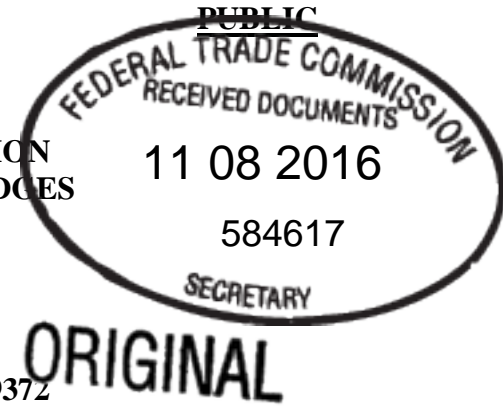


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF THE ADMINISTRATIVE LAW JUDGES



In the Matter of

1-800 CONTACTS, INC.,
a corporation

Docket No. 9372

**OPPOSITION OF RESPONDENT 1-800 CONTACTS, INC. TO COMPLAINT
COUNSEL'S MOTION TO CLARIFY THE SCHEDULING ORDER**

Respondent 1-800 Contacts, Inc. hereby opposes Complaint Counsel's Motion To Clarify the Scheduling Order (filed Nov. 3, 2016).

ARGUMENT

For the benefit of the deponent and to conserve the resources of the parties, a deposition is presumptively limited to one day of seven hours. *See* Richard L. Marcus, *Retooling American Discovery for the Twenty-First Century: Toward a New World Order?*, 7 *Tul. J. Int'l & Comp. L.* 153, 173 (1999). One goal of the one-day, seven-hour limit is to ensure that counsel are efficient in their examinations. *See, e.g., In the Matter of Intel Corp.*, FTC Docket No. 9341, 2010 WL 2332726, at *3 (May 28, 2010) ("Intel will necessarily be mindful of the seven hour time limitation, which is likely to encourage Intel to be efficient in its questioning and discourage Intel from duplicating prior lines of questioning."). Few depositions, if any, need go any longer. *See Roberson v. Bair*, 242 F.R.D. 130, 138 (D.D.C. 2007) ("[T]he court should begin with the presumption that the seven-hour limit was carefully chosen and that extensions of that limit should be the exception, not the rule").

A deposition does not consist of direct examination alone. It consists of both direct and cross-examination and each party “shall have the right to question” the deponent. Rule 3.33(d), 16 C.F.R. § 3.33(d). Even when the deposition is conducted on written questions, both direct and cross-examination are expressly authorized. Rule 3.33(e), 16 C.F.R. § 3.33(e). Under the Federal Rules of Civil Procedure, which Complaint Counsel agree may be consulted for guidance and interpretation of Commission rules (Complaint Counsel Brief at n. 2), “the examination and cross-examination of a deponent proceed as they would at trial.” Fed. R. Civ. P. 30(c)(1). At trial, of course, there is questioning by both sides. *See, e.g.*, Fed. R. Evid. 611.

In many cases, a witness’s testimony is presented by deposition, rather than live. This can occur for many reasons, including because the witness is no longer available, or able, to testify in person, or because the adverse party simply chooses to present testimony in that fashion. *See, e.g.*, Scheduling Order, ¶ 20; Fed. R. Civ. P. 32. There can be no guarantee that such a situation will not arise in this case. In addition, depositions taken in one case may on some occasions be used in other cases, which may not be tried until many years later. For these reasons, each deposition should be conducted as trial testimony, with direct examination, cross-examination, re-direct, and re-cross as necessary. This reality is recognized in the Commission’s Rules of Practice. *E.g.*, Rule 3.33, 16 C.F.R. § 3.33.

No clarification is needed to understand the meaning of the Court’s Scheduling Order that “No deposition ... may exceed a single, seven-hour day, unless otherwise agreed to by the parties or ordered by the Administrative Law Judge.” Scheduling Order, ¶ 12. This language plainly means what it says: The deposition – which consists of questioning by all parties – is to be concluded in seven hours unless otherwise ordered or agreed. There is thus no basis for

Complaint Counsel's suggestion that this language actually means that "Complaint Counsel is entitled to examine the witness for [all] seven hours." Complaint Counsel's [Proposed] Order.

