

ORIGINAL



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

\_\_\_\_\_)  
In the Matter of \_\_\_\_\_)  
\_\_\_\_\_)  
LabMD, Inc., \_\_\_\_\_)  
a corporation. \_\_\_\_\_)  
\_\_\_\_\_)

DOCKET NO. 9357

PUBLIC

**RESPONDENT LABMD, INC.'S MOTION FOR A RULE 3.36 SUBPOENA**

Pursuant to the Federal Trade Commission's ("FTC") Rules of Practice 3.36 and 3.37, 16 C.F.R. §§ 3.36 and 3.37, Respondent LabMD, Inc. ("LabMD"), respectfully moves that this Court issue a subpoena requiring the production of documents that are in the possession, custody, or control of the FTC Commissioners or the FTC's Office of Public Affairs, and are relevant to the matters described below.

On December 24, 2013, Respondent served discovery upon on Complaint Counsel.

Specifically, Complaint Counsel requested:

- all communications to, from, or between FTC employees, including the FTC's Office of Public Affairs, relating to LabMD and/or the 1718 file.
- all documents sufficient to show that since 2005, security professionals and others (including the Commission) have warned that P2P applications present a risk that users will inadvertently share files on P2P networks.
- all documents sufficient to show the standards the FTC used in the past and is currently using, to determine whether an entity's data-security practices violate Section 5 of the Federal Trade Commission Act.

(Discovery Requests, in relevant part, attached hereto as Exh. 1)(See Interrogatories No. 4 and Requests for Production of Documents No. 7, 8, 9, and 10). Complaint Counsel objected to these discovery requests on the basis of Commission Rule 3.36, 16 C.F.R. §3.36. *Id.* Moreover, Respondent now seeks information pertaining to: (1) all communications to, from, or between

FTC employees, including the FTC's Office of Public Affairs, relating to the Sacramento Incident<sup>1</sup>, as well as (2) all communications to, from, or between employees of the FTC and/or Commissioners relating to the 1718 File and the Sacramento Incident. LabMD moves that the Court to require the production of these documents for the time period of January 1, 2005, through the present, except to the extent they are protected by privilege.<sup>2</sup> LabMD's request is reasonable in scope, calculated to lead to discoverable evidence, and cannot be reasonably acquired by other means. *See* Commission Rule 3.36. Therefore, this motion should be granted and the FTC should produce the documents described herein.

**I. This motion satisfies Rule 3.36 because it is reasonable, within the limits of discovery, cannot be reasonably obtained by other means, and meets Rule 3.37.**

A movant under 3.36 must show only that: (1) "The material sought is reasonable in scope"; (2) "the material falls within the limits of discovery under § 3.31(c)(1)"; (3) "the information or material sought cannot reasonably be obtained by other means"; and (4) "it meets the requirements of 3.37." Rule 3.36.

**A. The material LabMD seeks is reasonable in scope.**

The requested documents are narrowly tailored to satisfy LabMD's need for information about the facts underlying the FTC's claims and LabMD's defenses. This is not a request for general access to the FTC's files. *Cf. In the Matter of Cavanagh Communities Corporation, A Corporation, et al.*, 1976 FTC LEXIS 133 (FTC 1976). LabMD's Motion seeks only documents that are specific to the facts underlying the Complaint and the claims therein.

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<sup>1</sup> The Sacramento Incident is where the Sacramento Police Department found hard copy documents that belonged to LabMD in a Flop House. These documents contained protected health information.

<sup>2</sup> Few or none of the documents requested will be privileged, since they all are or pertain to communications that include at least one non-attorney or one person outside of the FTC. *See e.g. United States v. Aronson*, 781 F.2d 1580, 1581 (11th Cir. Fla. 1986). Even if a question of privilege is likely to apply to some of the documents requested and deposition topics listed, this would not be sufficient reason to deny this Motion—instead it would be reason to grant the Motion and then address questions of privilege as they arise individually. *See In the Matter of Exxon Corporation, et al.* 1980 FTC LEXIS 121, at \*5-6 (1980).

