, Acting Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm.  
H-113 Washington, DC 20580

I also certify that I caused a copy of the foregoing document to be transmitted via electronic mail to:

The Honorable D. Michael  
Chappell Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm.  
H-110 Washington, DC 20580

I further certify that I caused a copy of the foregoing document to be served via electronic mail to:

Corey W. Roush  
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*Counsel for Respondent RagingWire Data Centers, Inc.*

January 27, 2020

By: /s/ Robin Wetherill  
Robin Wetherill  
Federal Trade Commission  
Bureau of Consumer Protection

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

|                                |   |                        |
|--------------------------------|---|------------------------|
| In the Matter of               | ) |                        |
|                                | ) |                        |
| RagingWire Data Centers, Inc., | ) | <b>DOCKET NO. 9386</b> |
| a corporation;                 | ) |                        |
|                                | ) |                        |

**SEPARATE MEET AND CONFER STATEMENT**

Consistent with this Court’s Scheduling Order, Complaint Counsel met and conferred by telephone on January 24, 2020 with counsel for Respondent RagingWire Data Centers, Inc. (“RagingWire”) in a good faith effort to resolve the discovery disputes that are the subject of Complaint Counsel’s Motion to Compel Responses to Complaint Counsel’s First Set of Discovery Requests (“Motion”). Complaint Counsel also met and conferred via an exchange of emails on January 24, 2020, and January 27, 2020. While counsel were able to partly resolve their dispute about the relevant discovery period, counsel were unable to resolve their disputes about the matters that are the subject of the Motion.

Dated: January 27, 2020

Respectfully submitted,

/s/ Robin L. Wetherill  
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*Complaint Counsel*

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

\_\_\_\_\_  
In the Matter of )

RagingWire Data Centers, Inc., )  
a corporation; )  
\_\_\_\_\_ )

**DOCKET NO. 9386**

**[PROPOSED] ORDER GRANTING COMPLAINT COUNSEL’S  
MOTION TO COMPEL RESPONSES TO COMPLAINT COUNSEL’S  
FIRST SET OF DISCOVERY REQUESTS**

Upon consideration of Complaint Counsel’s Motion to Compel Responses to Complaint Counsel’s First Set of Discovery Requests:

IT IS HEREBY ORDERED that Complaint Counsel’s Motion is GRANTED.

IT IS FURTHER ORDERED that Respondent shall produce information and documents responsive to Interrogatories 5 and 6 in Complaint Counsel First Set of Interrogatories, and Requests for Production 1-4, and 6-8 in Complaint Counsel’s First Set of Requests that relate to the U.S.-EU Safe Harbor Framework or to the European General Data Protection Regulation.

IT IS FURTHER ORDERED that Respondent shall respond to Interrogatory 5 and Request for Production 6 for the relevant time period prior to June 2016.

IT IS FURTHER ORDERED that Respondent (“Respondent”) shall provide responses to Complaint Counsel’s First Set of Discovery Requests on a rolling basis, and complete its document production by or before February 10, 2020.

ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date:

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

|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the Matter of )               |   |                        |
|                                  | ) |                        |
| RagingWire Data Centers, Inc., ) |   | <b>DOCKET NO. 9386</b> |
| a corporation; )                 |   |                        |
|                                  | ) |                        |

**[PROPOSED] ORDER GRANTING COMPLAINT COUNSEL’S  
REQUEST FOR EXPEDITED BRIEFING REGARDING THEIR  
MOTION TO COMPEL RESPONSES TO COMPLAINT COUNSEL’S  
FIRST SET OF DISCOVERY REQUESTS**

On January 27, 2020, Complaint Counsel filed Complaint Counsel’s Motion to Compel Responses to Complaint Counsel’s First Set of Discovery Requests. Complaint Counsel further requested that this Court establish an expedited schedule for briefing said motion.

Having determined that a shorter response period is appropriate under Rule 3.22(d), it is hereby ORDERED that any written response to Complaint Counsel’s Motion to Compel Responses to Complaint Counsel’s First Set of Discovery Requests shall be submitted no later than 5:00 p.m. on January 31, 2020.

ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Administrative Law Judge

Date:

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

**In the Matter of**

**RagingWire Data Centers, Inc.,  
a corporation,**

**Respondent.**

**Public**

**Docket No. 9386**

**DECLARATION OF ROBIN L. WETHERILL**

1. I have personal knowledge of the facts set forth in this declaration, and if called as a witness, I could and would testify competently under oath to such facts. This declaration is submitted in support of Complaint Counsel’s Motion to Compel Respondent RagingWire Data Centers, Inc.’s Responses to Complaint Counsel’s First Set of Interrogatories and Requests for Production (“Motion to Compel”).
2. I am an attorney at the Federal Trade Commission and Complaint Counsel in this proceeding.
3. Exhibit A is a true and correct copy of Complaint Counsel’s First Set of Interrogatories to RagingWire, Inc. [*sic*], dated December 10, 2019.
4. Exhibit B is a true and correct copy of Complaint Counsel’s First Set of Requests to RagingWire Data Centers, Inc. for Production of Documents, dated December 10, 2019.
5. Exhibit C is a true and correct copy of RagingWire’s Objections and Responses to Complaint Counsel’s First Set of Interrogatories.
6. Exhibit D is a true and correct copy of RagingWire’s Objections and Responses to Complaint Counsel’s First Set of Requests for Production of Documents.