Having refused a reasonable compromise regarding the allocation of the seven hours,¹ and now wanting all seven hours for themselves (*see* Complaint Counsel's [Proposed] Order),² Complaint Counsel, in effect, are asking the Court to extend the time for Mr. Roush's deposition or, alternatively, deny Respondent an opportunity to examine. Complaint Counsel, however, have made no showing of a need to extend Mr. Roush's deposition beyond seven hours. Rather than compelling the witness to stay longer, the Court should allocate the seven hours equitably between the parties and direct the parties to be efficient in their questioning.

In practice, courts expect the parties to work out an allocation that allows sufficient time for the party noticing the deposition to question the witness, while still allowing time for cross-examination. However, in some instances, the courts have found it necessary to make that allocation for the parties. The Scheduling Order, for example, establishes a 50/50 split for depositions of non-parties.³ For its current employees, Respondent proposes an allocation much more favorable to Complaint Counsel: 330 minutes, or more than 75% of the time (6 minutes

¹ As reflected in Ex. C to Complaint Counsel's motion, Complaint Counsel were willing to offer only 30 minutes of the 420 minutes allotted for Mr. Roush's deposition. Respondent asked for 90 minutes, as it asks for now, but ultimately offered to accept 60 minutes, or just one hour, in order to avoid the expense and effort necessitated by the motion. *See* Exhibit A hereto, October 27, 2016 email from Respondent's counsel to Complaint Counsel.

² In their [Proposed] Order, Complaint Counsel seek relief going far beyond the deposition of Mr. Roush, the only deponent at issue. They seek, even in those cases where they already have taken up to eight hours of an Investigational Hearing, to be allowed another seven hours solely for their use. No justification is provided for such a one-sided allocation of time. In any event, the issue before the Court relates only to the allocation of time for Mr. Roush's deposition.

³ Since Complaint Counsel already have taken Investigational Hearing testimony from some of the non-parties on their witness list, the ultimate allocation of time for these witnesses will give Complaint Counsel more than 50% of the total time.

less than 80% of the time), would be allocated to Complaint Counsel, and only 90 minutes, or 21% of the time, would be allocated to Respondent's counsel. Were Mr. Roush to be called at trial, the Court surely would allow Respondent's counsel at least as much time for examination as is allowed to Complaint Counsel. However, Respondent's counsel propose much less than that amount of time for deposition, hoping that they may be able to examine Mr. Roush more efficiently and expeditiously than Complaint Counsel.

Weighing in favor of the allocation that Respondent proposes is that Complaint Counsel already have conducted Investigational Hearings of nine current or former employees of Respondent. The significance of the discovery that Complaint Counsel already have taken is that they should need much less time with other witnesses, and they should be able to conduct their examination of Mr. Roush quite efficiently in light of the testimony they already have elicited. Surely 79% of the allotted time should be sufficient.

In cases with far more parties and many more complex issues, the courts routinely have allowed the witness's employer one hour for questioning, and also have limited the total deposition time to seven hours. *See, e.g.*, Pretrial Order No. 6 – Deposition Protocol, ¶ 13, *In re: National Hockey League Players' Concussion Injury Litigation*, MDL No. 14-2551, Doc. No. 67 (Dec. 19, 2014) (a copy of which is attached hereto as Exhibit B).⁴

⁴ Complaint Counsel's reliance on *In re Nat'l W. Life Ins. Deferred Annuities Litig.*, No. 05-CV-1018 JLS (WVG), 2011 U.S. Dist. LEXIS 4950 (S.D. Cal. Jan. 19, 2011), is misplaced. In that case, plaintiff's counsel did not raise the issue of time allocation before the Magistrate Judge and thus the District Judge found that the issue had been waived. *Id.* at *7. As a consequence, the issue before this Court was never considered and decided by the Magistrate Judge in that case. Moreover, although the procedural status of that case is not entirely clear, what we can ascertain is that the depositions were limited to just two hours on a limited set of topics for a limited purpose, presumably class certification, and thus the merits of the case were not being addressed. That declarations could also be obtained in that case is consistent with the usual procedure of (footnote continued)

Respondent submits that Complaint Counsel have failed to establish good cause to compel Mr. Roush to sit for a deposition longer than seven hours.⁵ That Complaint Counsel want all seven hours for themselves thus necessitates the Court's deciding how to allocate the seven hours between the parties in order to allow Respondent its right to question the witness and to have a complete record, not a one-sided record, of his testimony. Respondent's proposal of 330 minutes for Complaint Counsel and 90 minutes for Respondent is a reasonable and appropriate allocation, and consistent with how time has been allocated in other cases. *See, e.g., In re: NHL, supra; see also Loop AI Labs Inc. v. Gatti*, 2015 WL 5522166, *4 (N.D. Cal., Sept. 18, 2015) (declining to extend the deposition beyond seven hours and splitting the time 5 hours for plaintiff and two hours for defendant).⁶

deciding class certification on declarations. By contrast, the deposition here will cover the merits of the case, and testimony on the merits is generally presented live or by deposition.

