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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

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14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

17 FEDERAL TRADE COMMISSION,
18 600 Pennsylvania Avenue, NW
19 Washington, DC 20580
20
21 Petitioner,

21 v.

22 RESPONSE MAKERS, LLC,
23 11230 Sorrento Valley Road, Suite 100
24 San Diego, California 92121
25
26 Respondent.

'10 CV 1768WQH

BLM

Case No.

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



Preamble

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3 Petitioner, the Federal Trade Commission (“FTC” or “Commission”) petitions this Court,
4 pursuant to Sections 16 and 20 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 56,
5 57b-1, and 28 U.S.C. §§ 1337 and 1345, and Fed. R. Civ. P. 81 (a)(5), for an order requiring
6 respondent, Response Makers LLC (“Response Makers”), to produce responses to written
7 interrogatories and to document requests, and a sworn verification as to these responses, in response to
8 a Commission Civil Investigative Demand (“CID”), a type of administrative subpoena, issued to
9 Response Makers on July 27, 2010. The CID was issued in the course of a non-public investigation
10 concerning possible violations by Response Makers of Sections 604(f), 607(a), 607(e)(1), and/or
11 607(e)(2) of the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681b(f), 1681e(a), 1681e(e)(1),
12 1681e(e)(2), and of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), with respect to, *inter alia*, the sale
13 and marketing of prescreened consumer report information.
14
15

16 Response Makers’ absolute failure to comply with the CID is impeding the Commission’s
17 investigation. If, based on its investigation, the Commission has reason to believe that violations of the
18 FTC Act or the FCRA have occurred, the Commission may seek monetary civil penalties and
19 injunctive relief or other equitable relief under the FCRA, 15 U.S.C. §§ 1681 - 1681x, as well as
20 injunctive or other equitable relief under the FTC Act, §§ 45(a), 53(b).
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23 The Declaration under penalty of perjury of Katherine Armstrong, which verifies the allegations
24 of this Petition, is attached hereto as Petition Exhibit (Pet. Exh.) 1.
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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. The Commission likewise is authorized and directed to enforce the FCRA which, in Section 621, provides that “a violation of any requirement or prohibition imposed under the [FCRA] shall constitute an unfair or deceptive act or practice ... in violation of section 5(a) of the FTC Act.” 15 U.S.C. §1681s.

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 9 of the FTC Act, 15 U.S.C. § 49, authorizes the Commission to issue subpoenas to compel the testimony of witnesses and the production of all such documentary evidence relating to any matter under investigation. 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. *See also* 15 U.S.C. § 1681s(a)(1) (providing the Commission with the same investigatory authority for violations of the FCRA).

4. This Court also has jurisdiction to enforce the Commission’s duly issued CIDs, including

1 the CID issued to Respondent, under Section 20(e) of the FTC Act, which provides, in pertinent part:

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

11 15 U.S.C. § 57b-1(e).

12 5. Response Makers is a California limited liability company. Eric Rothchild is the
13 President and Principal Owner. Response Makers is located at 11230 Sorrento Valley Road, Suite 100,
14 San Diego California, 92121. Pet. Exh. 1, ¶ 4. Response Makers is engaged in, and its business
15 affects, "commerce" as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

16 6. On April 15, 1999, the Commission issued a "Resolution Directing Use of Compulsory
17 Process in Nonpublic Investigation Into the Acts and Practices of Unnamed Persons, Partnerships and
18 Corporations Engaged in Acts or Practices in Violation of 15 U.S.C. § 1681 *et seq.*, and/or 15 U.S.C. §
19 45. The resolution authorized all compulsory process available to the Commission to be used to
20 investigate, among other things, "whether persons, partnerships or corporations may be engaging in, or
21 have engaged in, acts or practices in violation of the FCRA, U.S.C. § 1681 *et seq.*, and/or Section 5 of
22 the FTC Act, 15 U.S.C. § 45, ... relating to information furnished to consumer reporting agencies,
23 maintained in the files of consumer reporting agencies, or obtained as a consumer report from a
24 consumer reporting agency." Pet. Exh. 2.

25 7. On July 27, 2010, pursuant to the authority of the investigatory resolution, the
26 Commission issued a CID seeking answers to interrogatories and documents concerning Response
27 Makers' business practices involving the use of prescreened consumer reports. Pet. Exh. 2. The CID
28

1 was served on July 28, 2010, and directs Response Makers to submit the response materials by August
2 4, 2010. Pet. Exh. 3; Pet. Exh. 2; Pet. Exh. 1, ¶7.

3
4 8. Weeks earlier, an FTC investigator spoke with Response Makers' President Eric
5 Rothchild about the Commission's investigation and the Commission's earlier efforts to serve a May 5,
6 2010 CID at a different address. In that conversation, Mr. Rothchild confirmed that Response Makers
7 would accept service of the CID at the Sorrento Valley Road address. Following that initial contact,
8 FTC staff again sent the CID, and made a number of unsuccessful attempts to contact Mr. Rothchild by
9 telephone concerning the Commission's need for responsive materials. Pet. Exh. 1, ¶ 8.