7. Exhibit E is a true and correct copy of Respondent' production cover letter, accompanying its discovery responses, dated January 23, 2020.
8. Exhibit F is a true and correct copy of Complaint Counsel's December 27-30, 2019 email exchange with counsel for Respondent, in which counsel for Respondent states, in response to a question posed by L. Kopp, that the 30-day extension they are seeking is an extension to respond fully to Complaint Counsel's First Set of Requests for Production of Documents.
9. Exhibit G is a true and correct copy of the Declaration of Christopher Ghazarian, General Counsel of DreamHost, LLC, a customer of RagingWire.
10. Exhibit H is a true and correct copy of the cover letter that accompanied the Commission's Civil Investigative Demand ("CID") to RagingWire, dated October 1, 2018.
11. On January 24, 2020, lead Complaint Counsel Linda Holleran Kopp and I spoke with counsel for Respondent RagingWire Data Centers, Inc. ("RagingWire") about RagingWire's responses to Complaint Counsel's first set of discovery requests.
12. During this telephone conference, Counsel spoke about, among other things, RagingWire's relevance objections and the materiality of responsive information and documents relating to the U.S.-EU Safe Harbor Framework ("Safe Harbor"), the General Data Protection Regulation ("GDPR"), and the full discovery timeframe set forth in the discovery requests. Counsel have not been able to resolve their disputes as to the relevance of Safe Harbor, GDPR, or responsive documents and information from prior to June 2016.

13. During this telephone conference, Complaint Counsel also inquired as to whether RagingWire, in responding to Complaint Counsel's First Set of Discovery Requests, had withheld any information or documents on the basis of any objection other than RagingWire's general objections as to the relevance of Safe Harbor and GDPR and as to the relevant time period. RagingWire responded that it was not "standing on" any other objection in withholding documents or information, except for possibly its objection to the definition of "Advertisements" because it had not yet completed its due diligence in responding to this request.
14. During this telephone conference, counsel for Respondent asserted that searching for any information or documents from prior to June 2016, as required by Interrogatory 5 (*see* Ex. A at 7), and RFP 6 (*see* Ex. B at 5), was unduly burdensome.
15. Complaint Counsel inquired whether RagingWire would complete its production of documents that are not in dispute by February 9, 2020, because RagingWire's counsel had previously indicated it could produce all responsive documents by that date during meet and confer discussions prior to RagingWire filing its December 27, 2019 Motion for Extension of Time to Respond to Discovery Requests. Lead counsel for Respondent stated that he did not feel any obligation to finish producing documents by that date because Complaint Counsel had not accepted his offer and instead required Respondent to file its motion for an extension. Counsel then declined to commit to any date by which RagingWire would complete its document production.
16. Complaint Counsel expressed that, in our view, RagingWire is currently in violation of the Court's December 30, 2019 Order Granting Respondent's Motion for Extension of Time to Respond to Discovery Requests. Lead counsel for Respondent disagreed,

asserting that “that’s not how discovery works,” and that RagingWire was obligated only to begin, rather than complete, its production by the deadline stated in the order.

17. As part of the FTC’s investigation into the practices at issue in this matter, it issued a Civil Investigative Demand (“CID”) to RagingWire on October 1, 2018. The cover letter accompanying the CID included the following instruction:

You must immediately stop any routine procedures for electronic or paper document destruction, and you must preserve all paper or electronic documents that are in any way relevant to this investigation, even if you believe the documents are protected from discovery by privilege or some other reason.

*See Exhibit H.*

18. ***Redacted***

19. Respondent’s delay in producing responsive discovery imposes a significant prejudice on Complaint Counsel and will, in turn, impose a substantial burden on third parties. Many of the discovery requests are stepping stones to other discovery that Complaint Counsel will need in order to rebut Respondent’s arguments. For example, Respondent argued at the Initial Scheduling Conference that the presumption of materiality should not apply to its deceptive statements because its customers did not care about its Privacy Shield status and because Respondent does not charge more for its services than do its competitors without a Privacy Shield certification.

20. Complaint Counsel needs the discovery at issue before it can seek third-party discovery to rebut these arguments. See, e.g., Ex. B at Requests 3, 5 and 8 and 9 (seeking

Respondent's customer contracts, communications with customers about Safe Harbor, Privacy Shield and GDPR, and information about Respondent's competitors with Privacy Shield certifications). Respondent's delay in producing responsive materials means that there will only be, at best, two and a half months left in the discovery period to obtain such discovery.

21. In that time, Complaint Counsel would need to review the discovery responses and identify relevant third parties, and subpoena those third parties; the third parties, which have never been previously contacted by the FTC in this matter, would need to obtain counsel and then search for and produce responsive documents; and Complaint Counsel would need to review those documents and then schedule and take any necessary depositions. There is a significant risk that two and a half months will be insufficient to complete these tasks, thereby significantly prejudicing Complaint Counsel.
22. Even if possible, this short timetable would impose a substantial burden on the third parties by cutting their available time to respond to discovery requests within the applicable discovery period.

