

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

In the Matter of

**TRAFFIC JAM EVENTS, LLC, a limited
liability company**

and

**DAVID J. JEANSONNE II, individually and as
an officer of TRAFFIC JAM EVENTS, LLC.**

DOCKET NO. 9395

**RESPONDENTS' MOTION TO COMPEL COMPLAINT COUNSEL TO COMPLY
WITH RESPONDENTS' REQUEST FOR PRODUCTION**

Pursuant to Rule 3.38, Respondents Traffic Jam Events, LLC and David Jeansonne (collectively "Respondents"), through undersigned counsel, respectfully move this Court for an order compelling the Federal Trade Commission ("FTC") to provide a privilege log that complies with the requirements of Rule 38.A. For the reasons stated herein, this Motion should be granted.

BACKGROUND

On October 16, 2020, Respondents served their first Request for Production of Documents (the "Requests") on the FTC. On November, 17, 2020, the FTC provided its Responses to the Requests, asserting, in large part, the deliberative process privilege. Essentially, the FTC provided nothing in the way of responsive documents, and broadly asserted a deliberative process privilege over everything. This case is particular and factually distinctive in that the FTC Complaint in the instant matter was filed *after* the FTC had initiated a lawsuit in the Eastern District of Louisiana on the same set of operative facts and after the federal district court judge (i) dismissed the FTC's

request for preliminary injunctive relief and (ii) was about to rule on a motion to dismiss the entire Complaint.¹

Since the inception of this administrative complaint, Respondents have been trying to obtain the most basic and simple of information: who, under the FTC Act, initiated the Complaint; what consumers contacted the FTC to lodge any complaint; what consumers the FTC interviewed and presented to the Commission to satisfy the obligation and legal requirement under the FTC Act that “the act or practice causes or is likely to cause substantial injury to consumers which is not reasonably avoided by consumers themselves and not outweighed by countervailing benefits to consumers or to competition” (15 U.S.C. § 45(b)), and what evidence the Commission looked at to make this determination. At every turn, Complaint Counsel has stonewalled such basic responses with the assertion of a deliberative process privilege, including producing for deposition the assigned FTC Investigator (Kathleen Nolan) who testified under oath that (i) she was assigned the file in mid-August of 2020, **after both the federal district court complaint and the administrative complaint were filed**; (ii) that she has spoken to no consumers and no persons who have complained about the act or practices; and (iii) was instructed by Complaint Counsel not to reveal what standard was used by her (or anyone within the FTC staff) to determine what is a false and deceptive act or practice.²

A copy of the FTC’s Responses is attached hereto as Exhibit B, showing the lack of any substantive response and the blanket assertion of privilege. No privilege log was produced. The

¹ See *Federal Trade Commission v. Traffic Jam Events, LLC*, 2:20-cv-1740 (E.D. La. June 16, 2020). A copy of the docket sheet is attached hereto as Exhibit A.

² Despite numerous instructions throughout the deposition, Ms. Nolan, as a “reasonable person” did testify that “fake” checks used in the automotive mail industry as vouchers do not confuse or mislead her.

FTC subsequently produced its privilege log, a copy of which is attached hereto as Exhibit C. The FTC's privilege log falls far short of complying with the mandatory requirements of Rule 3.38A, and Respondent's counsel sent an e-mail to Complaint Counsel outlining the deficiencies and insufficiencies in the Privilege Log. In particular, the FTC's privilege log does not identify any of the specific documents withheld under claim of privilege and does not identify the dates on which the withheld documents were created. Instead, the FTC has simply listed six broad categories of groupings of documents and has failed to provide the identifying information required by 16 C.F.R. § 3.38A that is necessary to allow a determination of whether the documents are truly ones subject to a claim of privilege. Basic information such as the date the document (email) was generated, who generated it and who it was distributed to, whether it had an attachment(-s) is simply not there. To determine in the first instance whether the privilege applies (especially one where Complaint Counsel takes the position that pre-Complaint activity is the defining standard), the simple listing of documents separate *by date and time is critically important*. As such, this Court should order that the FTC immediately provide a privilege log that comports with the requirements of 16 C.F.R. § 3.38A to allow Respondents an opportunity to review and, if necessary, challenge the assertion of privilege. Because the privilege log was only recently produced, Respondents also request an extension of the current July 16 discovery cutoff as it specifically relates to this information

LAW AND ARGUMENT

16 C.F.R. § 3.38A identifies the requirements for privilege logs, stating:

Any person withholding material responsive to a subpoena issued pursuant to § 3.34 or § 3.36, written interrogatories requested pursuant to § 3.35, a request for production or access pursuant to § 3.37, or any other request for the production of materials under this part, shall assert a claim of privilege or any similar claim not later than the date set for production of the material. Such person shall, if so directed in the subpoena or

other request for production, submit, together with such claim, a schedule which describes the nature of the documents, communications, or tangible things not produced or disclosed - and **does so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.** The schedule need not describe any material outside the scope of the duty to search set forth in § 3.31(c)(2) except to the extent that the Administrative Law Judge has authorized additional discovery as provided in that paragraph.

16 C.F.R. § 3.38A (emphasis added). Moreover, the burden of proving the existence of a privilege is on the party claiming it. *Diamond Resorts U.S. Collection Dev., Ltd. Liab. Co. v. US Consumer Attorneys, P.A.*, No. 9:18-cv-80311-REINHART, 2021 U.S. Dist. LEXIS 28784 (S.D. Fla. Feb. 11, 2021); *In re Schering-Plough Corp.*, 2001 FTC LEXIS 188, at * 15 (Oct. 23, 2001). As the party seeking to assert privilege over the documents at issue here, the FTC must do more than simply offer “conclusory statements” invoking the privilege. *Id.* at *15-16 (citing *Alexander v. FBI*, 192 F.R.D. 42, 45 (D.D.C. 2000)). Moreover, “[t]his burden must be met on a **document-by-document basis.**” *Id.* (emphasis added).