10
11 9. On July 29, 2010, FTC staff left a message for Mr. Rothchild reminding him that the
12 return date for the CID was August 4, 2010. On the same day, Mr. Rothchild left a message for Ms.
13 Armstrong, advising that he had received the CID and stating that he would cooperate in the
14 Commission's investigation. On August 4, 2010, after yet another unsuccessful attempt to reach Mr.
15 Rothchild directly, an FTC staff attorney left a voicemail reminding Mr. Rothchild that the responses to
16 the CID were due by close of business that same day, and that, failing a response, the Bureau of
17 Consumer Protection would have to ask the Commission's Office of General Counsel to institute CID
18 enforcement proceedings. Pet. Exh. 1, ¶ 9.

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21 10. Despite repeated efforts, FTC staff has not been able to speak directly with Mr. Rothchild
22 regarding the failure of Response Makers to respond to the CID. Furthermore, despite Mr. Rothchild's
23 promise to cooperate in the investigation, the Commission has not received any of the information and
24 documents requested by the CID. Pet. Exh. 1, ¶ 10.

25
26 11. Response Makers has not objected to the CID on any ground, and has not petitioned the
27 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.
28 Exh. 1, ¶ 11.

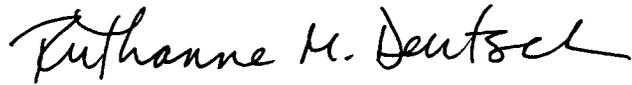
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Respectfully submitted,

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Deputy General Counsel - Litigation

LESLIE RICE MELMAN
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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED

I. (a) PLAINTIFFS
Federal Trade Commission

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Ruthanne Deutsch
PTC
600 Pennsylvania Ave.
Washington, DC 20530
921 (619) 557-7150
106632769 WQH BLM

DEFENDANTS
Response Makers, LLC
AUG 24 PM 12:11

County of Residence of First Listed Defendant: San Diego
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. DEPUTY

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff
 2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	<input type="checkbox"/> 1	PTF DEF	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2		<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3		<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act. <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. §§ 56, 57b-1 and 28 U.S.C. §§ 1337 and 1345

Brief description of cause:
Petition for an Order to Enforce a Civil Investigative Demand

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: 08/24/2010

SIGNATURE OF ATTORNEY OF RECORD:

FOR OFFICE USE ONLY

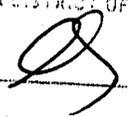
RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

No Fee Required

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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

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17 FEDERAL TRADE COMMISSION,
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21 Petitioner,

21 v.

22 RESPONSE MAKERS, LLC,
23 11230 Sorrento Valley Road, Suite 100
24 San Diego, California 92121

25 Respondent.

20 '10 CV 1768 WQH

BLM

Case No.

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



1
2
3 Petitioner, the Federal Trade Commission (“FTC” or “Commission”), pursuant to Section 20 of
4 the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 57b-1, petitions this Court for an Order
5 requiring Respondent, Response Makers LLC (“Response Makers”), to comply with a civil investigative
6 demand (“CID”). The Commission issued the CID in aid of a non-public investigation seeking to
7 determine whether Response Makers has engaged in acts or practices in violation of, *inter alia*, Sections
8 604(f), 607(a), 607(e)(1), and 607(e)(2) of the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§
9 1681b(f), 1681e(a), 1681e(e)(1), or Section 5(a) of the FTC Act, 15 U.S.C. § 5(a), in connection with its
10 marketing of “prescreened lists” containing, *inter alia*, the names and contact information of consumers
11 who meet certain criteria. Response Makers’ absolute failure to respond to the CID greatly impedes the
12 Commission’s ongoing investigation.
13

14 This proceeding is properly instituted by a petition and order to show cause (rather than by
15 complaint and summons) and is summary in nature; discovery or evidentiary hearings may be granted
16 only upon a showing of exceptional circumstances. *See, e.g., FTC v. Carter*, 636 F.2d 781, 789 (D.C.
17 Cir. 1980); *FTC v. MacArthur*, 532 F.2d 1135, 1141-42 (7th Cir. 1976); *United States v. Litton*
18 *Industries, Inc.*, 462 F.2d 14, 17 (9th Cir. 1972); *see also United States v. Markwood*, 48 F.3d 969, 981-
19 82 (6th Cir. 1995); *Appeal of FTC Line of Business Report Litigation*, 595 F.2d 685, 704-05 (D.C. Cir.
20 1978). Because the CID was lawfully issued, the information and documents sought are relevant to the
21 Commission’s investigation, and responding to the CID would not unduly burden Response Makers, the
22 Court should (1) order Response Makers to show cause why it should not fully comply, and (2)
23 thereafter enforce the CID. *See, e.g., EPA v. Alyeska Pipeline Serv. Co.*, 836 F.2d 443, 446 (9th Cir.
24 1988).
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JURISDICTION

1
2 The Commission is an administrative agency of the United States, organized and existing
3 pursuant to the FTC Act, 15 U.S.C. § 41 *et seq.* The Commission is authorized and directed by Section
4 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prohibit unfair methods of competition and unfair or
5 deceptive acts or practices in or affecting commerce. The Commission is also authorized and directed
6 by Section 621(a)(1) of the FCRA, 15 U.S.C. § 1681s(a)(1), to use the powers and authority granted it
7 by the FTC Act to enforce the requirements of the FCRA.
8
9