I declare under the penalty of perjury that the foregoing is true and correct. Executed this  
27<sup>th</sup> Day of January in Washington, D.C.

Respectfully submitted,

/s/ Robin L. Wetherill

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*Complaint Counsel*

# EXHIBIT A

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

|                   |   |                 |
|-------------------|---|-----------------|
| In the Matter of  | ) |                 |
|                   | ) |                 |
| RagingWire, Inc., | ) | DOCKET NO. 9386 |
| a corporation;    | ) |                 |
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**COMPLAINT COUNSEL’S FIRST SET OF  
INTERROGATORIES TO RAGINGWIRE, INC.**

Pursuant to Rule 3.35 of the Federal Trade Commission’s Rules of Practice for Adjudicative Proceedings and the Court’s Scheduling Order dated December 5, 2019, Complaint Counsel requests that Respondent RagingWire, Inc. (“RagingWire”) respond to these Interrogatories within 30 days and furnish the requested information to Complaint Counsel at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, CC-8232, Washington, DC 20580, or at such time and place as may be agreed upon by all counsel.

**DEFINITIONS**

Notwithstanding any definition below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the Federal Trade Commission’s Rules of Practice.

1. “1995 Directive” means Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of Personal Information and on the free movement of such data, 1995 O.J. (L 281) 31-50.

2. “**And**” and “**or**” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request any information that might otherwise be construed to be outside its scope.
3. “**Any**” and “**all**” shall be construed to include “any and all.”
4. “**Describe in Detail**” shall mean providing the information requested in narrative form, and shall include an explanation of each material change, if any, made over the applicable time period relating to the practices described, as well as the effective date of the change(s), and the reason(s) for such change(s).
5. “**Document**” or “**Documents**” are synonymous in meaning and equal in scope to the usage of the terms as defined by 16 C.F.R. 3.34(b), and includes, without limitation, 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, journal, agenda, minute, code book, or label. “Document” shall also include electronically stored information (“ESI”). ESI means the complete original and any nonidentical 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 enable conversion of such ESI into a reasonably usable form.

6. “**Each**” and “**any**” include “**all**,” so as to have the broadest meaning whenever necessary to bring within the scope of any document request all information and/or documents that might otherwise be construed to be outside its scope.
7. “**EEA**” shall mean the European Economic Area, comprised of member countries of the European Union as well as Iceland, Liechtenstein, and Norway.
8. “**GDPR**” shall mean Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of Personal Information and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), 2016 O.J. (L 119) 1-88.
9. “**Identify**” 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, telephone number, identities of natural persons who are officers, directors or managers of the business or organization, and contact persons, where applicable.
10. “**Includes**” or “**including**” means “**including, but not limited to**,” so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.

11. **“Person”** or **“Persons”** means all natural persons, corporations, partnerships or other business associations, and all other legal entities, including all members, officers, predecessors, assigns, divisions, affiliates, and subsidiaries.
12. **“Personal Information”** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier (including an IP address, device identifier, or advertising identifier) or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
13. **“Privacy Shield”** means the EU-U.S. Privacy Shield Framework administered by the U.S. Department of Commerce.
14. **“Relating to”** means discussing, describing, reflecting, referring, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.
15. **“Safe Harbor”** shall mean the U.S.-EU Safe Harbor Framework formerly administered by the U.S. Department of Commerce.
16. **“You”** and **“your”** means RagingWire.
17. The use of the singular includes the plural, and the plural includes the singular.
18. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
19. The spelling of a name shall be construed to include all similar variants thereof.

### **INSTRUCTIONS**

1. Unless otherwise specified, the time period covered by an Interrogatory shall be **from June 2016 to the present.**

2. Each Interrogatory should be set forth in full preceding the answer to it and should be answered separately and fully in writing, under oath.

3. All answers shall be served within 30 days after service of these Interrogatories.

4. These Interrogatories seek information that is in your knowledge or possession, or under your actual or constructive custody or control, whether or not such information is located in the files of, or possessed by your individual officers, directors or employees, and whether or not such information is received from or disseminated to any other person or entity including attorneys, accountants, directors, officers, employees, independent contractors, or volunteers.

5. To the extent that an Interrogatory may be answered by referencing a document, it is permissible to attach the document as an exhibit to the answer and refer to the document in the answer. If any such document contains more than one page, you must refer to the page and section where the relevant reference(s) can be found. 16 C.F.R. § 3.35(c).

6. Where an Interrogatory requests an answer or portion of an answer that already has been supplied in response to another Interrogatory, the answer or portion of the answer need not be supplied a second time. It is sufficient to specify the responses that contain the answer, and supply any additional information necessary to answer the Interrogatory.