⁵ *See, e.g., Malec v. Trustees of Boston College*, 208 F.R.D. 23, 24 (D. Mass. 2002) (denying a motion for leave to extend deposition beyond seven hours because "the better practice is for the deposition to go forward to determine how much is able to be covered in the seven hours"); *General Elec. Co. v. Indemnity Ins. Co. of N. Am.*, Case No. 3:06-CV-232 (CFD), 2006 WL 1525970, *3 (D. Conn. May 25, 2006) ("courts have viewed Rule 26(b)(2) as containing an exhaustion requirement with regard to moving for leave to extend a deposition").

⁶ In *Loop AI*, the parties disagreed over the allocation of time for the deposition of Mario Pepe, a director of a company plaintiff alleged "played a substantial role in assisting [the Defendants] in the alleged wrongdoing at issue in this case." *Id.* at *1, 3. The defendants wanted the time split 50/50; the plaintiff wanted all seven hours, but offered to stay late to allow defendants to question the witness beyond the allotted time. The court there declined to extend beyond seven hours the time for the deposition and allocated two hours to the defendants and five hours to the plaintiff. *Id.* at *4.

CONCLUSION

This Court should reject Complaint Counsel's suggestion to extend Mr. Roush's deposition beyond seven hours and should equitably allocate the time: 330 minutes to Complaint Counsel and 90 minutes to Respondent.

DATED: November 8, 2016

Respectfully submitted,

/s/ Steven M. Perry

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Counsel for 1-800 Contacts, Inc.

EXHIBIT A

From: [Stone, Gregory](#)
To: [Matheson, Daniel](#)
Cc: [~800CON_FTC_ATTYS](#); [Blank, Barbara](#); [Loughlin, Chuck](#); [Slaiman, Charlotte](#); [Green, Geoffrey](#); [Chiarello, Gustav](#); [Gray, Joshua Barton](#); [Clair, Kathleen](#); [Taylor, Mark](#); [Hopkin, Nathaniel](#); [BC-1040-1800-Search Ad Team-DL](#); [Brock, Thomas H.](#)
Subject: RE: Discovery-related issues
Date: Thursday, October 27, 2016 11:02:13 AM

Dan,

We will respond separately re the Protective Order language.

With regard to the amount of time we will be allocated of the seven hours allowed for the questioning of Mr. Roush at his deposition, we are not persuaded by the case you cited. In that case, plaintiffs' counsel did not raise the issue of time allocation before the Magistrate Judge and thus the District Judge found that the issue had been waived. That declarations could also be obtained there is only reflective of the fact that these were two-hour depositions on a very limited set of topics for a limited purpose. By contrast, you propose a deposition on issues going to the merits of the case and, as I outlined in my earlier email, we have a right, as the Rules clearly recognize, to question the witness within the seven-hour limit, just as we would at trial. We will offer to accept only one of the seven hours for this specific deposition in order to avoid a discovery dispute and the expense and distraction it entails. However, if you do bring a motion, we will ask Chief Administrative Law Judge Chappell to allow us 1.5 hours for our examination. I am willing to discuss this issue further if you think that might be productive.

Sincerely,

Greg Stone

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355 South Grand Avenue | Los Angeles, CA 90071
Tel: 213.683.9255 | Fax: 213.683.5155 | Cell: 213.309.5999
gregory.stone@mto.com | www.mto.com

From: Matheson, Daniel [<mailto:dmatheson@ftc.gov>]
Sent: Wednesday, October 26, 2016 8:03 PM
To: Stone, Gregory
Cc: [~800CON_FTC_ATTYS](#); [Blank, Barbara](#); [Loughlin, Chuck](#); [Slaiman, Charlotte](#); [Green, Geoffrey](#); [Chiarello, Gustav](#); [Gray, Joshua Barton](#); [Clair, Kathleen](#); [Taylor, Mark](#); [Hopkin, Nathaniel](#); [BC-1040-1800-Search Ad Team-DL](#); [Brock, Thomas H.](#)
Subject: RE: Discovery-related issues