10 The authority of the Commission to issue a CID, and the jurisdiction and venue of this Court to
11 enter an order enforcing it, are conferred by Section 20(c) of the FTC Act, 15 U.S.C. § 57b-1(c), which
12 empowers the Commission to issue CIDs to compel, *inter alia*, the production of documentary evidence
13 and responses to written interrogatories. Sections 20(e) and (h) of the FTC Act, 15 U.S.C. §§ 57b-1(e)
14 and (h), authorize the Commission to invoke the aid of the district courts to enforce a CID in any
15 jurisdiction in which the recipient of a CID “resides, is found, or transacts business.” They also
16 authorize the Commission to seek enforcement of a CID in its own name using its own counsel. *Id.*
17

18 In this case, venue and jurisdiction are proper under Section 20(e) because Response Makers
19 transacts business, and is found, in this district. Pet. Exh. 1 ¶ 4.¹
20

STATEMENT OF FACTS

21
22 Response Makers is a California limited liability company, located at 11230 Sorrento Valley
23 Road, Suite 100, San Diego California, 92121. Eric Rothchild is the President and Principal Owner.
24 Pet. Exh. 1 ¶ 4. In the ongoing investigation, the Commission seeks to determine, *inter alia*, whether
25 Response Makers is violating Section 604(f) of the FCRA, 15 U.S.C. § 1681b(f), by obtaining consumer
26

27
28 ¹ Exhibits to the Commission’s Petition are referred to as “Pet. Exh.”

1 reports without a permissible purpose, and 607(a) of the FCRA, 15 U.S.C. § 1681e(a), for failure to
2 establish adequate compliance procedures for the handling of consumer reports. The investigation also
3 seeks to determine whether Response Makers is procuring consumer reports for resale without
4 disclosing the identity of the end-user of the report and the end-user's permissible purpose to the
5 consumer reporting agency that furnished the consumer report, as required by Section 607(e)(1) of the
6 FCRA, 15 U.S.C. § 1681e(e)(1), and whether Response Makers has failed to establish and comply with
7 procedures to ensure that consumer reports are resold only to persons who have a permissible purpose,
8 as required by Section 607(e)(2) of the FCRA, 15 U.S.C. § 1681e(e)(2). Finally, the Commission is
9 investigating whether Response Makers' practices are "unfair or deceptive acts or practices" in violation
10 of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). Pet. Exh. 1 ¶ 6.

13 On July 28, 2010, the Commission served Response Makers with the CID that is the subject of
14 this proceeding. Pet. Exh. 2; Pet. Exh. 1 ¶ 7. The CID directs the production of certain documents and
15 responses to written interrogatories, with a return date of August 4, 2010. Pet. Ex. 1 ¶¶ 7; Pet. Exh. 2.²
16 The instant CID was issued pursuant to the authority of a Commission resolution dated April 15, 1999.
17 Pet. Exh. 2. The 1999 resolution directed that compulsory process be used to investigate, among other
18 things, "acts or practices in violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., and/or
19 Section 5 of the FTC Act, 15 U.S.C. § 45 ... relating to information ... obtained as a consumer report
20
21

23 ² The Commission has been seeking to obtain information from Response Makers since
24 early May 2010. That CID was mailed to the address that appeared on Response Makers'
25 website. It was later returned, apparently due to a problem with the address. Pet. Exh. 1 ¶ 8.
26 After the CID was sent again, an FTC investigator was able to reach Response Makers'
27 President, Eric Rothchild, and discussed the contents of the CID and Response Makers'
28 compliance obligations. Subsequently, due to continuing problems with establishing the date of
service, the Commission issued the CID that is the subject of this proceeding. But for the dates
of issuance and service, it is identical in content to the CID that the Commission issued in May.
Pet. Exh. 1 ¶ 8.

1 from a consumer reporting agency.” Pet. Exh. 2. The CID contains twelve written interrogatory
2 specifications and nine document production requests. The information sought concerns Response
3 Makers’ business practices with respect to the handling of prescreened consumer reports and
4 compliance with the FCRA. Pet. Exh. 2.

5
6 The return date for the responses to the CID was August 4, 2010. Pet. Exh 1 ¶ 7; Pet. Exh. 2.
7 Response Makers has not objected to the CID on any ground, and has not petitioned to quash or limit the
8 CID as provided in FTC Rule 2.7(d)(1), 16 C.F.R. § 2.7(d)(1). Pet. Exh. 1 ¶ 11. Nonetheless, Response
9 Makers has not produced any of the information or documents required by the CID. Pet. Exh 1 ¶ 10.
10 Indeed, as of the filing date of the Commission’s Petition, FTC staff has not been able to speak directly
11 with Mr. Rothchild regarding the failure of Response Makers to respond to the CID.
12