7. All objections to any Interrogatory must be raised in your initial response and are otherwise waived.

8. If you object to any Interrogatory or a part of any Interrogatory, state the Interrogatory or part to which you object, state the exact nature of the objection, and describe in detail the facts upon which you base your objection. If any Interrogatory cannot be answered in full, it shall be answered to the fullest extent possible and the reasons for the inability to answer fully shall be provided. If you object to any Interrogatory on the grounds of relevance or

overbreadth, you shall provide all responsive information that is concededly relevant to the parties' claims or defenses or the requested relief. For each Interrogatory that cannot be answered in full, you shall describe the efforts made to locate information needed for such answer.

9. If any documents are not identified in response to an Interrogatory on grounds of privilege, submit together with such claim a schedule of the items withheld which states individually for each item withheld: (a) the type, title, specific subject matter, and date of the item; (b) the names, addresses, positions, and organizations of all authors and recipients of the item; and (c) the specific grounds for claiming that item as privileged. If only part of a responsive document is privileged, all non-privileged portions of the item must be identified.

10. These Interrogatories are continuing in character so as to require you to produce additional information promptly upon obtaining or discovering different, new or further information before the close of discovery. Further instructions pertinent to a particular Interrogatory appear in parentheses within or following that Interrogatory.

11. You are hereby advised that Complaint Counsel will move, if any party files any dispositive motion, or at the commencement of trial, to preclude you from presenting evidence regarding responsive matters you have failed to set forth in your answers to these Interrogatories.

### **INTERROGATORIES**

1. Identify all customers since June 2016, and for each customer, Describe in Detail:
  - (a) the time period, by date, during which each customer has retained Your services;
  - (b) whether the customer is known to have any locations in Europe;
  - (c) the specific product(s) or service(s), including any support services, provided by You to the customer, and

(d) all reason(s), if known, why any customer relationship may have terminated during the relevant time period.

2. Describe in Detail each product or service that You offer, including but not limited to any related support services (e.g., products or services relating to the storage, physical or virtual hosting, acquisition, design, assembly, installation, de-installation, organization, structuring, construction, interconnectivity, monitoring, remote access, maintenance, or alteration of data or of devices, networks, or systems for processing data).

3. Identify each employee or former employee who had any responsibility(ies), including any oversight responsibilities, relating to Your compliance with Privacy Shield, and Describe in Detail such responsibilities.

4. Identify each employee or former employee who had any responsibilities, including any oversight responsibilities, relating to the sales, marketing or negotiation of Your services to customers or potential customers.

5. Identify each employee or former employee, regardless of date, who had any role relating to Your decision to participate or continue to participate in Safe Harbor or Privacy Shield, and Describe in Detail their role.

6. If You contend that any representations by You relating to Privacy Shield or Safe Harbor that are set forth in Your online privacy policy, website, or sales presentations were not material to Your customers or potential customers, state the basis for Your contention.

Dated December 10, 2019:

Respectfully submitted,

/s/  
Linda Holleran Kopp (202) 326-226  
Robin Wetherill (202) 326-2220

Division of Privacy and Identity Protection  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Mailstop CC-8232  
Washington, DC 20580

**CERTIFICATE OF SERVICE**

I hereby certify that on December 10, 2019, I caused a true and correct copy of the foregoing document to be served as follows:

One electronic copy to Counsel for the Respondent:

Corey W. Roush  
C. Fairley Spillman  
Diana E. Schaffner  
Akin Gump Strauss Hauer & Feld LLP  
2001 K. Street, N.W.  
Washington, DC 20006  
(202) 887-4000  
croush@akingump.com  
fspillman@akingump.com  
dschaffner@akingump.com

I further certify that I possess a paper copy of the signed original of the foregoing document that is available for review by the parties and the adjudicator.

/s/ \_\_\_\_\_  
Linda Holleran Kopp  
Division of Privacy and Identity Protection  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Ave., NW, M-8102B  
Washington, DC 20580  
Telephone: (202) 326-2267  
Facsimile: 202-326-3062  
Email: lkopp@ftc.gov

# EXHIBIT B

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

\_\_\_\_\_ )  
In the Matter of )

RagingWire Data Centers, Inc., )  
a corporation; )  
\_\_\_\_\_ )

**DOCKET NO. 9386**

**COMPLAINT COUNSEL’S FIRST SET OF REQUESTS TO  
RAGINGWIRE DATA CENTERS, INC. FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 3.37(a) of the Federal Trade Commission’s Rules of Practice for Adjudicative Proceedings and the Court’s Scheduling Order dated December 5, 2019, Complaint Counsel requests that Respondent RagingWire Data Centers, Inc. (“RagingWire” or “Respondent”) produce the documentary materials identified below for inspection and copying within 30 days at the Federal Trade Commission, 600 Pennsylvania Avenue, NW, CC-8232.

**DEFINITIONS**

Notwithstanding any definition below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the Federal Trade Commission’s Rules of Practice.

1. “**Advertisement**” means any written or verbal statement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether it appears on the Internet, in email, on packaging, in a brochure, newspaper, magazine, pamphlet, leaflet, webinar, podcast, YouTube video, presentation slide, white paper, blog post, circular, mailer, book insert, free standing insert, letter, catalog, poster, chart, billboard, point of purchase material (including, but not limited to, a display or an item worn by salespeople), fact sheet, film,

radio, broadcast or cable television, audio program transmitted over a telephone system, program-length commercial, or in any other medium.