**1. All communications to, from, between FTC employees and the FTC's Office of Public Affairs relating to LabMD, the 1718 file, or Sacramento Documents.**

The FTC through its Office of Public Affairs has published disparaging statements in the media about LabMD which have had a negative commercial impact on the company. It is LabMD's position that these statements were published in retaliation for statements made by LabMD's CEO, Michael Daugherty ("Daugherty") which criticized the FTC's investigation of LabMD's data security practices. For example, on August 29, 2013, FTC threatened to post LabMD's confidential business information on the internet and disseminated a disparaging blog post and press release. (See Exh. 21 of the Motion for Stay Pending Review, *LabMD v. FTC*, Case No. 13-15267 (11<sup>th</sup> Cir. Nov. 18, 2013)). This led to adverse third-party publicity.<sup>3</sup> *Id.*

The scope of this request is reasonably limited to communications to, from, or between FTC employees and the Office of Public Affairs<sup>4</sup> that would show that the FTC violated Daugherty's First Amendment rights by retaliating against LabMD for speech criticizing their actions. See *Harris v. Holder*, 885 F. Supp. 2d 390, 400 (D.D.C. 2012); See *New York Times Co. v. Sullivan*, 376 U.S. 254, 282 (U.S. 1964) (protected interest in right to criticize government officials). Specifically it would go to prove that the FTC was motivated to retaliate because of Daugherty's speech. See *Harris*, 885 F.Supp at 400; see generally *Beedle v. Wilson*, 422 F.3d 1059, 1066 (10th Cir. Okla. 2005)("[A] a governmental lawsuit brought with the intent to retaliate against a citizen for the exercise of his First Amendment rights is itself a violation of the First Amendment...."). Thus, the information requested is reasonable in scope.

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<sup>3</sup> Three days after a trailer for Mr. Dougherty's book exposing Defendants abuses against LabMD was posted online, criticizing the FTC and its staff (including Alain Sheer), Mr. Sheer emailed LabMD to say that FTC staff had recommended issuing a complaint against LabMD. Motion for Stay Pending Review, *LabMD v. FTC*, Case No. 13-15267 (11<sup>th</sup> Cir. Nov. 18, 2013). One month after the book was published, Defendants began using overly aggressive tactics in administrative discovery to ruin LabMD's reputation and business, including seeking all drafts of and comments on the manuscript of Mr. Daugherty's book, and promotional materials relating to it. See *In re LabMD, Inc.*, Docket No. 9357, Motion for a Protective Order (Nov. 5, 2013).

<sup>4</sup> The Office of Public Affairs publishes press releases and otherwise disseminates the messaging of the FTC.

2. **All documents sufficient to show that since 2005, security professionals and others (including the Commission) have warned that P2P applications present a risk that users will inadvertently share files on P2P networks.**

In paragraph 16 of the Complaint, Complaint Counsel alleges “since 2005, security professionals and others (including the Commission) have warned that P2P applications present a risk that users will inadvertently share files on P2P networks.” To the extent that the Commissioners possess such information, it is reasonable for Respondents to obtain it. After all, Complaint Counsel, by the drafting of its own Complaint, calls into question whether the Commission has warned that P2P applications present a risk. Specifically, this information goes to LabMD’s defense that “the Commission has not published any rules, regulations, or other guidelines clarifying and providing any notice, let alone constitutionally adequate notice, of what data-security practices the Commission believes Section 5 of the FTC Act forbids . . .” (Answer, Fifth Defense). Given that Complaint Counsel placed into question whether the Commission has advised against the use of P2P applications, receipt of this information is necessary so that Respondent may properly defend itself.