13 ARGUMENT

14 **I. THE SCOPE OF ISSUES CONSIDERED IN PROCEEDINGS TO ENFORCE** 15 **COMPULSORY PROCESS IS NARROW**

16 Although “the court's function is ‘neither minor nor ministerial,’ the scope of issues which may
17 be litigated in a [compulsory process] enforcement proceeding must be narrow, because of the important
18 governmental interest in the expeditious investigation of possible unlawful activity.” *FTC v. Texaco,*
19 *Inc.*, 555 F.2d 862, 872 (D.C. Cir. 1977) (*en banc*) (internal citation omitted). This Court’s role in a
20 CID enforcement proceeding is thus limited to determining whether the Commission demonstrates that:
21 (1) the investigation is within the authority of the agency; (2) the procedural requirements have been
22 followed; and (3) the information sought is reasonably relevant. *EEOC v. Children's Hosp. Med. Ctr.*,
23 719 F.2d 1426, 1428 (9th Cir. 1983) (*en banc*), *abrogated on other grounds by Gilmer v.*
24 *Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991), *as recognized by Prudential Ins. Co. of Am. v. Lai*,
25 42 F.3d 1299, 1303 (9th Cir. 1994)). *See also United States v. Morton Salt Co.*, 338 U.S. 632, 652
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1 (1950); *NLRB v. Bakersfield Californian*, 128 F.3d 1339, 1341 (9th Cir.1994); *Alyeska Pipeline Serv.*
 2 *Co.*, 836 F.2d at 446.³ “As long as the evidence sought is relevant, material and there is some
 3 ‘plausible’ ground for jurisdiction, or to phrase it another way, unless jurisdiction is plainly lacking the
 4 court should enforce the subpoena.” *EEOC v. Karuk Tribe Housing Auth.*, 260 F.3d 1071, 1077 (9th Cir.
 5 2001) (internal quotation marks omitted).

7 The government’s burden to demonstrate that these requirements have been satisfied is a “slight
 8 one” and “may be satisfied by a declaration from an investigating agent.” *United States v. Dynavac,*
 9 *Inc.*, 6 F.3d 1407, 1414 (9th Cir.1993). Here, as set forth in the accompanying declaration of Katherine
 10 Armstrong, Pet. Exh. 1, the Commission has readily demonstrated that the requirements for enforcement
 11 are satisfied.

14 II. THE CIVIL INVESTIGATIVE DEMAND SHOULD BE ENFORCED

15 A. The Civil Investigative Demand is Within the Authority of the Commission

16 The Commission's authority to issue the CID is clear. *See* 15 U.S.C. §§ 43, 57b-1, 1681s(a)(1).
 17 Also without doubt is the Commission's authority to investigate acts and practices that may violate §
 18 5(a) of the FTC Act. *See FTC v. Invention Submission Corp.*, 965 F.2d 1086 (D.C. Cir. 1992); *FTC v.*
 19

21 ³ A fourth, possible consideration for the Court is whether a recipient of process has shown
 22 that a subpoena or CID is unreasonable because it is overbroad or unduly burdensome.
 23 *Bakersfield Californian*, 128 F.3d at 1341. The burden for this issue would rest with Response
 24 Makers. Even if Response Makers had such objections, however, they could not properly be
 25 presented to the Court in the instant proceeding because its opportunity to seek administrative
 26 relief from the Commission (a predicate to seeking judicial relief) has passed. *See FTC v.*
 27 *O'Connell Assocs., Inc.*, 828 F. Supp. 165, 168 (E.D.N.Y. 1993); Commission Rule 2.7(d)(1), 16
 28 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.”). Response Makers 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, ¶ 11.

1 *Ken Roberts Co.*, 276 F.3d 583, 586 (D.C. Cir. 2001); *Carter*, 636 F.2d at 787-88. The Commission's
2 authority to issue the CID and investigate acts or practices that may violate the FCRA is equally clear,
3 and courts ordering enforcement of CIDs issued in the context of FCRA investigations have confirmed
4 the agency's "plenary power to secure information bearing on authorized agency inquiries." *FTC v.*
5 *Manager, Retail Credit Co., Miami Branch Office*, 515 F.2d 988, 993 (D.C. Cir. 1975); *see also FTC v.*
6 *TRW, Inc.*, 628 F.2d 207, 211 (D.C. Cir. 1980).

8 **B. The Procedural Requirements were Followed**

9
10 The CID was issued pursuant to a valid Commission resolution authorizing the issuance of
11 compulsory process for possible violations of the FCRA and the FTC Act. Pet. Exh. 2. The CID was
12 signed by a Commissioner and was served by the Commission's Secretary, as provided in the
13 Commission's Rules. *See* 16 C.F.R. § 2.7. The procedural requirements for the CID were, therefore,
14 followed.

15
16 **C. The CID Seeks Information That is Reasonably Relevant to the
17 Commission's Investigation**

18 The instant CID is designed to determine whether Response Makers is engaged in procuring and
19 reselling prescreened lists for an impermissible purpose, in violation of Sections 604(f), 607(a)
20 607(e)(1), and/or 607(e)(2) of the FCRA, 15 U.S.C. §§ 1681b(f), 1681e(a), 1681e(e)(1), & 1681e(e)(2),
21 and whether such activity might also violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). Pet. Exh. 1
22 ¶ 6.

23
24 Plainly, the information sought by the CID is reasonably relevant to the Commission's
25 investigation, as it is designed to assist the Commission in ascertaining whether "the law is being
26 violated in some way and . . . to determine whether or not to file a complaint." *Invention Submission*
27 *Corp.*, 965 F.2d at 1090. As set forth in the accompanying declaration of the Commission's lead
28

1 attorney, Katherine Armstrong, the Commission, through specific interrogatories and document
2 requests, seeks to ascertain whether or not Response Makers is violating the FTC Act or the FCRA with
3 respect to the manner in which it obtains or sells prescreened consumer lists containing the names and
4 other identifying information of consumers who, based on information maintained by consumer
5 reporting agencies, meet certain criteria. Pet. Exh. 1 ¶¶ 4, 6.