2. “**Agreement**” means any oral or written contract, arrangement, or understanding, whether formal or informal, between two or more persons, together with all modification or amendments thereto.
3. “**And**” and “**or**” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request any information that might otherwise be construed to be outside its scope.
4. “**Any**” and “**all**” shall be construed to mean “any and all.”
5. “**Communication(s)**” includes, but is not limited to, any and all conversations, meetings, discussions and any other occasion for verbal exchange, whether in person, by telephone, or electronically, as well as all letters, memoranda, telegrams, cables, and other writings or documents.
6. “**Complaint**” means the Complaint issued by the Federal Trade Commission in the above-captioned matter on November 5, 2019.
7. “**Document**” or “**Documents**” are synonymous in meaning and equal in scope to the usage of the terms as defined by 16 C.F.R. 3.34(b), and includes, without limitation, 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, journal, agenda, minute, code book, or label. "Document" shall also include electronically stored information ("ESI"). ESI means the complete original and any nonidentical 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 enable conversion of such ESI into a reasonably usable form.

8. **"Documents Sufficient to Show"** means documents that are necessary and sufficient to provide the specified information. Where "Documents Sufficient to Show" is specified, if summaries, compilations, lists, or synopses are available that provide the information, these should be provided in lieu of the underlying documents.

9. **"Each"** and **"any"** include **"all,"** so as to have the broadest meaning whenever necessary to bring within the scope of any document request all information and/or documents that might otherwise be construed to be outside its scope.

10. **"EU"** means the European Union.

11. **"GDPR"** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal information and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

12. **“Includes”** or **“including”** means **“including, but not limited to,”** so as to avoid excluding any information that might otherwise be construed to be within the scope of any document request.
13. **“Or”** as well as **“and”** shall be construed both conjunctively and disjunctively, as necessary, in order to bring within the scope of any document request all documents that otherwise might be construed to be outside the scope.
14. **“Person”** or **“Persons”** means all natural persons, corporations, partnerships or other business associations, and all other legal entities, including all members, officers, predecessors, assigns, divisions, affiliates, and subsidiaries.
15. **“Privacy Shield”** means the EU-U.S. Privacy Shield Framework administered by the U.S. Department of Commerce.
16. **“Relating to”** means discussing, describing, reflecting, referring, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.
17. **“Safe Harbor”** means the U.S.-EU Safe Harbor Framework formerly administered by the U.S. Department of Commerce.
18. **“Sales Tour Deck”** means the sales presentation produced by Respondent at RDC-0000059-109.
19. **“You”** or **“Your”** means RagingWire.
20. The use of the singular includes the plural, and the plural includes the singular.
21. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
22. The spelling of a name shall be construed to include all similar variants thereof.

## INSTRUCTIONS

1. Unless otherwise specified, the time period covered by a Document Request shall be from **June 2016 to the present**.
2. If any documents responsive to a Specification have been previously supplied to the Commission during the course of its investigation, *In re RagingWire Data Centers, Inc.*, Matter No. 1823189, you shall identify the document(s) previously provided and the date of submission instead of re-submitting the document(s). Identification shall be by Bates number if the documents were so numbered when submitted, or by author, date, and subject matter if not so numbered. Documents that may be responsive to more than one Request need not be submitted more than once; however, your response shall indicate, for each document submitted, each Specification to which the document is responsive.
3. A complete copy of each document should be submitted even if only a portion of the document is within the terms of the Document Request. The document shall not be edited, cut, or expunged and shall include all covering letters and memoranda, transmittal slips, appendices, tables, or other attachments.
4. All information submitted shall be clearly and precisely identified as to the Document Request(s) to which it is responsive. Each page submitted should be marked with a unique “Bates” document tracking number.
5. Documents covered by these requests are those that are in your possession or under your actual or constructive custody or control, whether or not such documents were received from or disseminated to any other person or entity including attorneys, accountants, directors, officers, employees, independent contractors, and volunteers.

6. If any of the responsive documents are in the form of ESI, please produce these documents in their existing, native formats.
7. Advertisements submitted in response to these Document Requests shall be submitted in the following form(s): For print documents, provide the original promotional material if available, or, if not available, color copies thereof. For audio-only (or radio) materials, provide a CD containing an audio file in a standard format, as well as a script and, if available, any audio out-takes. For video recordings, such as television advertisements, provide a DVD or CD containing a video file in a standard format, as well as a photoboard, script, and, if available, any video out-takes for each video recording. For Internet or other online materials, provide a CD (if in machine-readable form) or a clear color printout of all screens displayed in the promotional material and identify the site, forum, or address. For email solicitations, please submit a hard copy of each materially different solicitation. For foreign language advertisements, please provide the advertisements in the language in which they were disseminated as well as English translations.
8. If any requested material is withheld based on a claim of privilege, submit, together with such claim, a schedule of items withheld that states individually for each item withheld: (a) the type, title, specific subject matter, and date of the item; (b) the names, addresses, positions, and organizations of all authors and recipients of the item; and (c) the specific grounds for claiming that item as privileged. If only part of a responsive document is privileged, all non-privileged portions of the document must be submitted.
9. The Document Requests are continuing in character so as to require you to produce additional information promptly upon obtaining or discovering different, new, or further information before the close of discovery.