The FTC has failed to sustain its burden of asserting privilege by setting forth a boilerplate description of six broad categories of documents at issue, and little else, which is in no way a proper description of the subject matter for each document or the necessary linkage between privilege and document. Accordingly, Respondents are unable to assess the asserted claims of privilege. *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 250 F.R.D. 251,264-68 (D. Md. 2008). Moreover, the language used by the FTC in its description of the documents is nothing more than a series of conclusory statements which describe the privilege, not the documents. There is no evidentiary, factual, or other basis by which Respondents can evaluate the propriety of the asserted privileges, and therefore the Log is deficient. The FTC’s conclusory statements do not contain a clear showing of why any privilege should attach to these documents. *United States v. Burns*, 162 F.R.D. 624, 627-28 (S.D. Cal. 1995). The Privilege Log in no way “demonstrate[s] careful analysis

of each document by the government . . . “ *Church of Scientology Int’l v. Dep ’t of Justice*, 30 F.3d 224, 231 (1st Cir. 1994). As such, the log produced suffers from severe deficiencies, which Complaint Counsel has failed to remedy. Complaint Counsel’s continued failure to fully comply with its discovery obligations is wholly unjustified.

CONCLUSION

For these reasons, this Court should issue an Order compelling the FTC to issue privilege logs in compliance with Rule 3.3.

CERTIFICATE OF COMPLIANCE

Pursuant to Section 3.220 of the Commission's Rules of Practice, Respondent has conferred with Complaint Counsel in a good faith effort to discuss the deficiencies with Complaint Counsel's privilege log, as evidenced by the exhibits attached. Complaint Counsel has refused to update and provide additional information in its privilege log.

Respectfully submitted,

/s/ L. Etienne Balart

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***Counsel for Respondents, Traffic Jam Events,
LLC and David J. Jeansonne II***

CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2021, I caused the foregoing document to be served via electronic mail to:

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

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

Thomas J. Widor
Sanya Shahrabi
Federal Trade Commission
Bureau of Consumer Protection
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sshahrabi@ftc.gov

Complainant Counsel

/s/ L. Etienne Balart
L. ETIENNE BALART

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

In the Matter of

**TRAFFIC JAM EVENTS, LLC, a limited
liability company**

and

**DAVID J. JEANSONNE II, individually and as
an officer of TRAFFIC JAM EVENTS, LLC.**

DOCKET NO. 9395

**ORDER ON RESPONDENTS' MOTION TO COMPEL COMPLAINT COUNSEL TO
COMPLY WITH RESPONDENTS' REQUEST FOR PRODUCTION**

Considering Respondents' Motion to Compel Complaint Counsel to Comply with
Respondents' Request for Production of Documents,

IT IS ORDERED that the Motion is GRANTED;

IT IS FURTHER ORDERED that Complaint Counsel shall provide a privilege log that
identifies separately each document, date, author and recipients.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

CLOSED

**U.S. District Court
Eastern District of Louisiana (New Orleans)
CIVIL DOCKET FOR CASE #: 2:20-cv-01740-WBV-DMD**

Federal Trade Commission v. Traffic Jam Events, LLC et al
Assigned to: Judge Wendy B Vitter
Referred to: Magistrate Judge Dana Douglas
Cause: 15:0045 Federal Trade Commission Act

Date Filed: 06/16/2020
Date Terminated: 08/10/2020
Jury Demand: None
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: U.S. Government Plaintiff

Plaintiff

Federal Trade Commission

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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

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V.

Defendant

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EXHIBIT A

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Defendant

David J. Jeansonne, II
*Individually and as an Office of Traffic Jam
 Events, LLC*

represented by **Etienne Balart**
 (See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jennifer A David
 (See above for address)
ATTORNEY TO BE NOTICED

Lauren Courtney Mastio
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ATTORNEY TO BE NOTICED

Taylor Katherine Wimberly
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/16/2020	1	COMPLAINT against All Defendants (Filed on behalf of USA - Filing Fee not required) filed by Federal Trade Commission. (Attachments: # 1 Exhibit, # 2 Civil Cover Sheet, # 3 Summons, # 4 Summons)Attorney Sanya Shahrabi added to party Federal Trade Commission(pty:pla).(Shahrabi, Sanya) (Entered: 06/16/2020)
06/16/2020	2	Initial Case Assignment to Judge Wendy B Vitter and Magistrate Judge Dana Douglas. (cc) (Entered: 06/16/2020)
06/16/2020	3	EXPARTE/CONSENT MOTION for Temporary Restraining Order <i>and other equitable relief in order to show cause why a preliminary injunction should not issue</i> by Federal

		Trade Commission. (Attachments: # 1 Memorandum in Support, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Rule 65 Certification, # 6 Proposed Order)(Shahrasbi, Sanya) (Entered: 06/16/2020)
06/17/2020	4	Summons Issued as to David J. Jeansonne, II, Traffic Jam Events, LLC. (Attachments: # 1 Summons)(jeg) (Entered: 06/17/2020)
06/17/2020	5	**DEFICIENT** CERTIFICATE OF SERVICE by Federal Trade Commission re 3 MOTION for Temporary Restraining Order <i>and other equitable relief in order to show cause why a preliminary injunction should not issue</i> . (Widor, Thomas) Modified on 6/18/2020 (jeg). (Entered: 06/17/2020)
06/17/2020	6	ORDER: IT IS HEREBY ORDERED that a telephone status conference is set for Friday, June 19, 2020, at 9:30 a.m. (EST), to discuss the Motion for Temporary Restraining Order, and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (R. Doc. 3). Signed by Judge Wendy B Vitter on 6/17/2020.(jeg) (CC via email: ebalart@joneswalker.com, jbrickman@joneswalker.com) (Entered: 06/17/2020)
06/18/2020		NOTICE OF DEFICIENT DOCUMENT: re 5 Certificate of Service. **Reason(s) of deficiency: Incomplete document. All documents filed with the Court must have a proper caption.** For corrective information, see section(s) D01 on http://www.laed.uscourts.gov/cmecf/Deficiency/deficiency.htm Attention: Document must be refiled in its entirety within seven(7) calendar days; otherwise, it may be stricken by the court without further notice. Deficiency remedy due by 6/25/2020. (jeg) (Entered: 06/18/2020)
06/18/2020	7	CERTIFICATE OF SERVICE by Federal Trade Commission re 3 MOTION for Temporary Restraining Order <i>and other equitable relief in order to show cause why a preliminary injunction should not issue</i> . (Widor, Thomas) (Entered: 06/18/2020)
06/18/2020	8	Memorandum by David J. Jeansonne, II, Traffic Jam Events, LLC <i>Submitted in Advance of June 19, 2020 Status Conference</i> (Attachments: # 1 Exhibit A, # 2 Exhibit A-1, # 3 Exhibit A-2, # 4 Exhibit B)(Mastio, Lauren) (Entered: 06/18/2020)
06/19/2020	9	Minute Entry for proceedings held before Judge Wendy B Vitter: On 6/19/2020, the Court held a Telephone Status Conference in this matter. The Court discussed with counsel the status of the case and the pending Motion For a Temporary Restraining Order, and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue. (R. Doc. 3). After a discussion with counsel, the Court issued an oral ORDER as set forth in document. IT IS HEREBY ORDERED that a hearing is set for Tuesday, June 23, 2020, at 2:00 p.m. (CST), to determine whether the Federal Trade Commission is entitled to a temporary restraining order in this matter. The hearing shall take place by videoconference. Oral argument shall be limited to fifteen (15) minutes per side. IT IS FURTHER ORDERED that the parties shall exchange and file electronically into the record any exhibits or affidavits that they intend to introduce at the hearing by 5:00 p.m. (CST) on Monday, June 22, 2020. (jeg) (Entered: 06/19/2020)
06/22/2020	10	EXPARTE/CONSENT MOTION for Leave to File <i>Notice of Supplemental Authority and Proposed Preliminary Relief</i> by Federal Trade Commission. (Attachments: # 1 Proposed Pleading- Notice of Supplemental Authority, # 2 Proposed Pleading- Exhibits and Amended Proposed Temporary Restraining Order, # 3 Proposed Order)(Shahrasbi, Sanya) Modified text/attachment descriptions on 6/23/2020 (jeg). (Entered: 06/22/2020)
06/22/2020	11	RESPONSE/MEMORANDUM in Opposition filed David J. Jeansonne, II, Traffic Jam Events, LLC re 3 MOTION for Temporary Restraining Order (Attachments: # 1 Exhibit 1) (Mastio, Lauren) Modified text/event/linkage on 6/23/2020 (jeg). (Entered: 06/22/2020)
06/23/2020	12	Correction of Docket Entry by Clerk re 10 MOTION for Leave to File <i>Notice of</i>

