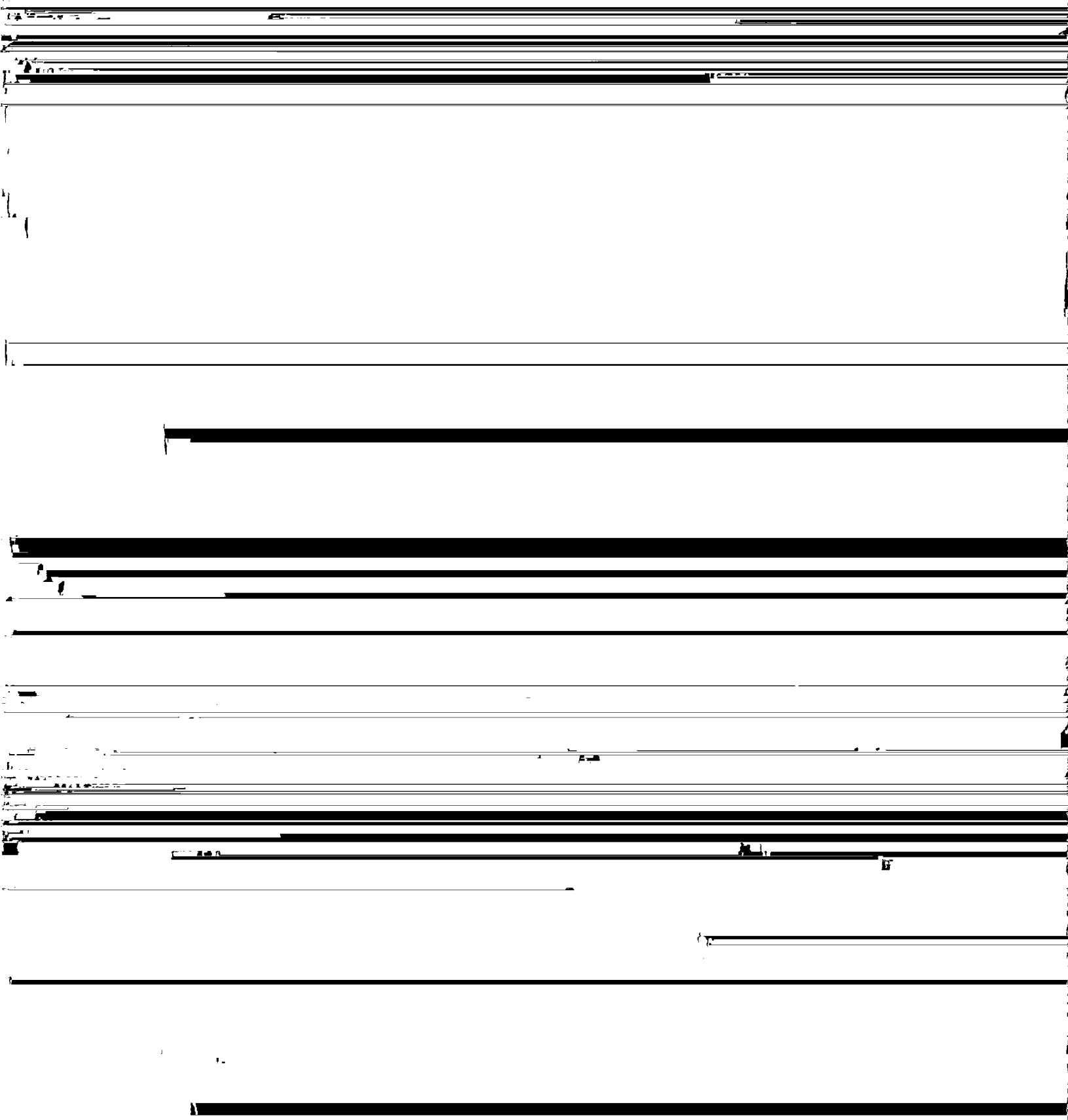


confidential information “must be weighed against a liability determination, if any, by the hearing officer” in this proceeding (Opposition at 2) — is meritless. Respondents’



of the Commission's complaint, to the relief proposed therein, or to the Respondents' defenses, none of which is at issue in this discovery motion." (6/17/05 Order at 8.) The Commission's ruling applies with full force to the subpoena issued to Yahoo! Inc.

because this subpoena seeks information about the same events — the publication of Respondents' exhibits on the FTC website — that the Commission has deemed irrelevant to the instant litigation, and therefore outside the scope of discovery.