Greg,

As we discussed during our meet and confer earlier today, Complaint Counsel is amenable to your proposal regarding confidentiality if you are willing to accept the clarifications below we have offered in red text. As discussed, we will undertake to obtain agreement from relevant third parties, but if we are not successful in doing so we reserve the right to revisit this issue to develop a workable solution. With that caveat, we understand that we have an agreement that Respondent will waive its claims that certain materials are “confidential material” to the following extent:

“If a communication produced by 1-800 Contacts in the course of discovery in this matter is a communication that was sent to or received from a person who was then a current employee of a company, that communication may be shown to any person during the course of a deposition if that person to whom it is shown is, at the time of his or her deposition, a current employee of that same company, but only so long as the company agrees in writing that ~~the Protective Order’s restrictions shall be relaxed so that any~~ it will waive its claims that documents it has produced to the FTC, Complaint Counsel, or 1-800 Contacts in this matter are “confidential material” solely to the extent that such documents (a) that constitute communications to or from any person at that company may be shown to any person during the course of a deposition if that person is, at the time of his or her deposition, a current employee of that same company, and/or (b) that constitute communications to or from any person who was at the time of the communication an employee of 1-800 Contacts may be shown during the course of a deposition to any current employee of 1-800 Contacts.”

Regarding our authority that Respondent is not entitled to cut short Complaint Counsel’s examination of Respondent’s executives, we direct you to *In re Nat’l W. Life Ins. Deferred Annuities Litig.*, No. 05-CV-1018 JLS (WVG), 2011 U.S. Dist. LEXIS 4950, at *8 (S.D. Cal. Jan. 19, 2011). In light of this authority, please let us know if you are willing to accept the 6.5 hour limitation on Complaint Counsel’s examination that we have offered, accompanied by our offer to

extend deposition time as needed, subject to our reasonable cross.

Respectfully,

Dan

From: Stone, Gregory [<mailto:Gregory.Stone@mt.com>]

Sent: Wednesday, October 26, 2016 5:45 PM

To: Matheson, Daniel

Cc: ~800CON_FTC_ATTYS; Blank, Barbara; Loughlin, Chuck; Slaiman, Charlotte; Green, Geoffrey; Chiarello, Gustav; Gray, Joshua Barton; Clair, Kathleen; Taylor, Mark; Hopkin, Nathaniel; BC-1040-1800-Search Ad Team-DL; Brock, Thomas H.

Subject: Discovery-related issues

Dan,

In anticipation of our call later today, let me offer a proposed compromise with regard to the Protective Order issue you have raised:

“If a communication produced by 1-800 Contacts in the course of discovery in this matter is a communication that was sent to or received from a person who was then a current employee of a company, that communication may be shown to any person during the course of a deposition if that person to whom it is shown is, at the time of his or her deposition, a current employee of that same company, but only so long as the company agrees in writing that the Protective Order’s restrictions shall be relaxed so that any documents it has produced to the FTC, Complaint Counsel, or 1-800 Contacts (a) that constitute communications to or from any person at that company may be shown to any person during the course of a deposition if that person is, at the time of his or her deposition, a current employee of that same company, and/or (b) that constitute communications to or from any person who was at the time of the communication an employee of 1-800 Contacts may be shown to any current employee of 1-800 Contacts.”

You also have asked for authority for the proposition that Respondent’s counsel is entitled to examine witnesses at depositions noticed by Complaint Counsel in this matter, including when the deponent is a current employee of Respondent. I refer you to 16 C.F.R. §§ 3.33 (d) (“and any party shall have the right to question him or her”) and 3.33(e), as well as Rule 30(c)(1), F.R.Civ.P.

Obviously, this examination must occur within the time limits established by the Scheduling Order. If you have any contrary authority that you would like us to consider, please send it in advance of our call.

I look forward to speaking with you at 4 p.m.

Best,

Greg

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EXHIBIT B

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

IN RE: NATIONAL HOCKEY LEAGUE)	
PLAYERS' CONCUSSION INJURY)	MDL No. 14-2551 (SRN/JSM)
LITIGATION)	
)	Pretrial Order No. 6
This Document Relates to: ALL ACTIONS)	Deposition Protocol
_____)	

The Court hereby adopts this Pretrial Order, which shall govern deposition protocols and procedures in all cases in this MDL proceeding.

1. Depositions – Generally. The procedures governing and limiting depositions, including resolution of any disputes arising during depositions, shall be in accordance with the Federal Rules of Civil Procedure. Counsel are expected to cooperate with, and be courteous to, each other and each deponent.