		<i>Supplemental Authority and Proposed Preliminary Relief.</i> **Filing attorney did not select category 'Proposed Pleading' when attaching document for which leave to file is being requested. Clerk took corrective action. No further action necessary.** (jeg) (Entered: 06/23/2020)
06/23/2020	13	Correction of Docket Entry by Clerk re 11 Memorandum. **Filing attorney selected incorrect event. Correct event is RESPONSE/MEMORANDUM in Opposition to Motion. Clerk took corrective action by changing the event. No further action necessary.** (jeg) (Entered: 06/23/2020)
06/23/2020	14	TEXT ORDER (No PDF Document Attached) Granting 10 Motion for Leave to File Supplemental Authority and Amended Proposed Temporary Restraining Order. The Clerk's office is directed to file the Supplemental Memorandum (R. Doc. 10-1), and exhibits thereto (R. Doc. 10-2), into the record in this matter. Signed by Judge Wendy B Vitter on 6/23/20. (fmm) (Entered: 06/23/2020)
06/23/2020	15	Notice of Supplemental Authority and Amended Proposed Preliminary Relief filed by Federal Trade Commission. (Attachments: # 1 Exhibits A & B, # 2 Proposed Order-Exhibit C, Proposed TRO)(mmv) (Attachment 2 replaced per Minute Order, doc. 18 on 6/25/2020) (mmv). (Entered: 06/23/2020)
06/23/2020	16	EXPARTE/CONSENT MOTION to Substitute <i>Exhibit C of Notice of Supplemental Authority and Amended Proposed Preliminary Relief (rec doc 15)</i> by Federal Trade Commission. (Attachments: # 1 Exhibit)(Shahrasbi, Sanya) (Additional attachment(s) added on 6/23/2020: # 2 Proposed Order) (mmv). Modified text on 6/24/2020 (jeg). (Entered: 06/23/2020)
06/23/2020	17	Correction of Docket Entry by Clerk re 16 MOTION to Substitute <i>Exhibit C</i> . **Filing attorney did not include a proposed order. Proposed Order subsequently provided to Clerk and has now been attached to the motion.** (mmv) (Entered: 06/23/2020)
06/23/2020	18	Minute Order. Proceedings held before Judge Wendy B Vitter: The Court orally GRANTS Plaintiff's 16 Motion to Substitute Exhibit C. Court recesses at 2:50 p.m. at the request of all counsel in order for counsel to have private communications. After discussion with all parties, the Court continues the hearing on the 3 Motion for Temporary Restraining Order, with the consent of all parties to THURSDAY, JUNE 25, 2020 AT 10:00 A.M. (Court Reporter Cathy Pepper.) (mmv) (Entered: 06/25/2020)
06/25/2020	19	Minute Entry for proceedings held before Judge Wendy B Vitter: Videoconference Motion Hearing held on 6/25/2020. All parties consent to proceed by video conference for these proceedings on the 3 Motion for Temporary Restraining Order. Plaintiff's 3 Motion for Temporary Restraining Order, is taken under advisement. (Court Reporter Nichelle Wheeler.) (jeg) Modified to edit text on 6/25/2020 (mmv). (Entered: 06/25/2020)
06/26/2020	20	ORDER AND REASONS: IT IS HEREBY ORDERED that the 3 Motion for A Temporary Restraining Order, and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue is DENIED as set forth in document. Signed by Judge Wendy B Vitter on 6/26/2020. (jeg) (Entered: 06/26/2020)
07/07/2020	21	WAIVER OF SERVICE Returned Executed; waiver sent to David J. Jeansonne, II on 6/17/2020, answer due 8/17/2020; Traffic Jam Events, LLC on 6/17/2020, answer due 8/17/2020. (Shahrasbi, Sanya) (Entered: 07/07/2020)
07/10/2020	22	NOTICE of Hearing. A call-in scheduling conference is set for 8/3/2020 01:30 PM before case manager by telephone. By Clerk. Please follow the instructions provided in the notice. (mmv) (Entered: 07/10/2020)
07/20/2020	23	MOTION to Dismiss by David J. Jeansonne, II, Traffic Jam Events, LLC. Motion(s) will