3. **All documents sufficient to show the standards the FTC used in the past and is currently using, to determine whether an entity’s data-security practices violate Section 5 of the of the Federal Trade Commission Act.**

Similarly, LabMD is entitled to documents sufficient to show the standards that the Commission utilized in determining whether LabMD’s data security practices were inadequate, and ultimately the bases upon which the decision was made to bring a Complaint against LabMD. LabMD defended the Complaint by asserting that the Commission’s behavior toward LabMD was “arbitrary capricious, an abuse of discretion, and otherwise not in accordance with the law.” Moreover, because the Commission failed to publish rules, regulations and guidelines

constituting fair notice, this information is relevant and necessary to determine whether the complaint was motivated by retaliation for Daugherty's exercise of his First Amendment rights.(Answer, Third and Fifth Defense). The standards that Commission possessed and utilized to determine whether LabMD had adequate security is directly relevant to LabMD's intended defense that the Commission did not have any objective criteria by which to judge LabMD's security practices, and if it did, the criteria was applied arbitrarily and capriciously, as well as motivated by retaliation. This information is reasonable in scope, and cannot be acquired from any other source; thus, should be provided to LabMD.

**4. All communications to, from, or between FTC employees and the Commissioners relating to the 1,718 File and the Sacramento Incident.**

In order for Complaint Counsel to succeed on its complaint, LabMD assumes that the FTC will be required to prove that LabMD's data security was inadequate relevant to the 1,718 file and the Sacramento documents. LabMD also assumes that Complaint Counsel will be required to present the data security standards that they are asserting LabMD violated. As previously stated, LabMD defended the Complaint by asserting the Commissioners' behavior in filing the Complaint was "arbitrary and capricious." (Answer, Fourth Defenses). It is uncontroverted that the FTC has not promulgated any rules or guidelines with regard to its enforcement of data security. Communications to, from, or between the FTC and the Commissioners will show the type of information the Commissioners evaluated and considered prior to filing the complaint, and the data security standards that were used to determine that a complaint should be filed against LabMD. Respondent will be able to rely squarely on its defense that the Complaint is arbitrary and capricious if, as LabMD suspects, the Commissioners did not utilize appropriate data security standards, if any, relevant to the documents in question. Thus, this information is

reasonable in scope and relevant to LabMD's stated defenses and therefore should be provided to LabMD.

**B. This Motion falls within the limits of discovery.**

The limits of discovery are governed by Rule 3.31's low standard of being "reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses" it intends to pursue. Rule 3.31(c)(1). As exemplified *supra*, the information which LabMD requests is directly relevant to the defenses it intends to pursue.

**C. This Motion Satisfies Rule 3.37 because it specifies the documents to be produced, and a reasonable time, place, and manner of production.**

LabMD requests that the documents be produced to Dinsmore & Shohl's office, in electronic format pursuant to the Bureau's BCP Production Guide where possible and otherwise in tangible paper form, by no later than February 21, 2014. The burden on the FTC of producing the requested documents is designed to be as minimal as possible, and is certainly reasonable.

**D. The information sought in this Motion cannot reasonably be obtained by other means.**

Many of the documents requested by this Motion are held by the FTC, its Commissioners and offices, including communications between FTC employees, the Office of Public Affairs, and the Commissioners. Unless this Motion is granted, LabMD will have no way to obtain any of the documents requested.

**II. This Motion satisfies Rule 3.34(b).**

This Motion "specif[ies] with reasonable particularity the materials to be produced" in the first section of the Motion, those documents are to be used "for purposes of discovery, for obtaining documents for use in evidence, or for both purposes," and it also properly designated a time and place for production. 3.34(b)

## CONCLUSION

Accordingly, LabMD respectfully requests that this Court grant this motion and require that the FTC produce the above documents.

Dated: January 30, 2014

Respectfully submitted,

/s/ 

Reed Rubinstein, Esq.

William A. Sherman, II, Esq.

Sunni R. Harris, Esq.