2. Scheduling of Depositions. Absent extraordinary circumstances, counsel shall consult in advance in an effort to schedule depositions at mutually convenient times and places. Telephonic depositions shall only be permitted by express agreement of the parties and the deponent, or with leave of Court. Plaintiffs' Lead Counsel and defendant's Lead Counsel shall attempt to establish by mutual agreement a schedule for depositions in this proceeding that reflects sequencing consistent with the objective of avoiding the need to subject any person to repeated depositions. The parties shall work cooperatively to ensure a fair and orderly process for the scheduling of depositions, and shall comply with all of the other directives set forth in this Order. Depositions shall not be allowed, without leave of Court or by agreement of the parties, on less than fourteen days' notice.

3. Notices. The Court expects that the use of formal notices of depositions or subpoenas with respect to party witnesses will be unnecessary in this case – that is, party witnesses will be produced in accordance with whatever schedule is developed. Liaison Counsel shall respectively be responsible for keeping plaintiffs’ and defendant’s counsel fully apprised of the scheduling of any depositions in this proceeding. The parties shall use their best efforts to coordinate the scheduling of any third-party and/or non-party witnesses.

4. As soon as practicable after or in conjunction with the scheduling of the depositions of party fact witnesses set forth above, the parties shall exchange lists of the plaintiffs and other case-specific fact witnesses that the parties wish to depose. Plaintiffs’ Lead Counsel and Defendant’s Liaison Counsel (or their designees) shall attempt to establish by mutual agreement a schedule for depositions of the plaintiffs and other case-specific fact witnesses.

5. Number of Depositions. Plaintiffs and the NHL shall each be allowed 40 depositions of fact witnesses. This number does not include expert witnesses and/or treating physicians. Any party may seek additional depositions either by agreement of the parties or by leave of the Court.

6. Avoidance of Duplicative Depositions. Absent agreement of the parties or leave of Court, no witness should be deposed more than once in these proceedings. Supplemental depositions will be permitted only upon motion demonstrating (a) a compelling need for the information sought and (b) compelling reasons why the desired lines of questioning could not have been pursued in the original deposition and why the

information cannot be obtained from any persons available for future depositions. If permitted, a supplemental deposition shall be treated as the resumption of the deposition originally noticed. Examination in any supplemental deposition shall not be repetitive of any prior interrogation.

7. Attendance. Unless otherwise agreed to by the parties, depositions may be attended only by the parties, the parties' counsel (including in-house counsel), the deponent, the deponent's attorney, the parties' expert witnesses, court reporters, videographers, and members and/or employees of the law firms of counsel of record. Upon application to the Court, and for good cause shown, attendance by a person who does not fall within any of the categories set forth in the previous sentence may be permitted. Unnecessary attendance by counsel is discouraged and may not be compensated in any fee application to the Court. While a deponent is being examined about any stamped confidential document or the confidential information contained therein, persons to whom disclosure is not authorized under the Confidentiality Order shall be excluded.

8. Videotaping. Videotaping of depositions shall be permitted upon request by the noticing party. Even when a deposition is videotaped, the stenographic record shall be the official record of the deposition. The party requesting the videotape shall bear the cost of the videotaping.

9. Conduct of Depositions. In any deposition, each side should endeavor to limit the number of attorneys questioning each witness by conferring in advance of the deposition to allow one attorney to be the primary questioner. Attorneys who may wish

to question a deponent should confer in advance to allocate among themselves the time permitted for the deposition.

10. Objections. Counsel shall comply with Fed. R. Civ. P. 30(d)(1). Directions to the deponent not to answer are improper except on the ground of privilege or to enable a party or deponent to present a motion to the Court for termination of the deposition on the ground that it is being conducted in bad faith or in such a manner as unreasonably to annoy, embarrass, or oppress the party or deponent. The only objections that may be raised at the deposition are those involving a privilege against disclosure or some matter that may be remedied if presented at the time, such as to the form of the question or the responsiveness of the answer. Objections on other grounds are unnecessary and shall not be made. In addition, the examining attorney may elect to waive the requirement that objections be voiced regarding matters that may be remedied if presented at the time, and allow those objections to be preserved, in which event such objections are unnecessary and shall not be made. Any objections that are made must be stated concisely and in a non-argumentative and non-suggestive manner, such as would be appropriate if the examination was conducted before a judicial officer.