		be submitted on 8/11/2020. (Attachments: # 1 Memorandum in Support, # 2 Notice of Submission)(Mastio, Lauren) Responses due by 8/3/2020 (mmv). (Entered: 07/20/2020)
08/03/2020	24	TRANSCRIPT of Motion Hearing held on June 25, 2020 before Judge Wendy B. Vitter. Court Reporter/Recorder Nichelle Wheeler, Telephone number 504-589-7775. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Parties have 21 days from the filing of this transcript to file with the Court a Redaction Request. Release of Transcript Restriction set for 11/2/2020. (rsg) (Entered: 08/03/2020)
08/03/2020	25	RESPONSE/MEMORANDUM in Opposition filed by Federal Trade Commission re 23 MOTION to Dismiss . (Widor, Thomas) (Entered: 08/03/2020)
08/03/2020	26	SCHEDULING ORDER: Final Pretrial Conference set for 2/12/2021 09:00 AM before Judge Wendy B Vitter. Status Conference set for 10/2/2020 01:00 PM before Judge Wendy B Vitter. Bench Trial set for 4/13/2021 09:00 AM before Judge Wendy B Vitter. All discovery must be completed by 12/14/2020. Signed by Judge Wendy B Vitter on 8/3/2020. (Attachments: # 1 Pretrial Notice Form)(jeg) (Entered: 08/04/2020)
08/07/2020	27	EXPARTE/CONSENT MOTION for Leave to File <i>Reply Memorandum in Further Support of Motion to Dismiss</i> by David J. Jeansonne, II, Traffic Jam Events, LLC. (Attachments: # 1 Proposed Pleading, # 2 Proposed Order)(Mastio, Lauren) (Entered: 08/07/2020)
08/07/2020	28	TEXT ORDER (No PDF Document Attached) granting 27 Motion for Leave to File Reply Memorandum. The Clerk's Office is directed to file the Reply (R. Doc. 27-1) into the record. Signed by Judge Wendy B Vitter on 08/07/2020. (NCS) (Entered: 08/07/2020)
08/07/2020	29	Reply Memorandum filed by David J. Jeansonne, II, Traffic Jam Events, LLC, in Further Support of 23 MOTION to Dismiss . (mmv) (Entered: 08/07/2020)
08/07/2020	30	NOTICE of Voluntary Dismissal Without Prejudice by Federal Trade Commission. (Widor, Thomas) (Entered: 08/07/2020)
08/10/2020	31	ORDER: IT IS HEREBY ORDERED that this action is DISMISSED without prejudice and with each party to bear its own costs. Signed by Judge Wendy B Vitter on 8/7/2020. (jeg) (Entered: 08/10/2020)

PACER Service Center			
Transaction Receipt			
07/02/2021 10:20:42			
PACER Login:	tkwimberly	Client Code:	17841200
Description:	Docket Report	Search Criteria:	2:20-cv-01740-WBV-DMD
Billable Pages:	5	Cost:	0.50

Category No.	Date Range	Document	Sender(s); Recipient(s); Cop	Category Description	Privilege	Documents
1	4/24/2020 - 9/8/2020	Email	Widor, Thomas; Shahrasbi, Sanya; Broadwell, Eleni; Saunders, Emilie; Butler, Victoria; Pinder, Jennifer; Martin, Elizabeth; Granai, Celine Funk; Rimkevicius, Zivile	Communications in anticipation of litigation with the Florida State Attorney General's Office that share a common interest regarding related law enforcement actions and that contain information that would reveal law enforcement techniques and procedures and contain mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of Complaint Counsel	Attorney Work Product; Law Enforcement/Investigatory Files Privilege; Common Interest Doctrine	51
2	9/17/2020 - 10/22/2020	Email	Widor, Thomas; Nolan, Kathleen; Snodgrass, Mark	Communications in anticipation of litigation with the Indiana State Attorney General's Office that share a common interest regarding related law enforcement actions and that contain information that would reveal law enforcement techniques and procedures and contain mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of Complaint Counsel	Attorney Work Product; Law Enforcement/Investigatory Files Privilege; Common Interest Doctrine	23
3	5/1/2020 - 5/12/2020	Email	Widor, Thomas; Burdette, Emilie	Communications in anticipation of litigation with the Kansas State Attorney General's Office that share a common interest regarding related law enforcement actions and that contain information that would reveal law enforcement techniques and procedures and contain mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of Complaint Counsel	Attorney Work Product; Law Enforcement/Investigatory Files Privilege; Common Interest Doctrine	4
4	8/24/2020 - 9/17/2020	Email	Nolan, Kathleen; George, David; Riley, Patrick; Brown, Travis; Olah, Ray; Kirkland, Jr., Clark; Hartner, Rebecca; Jowers, Mary Frances; Jones, Sonny; Chun, Elizabeth; Roscetti, Jennifer; Rienzo, David; Kroepfl, Ronnie	Communications in anticipation of litigation with state law enforcement agencies that share a common interest regarding related law enforcement actions or potential investigations and that contain information that would reveal law enforcement techniques and procedures and contain mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of Complaint Counsel	Attorney Work Product; Law Enforcement/Investigatory Files Privilege; Common Interest Doctrine	19
5	8/21/2020 - 10/21/2020	Email	Nolan, Kathleen; Rintoul, Matthew; Fernandez, Taylor	Communications in anticipation of litigation with the U.S. Postal Service that shares a common interest regarding Respondents' advertisements and mailers, which contain information that would reveal law enforcement techniques and procedures and contain mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of Complaint Counsel	Attorney Work Product; Law Enforcement/Investigatory Files Privilege; Common Interest Doctrine	3
6	4/29/2020 - 11/10/2020	Email	Widor, Thomas; Broadwell, Eleni; Adams, Bobbi; Anomaly, Michelle; Alforo; Boso, Florencia; Cross, Janelle; DiGeronimo, Anthony; Kingsley; Sanoria, E.; Schlott, Mikki; Whitehead, Amos; Wissenbach, Eric	Communications in anticipation of litigation with consumers regarding prize advertising complaints, which contain mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of Complaint Counsel	Attorney Work Product	16

X200041

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

In the Matter of

TRAFFIC JAM EVENTS, LLC, a limited liability company, and

DAVID J. JEANSONNE II, individually and as an officer of TRAFFIC JAM EVENTS, LLC.

DOCKET NO. 9395

**COMPLAINT COUNSEL’S RESPONSES AND OBJECTIONS TO RESPONDENTS
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 3.31 and 3.37(b) of the Federal Trade Commission’s Rules of Practice, Complaint Counsel hereby responds to Respondent’s First Request for Production to Complaint Counsel, dated October 16, 2020.

GENERAL OBJECTIONS

The following General Objections apply to each request for documents in Respondent’s Requests and are hereby incorporated by reference into our response to each request.

1. Complaint Counsel objects to Respondent’s Requests to the extent the requests are directed to the Federal Trade Commission rather than to Complaint Counsel.
2. Complaint Counsel objects to Respondent’s Requests to the extent they seek to impose duties and obligations upon Complaint Counsel beyond the Commission’s Rules of Practice for Adjudicative Proceedings, including seeking the production of documents that are beyond the scope of permissible discovery under Rule 3.31(c)(2).