7 Because the CID seeks information that is “not plainly incompetent or irrelevant to any lawful
8 purpose,” *Casey v. FTC*, 578 F.2d 793, 799 (9th Cir. 1978) (citations omitted), it should be enforced.

9
10 *See also Texaco*, 555 F.2d at 874-76.

11 **CONCLUSION**

12 For all the foregoing reasons, this Court should enter an order requiring Response Makers,
13 within ten calendar days of the entry of this Court’s order compelling compliance, to provide complete
14 responses to the CID’s written interrogatories and document requests, and a sworn certificate of
15 compliance in the form provided in Pet. Exh. 2.
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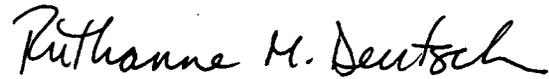
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Respectfully submitted,

WILLARD K. TOM
General Counsel

JOHN F. DALY
Deputy General Counsel - Litigation

LESLIE RICE MELMAN
Assistant General Counsel - Litigation



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San Diego, CA 92101-8893
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Facsimile: (619) 557-5004
email: Raven.Norris@usdoj.gov

Petition Exhibit 1

1
2
3 **DECLARATION OF KATHERINE ARMSTRONG**

4 Pursuant to 28 U.S.C. § 1746, Katherine Armstrong, declares as follows:

5 1. I am employed as an attorney by the Federal Trade Commission (“Commission” or
6 “FTC”), Bureau of Consumer Protection, Division of Privacy and Identity Protection, Washington,
7 D.C. I am the lead attorney for the Commission’s investigation of Response Makers LLC (“Response
8 Makers”), FTC File No. 1023000.

9
10 2. I am authorized to execute a declaration verifying the contents of the Commission’s
11 Petition for an Order to Enforce Civil Investigative Demand. I have read the Petition and exhibits
12 thereto (hereinafter Petition) and verify that Pet Exh. 2 through Pet. Exh. 3 (this declaration is Pet. Exh
13 1) are true and correct copies of documents contained in the Commission’s official files.

14
15 3. The Commission is an administrative agency of the United States, organized and
16 existing pursuant to the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 41 *et seq.* The
17 Commission is authorized and directed by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prohibit
18 unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. The
19 Commission is likewise authorized, under Section 621(a) of the Fair Credit Reporting Act (“FCRA”),
20 to seek equitable relief and monetary civil penalties necessary to prevent and deter violations of the
21 FCRA, 15 U.S.C. §§1681 - 1681x.
22

23
24 4. Response Makers is a California limited liability company. Eric Rothchild is the
25 President and Principal Owner. Response Makers is a lead generator and is in the business of, *inter*
26 *alia*, obtaining and selling “prescreened lists” containing, *inter alia*, the names, addresses, or telephone
27 numbers of consumers who meet certain criteria, based on information maintained by consumer
28 reporting agencies. Response Makers maintains its principal place of business at 11230 Sorrento

1
2 Valley Road, Suite 100, San Diego, California 92121.

3
4 5. The CID that the Commission seeks to enforce was issued pursuant to the authority of a
5 Commission resolution dated April 15, 1999 (attached as Pet. Exh. 2.). The Commission's
6 investigatory resolution directs that compulsory process be used to investigate, among other things,
7 "acts or practices in violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*, and/or Section
8 5 of the FTC Act, 15 U.S.C. § 45 ... relating to information ... obtained as a consumer report from a
9 consumer reporting agency." Pet. Exh. 2.

10
11 6. On May 5, 2010, in the course of the investigation, the Commission issued a Civil
12 Investigative Demand ("CID") directing Response Makers to respond to interrogatories and provide
13 documents regarding its business processes involving the use of prescreened lists and compliance with
14 the FCRA. The purpose of the investigation is to determine, *inter alia*, whether Response Makers is
15 violating Section 604(f) of the FCRA, 15 U.S.C. § 1681b(f), by obtaining consumer reports without a
16 permissible purpose and/or Section 607(a) of the FCRA, 15 U.S.C. § 1681e(a), by failing to establish
17 adequate compliance procedures for the handling of consumer reports. The investigation also seeks to
18 determine whether Response Makers is procuring consumer reports for resale without disclosing the
19 identity of the end-user of the report and the end-user's permissible purpose to the consumer reporting
20 agency that furnished the consumer report, as required by Section 607(e)(1) of the FCRA, 15 U.S.C. §
21 1681e(e)(1), and whether Response Makers has failed to establish and comply with procedures to
22 ensure that consumer reports are resold only to persons who have a permissible purpose, as required by
23 Section 607(e)(2) of the FCRA, 15 U.S.C. § 1681e(e)(2). The Commission also seeks to determine
24 whether Response Makers' business practices violate the prohibition against "unfair or deceptive acts
25 or practices" in Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

1
2 7. The CID at issue in this proceedings was issued by the Commission on July 27, 2010,
3 and directs Response Makers to submit the responsive materials by August 4, 2010. (A true and correct
4 copy of the CID is attached as Pet. Exh. 2.) The July 27, 2010 CID was served on Response Makers by
5 express mail, delivery receipt requested on July 28, 2010. (A true and correct copy of the receipt
6 confirming delivery of the CID is attached as Pet. Exh. 3.)
7