11. Privilege. When a privilege is claimed, the witness should nevertheless answer the questions relevant to the existence, extent, or waiver of the privilege, such as the date of a communication, who made the statement, to whom and in whose presence the statement was made, other persons to whom the contents of the statement have been disclosed, and the general subject matter of the statement.

12. Consultation. Private consultations between deponents and their attorneys during the actual taking of the deposition are improper except for the purpose of determining whether a privilege should be asserted. Unless prohibited by the Court for good cause shown, such conferences may be held during normal recesses and adjournments.

13. Duration of Examinations. Except by agreement of the parties, the deposition of any fact witness shall be limited to seven (7) hours, excluding time taken for breaks, meals, and other reasons. The seven hours shall be allocated as follows: up to six (6) hours of the deposition may be used by the side of the party requesting the deposition, and no more than one (1) hour shall be used by the opposing counsel. A deposition shall not extend over more than two consecutive days (except by agreement of the parties).

14. The deposition of any expert witness shall be limited to ten (10) hours, excluding time taken for breaks, meals, and other reasons. The ten hours shall be allocated as follows: up to eight (8) hours may be used for questions by the side of the party noticing the deposition, and no more than two (2) hours shall be used by the deponent's counsel and/or by counsel opposing the party that noticed the deposition.

15. Motions for leave of Court to deviate from the time limitations in paragraphs 14 and 15, above, are disfavored and should be made only if the parties cannot reasonably agree to a deviation; such motions will be granted only for compelling reasons. Any request to extend the time limit on a deposition must be accompanied by a certification that compelling reasons preclude completion of the deposition during the

allotted period and that the particular information being sought cannot be elicited from a witness that is (or could be) scheduled to appear at another time. In the event that the deposition involves a translator, the maximum length of the deposition shall be increased as is reasonably necessary by up to 75%.

16. Depositions of Treating Healthcare Providers. Depositions of treating healthcare providers shall be subject to the time limitations applicable to fact witnesses.

17. Use. Depositions may, under the conditions prescribed in Fed. R. Civ. P. 32(a)(1)-(4) or as otherwise permitted by the Federal Rules of Evidence, be used against any party (including parties later added and parties in cases subsequently filed in, or transferred to this Court as part of this litigation): (1) who was present or represented at the deposition; (2) who had reasonable notice thereof; or (3) who, within thirty (30) days after the filing of the deposition (or, if later, within sixty (60) days after becoming a party in this court in any action that is a part of this litigation), fails to show just cause why such deposition should not be usable against such party. However, this Order does not address the admissibility for trial purposes of any testimony taken by deposition. Determinations on the admissibility of any such testimony shall be made in each coordinated proceeding or at trial.

18. Deposition Disputes. During depositions, disputes that arise that cannot be resolved by agreement and that, if not immediately resolved, will significantly disrupt the discovery schedule or require a rescheduling of the deposition, may be presented to the Court by telephone. The presentation of the issue and the Court's ruling will be recorded as part of the deposition. The undersigned will exercise by telephone the authority

granted under 28 U.S.C. § 1407(b) to act as district judge in the district in which the deposition is taken. The Court will provide the parties with a telephone number to reach the undersigned for any deposition disputes.

IT IS SO ORDERED.

ST. PAUL, MINNESOTA, this 19th day of December 2014.

s/Susan Richard Nelson

SUSAN RICHARD NELSON
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2016, I filed the **OPPOSITION OF RESPONDENT 1-800 CONTACTS, INC. TO COMPLAINT COUNSEL'S MOTION TO CLARIFY THE SCHEDULING ORDER** using the FTC's E-Filing System, which will send notification of such filing to all counsel of record as well as the following:

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

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

DATED: November 8, 2016

By: /s/ Eunice Ikemoto
Eunice Ikemoto

CERTIFICATE FOR ELECTRONIC FILING

I hereby 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: November 8, 2016

By: /s/ Steven M. Perry
Steven M. Perry

Notice of Electronic Service

I hereby certify that on November 08, 2016, I filed an electronic copy of the foregoing Opposition of Respondent to Complaint Counsel's Motion to Clarify the Scheduling Order, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on November 08, 2016, I served via E-Service an electronic copy of the foregoing Opposition of Respondent to Complaint Counsel's Motion to Clarify the Scheduling Order, upon:

Thomas H. Brock
Attorney
Federal Trade Commission
TBrock@ftc.gov
Complaint

Barbara Blank
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