10. You are hereby advised that Complaint Counsel will move, if any party files any dispositive motion, or at the commencement of trial, to preclude you from presenting evidence regarding responsive matters you have failed to set forth in your answers to these Document Requests.

### **DOCUMENTS REQUESTED**

Demand is hereby made of RagingWire for the following documentary and tangible things:

1. Each materially different representation made by RagingWire, including but not limited to verbal and written statements, Advertisements, sales presentations, logos, and images, communicated in person, by phone, via RagingWire's website, by email, or by any other means, that relates to Safe Harbor, Privacy Shield, or GDPR.
2. Each materially different Advertisement relating to RagingWire's efforts to market its services to customers or potential customers with international presence or operations, including any Advertisements that include terms such as "global," "worldwide," "Europe," "General Data Protection Regulation," "GDPR," "Privacy Shield," "Safe Harbor," "international," "transnational," "foreign," "world," "multinational," or "cross-border," that feature images of maps or globes, or that relate to RagingWire's ability to meet the needs of customers engaged in international or transnational business and/or data transfers.
3. All Documents relating to the creation, use, updating, customization, or dissemination of the Sales Tour Deck or any version of, or document derived from, the Sales Tour Deck.
4. All Communications between RagingWire and any customer or potential customer relating to Privacy Shield, Safe Harbor, or GDPR.
5. All Agreements between RagingWire and its customers.

6. All Documents, regardless of date, relating to RagingWire's decision to participate, or to continue to participate, in Safe Harbor or Privacy Shield.
7. Documents Sufficient to Show all monies paid by RagingWire relating to its Privacy Shield or Safe Harbor participation or compliance, including but not limited to legal fees, consulting fees, advertising costs, self-certification fees, fees relating to providing an independent recourse mechanism, or payments into the ICDR-AAA EU-U.S. Privacy Shield Arbitral Fund.
8. All Documents relating to any provider of colocation services other than RagingWire participating in Privacy Shield or Safe Harbor.
9. Documents Sufficient to Show the prices for each product or service provided by RagingWire.
10. All Documents relating to how RagingWire decides to price its services.



**CERTIFICATE OF SERVICE**

I hereby certify that on December 10, 2019, I caused a true and correct copy of the foregoing document to be served as follows:

One electronic copy to **Counsel for the Respondent:**

Corey W. Roush  
C. Fairley Spillman  
Diana E. Schaffner  
Akin Gump Strauss Hauer & Feld LLP  
2001 K. Street, N.W.  
Washington, DC 20006  
(202) 887-4000  
croush@akingump.com  
fspillman@akingump.com  
dschaffner@akingump.com

I further certify that I possess a paper copy of the signed original of the foregoing document that is available for review by the parties and the adjudicator.

/s/  
Linda Holleran Kopp  
Division of Privacy and Identity Protection  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Ave., NW, M-8102B  
Washington, DC 20580  
Telephone: (202) 326-2267  
Facsimile: 202-326-3062  
Email: lkopp@ftc.gov

# EXHIBIT C

REDACTED IN ITS ENTIRETY

# EXHIBIT D

REDACTED IN ITS ENTIRETY

# EXHIBIT E

# Akin Gump

STRAUSS HAUER & FELD LLP

**DIANA E. SCHAFFNER**

+1 415.765.9507/fax: +1 415.765.9501  
dschaffner@akingump.com

**CONFIDENTIAL**

January 23, 2020

VIA E-MAIL

Linda Holleran Kopp  
Division of Privacy & Identity Protection  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
Mail Drop: CC-8232

Re: RagingWire's First Production in Response to Complaint Counsel's First Set of  
Discovery Requests – Docket No. 9396

Dear Linda:

In response to Complaint Counsel's First Set of Requests for Production of Documents and First Set of Interrogatories (collectively, the "First Set of Discovery Requests"), RagingWire Data Centers, Inc. ("RagingWire") has produced documents via the FTC-hosted secure file transfer protocol. The password required to access this production will be sent via a separate email. This is the first of an ongoing series of productions RagingWire will make in response to Complaint Counsel's First Set of Discovery Requests.

This is production volume RDC\_FTC\_VOL001 (2020-01-23). This production includes 100 documents and 960 pages. The bates range for all documents in this production volume is RDC\_FTC\_0000001 - RDC\_FTC\_0000960.

The following bullet points provide a breakdown of the production by specific request:

- Documents produced at bates range RDC\_FTC\_0000071 - RDC\_FTC\_0000926 are responsive to Request for Production No. 5.
- Documents produced at bates range RDC\_FTC\_0000927 - RDC\_FTC\_0000957 are responsive to Request for Production No. 7.
- Documents produced at bates range RDC\_FTC\_0000001 - RDC\_FTC\_0000070 are responsive to Request for Production No. 10.