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Counsel for Respondent

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

|                  |   |                 |
|------------------|---|-----------------|
| In the Matter of | ) |                 |
|                  | ) | DOCKET NO. 9357 |
|                  | ) |                 |
| LabMD, Inc.,     | ) | PUBLIC          |
| a corporation.   | ) |                 |
|                  | ) |                 |

**[PROPOSED] ORDER GRANTING RESPONDENT LABMD, INC.'S  
MOTION FOR A RULE 3.36 SUBPOENA**

This matter came before the Administrative Law Judge on January 30, 2014, upon a Motion for a Rule 3.36 Subpoena ("Motion") filed by Respondent LabMD, Inc. ("LabMD") pursuant to Commission Rules 3.36 and 3.37, 16 C.F.R. §§ 3.36 and 3.37, for an Order allowing LabMD to obtain discovery from the Federal Trade Commission. Having considered LabMD's Motion and all supporting and opposition papers, and good cause appearing, it is hereby ORDERED that LabMD's Motion is GRANTED.

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 )  
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LabMD, Inc., )  
a corporation. )  
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**DOCKET NO. 9357**

**PUBLIC**

**STATEMENT PURSUANT TO SCHEDULING ORDER**

Pursuant to the Additional Provisions set forth in paragraph 4 of the Scheduling Order, Counsel for the moving party, Respondent, LabMD, Inc. (LabMD), hereby certifies that counsel met and conferred with Complaint Counsel in a good-faith effort to resolve by agreement the issues set forth in LabMD's Motion for a Rule 3.36 Subpoena, but the parties were unable to reach agreement.

Respectfully submitted,

  
\_\_\_\_\_  
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Washington, DC 20004  
Phone: (202) 372-9100  
Facsimile: (202) 372-9141  
Email: [william.sherman@dinsmore.com](mailto:william.sherman@dinsmore.com)  
Counsel for Respondent

Dated: January 30, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that on January 30, 2014, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark, Esq.  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580

I also certify that I delivered via electronic mail and first-class mail a copy of the foregoing document to:

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

I further certify that I delivered via electronic mail and first-class mail a copy of the foregoing document to:

Alain Sheer, Esq.  
Laura Riposo VanDruff  
Megan Cox  
Margaret Lassack  
Ryan Mehm  
Division of Privacy and Identity Protection  
Federal Trade Commission  
600 Pennsylvania Ave., N.W.  
Mail Stop NJ-8122  
Washington, D.C. 20580

**CERTIFICATE FOR ELECTRONIC FILING**

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

Dated: January 30, 2014

By: /s/





Counsel further objects that any such communications unrelated to the FTC's investigation of LabMD and preparations for this hearing are not relevant to the allegations of the Complaint, to the proposed relief, or to the defenses asserted by Respondent. Complaint Counsel further objects to this Document Request as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and an improper inquiry into the mental processes of the Commissioners and FTC attorneys.

Complaint Counsel further objects to this Document Request to the extent it seeks information relating to non-testifying experts and seeks prematurely the identity and opinions of expert witness(es).

Complaint Counsel further objects to this Document Request to the extent it seeks documents that are protected by the work product doctrine, government deliberative process privilege, government informer privilege, law enforcement investigatory privilege, or common interest privilege.

Complaint Counsel further objects to this Document Request to the extent it seeks production of materials previously produced to Respondent.

Subject to and without waiving any General or Specific objections, Complaint Counsel states that it has previously produced responsive, discoverable, and non-privileged documents pursuant to Paragraph 14 of the Scheduling Order and at FTC-PRI-000001 to FTC-PRI-001724, and will produce additional responsive, discoverable, and non-privileged documents.

**6. All communications between FTC and any federal Government agency, including the U.S. Department of Homeland Security, concerning LabMD generally and/or the 1,718 File specifically.**

Complaint Counsel refers Respondent to its response to Document Request 5.

**7. All communications between FTC employees referring or relating to LabMD or the 1,718 File that is not protected as attorney work product, including**

**communications between the FTC and the FTC's Office of Public Affairs (including communications between the FTC and the Office of Public Affairs's current and former employees).**

In addition to the General Objections, Complaint Counsel specifically objects to this Document Request to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings. Complaint Counsel further objects that any such communications unrelated to the FTC's investigation of LabMD and preparations for this hearing are not relevant to the allegations of the Complaint, to the proposed relief, or to the defenses asserted by Respondent. Complaint Counsel further objects to this Document Request as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and an improper inquiry into the mental processes of the Commissioners and FTC attorneys.

