UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

[redacted]

In the matter of

Evanston Northwestern Healthcare Corporation,
a corporation, and

[redacted]

Docket No. 9315

PUBLIC RECORD

[redacted]

a corporation.

RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S

[redacted]

MOTION FOR RECONSIDERATION OF MOTION TO COMPEL DISCOVERY

Pursuant to the Federal Trade Commission's Rules of Practice ("Rules"), 16 C.F.R. § 3.22(c), Respondents Evanston Northwestern Healthcare Corporation ("ENH") and

Court properly concluded that Complaint Counsel's initial motion to compel expert data was untimely and the requested 10-day extension for econometric rebuttal reports unwarranted. Under these circumstances, the Motion to Reconsider should be denied because it fails to meet the strict reconsideration standard.

ARGUMENT

I. Complaint Counsel Ignore The Strict Reconsideration Standard.

When articulating the motion to reconsider standard in *In re Rambus*, Dkt. No. 9302, 2003 FTC LEXIS 49 (Mar. 26, 2003), this Court emphasized that parties may not use such a motion as a vehicle to obtain a "second bite at the apple" or to "relitigate previously decided matters":

> *Motions for reconsideration should be granted only sparingly.* [redacted]
>
> motions should be granted only where: (1) there has been an intervening change in controlling law; (2) new evidence is available; or (3) there is a need to correct clear error or manifest injustice. Regency Communications, Inc. v. Cleartel Communications, Inc., 212 F.Supp.2d 1, 3 (D.D.C. 2002). *Reconsideration motions are not intended to be opportunities "to*

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the Court and thus seek, without good cause, "a second bite at the apple." *Id.*[1]

II. Complaint Counsel Cannot Satisfy Their Burden Of Demonstrating "A Need To Correct Clear Error Or Manifest Injustice."

A. The Court Made No "Clear Error" In The Order Granting Motion To Compel.

Complaint Counsel first argue that their delay in filing the initial motion to compel was justified because "very active negotiations" concerning the underlying discovery dispute purportedly continued after November 11, 2004. They next appear to argue that Complaint Counsel's production of expert material was more extensive than that of Respondents

Complaint Counsel filed the motion." Mot. to Reconsider at 1, 2. This characterization of the parties' communications are not supported by the pertinent correspondence set forth below.

Such correspondence make it clear that negotiations pertaining to Complaint Counsel's request for processed data files ended on November 11, Respondents' refusal to produce such information was left unanswered for almost two weeks, and when Complaint Counsel finally

pertaining to Dr. Baker's report and notified Complaint Counsel that the requested 10-day extension of time would "have an adverse ripple effect on the remaining scheduling order deadlines." Ex. 7 at 2.

[redacted]

files, after Respondents flatly refused to provide such information on November 11, 2004. Mot.

somehow result in a multitude of discovery motions to the detriment of the "Court's own operational interest." This argument flows from the erroneous inference that the basis for the Court's ruling was that Complaint Counsel merely waited more than the 5-days after "impasse" allowed under the scheduling order to file their motion to compel. Complaint Counsel are as wrong in their reading of the Court's opinion as they are in their dire predictions of the order's consequences.

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disputes are resolved quickly to minimize disruptions to the scheduling order and delays in the

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assertion to the contrary, no party needs to rush to Court when, unlike here, disputed issues are still being negotiated.[5] Instead, parties have an obligation to determine when disputes have

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productions and immediately made clear their position on the production of processed data files; (5) Complaint Counsel provided no legitimate excuse for waiting to file a motion to compel on the processed data files; and (6) Complaint Counsel served *six* rebuttal expert reports in an overkill response to Respondents' four expert reports. Under these circumstances, there is no basis to reconsider the Order Denying Motion to Compel.[7]

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court deny

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Dated: December 15, 2004

Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2004, a copy of the foregoing ***Respondents' Opposition to Complaint Counsel's Motion for Reconsideration of Motion to Compel***

[redacted]

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

UNITED STATES OF AMERICA

[redacted]

In the matter of	)	
Evanston Northwestern Healthcare Corporation, a corporation, and	)	Docket No. 9315
ENH Medical Group, Inc., a corporation.	)	

ORDER

Upon consideration of Complaint Counsel's Motion for Reconsideration of Motion to Compel Discovery ("Motion") and Respondents' opposition thereto, and the Court being fully informed, it is this _____ day of _____, 2004 hereby

ORDERED, that the Motion is DENIED.

Exhibit 18

REDACTED