3. Complaint Counsel objects to Respondent's Requests to the extent the requests seek information protected by the work product doctrine, the government deliberative process privilege, the government informant privilege, the law enforcement investigatory privilege, the common interest privilege, or any other applicable privilege or doctrine. Complaint Counsel does not, by providing a response to any request, waive or partially waive any applicable privilege or attorney-work product claim.
4. Complaint Counsel objects to Respondent's Requests to the extent they are overly broad, vague, ambiguous, unduly burdensome, and are not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent.
5. Complaint Counsel objects to Respondent's Requests as unduly burdensome and to the extent they ask Complaint Counsel to produce documents that are already in Respondent's possession or control, or are in the public record.
6. Complaint Counsel's answers to Respondent's Requests are given without prejudice to Complaint Counsel's right to produce documents relating to any subsequently discovered facts or to identify or to produce documents that Complaint Counsel obtains in this litigation.
7. The failure of Complaint Counsel to object to any document request on a particular ground may not be construed as a waiver of its right to object on any additional ground(s).
8. Complaint Counsel reserves all of its evidentiary or other objections to the admissibility of any document in this action, and does not, by any response to any request, waive any objection, stated or unstated.

9. The assertion of the same, similar, or additional objections or the provision of partial answers in response to an individual request does not waive any of Complaint Counsel's General or Specific Objections as to that request or any other requests.
10. Pursuant to Rule 3.31(g), the inadvertent production of any privileged information shall not constitute a waiver of the applicable privilege.

SPECIFIC OBJECTIONS AND RESPONSES

Subject to the General Objections and the Specific Objections below, and without waiving these objections, Complaint Counsel answers as follows:

- 1. All communications between the Federal Trade Commission and any representative, agent, or employee of the Florida Attorney General's Office, including but not limited to any document received from or sent to the Florida Attorney General's Office.**

Complaint Counsel objects to Document Request No. 1 as overly broad, vague, ambiguous, unduly burdensome, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent. The request seeks any and all communications with the Florida Attorney General's Office regardless of the subject matter of the communication.

Complaint Counsel further objects to Document Request No. 1 to the extent it requests information or documents covered by the law enforcement evidentiary or investigatory files privileges, the work product doctrine, and the attorney-client privilege. The law enforcement evidentiary or investigatory files privilege is based primarily on the harm to law enforcement efforts which might arise from public disclosure of certain law enforcement-related information and

documents. *See, e.g., Black v. Sheraton Corp. of Am.*, 564 F.2d 531, 545 (D.C. Cir. 1977) (“We begin with the proposition that there is indeed a public interest in minimizing disclosure of documents that would tend to reveal law enforcement investigative techniques or sources.”).

The FTC further objects to this Request to the extent it calls for documents that are already in Respondent’s possession. Subject to and without waiving these objections and privileges, Complaint Counsel previously has provided any relevant, non-privileged responsive documents.

2. All communications between the Federal Trade Commission and any representative, agent, or employee of the Alabama Attorney General’s Office, including but not limited to any document received from or sent to the Alabama Attorney General’s Office.

Complaint Counsel objects to Document Request No. 2 as overly broad, vague, ambiguous, unduly burdensome, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent. The request seeks any and all communications with the Alabama Attorney General’s Office regardless of the subject matter of the communication.

Complaint Counsel further objects to Document Request No. 2 to the extent it requests information or documents covered by the law enforcement evidentiary or investigatory files privileges, the work product doctrine, and the attorney-client privilege.

Subject to and without waiving these objections and privileges, Complaint Counsel does not have any relevant, non-privileged documents responsive to this request in its possession, custody, or control.

3. All communications between the Federal Trade Commission and any representative, agent, or employee of the Indiana Attorney General's Office including but not limited to any document received from or sent to the Indiana Attorney General's Office.

Complaint Counsel objects to Document Request No. 3 as overly broad, vague, ambiguous, unduly burdensome, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent.

The request seeks any and all communications with the Indiana Attorney General's Office regardless of the subject matter of the communication. Complaint Counsel also objects to Document Request No. 3 to the extent it requests information or documents covered by the law enforcement evidentiary or investigatory files privileges, the work product doctrine, and the attorney-client privilege.

The FTC further objects to this Request to the extent it calls for documents that are already in Respondent's possession, including documents that Respondents produced to the Indiana Attorney General's office. Subject to and without waiving these objections and privileges, Respondents are already in possession of any relevant, non-privileged documents responsive to this request.

4. All communications between the Federal Trade Commission and any representative, agent, or employee of the Kansas Attorney General's Office including but not limited to any document received from or sent to the Kansas Attorney General's Office.

Complaint Counsel objects to Document Request No. 4 as overly broad, vague, ambiguous, unduly burdensome, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent.

The request seeks any and all communications with the Kansas Attorney General's Office regardless of the subject matter of the communication. Complaint Counsel further objects to Document Request No. 4 to the extent it requests information or documents covered by the law enforcement evidentiary or investigatory files privileges, the work product doctrine, and the attorney-client privilege.

Complaint Counsel further objects to this Request to the extent it calls for documents that are already in Respondent's possession, including documents that Respondents produced to the Kansas Attorney General's office. Subject to and without waiving these objections and privileges, Respondents are already in possession of any relevant, non-privileged documents responsive to this request.

5. All communications relating to Traffic Jam Events, LLC.

Complaint Counsel objects to Document Request No. 5 as overly broad, unduly burdensome, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent.

Complaint Counsel objects to Document Request No. 5 to the extent that it requests information or documents covered by law enforcement evidentiary or investigatory files privileges, the work product doctrine, and the attorney-client privilege.

Moreover, Complaint Counsel objects on the basis of the deliberative process privilege to the extent that this Request seeks internal FTC documents and communications "consisting of deliberative analysis preceding agency decisions." See *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51 (1975); *Carter v. U.S. Dept. of Commerce*, 307 F.3d 1084, 1088-89 (9th Cir. 2002); *F.T.C. v. Warner Commc'ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984) ("[T]he government's 'deliberative process privilege' . . . permits the government to withhold documents that reflect

advisory opinions, recommendations and deliberations comprising part of a process by which government decisions and policies are formulated.); *Cal. Native Plant Soc’y v. E.P.A.*, 251 F.R.D. 408, 411 (N.D. Cal. 2008); *See also In the Matter of Axon Enterprise, Inc et al.*, Docket No. 9389,2020 FTC LEXIS 35 (Jan. 3, 2020). The privilege is intended to promote frank, honest communications among government employees in order to promote well-vetted policies. *Cal. Native Plant Soc’y*, 251 F.R.D. at 411.

