

[REDACTED]

## INTRODUCTION

Complaint Counsel commenced this action against Basic Research, L.L.C., four other companies and three individuals. On August 11, 2004, a Scheduling Order was entered by the court providing that "each party" was limited to propounding 60 interrogatories, 60 document

requests and 60 requests for admissions. On October 20, 2004, counsel for Respondents

propounded 27 interrogatories, 11 document requests and 54 requests for admissions. Complaint Counsel, however, has refused to respond to any of the discovery requests and has instead asked that the court change its order to limit Respondents collectively to 60 of each type of discovery requests, rather than per party.

**ADDITIONAL ARGUMENT**

First, it is fundamentally unfair for Complaint Counsel to ask this Court to construe the Scheduling Order to limit discovery requests to each side despite the Scheduling Order's plain language at this juncture now that written discovery has closed. Complaint Counsel has been aware of this issue since at least August 14, 2004 when this Court promulgated its Scheduling Order. Following review of this Court's Draft Proposed Scheduling Order, the parties



addressed the issue now raised, Respondents who are parties to that Order were entitled to rely on the language of the Order in fashioning their respective plans for discovery. *Id.*

In specific, under the plain language of the Scheduling Order, provided that each Respondent was entitled to promulgate separate discovery requests. Now that each has done so, Complaint Counsel argues that they should not have relied on the language of the Scheduling

Order and should now suffer the inability to conduct the discovery each has planned.

waited nearly three months to raise this issue with the Court. Complaint Counsel has been amply aware that from the inception of the discovery phase of this litigation Respondents have been

Complaint Counsel's Motion for Protective Order stays as moot. Yet Complaint Counsel took no steps to clarify or raise the issue until it would be too late for Respondents to reformulate their discovery requests should the Court grant Complaint Counsel's request. For that reason alone, this Court should deny Complaint Counsel's Motion for Protective Order or alternatively

avoidance of that language from the hearing is similar to their silence on the issue for the past three months of discovery. This Court should not sanction Complaint Counsel's silent ambush in failing to timely raise this issue by allowing it to now ignore its discovery obligation once it is too late for each Respondent to reformulate its discovery plan.

~~Finally, Complaint Counsel's discovery argument is undermined by its earlier~~

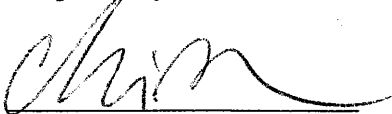
~~attempt to schedule "a brief status conference" referenced in its Motion. There is no provision for such a meeting in the Commission Rules of Practice and the intent of the Status Conference~~

CONCLUSION

For the foregoing arguments, as well as those incorporated herein, it is respectfully

DATED this 15<sup>th</sup> day of November, 2004.

Respectfully submitted,



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**CERTIFICATION FOR ELECTRONIC FILING**

I HEREBY CERTIFY that the electronic version of the foregoing is a true and correct copy of the original document being filed this same day of November 15, 2004 via Federal Express with the Office of the Secretary, Room H-159, Federal Trade Commission, 600 Pennsylvania Avenue N.W. Washington, D.C. 20580.

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