8 8. Weeks earlier, an FTC investigator had called Response Maker's President, Eric
9 Rothchild, and had talked with him about the Commission's investigation and the Commission's
10 unsuccessful efforts to serve an earlier version of the CID (issued on May 5, 2010). In that
11 conversation, Mr. Rothchild stated that Response Makers would accept service of a CID at its new
12 address on Sorrento Valley Road. Following that initial contact, the May 5, 2010, CID was resent, and
13 FTC staff followed up with a number of attempts, all of which were unsuccessful, to reach Mr.
14 Rothchild and to discuss Response Makers' compliance with the CID. Ultimately, as a result of
15 difficulties in establishing the date of service, the Commission, on July 27, 2010, reissued the CID.
16 The instant CID is identical to the CID previously discussed with Mr. Rothchild, but for the date of
17 issuance and return dates.
18

19 9. On July 29, 2010, FTC staff left a message for Mr. Rothchild reminding him that the
20 return date for the CID was August 4, 2010. On the same day, Mr. Rothchild left a message for me,
21 stating that he had received the CID and that he would cooperate in the Commission's investigation. On
22 August 4, 2010, after yet another unsuccessful attempt to reach Mr. Rothchild directly, an FTC staff
23 attorney left a voicemail reminding Mr. Rothchild that Response Makers' responses to the CID were
24 due by close of business that same day, and that, failing a response, the Bureau of Consumer Protection
25 would have to ask the Commission's Office of General Counsel to institute CID enforcement
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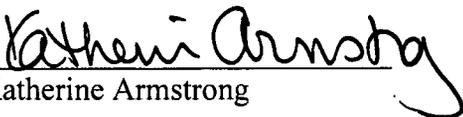
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2 proceedings.

3
4 10. Despite repeated efforts to do so, FTC staff has not been able to speak directly with Mr.
5 Rothchild regarding the failure of Response Makers to respond to the CID. Furthermore, despite Mr.
6 Rothchild's earlier promise to cooperate in the investigation, the Commission has not received any of
7 the information and documents requested by the CID.

8
9 11. Response Makers has not objected to the CID on any ground, and has not petitioned the
10 Commission to quash or limit the CID, as provided in FTC Rule 2.7(d)(1), 16 C.F.R. § 2.7(d)(1).

11
12 12. Response Makers' failure to comply with the CID continues to greatly impede the
13 Commission's ongoing investigation.

14
15 I declare under penalty of perjury that the foregoing is true and correct. Executed this 20th day
16 of August 2010, in Washington, District of Columbia..

17
18 
19 Katherine Armstrong

**Petition
Exhibit 2
(Redacted)**



United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

Response Makers, LLC
11230 Sorrento Valley Road
Suite 100
San Diego, CA 92121
Attn: Eric Rothchild

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

August 4, 2010

3. SUBJECT OF INVESTIGATION

See attached resolution.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Katherine Armstrong/Amanda Koulousias
Federal Trade Commission
601 New Jersey Avenue NW (Stop NJ 8122)
Washington, DC 20580 (202-326-3250)

5. COMMISSION COUNSEL

Katherine Armstrong
Federal Trade Commission
601 New Jersey Avenue NW (Stop NJ 8122)
Washington, DC 20580 (202-326-3250)

DATE ISSUED

July 27, 2010

COMMISSIONER'S SIGNATURE

A. Thomas Ross

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 OMB 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 FEDERAL TRADE COMMISSION**

COMMISSIONERS:

Robert Pitofsky, Chairman
Sheila F. Anthony
Mozelle W. Thompson
Orson Swindle

**RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN NONPUBLIC
INVESTIGATION INTO THE ACTS AND PRACTICES OF UNNAMED PERSONS,
PARTNERSHIPS AND CORPORATIONS ENGAGED IN ACTS OR PRACTICES IN
VIOLATION OF 15 U.S.C. § 1681 ET SEQ. AND/OR 15 U.S.C. § 45**

File No. 992-3120

Nature and Scope of Investigation:

An investigation to determine whether persons, partnerships or corporations may be engaging in, or may have engaged in, acts or practices in violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., and/or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended, relating to information furnished to consumer reporting agencies, maintained in the files of consumer reporting agencies, or obtained as a consumer report from a consumer reporting agency. Such investigation shall, in addition, determine whether Commission action to obtain redress of injury to consumers or others would be in the public interest.

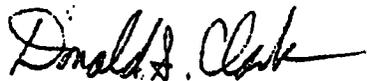
The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

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; FTC Procedures and Rules of Practices 16 C.F.R. 1.1 et seq. and supplements thereto.

Title VI of the Consumer Credit Protection Act, Section 621, 15 USCA § 1681s.

By direction of the Commission.


Donald S. Clark
Secretary

Dated: April 15, 1999

**Civil Investigative Demand
Schedule for
Documentary Material and Written Interrogatories**

To: Response Makers, LLC
11230 Sorrento Valley Road
Suite 100
San Diego, CA 92121
Attn: Eric Rothchild

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 "all," and "all" shall be construed to include the word "any."

C. "CID" shall mean this Civil Investigative Demand, the attached Resolution and the accompanying Schedule, including the Definitions, Instructions, and Specifications.

D. [REDACTED] shall mean [REDACTED] which is believed to be located at [REDACTED]

E. "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, taped, recorded, filmed, punched, computer-stored, 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, electronic mail, and computer material (including print-outs, cards, magnetic or electronic tapes, discs and such codes or instructions as will transform such computer materials into easily understandable form).