Complaint Counsel finally specifically objects pursuant to Rule 3.31(c)(2), to the extent that it seeks the production of documents that were not “collected or reviewed in the course of the investigation of this matter or prosecution of this case and that are in the possession, custody or control of the Bureaus or Offices of the Commission that investigated the matter.”

Complaint Counsel further objects to this Request to the extent it calls for documents that are already in Respondent’s possession, including communications between Respondent’s Counsel and Complaint Counsel.

Based on those privileges, Complaint Counsel will not produce internal communications and memoranda regarding its investigation of Respondent, Traffic Jam Events, LLC. Subject to and without waiving these objections and privileges, Complaint Counsel previously has provided any relevant, non-privileged responsive documents.

6. All communications relating to David J. Jeanson II.

Complaint Counsel objects to Document Request No. 6 as overly broad, unduly burdensome, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent.

Complaint Counsel objects to Document Request No. 6 to the extent that it requests information or documents covered by law enforcement evidentiary or investigatory files privileges, the work product doctrine, and the attorney-client privilege.

Moreover, Complaint Counsel objects on the basis of the deliberative process privilege to the extent that this Request seeks internal FTC documents and communications “consisting of deliberative analysis preceding agency decisions.” *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51 (1975); *Carter v. U.S. Dept. of Commerce*, 307 F.3d 1084, 1088-89 (9th Cir. 2002); *F.T.C. v. Warner Commc’ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *Cal. Native Plant Soc’y v. E.P.A.*, 251 F.R.D. 408, 411 (N.D. Cal. 2008); *See also In the Matter of Axon Enterprise, Inc et al.*, Docket No. 9389,2020 FTC LEXIS 35 (Jan. 3, 2020).

Complaint Counsel finally specifically objects pursuant to Rule 3.31(c)(2), to the extent that it seeks the production of documents that were not “collected or reviewed in the course of the investigation of this matter or prosecution of this case and that are in the possession, custody or control of the Bureaus or Offices of the Commission that investigated the matter.”

The FTC further objects to this Request to the extent it calls for documents that are already in Respondent’s possession, including communications between Respondent’s Counsel and Complaint Counsel.

Based on those privileges, Complaint Counsel will not produce internal communications and memoranda regarding its investigation of Respondent, David J. Jeanson II. Subject to and without waiving these objections and privileges, Complaint Counsel previously has provided any relevant, non-privileged responsive documents.

7. All communications relating to any advertisement or promotional material referenced in the Complaint.

Complaint Counsel objects to Document Request No. 7 as overly broad, unduly burdensome, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent.

Complaint Counsel objects to Document Request No. 7 to the extent that it requests information or documents covered by law enforcement evidentiary or investigatory files privileges, the work product doctrine, and the attorney-client privilege.

Moreover, Complaint Counsel objects on the basis of the deliberative process privilege to the extent that this Request seeks internal FTC documents and communications “consisting of deliberative analysis preceding agency decisions.” *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51 (1975); *Carter v. U.S. Dept. of Commerce*, 307 F.3d 1084, 1088-89 (9th Cir. 2002); *F.T.C. v. Warner Commc’ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *Cal. Native Plant Soc’y v. E.P.A.*, 251 F.R.D. 408, 411 (N.D. Cal. 2008); *See also In the Matter of Axon Enterprise, Inc et al.*, Docket No. 9389,2020 FTC LEXIS 35 (Jan. 3, 2020).

Complaint Counsel finally specifically objects pursuant to Rule 3.31(c)(2), to the extent that it seeks the production of documents that were not “collected or reviewed in the course of the investigation of this matter or prosecution of this case and that are in the possession, custody or control of the Bureaus or Offices of the Commission that investigated the matter.”

Subject to and without waiving these objections and privileges, Complaint Counsel previously has provided any relevant, non-privileged responsive documents, including as part of their Initial Disclosures.

8. All documents presented to the Federal Trade Commission and/or any individual Commissioner prior to the FTC’s vote to institute the administrative proceeding against Respondents.

Complaint Counsel objects to Document Request No. 8 as overly broad, unduly burdensome, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent. Precedent holds that the reason for issuing a complaint and the information considered or evaluated prior to issuance, “are outside the scope of discovery, absent extraordinary circumstances.” *In re LabMD, Inc.*, 2014 FTC LEXIS 45, at *7 (Mar. 10, 2014).

Complaint Counsel objects to Document Request No. 8 to the extent that it requests information or documents covered by law enforcement evidentiary or investigatory files privileges, the work product doctrine, and the attorney-client privilege.

Moreover, Complaint Counsel objects on the basis of the deliberative process privilege to the extent that this Request seeks internal FTC documents and communications “consisting of deliberative analysis preceding agency decisions.” *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51 (1975); *Carter v. U.S. Dept. of Commerce*, 307 F.3d 1084, 1088-89 (9th Cir. 2002); *F.T.C. v. Warner Commc’ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *Cal. Native Plant Soc’y v. E.P.A.*, 251 F.R.D. 408, 411 (N.D. Cal. 2008); *See also In the Matter of Axon Enterprise, Inc et al.*, Docket No. 9389,2020 FTC LEXIS 35 (Jan. 3, 2020).

Complaint Counsel finally specifically objects pursuant to Rule 3.31(c)(2), to the extent that it seeks the production of documents that were not “collected or reviewed in the course of the investigation of this matter or prosecution of this case and that are in the possession, custody or control of the Bureaus or Offices of the Commission that investigated the matter.”

On the basis of these objections and privileges, Complaint Counsel will not produce internal communications and memoranda regarding its investigation of Respondents. To the extent that this request seeks documents that were not reviewed by Complaint Counsel, Complaint Counsel is not required to search for under Rule 3.31(c)(2).

9. All documents presented to the Federal Trade Commission after the FTC's vote to institute the administrative proceeding against Respondents.

Precedent holds that the reason for issuing a complaint and the information considered or evaluated prior to issuance, “are outside the scope of discovery, absent extraordinary circumstances.” *In re LabMD, Inc.*, 2014 FTC LEXIS 45, at *7 (Mar. 10, 2014). Complaint Counsel objects to Document Request No. 9 as overly broad, vague, ambiguous, unduly burdensome, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent.