January 23, 2020

Page 2

- Documents produced at bates range RDC\_FTC\_0000958 - RDC\_FTC\_0000960 are produced in connection with RagingWire's response to Interrogatory No. 2.

The documents in this production contain confidential and proprietary business information and are protected by the Protective Order dated November 7, 2019, as well as by Section 21(f) of the Federal Trade Commission Act, 15 U.S.C. § 46(f), 15 U.S.C. § 57b-2(f), and the Commission's Rules of Practice, 4.10 and 4.11, 16 C.F.R. §§ 4.10, 4.11. We have marked the entire production as "CONFIDENTIAL" pursuant to the Protective Order.

Please contact me if you have any questions.

Sincerely,

/s/ Diana E. Schaffner

Diana E. Schaffner

# EXHIBIT F

**Kopp, Linda Holleran**

---

**From:** Kopp, Linda Holleran  
**Sent:** Monday, December 30, 2019 1:29 PM  
**To:** 'Schaffner, Diana'; Roush, Corey  
**Cc:** Wetherill, Robin; Spillman, C. Fairley  
**Subject:** RE: Docket 9386: Respondent's Motion for Extension of Time to Respond to Discovery Request

Thank you, I appreciate the clarification. Unfortunately, given the short discovery period, we can't agree to a doubling of the response time before we get any documents. If you reach a point where you can talk about a faster production schedule, give me a call and we can talk further.

Have a happy new year!

---

**From:** Schaffner, Diana <dschaffner@akingump.com>  
**Sent:** Monday, December 30, 2019 11:29 AM  
**To:** Kopp, Linda Holleran <lkopp@ftc.gov>; Roush, Corey <croush@akingump.com>  
**Cc:** Wetherill, Robin <rwetherill@ftc.gov>; Spillman, C. Fairley <spillman@AKINGUMP.COM>  
**Subject:** RE: Docket 9386: Respondent's Motion for Extension of Time to Respond to Discovery Request

Linda,

Our initial request was for a one-month extension to provide our responses and produce documents. On our call, we asked for a week to provide objections and then provide additional details as to the specific timing of the production of documents. We were attempting to provide a realistic estimate, not extend beyond that initial one-month period. If you can agree to a one-month extension for all responses and productions (aside from the two-week extension we already agreed on), we would appreciate it and will update our motion.

Best,  
Diana

---

**From:** Kopp, Linda Holleran <lkopp@ftc.gov>  
**Sent:** Monday, December 30, 2019 6:48 AM  
**To:** Roush, Corey <croush@akingump.com>; Schaffner, Diana <dschaffner@akingump.com>  
**Cc:** Wetherill, Robin <rwetherill@ftc.gov>  
**Subject:** RE: Docket 9386: Respondent's Motion for Extension of Time to Respond to Discovery Request

**\*\*EXTERNAL Email\*\***

Corey and Diana.

Good morning. I have a question about your motion for an extension. When we spoke on Friday, I had understood you to say that you needed a week extension to file objections, and that you couldn't say when you might actually start or finish producing documents (or, to use the words in your motion, after the week extension to file objections, you would then determine how long it would take for Respondent to fully produce the requested material). That's why I had said if you aren't ready to start talking about a production schedule, then there's nothing for us to come to an agreement on.

So, I was surprised when I saw your motion ask the court to have until Feb 9<sup>th</sup> to “respond” to our document requests. Does that mean that you would complete your production of documents by 2/9, or are you using ‘respond’ to just mean file objections and/or start producing documents?

Thanks,  
Linda

---

**From:** Khader, Mitchell <[mkhader@akingump.com](mailto:mkhader@akingump.com)>  
**Sent:** Friday, December 27, 2019 3:06 PM  
**To:** Kopp, Linda Holleran <[lkopp@ftc.gov](mailto:lkopp@ftc.gov)>; Wetherill, Robin <[rwetherill@ftc.gov](mailto:rwetherill@ftc.gov)>  
**Cc:** Roush, Corey <[croush@akingump.com](mailto:croush@akingump.com)>; Iglesias, Alexander <[aiglesias@ftc.gov](mailto:aiglesias@ftc.gov)>  
**Subject:** Docket 9386: Respondent's Motion for Extension of Time to Respond to Discovery Request

Counsel,

Please find attached Respondent’s motion for an extension of time to respond to the discovery request.

Best,  
Mitchell Khader

**Mitchell Khader** | Law Clerk  
**AKIN GUMP STRAUSS HAUER & FELD LLP**  
2001 K Street N.W. | Washington, DC 20006 | USA | Direct: [+1 202.887-4585](tel:+12028874585) | Internal: 24585  
Fax: [+1 202.887.4288](tel:+12028874288) | [mkhader@akingump.com](mailto:mkhader@akingump.com) | [akingump.com](http://akingump.com) | [Bio](#)

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

The information contained in this e-mail message is intended only for the personal and confidential use of the recipient(s) named above. If you have received this communication in error, please notify us immediately by e-mail, and delete the original message.