F. "Each" shall be construed to include "every," and "every" shall be construed to include "each."

G. [REDACTED] shall mean [REDACTED] its wholly or partially owned subsidiaries, parent companies, unincorporated divisions, joint ventures, partnerships, operations under assumed names, predecessors, affiliates, and all directors, officers, partners, employees, agents, consultants, franchisees, independent distributors, and any other person or entity, working for or

on behalf of the foregoing.

H. **“Fair Credit Reporting Act” or “FCRA”** shall mean the statute found at 15 U.S.C. § 1681 *et. seq.*

I. **“FTC” or “Commission”** shall mean the Federal Trade Commission.

J. **“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.

K. **“Prescreening” or “prescreened list”** shall refer to the process and the resulting lists covered by Section 603(l), 604(c), 604(e), and 615(d) of the FCRA.

L. **“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.

M. **“Response Makers”** shall mean Response Makers, 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.

N. **“You” and “Your”** shall mean the person or entity to whom this CID is issued.

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. **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 CID.

C. **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, and date 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).

D. 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.

E. 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).

F. 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 or information, you are encouraged to discuss such possible modifications, including any modifications of definitions and instructions, with Katherine Armstrong at 202.326.3250. All such modifications must be agreed to in writing. 16 C.F.R. § 2.7(c).

G. Certification: A duly authorized manager of Response Makers shall certify that the response to this CID is 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 28 U.S.C. § 1746.

H. Scope of Search: This CID covers documents and information 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, and employees, whether or not such documents were received from or disseminated to any person or entity.

I. Document Production: You shall produce the documentary material by making all responsive documents available for inspection and copying at your principal place of business. Alternatively, you may elect to send all responsive documents to Katherine Armstrong, Division

of Privacy and Identity Protection, Federal Trade Commission, 601 New Jersey Avenue N.W. (Stop NJ 8122) Washington, DC 20580. 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 Katherine Armstrong, at 202.326.3250, at least five days prior to the return date.

J. 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. In addition, number by page all documents in your submission and indicate the total number of documents in your submission.

K. 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.

L. 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 will be accepted only with prior approval.

- (2) File and record formats
 - (a) E-mail: The FTC accepts MS Outlook PST files, MS Outlook MSG files,

and 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.**

- M. **Sensitive Personally Identifiable Information:** If any material called for by these requests contains sensitive personally identifiable information or sensitive health information of any individual, please contact us before sending those materials to discuss ways to protect such information during production. If that information will not be redacted, contact us to discuss encrypting any electronic copies of such material with encryption software such as SecureZip and provide the encryption key in a separate communication.

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. Sensitive health information includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

- N. **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 subspecification(s) to which it is responsive.
- O. **Certification of Records of Regularly Conducted Activity:** A Certification of Records of Regularly Conducted Activity is attached. While Response Makers is not legally obligated to complete this certification, it will aid in establishing the admissibility of the documents as evidence, if necessary, and may reduce the need to subpoena Response Makers to testify at future proceedings.

III. SPECIFICATIONS

A. Interrogatories

- 1. State Response Makers' complete legal name, its principal place of business, its corporate mailing address, the date and state of incorporation, and all other names

under which it has done or does business.

2. Describe Response Makers' corporate structure, and state the names of all parents, subsidiaries (whether wholly or partially owned), divisions (whether incorporated or not), affiliates, branches, joint ventures, franchises, operations under assumed names, and entities over which it exercises supervision or control. For each such entity, describe the nature of its relationship to Response Makers.
3. Describe the structure, composition, duties, and powers of Response Makers' Board or other governing body, including the names of all members and the names of the companies or other organizations with which the members are affiliated.
4. Describe each product and service that you provide, how it is promoted, the types of entities to which (or individuals to whom) you promote and provide it, and the method(s) by which you provide it or make it available, including but not limited to:
 - (a) how and where you store and organize the data you collect, how requested data is provided to your customers, and how your customers are charged for the product or service;
 - (b) a step-by-step explanation of how your customers, including but not limited to Deed Data, access Response Makers' services or information; and
 - (c) the flow of data from the initial request made to Response Makers to the furnishing of services or information to the customer, including an explanation of Response Makers' respective contributions to and roles in the furnishing of said services or information.
5. Identify all sources from which you obtain information on consumers for use in the products and services identified in your response to Interrogatory No. 4.
6. Describe in detail your relationship with [REDACTED] and any other consumer reporting agency with which you conduct business.
7. Describe in detail your relationship with [REDACTED].
8. Identify all customers to whom you provide or have provided the products and services identified in your response to Interrogatory No. 4; and, in each case, describe the nature of the business in which each is engaged.
9. Identify the time period during which [REDACTED] has provided "prescreened lists" to Response Makers including "prescreened lists" provided by [REDACTED] through [REDACTED].

- [REDACTED]
10. Identify the names and titles of the individuals at Response Makers who are responsible for ensuring compliance with the FCRA.
 11. Identify each "prescreened list" provided by [REDACTED] to Response Makers, including "prescreened lists" provided either directly or through [REDACTED] from January 2008 to the present, including:
 - (a) The criteria used to select consumers on each list from [REDACTED] databases; and
 - (b) A description of the information provided in each list.
 12. Has Response Makers ever been the subject of any governmental or regulatory inquiry or private action relating to the products and services it has sold or made available? If so, describe the nature and the status or outcome of any such inquiry or action.