Complaint Counsel objects to Document Request No. 9 to the extent that it requests information or documents covered by law enforcement evidentiary or investigatory files privileges, the work product doctrine, and the attorney-client privilege.

Moreover, Complaint Counsel objects on the basis of the deliberative process privilege to the extent that this Request seeks internal FTC documents and communications “consisting of deliberative analysis preceding agency decisions.” *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51 (1975); *Carter v. U.S. Dept. of Commerce*, 307 F.3d 1084, 1088-89 (9th Cir. 2002); *F.T.C. v. Warner Commc'ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *Cal. Native Plant Soc'y v. E.P.A.*, 251 F.R.D. 408, 411 (N.D. Cal. 2008); *See also In the Matter of Axon Enterprise, Inc et al.*, Docket No. 9389, 2020 FTC LEXIS 35 (Jan. 3, 2020).

Complaint Counsel finally specifically objects pursuant to Rule 3.31(c)(2), to the extent that it seeks the production of documents that were not “collected or reviewed in the course of the investigation of this matter or prosecution of this case and that are in the possession, custody or control of the Bureaus or Offices of the Commission that investigated the matter.”

On the basis of these objections and privileges, Complaint Counsel is unaware of any documents that exist. To the extent that this request seeks documents that were not reviewed by Complaint Counsel, Complaint Counsel is not required to search under Rule 3.31(c)(2).

10. All documents relating to the Federal Trade Commission’s contention that the representations made in the Advertisements and Promotional Materials referenced in the complaint are false or misleading.

Complaint Counsel objects to Document Request No. 10 to the extent that it requests information or documents covered by law enforcement evidentiary or investigatory files privileges, the work product doctrine, and the attorney-client privilege. Precedent holds that the reason for issuing a complaint and the information considered or evaluated prior to issuance, “are outside the scope of discovery, absent extraordinary circumstances.” *In re LabMD, Inc.*, 2014 FTC LEXIS 45, at *7 (Mar. 10, 2014).

Complaint Counsel also specifically objects pursuant to Rule 3.31(c)(2), to the extent that it seeks the production of documents that were not “collected or reviewed in the course of the investigation of this matter or prosecution of this case and that are in the possession, custody or control of the Bureaus or Offices of the Commission that investigated the matter.”

Moreover, Complaint Counsel objects on the basis of the deliberative process privilege to the extent that this Request seeks internal FTC documents and communications “consisting of deliberative analysis preceding agency decisions.” *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51 (1975); *Carter v. U.S. Dept. of Commerce*, 307 F.3d 1084, 1088-89 (9th Cir. 2002); *F.T.C. v. Warner Commc’ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *Cal. Native Plant Soc’y v. E.P.A.*, 251 F.R.D. 408, 411 (N.D. Cal. 2008); *See also In the Matter of Axon Enterprise, Inc et al.*, Docket No. 9389,2020 FTC LEXIS 35 (Jan. 3, 2020).

Subject to and without waiving these objections and privileges, Complaint Counsel directs Respondents to the Complaint and accompanying exhibits as well as documents previously produced by Complaint Counsel or third parties. Discovery is ongoing, and Complaint Counsel will continue to produce relevant, non-privileged documents responsive to this Request that are in Complaint Counsel's possession, custody, or control.

11. All documents demonstrating that the issuance of the Administrative Complaint and the contemplated relief are in the public interest, as required under Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b).

Complaint Counsel objects to Document Request No. 11 as overly broad, vague, ambiguous, unduly burdensome, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent. Specifically, whether the Commission found sufficient public interest is irrelevant, and whether the public interest justifies relief will be based on the record in this case. *See In re Century 21 Commodore Plaza, Inc.*, Docket No. 9088, 1976 FTC LEXIS 32, *3-*4 (Dec. 7, 1976).

Complaint Counsel also objects to Document Request No. 11 to the extent that it requests information or documents covered by law enforcement evidentiary or investigatory files privileges, the work product doctrine, and the attorney-client privilege.

Moreover, Complaint Counsel objects on the basis of the deliberative process privilege to the extent that this Request seeks internal FTC documents and communications "consisting of deliberative analysis preceding agency decisions." *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51 (1975); *Carter v. U.S. Dept. of Commerce*, 307 F.3d 1084, 1088-89 (9th Cir. 2002); *F.T.C. v. Warner Comm'ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *Cal. Native Plant Soc'y v.*

E.P.A., 251 F.R.D. 408, 411 (N.D. Cal. 2008); *See also In the Matter of Axon Enterprise, Inc et al.*, Docket No. 9389,2020 FTC LEXIS 35 (Jan. 3, 2020).

Complaint Counsel further objects pursuant to Rule 3.31(c)(2), to the extent that it seeks the production of documents that were not “collected or reviewed in the course of the investigation of this matter or prosecution of this case and that are in the possession, custody or control of the Bureaus or Offices of the Commission that investigated the matter.”

On the basis of these objections and privileges, Complaint Counsel will not produce internal communications and memoranda regarding its investigation of Respondents. To the extent that this request seeks documents that were not reviewed by Complaint Counsel, Complaint Counsel is not required to search for under Rule 3.31(c)(2).

12. All data reports from any sources relating to the business of Respondents and received by the Federal Trade Commission prior to the filing of the Complaint.

Complaint Counsel objects to Document Request No. 12 to the extent that the phrase “data reports” is vague and ambiguous, and the request is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent.

Complaint Counsel also objects to Document Request No. 12 to the extent that it requests information or documents covered by law enforcement evidentiary or investigatory files privileges, the work product doctrine, and the attorney-client privilege.

Complaint Counsel further objects pursuant to Rule 3.31(c)(2), to the extent that it seeks the production of documents that were not “collected or reviewed in the course of the investigation of this matter or prosecution of this case and that are in the possession, custody or control of the Bureaus or Offices of the Commission that investigated the matter.”

Complaint Counsel also objects to the extent that Respondents have access to the same publicly available databases.

Subject to and without waiving these objections and privileges, and based on Complaint Counsel's understanding of the phrase "data reports", Complaint Counsel already has produced any relevant, non-privileged, responsive material, including USPS mailing lists and corporate records.

13. Any documents or discussions relating to the Federal Trade Commission's allegation that the acts and practices of Respondents have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

Complaint Counsel objects to Document Request No. 13 to the extent that it requests information or documents covered by law enforcement evidentiary or investigatory files privileges, the work product doctrine, and the attorney-client privilege.

