

BEFORE THE FEDERAL TRADE COMMISSION

In the matter of

a corporation, and
ENH Medical Group, Inc.,
a corporation.

clear, Complaint Counsel has had for some time now all necessary data and instructions to obtain the information it requests. The requested *further* extension of time, if granted, would stand the concept of a "rebuttal" report on its head, provide Complaint Counsel an unfair

sets that resulted from all of the data processing steps. See Exhibit B in Complaint Counsel's Motion for Extension (Email dated November 24, 2004 from Michael Siberium to Thomas

Brock). Complaint Counsel's production deficiencies required Respondents' experts to re-

state the results in Dr. Hogg Wilson's reports. See

and Monica Noether at issue in the Motion for Extension.² Respondents also provided to

[REDACTED] with Dr. Baker's expert report, all of the statistical programs

specifications, and precise instructions "on how to reproduce Drs. Baker and Noether's results."

Mot. for Extension at 3, n. 1; Maierns Dec. ¶ 8 (Ex. 1).

After Respondents produced their expert reports, Complaint Counsel asked for various instructions regarding the computer programs and data produced with such reports. Respondents replied quickly to Complaint Counsel's concerns and questions, thus allowing

[REDACTED] understand Respondents' experts' techniques and the use of

Email dated November 11, 2004 from Charles Klein to Thomas Brock (Ex. 3) (emphasis added).

believe that this response was unsatisfactory to Complaint Counsel, until last week.³

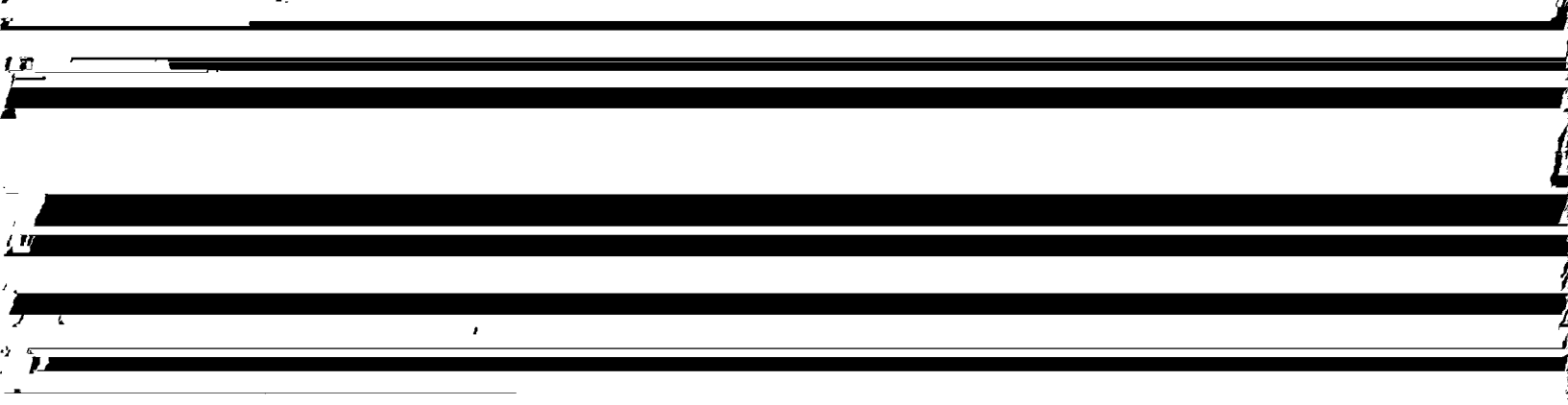
On 11/11/04, Complaint Counsel asked Respondents five sub-questions.

Extension was filed just two business days before the deadline for Complaint Counsel's econometric rebuttal reports, yet such motion fails to explain Complaint Counsel's delay in bringing this issue before the Court.

ARGUMENT

Respondents have produced to Complaint Counsel everything that is required under 16 C.F.R. § 3.31(b)(3), and more than Complaint Counsel provided to Respondents with its expert reports. The purpose of providing computer information relied on by experts is to let the opposing party "know[] the precise methods employed in programming the computer as well as the [] ability to determine the effectiveness of the persons responsible for feeding data into the

Cleveland Electric Illuminating Co. 529 F. Supp. 1257, 1266



(N.D. Ohio 1980). In that case, unlike here, the plaintiff provided the defendant with its expert report, but *no* computer information relied upon by the expert.

Here, it is undisputed that Respondents timely provided computer programs and

Complaint Counsel's experts presently have all of the underlying data, programs, specifications, and detailed instructions to replicate Dr. Baker's results and to examine its reliability and Dr. Baker's effectiveness. *See* Majerus Decl. ¶ 8 (Ex. 1) Complaint Counsel,

11. Complaint Counsel's experts have no right to compel

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court deny Complaint Counsel's Motion to Compel Discovery and for Extension of Time to File Econometric Rebuttal Report.

CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2004, a copy of the foregoing *Respondents' Opposition to Complaint Counsel's Motion to Compel Discovery and for Extension of Time to File Econometric Rebuttal Report* was served by email and first class mail, postage prepaid, on:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave NW (H-106)

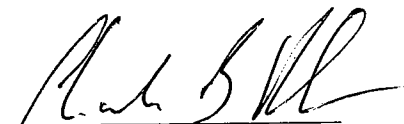
Washington, DC 20580
(two courtesy copies delivered by messenger only)

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Charles B. Klein

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

In the matter of _____

Corporation, _____
a corporation, and _____
ENH Medical Group, Inc., _____
a corporation. _____

Docket No. 9315

ORDER

Upon consideration of Complaint Counsel's Motion to Compel Discovery and for
Extension of Time to File Econometric Rebuttal Report ("Motion") and Respondents' opposition

thereto, and the Court being fully informed, it is this _____ day of _____, 2004 hereby

ORDERED, that the Motion is DENIED.