Complaint Counsel further objects to this Document Request to the extent it seeks documents that are protected by the work product doctrine, government deliberative process privilege, government informer privilege, law enforcement investigatory privilege, or common interest privilege.

To the extent this Document Request seeks information in the possession, custody, or control of the Commissioners, the General Counsel, or any Bureau or Office not involved in this matter, Complaint Counsel further objects to this Document Request. Documents in the possession, custody, or control of the aforementioned entities must be sought through written motion under the procedure laid out in Rule 3.36, 16 C.F.R. § 3.36.

Subject to and without waiving any General or Specific objections, Complaint Counsel will produce responsive, discoverable, and non-privileged documents.

**8. All documents sufficient to show what data-security standards are currently used by FTC to enforce the law under Section 5 of the Federal Trade Commission Act.**

Complaint Counsel refers Respondent to its response to Document Request 10.

**9. All documents sufficient to show what changes occurred in the data-security standards used by FTC to enforce the law under Section 5 of the Federal Trade Commission Act from 2005 to the present and the dates on which these standards changed.**

Complaint Counsel objects to this Document Request as vague and ambiguous.

Complaint Counsel refers Respondent to its response to Document Request 10.

**10. All documents sufficient to show the standards or criteria the FTC used in the past and is currently using to determine whether an entity's data-security practices violate Section 5 of the Federal Trade Commission Act from 2005 to the present.**

In addition to the General Objections, Complaint Counsel specifically objects to this Document Request to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings. Complaint Counsel further objects that any such documents unrelated to the FTC's investigation of LabMD and preparations for this hearing are not relevant to the allegations of the Complaint, to the proposed relief, or to the defenses asserted by Respondent. Complaint Counsel further objects to this Document Request as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and an improper inquiry into the mental processes of the Commissioners and FTC attorneys.

To the extent this Document Request seeks information in the possession, custody, or control of the Commissioners, the General Counsel, or any Bureau or Office not involved in this matter, Complaint Counsel further objects to this Document Request. Documents in the

possession, custody, or control of the aforementioned entities must be sought through written motion under the procedure laid out in Rule 3.36, 16 C.F.R. § 3.36.

Complaint Counsel further objects to this Document Request to the extent it seeks documents that are protected by the work product doctrine, government deliberative process privilege, government informer privilege, law enforcement investigatory privilege, or common interest privilege.

Complaint Counsel further objects to this Document Request as vague and ambiguous.

Subject to and without waiving any General or Specific objections, Complaint Counsel states that it has previously produced responsive, discoverable, and non-privileged documents at FTC-000685 to FTC-000893 and will produce responsive, discoverable, and non-privileged documents.

**11. All documents provided to the FTC pursuant to any Civil Investigation Demand regarding its investigation of LabMD.**

In addition to the General Objections, Complaint Counsel specifically objects to this Document Request to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings. Complaint Counsel further objects that any such documents unrelated to the FTC's investigation of LabMD and preparations for this hearing are not relevant to the allegations of the Complaint, to the proposed relief, or to the defenses asserted by Respondent. Complaint Counsel further objects to this Document Request as overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and an improper inquiry into the mental processes of the Commissioners and FTC attorneys.

Complaint Counsel further objects to this Document Request to the extent it seeks documents that are protected by the work product doctrine, government deliberative process

**UNITED STATES OF AMERICA  
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|                         |   |                        |
|-------------------------|---|------------------------|
| <b>In the Matter of</b> | ) |                        |
|                         | ) |                        |
| <b>LabMD, Inc.,</b>     | ) | <b>Docket No. 9357</b> |
| <b>a corporation,</b>   | ) |                        |
| <b>Respondent.</b>      | ) |                        |
|                         | ) |                        |
|                         | ) |                        |