Moreover, Complaint Counsel objects on the basis of the deliberative process privilege to the extent that this Request seeks internal FTC documents and communications "consisting of deliberative analysis preceding agency decisions." See *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51 (1975); *Carter v. U.S. Dept. of Commerce*, 307 F.3d 1084, 1088-89 (9th Cir. 2002); *F.T.C. v. Warner Commc'ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *Cal. Native Plant Soc'y v. E.P.A.*, 251 F.R.D. 408, 411 (N.D. Cal. 2008); See also *In the Matter of Axon Enterprise, Inc et al.*, Docket No. 9389,2020 FTC LEXIS 35 (Jan. 3, 2020).

Complaint Counsel further objects pursuant to Rule 3.31(c)(2), to the extent that it seeks the production of documents that were not "collected or reviewed in the course of the investigation of this matter or prosecution of this case and that are in the possession, custody or control of the Bureaus or Offices of the Commission that investigated the matter."

Respondents also are already in possession of any relevant, non-privileged documents responsive to this request.

Subject to and without waiving these objections and privileges, Complaint Counsel has already produced any relevant, non-privileged documents responsive to this requests, including documents provided in its Initial Disclosures. Discovery is ongoing, and Complaint Counsel will continue to produce relevant, non-privileged documents responsive to this Request that are in Complaint Counsel's possession, custody, or control.

14. All documents obtained by the FTC in its investigation of either Respondent.

Complaint Counsel objects to Document Request No. 14 as overly broad, vague, ambiguous, unduly burdensome, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent.

Complaint Counsel also objects to Document Request No. 14 to the extent that it requests information or documents covered by law enforcement evidentiary or investigatory files privileges, the work product doctrine, and the attorney-client privilege.

Moreover, Complaint Counsel objects on the basis of the deliberative process privilege to the extent that this Request seeks internal FTC documents and communications "consisting of deliberative analysis preceding agency decisions." See *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51 (1975); *Carter v. U.S. Dept. of Commerce*, 307 F.3d 1084, 1088-89 (9th Cir. 2002); *F.T.C. v. Warner Commc'ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *Cal. Native Plant Soc'y v. E.P.A.*, 251 F.R.D. 408, 411 (N.D. Cal. 2008); See also *In the Matter of Axon Enterprise, Inc et al.*, Docket No. 9389,2020 FTC LEXIS 35 (Jan. 3, 2020).

Complaint Counsel further objects pursuant to Rule 3.31(c)(2), to the extent that it seeks the production of documents that were not "collected or reviewed in the course of the investigation of

this matter or prosecution of this case and that are in the possession, custody or control of the Bureaus or Offices of the Commission that investigated the matter.”

Subject to and without waiving these privileges, Complaint Counsel already has produced any relevant, non-privileged, responsive material, including as part of the Complaint and Initial Disclosures.

15. All communications by and between any member of the FTC’s office of legal counsel and any Commissioners, or their staff, and relating to the allegation in the Complaint.

Complaint Counsel objects to Document Request No. 15 as overly broad, vague, ambiguous, unduly burdensome, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent.

Complaint Counsel also objects to Document Request No. 15 to the extent that it requests information or documents covered by law enforcement evidentiary or investigatory files privileges, the work product doctrine, and the attorney-client privilege.

Moreover, Complaint Counsel objects on the basis of the deliberative process privilege to the extent that this Request seeks internal FTC documents and communications “consisting of deliberative analysis preceding agency decisions.” *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51 (1975); *Carter v. U.S. Dept. of Commerce*, 307 F.3d 1084, 1088-89 (9th Cir. 2002); *F.T.C. v. Warner Commc’ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *Cal. Native Plant Soc’y v. E.P.A.*, 251 F.R.D. 408, 411 (N.D. Cal. 2008); *See also In the Matter of Axon Enterprise, Inc et al.*, Docket No. 9389,2020 FTC LEXIS 35 (Jan. 3, 2020).

Complaint Counsel further objects pursuant to Rule 3.31(c)(2), to the extent that it seeks the production of documents that were not “collected or reviewed in the course of the investigation of

this matter or prosecution of this case and that are in the possession, custody or control of the Bureaus or Offices of the Commission that investigated the matter.”

On the basis of these objections and privileges, Complaint Counsel will not produce internal communications and memoranda regarding its investigation of Respondents. Complaint Counsel is unaware of any other relevant, responsive documents that exists, and to the extent that this request seeks documents that were not reviewed by Complaint Counsel, Complaint Counsel is not required to search for under Rule 3.31(c)(2).

16. Any and all recordings of any person relating to the allegations of the Complaint.

Complaint Counsel objects to Document Request No. 16 to the extent that the term “recordings” is vague and ambiguous, and the request is unduly burdensome, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent.

Complaint Counsel also objects to Document Request No. 16 to the extent that it requests information or documents covered by law enforcement evidentiary or investigatory files privileges, the work product doctrine, and the attorney-client privilege.

Moreover, Complaint Counsel objects on the basis of the deliberative process privilege to the extent that this Request seeks internal FTC documents and communications “consisting of deliberative analysis preceding agency decisions.” *See NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150-51 (1975); *Carter v. U.S. Dept. of Commerce*, 307 F.3d 1084, 1088-89 (9th Cir. 2002); *F.T.C. v. Warner Commc’ns Inc.*, 742 F.2d 1156, 1161 (9th Cir. 1984); *Cal. Native Plant Soc’y v. E.P.A.*, 251 F.R.D. 408, 411 (N.D. Cal. 2008); *See also In the Matter of Axon Enterprise, Inc et al.*, Docket No. 9389,2020 FTC LEXIS 35 (Jan. 3, 2020).

Complaint Counsel further objects pursuant to Rule 3.31(c)(2), to the extent that it seeks the production of documents that were not “collected or reviewed in the course of the investigation of this matter or prosecution of this case and that are in the possession, custody or control of the Bureaus or Offices of the Commission that investigated the matter.”

Subject to and without waiving these objections and privileges, Complaint Counsel does not have any relevant, non-privileged documents responsive to this request in its possession, custody, or control. To the extent that this request seeks documents that were not reviewed by Complaint Counsel, Complaint Counsel is not required to search for under Rule 3.31(c)(2).

Respectfully submitted,

November 17, 2020

By: /s/ Sanya Shahrabi
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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2020, I caused the foregoing document to be served via electronic mail to:

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November 17, 2020

By: /s/ Sanya Shahrabi
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Federal Trade Commission
Bureau of Consumer Protection