B. Documents

1. Provide samples of promotional materials referring or relating to each of the products or services listed, sold or otherwise made available by Response Makers.
2. Provide signed copies of all contracts or other types of agreements with [REDACTED] and any other consumer reporting agency with which you conduct business.
3. Provide signed copies of all contracts or other types of agreements with [REDACTED].
4. Provide copies of the application forms or agreements required to become a Response Makers customer, any instructions or other information about the application process and about your services provided to prospective customers, and copies of any instruction or other information given to customers regarding ID and password policies and procedures.
5. Provide documents sufficient to describe Response Makers' monitoring or auditing of the activities of its customers, including but not limited to copies of all policies, standards, procedures, or guidelines for reviewing or analyzing customer activities and suspending or terminating customer and affiliate accounts.
6. Provide documents sufficient to describe the procedures implemented and steps taken specifically to ensure compliance with the requirements of sections 607(a) and (e) of the FCRA, 15 U.S.C. § 1681e(a) and (e), to limit the furnishing of consumer reports to the purposes listed under section 604 of the FCRA, 15 U.S.C.

§ 1681b. Such documents shall include, but are not limited to:

- (a) documents sufficient to identify the name and title of the person(s) responsible for (i) developing, (ii) implementing, and (iii) operating on a day-to-day basis the specific procedures, programs, and operations designed to ensure compliance with sections 607(a) and (e) of the FCRA, to limit the furnishing of consumer reports to those with a permissible purpose under section 604 of the FCRA;
- (b) all written procedures to ensure compliance with the requirements of sections 607(a) and (e) of the FCRA, to limit the furnishing of consumer reports to the permissible purposes listed under section 604 of the FCRA; such procedures include, but are not limited to:
 - (i) specific procedures implemented and all steps taken by Response Makers to require prospective users to whom Response Makers furnishes consumer reports to identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purposes;
 - (ii) specific procedures implemented and all steps taken by Response Makers to verify the identity of new prospective users and the uses certified by such prospective users;
 - (iii) specific procedures implemented and all steps taken by Response Makers as a "person who procures a consumer report for purposes of reselling the report (or any information in the report)" within the meaning of section 607(e)(2) of the FCRA, to (1) identify the end user of each consumer report, and (2) obtain the certifications required by sections 607(e)(2)(A)(ii) and (iii) of the FCRA for each consumer report resold by Response Makers; and
 - (iv) specific procedures implemented and all steps taken by Response Makers as a "person who procures a consumer report for purposes of reselling the report (or any information in the report)" within the meaning of section 607(e)(2) of the FCRA, to verify (i) the identity of each end user, and (2) the certifications required by sections 607(e)(2)(A)(ii) and (iii) of the FCRA for each consumer report resold by Response Makers;
- (c) any assessments, audits, reviews, or similar steps undertaken by Response Makers to assess the efficacy of procedures designed and implemented to limit the furnishing of consumer reports to those with a permissible purpose under section 604 of the FCRA, including the results of any such assessments or other steps;
- (d) any assessments, audits, reviews, or similar steps undertaken by others to assess the efficacy of Response Makers' procedures designed and

implemented to limit the furnishing of consumer reports to those with a permissible purpose under section 604 of the FCRA, including the results of any such assessments or other steps; and

(e) any training or other instruction given to Response Makers' employees regarding their obligations to ensure compliance with the requirements of sections 607(a) and (e) of the FCRA, to limit the furnishing of consumer reports to the purposes listed under section 604 of the FCRA.

7. All documents showing applications by Response Makers, and information submitted in connection with the applications, to obtain "prescreened lists" from [REDACTED] and [REDACTED].
8. All documents provided to Response Makers by [REDACTED] or [REDACTED] outlining or explaining compliance with the FCRA, relevant state laws, and any procedures of [REDACTED] or [REDACTED] relating to "prescreening."
9. All documents, including correspondence, e-mails, records or telephone calls, and the results of any reviews or analysis by [REDACTED], [REDACTED] or Response Makers, that discuss or refer to compliance with the FCRA or to any standards or procedures relating to "prescreening," including but not limited to determinations about what constitutes a "firm offer of credit."

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 and accuracy of the records produced by Response Makers and attached hereto.
3. The documents produced and attached hereto by Response Makers 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 Response Makers;
and
 - c) Were made by the regularly conducted activity as a regular practice of Response Makers.

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

Executed on _____, 2010.

Signature

Petition Exhibit 3



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Label/Receipt Number: **EM46 5384 005U S**
Guaranteed Delivery Date/Time: **July 28, 2010, 12:00 PM**
Class: **Express Mail®**
Service(s): **Return Receipt**
Status: **Delivered**

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Your item was delivered at 10:21 AM on July 28, 2010 in SAN DIEGO, CA 92121. The item was signed for by C SALAS.

Detailed Results:

- Delivered, July 28, 2010, 10:21 am, SAN DIEGO, CA 92121
- Arrival at Post Office, July 28, 2010, 8:57 am, SAN DIEGO, CA 92121
- Processed through Sort Facility, July 28, 2010, 6:22 am, SAN DIEGO, CA 92186
- Processed through Sort Facility, July 27, 2010, 5:31 pm, WASHINGTON, DC 20074
- Acceptance, July 27, 2010, 5:00 pm, WASHINGTON, DC 20066

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