# EXHIBIT G

**DECLARATION OF CHRISTOPHER GHAZARIAN**  
PURSUANT TO 28 U.S.C. § 1746

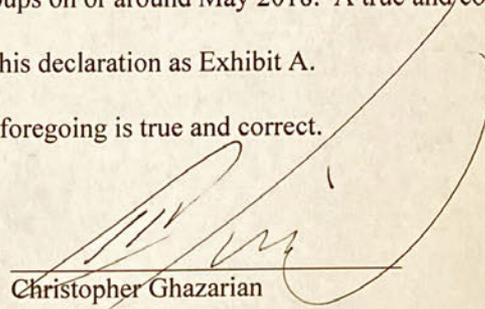
I, Christopher Ghazarian, have personal knowledge of the following facts and matters discussed in this declaration. If called as a witness, I would testify as follows:

1. I am over age 18 years old and reside in California.
2. I am the General Counsel of DreamHost, LLC ("DreamHost"). DreamHost provides a variety of webhosting services that allow customers to create websites and host them on DreamHost's servers.
3. DreamHost has housed some of those servers in facilities owned and operated by RagingWire Data Centers, Inc. ("RagingWire"). DreamHost most recently renewed its contract with RagingWire in 2017. The term of the contract is five years.
4. Starting in 2017, DreamHost started working towards meeting the requirements for GDPR compliance. DreamHost complies with GDPR, and ensures that all of its partners that deal with personally identifiable information from residents in the European Economic Area are also compliant. DreamHost vets all of its partners from security, legal and privacy standpoints, which includes checking the partner's privacy policy.
5. For partners implicated by GDPR, one of the many things we check for is to see if the partner is Privacy Shield certified. If a company is not Privacy Shield certified, we pursue other methods to ensure GDPR compliance, such as model contract clauses. The accuracy of a company's representations about being a Privacy Shield participant is a big deal to DreamHost.
6. Working with Privacy Shield-certified partners is attractive because the partner's certification gives us more peace of mind when considering whether or not to partner with that company. RagingWire's Privacy Shield certification was therefore a plus for deciding to work with RagingWire.

7. There was a discussion about DreamHost's GDPR or Privacy Shield compliance in one of DreamHost's community forum discussion groups on or around May 2018. A true and correct copy of a screenshot of this discussion is attached to this declaration as Exhibit A.

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

Date: December 20, 2019

  
\_\_\_\_\_  
Christopher Ghazarian

# EXHIBIT H



Office of the Secretary

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

OCT 01 2018

Via Federal ExpressDoug Adams  
Chief Executive Officer  
RagingWire Data Centers, Inc.  
P.O. Box 348060  
Sacramento, CA 95834-8060

FTC Matter No. 1823189

To Mr. Adams:

The Federal Trade Commission (FTC) has issued the attached Civil Investigative Demand ("CID") asking for information as part of a non-public investigation. Our purpose is to determine whether RagingWire Data Centers, Inc. falsely represented that it was a certified participant in the E.U.-U.S. and/or Swiss-U.S. Privacy Shield Frameworks or that it adhered to the Privacy Shield principles established by the Framework(s), in violation of Section 5 of the FTC Act, 15 USC 45, and whether Commission action to obtain monetary relief would be in the public interest. Please read the attached documents carefully. Here are a few important points we would like to highlight:

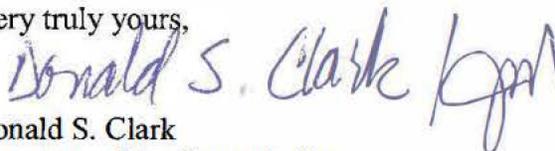
1. **Contact FTC counsel, Mark Eichorn (meichorn@ftc.gov; (202) 326-3053), or staff member Robin Wetherill (rwetherill@ftc.gov; (202) 326-2220), as soon as possible to schedule an initial meeting to be held within 14 days.** You can meet in person or by phone to discuss any questions you have, including whether there are changes to how you comply with the CJD that would reduce your cost or burden while still giving the FTC the information it needs. Please read the attached documents for more information about that meeting.
2. **You must immediately stop any routine procedures for electronic or paper document destruction, and you must preserve all paper or electronic documents** that are in any way relevant to this investigation, even if you believe the documents are protected from discovery by privilege or some other reason.
3. **The FTC will use information you provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces.** We will not disclose the information under the Freedom of Information Act, 5 U.S.C. § 552. We may disclose the information in response to a valid request from Congress, or other civil or criminal federal, state, local, or foreign law enforcement agencies for their official law enforcement purposes. The FTC or other agencies may use and disclose your response in any federal, state, or foreign civil or criminal proceeding, or if

required to do so by law. However, we will not publically disclose your information without giving you prior notice.

4. **Please read the attached documents closely.** They contain important information about how you should provide your response.

Please contact FTC counsel as soon as possible to set up an initial meeting. We appreciate your cooperation.

Very truly yours,

A handwritten signature in blue ink that reads "Donald S. Clark" followed by a stylized monogram or initials.

Donald S. Clark  
Secretary of the Commission