**COMPLAINT COUNSEL'S RESPONSE TO LABMD, INC.'S FIRST SET OF  
INTERROGATORIES (NUMBERS 1-22)**

Pursuant to Sections 3.31 and 3.35 of the Federal Trade Commission's Rules of Practice, Complaint Counsel hereby responds to Respondent LabMD, Inc.'s First Set of Interrogatories ("Respondent's Interrogatories"). Subject to the General and Specific Objections below, and without waiving these objections, Complaint Counsel answers as follows:

**General Objections**

The following General Objections apply to each of Respondent's Interrogatories and are hereby incorporated by reference into each response. The assertion of the same, similar, or additional objections or the provision of partial answers in response to an individual interrogatory does not waive any of Complaint Counsel's General Objections as to the other interrogatories.

1. Complaint Counsel objects to Respondent's Interrogatories to the extent they seek to impose duties and obligations upon Complaint Counsel beyond those imposed by the Commission's Rules of Practice for Adjudicative Proceedings, including seeking documents that are beyond the scope of permissible discovery under Rule 3.31(c)(2), and/or are expressly excluded from interrogatory responses by Rule 3.35(a)(1).

Complaint Counsel further objects to this Interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2). Complaint Counsel will supplement its answer, as appropriate, as set forth in Rule 3.35(b)(2).

**3. Please set forth with specificity all facts and evidence, including identification of witnesses and documents, that you contend supports your allegation in Paragraph 12 of the Complaint that “[c]onsumers have no way of independently knowing about respondent’s security failures and could not reasonably avoid possible harms of such failures.”**

RESPONSE:

Complaint Counsel objects to this Interrogatory to the extent that it seeks the identity and opinions rendered by non-testifying experts and seeks prematurely the identity and opinions of expert witness(es). Complaint Counsel also objects that this Interrogatory calls for expert opinions and is not an appropriate subject for this manner of discovery.

Complaint Counsel further objects to this Interrogatory as unduly burdensome to the extent it seeks to compel Complaint Counsel to undertake investigation, discovery, and analysis on behalf of Respondent. Complaint Counsel also objects to this Interrogatory to the extent it impermissibly seeks attorney work product and Complaint Counsel’s trial strategy.

Complaint Counsel further objects to this Interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2). Complaint Counsel will supplement its answer, as appropriate, as set forth in Rule 3.35(b)(2).

**4. Please set forth with specificity all facts and evidence, including identification of witnesses and documents, that you contend supports your allegation in Paragraph 16 of the Complaint that “since 2005, security professionals and others (including the Commission) have warned that P2P applications present a risk that users will inadvertently share files on P2P networks.”**

RESPONSE:

Complaint Counsel objects to this Interrogatory to the extent that it seeks the identity and opinions rendered by non-testifying experts and seeks prematurely the identity and opinions of expert witness(es).

Complaint Counsel further objects to this Interrogatory as unduly burdensome to the extent it seeks to compel Complaint Counsel to undertake investigation, discovery, and analysis on behalf of Respondent. Complaint Counsel also objects to this Interrogatory to the extent it impermissibly seeks attorney work product and Complaint Counsel's trial strategy.

To the extent this Interrogatory seeks information in the possession, custody, or control of the Commissioners, the General Counsel, or any Bureau or Office not involved in this matter, Complaint Counsel objects to this Interrogatory. Documents in the possession, custody, or control of the aforementioned entities must be sought through written motion under the procedure laid out in Rule 3.36, 16 C.F.R. § 3.36.

Complaint Counsel further objects to this Interrogatory as premature and unduly burdensome because it is a contention interrogatory and no response is required prior to the close of discovery pursuant to Rule 3.35(b)(2). Complaint Counsel will supplement its answer, as appropriate, as set forth in Rule 3.35(b)(2).

Complaint Counsel further objects to this Interrogatory to the extent it seeks production of materials previously produced to Respondent.

Subject to and without waiving any General or Specific objections, Complaint Counsel states that it has previously produced responsive, discoverable, and non-privileged information, at FTC-000685 to FTC-000893.

**5. Please set forth with specificity all facts and evidence, including identification of witnesses and documents, that you contend supports your allegations in**