(2) Respondents' Motion for Order to Show Cause Why Complaint Counsel Should Not Be Held in Contempt (March 8, 2005)

The Commission concluded that Complaint Counsel violated Rule 4.2(c)(3), which prohibits the FTC from filing confidential exhibits by email, and that this violation

Commission's complaint because Respondents did not allege or demonstrate how the

other information that would personally identify specific individuals because such a disclosure would violate the Privacy Act of 1974. Rather, the Commission granted “Respondents access to aggregate Web log data that reveal the Web domains from which requests to the exhibits in question were received. Disclosure of this information

provides Respondents with information regarding the extent of the disclosures and may allow the Respondents to contact these domains to determine to what extent the domain operators themselves or users of these domains may have retrieved, stored, used, shared,

or disclosed exhibits from the ETC’s servers.” (6/17/05 Order at 7.) The Commission

states that the data would allow Respondents to “determine if those domains might assist in identifying, retrieving, or destroying any copies of the exhibits that may have been retained by users of those domains or by the domain operators themselves.” (6/17/05 Order at 7-8.)

FTC sent to Respondents redacted FTC website server logs for the exhibits that had been improperly emailed or posted, including Exhibits 11, 15, 36, 42, and 45 accompanying Complaint Counsel's January 31, 2005, Motion For Partial Summary Decision, and

compelling justification for offsetting such a public remedy based upon subsequent governmental action that allegedly injured Respondents. Injured consumers should receive full redress in this proceeding. Respondents are free in another proceeding before a tribunal with jurisdiction to seek recovery of any injury they may have suffered.

Finally, the Commission already ruled on the question of the relevance of the information sought in the pending subpoenas by denying Respondents' Motion for Leave to Take Discovery Regarding Complaint Counsel's Violation of the Protective Order

in Commission adjudicatory proceedings under Part 3 of the

Commission's Rules is limited to matters that are relevant to the allegations of the Commission's complaint, to the relief proposed therein, or to the Respondents' defenses,

improperly posted to the website were only posted for two days^{7/} and comprised only a tiny portion of the vast information contained on the FTC website. Accordingly, the first four categories of documents listed in the subpoena are not tailored to the information Respondents claim to seek.

In addition, with respect to the fifth and sixth categories of documents (which do

not relate to the information sought) the burden would be extraordinarily

burdensome because Yahoo! Inc. has nearly 10,000 employees, any of whom may have accessed the FTC's website for reasons wholly unrelated to the issues in this matter.

The seventh category in the subpoena, which seeks "[a]ll information maintained

by Yahoo! Inc. relating in any way" to the specified exhibits, imposes

conduct extensive and time-consuming technical research to retrieve such information for its nearly 10,000 employees concerning information that was removed from the FTC's website nearly nine months ago. This process would be virtually impossible.

Additionally, given the overbroad language of the subpoena, any responsive information that may exist may be subject to prohibitions on disclosure under the Electronic

requirements of this Act and other privacy protections that may preclude disclosure of

information covered by the subpoena.

Finally, even apart from the specific flaws of the subpoena, enforcement of the

the chilling effect on core First Amendment freedoms, this subpoena should be quashed.

III. Conclusion

For the foregoing reasons, Yahoo! Inc. respectfully requests that the subpoena issued to it be quashed.

Respectfully submitted,

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Counsel for Yahoo! Inc.

Dated: November 14, 2005

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

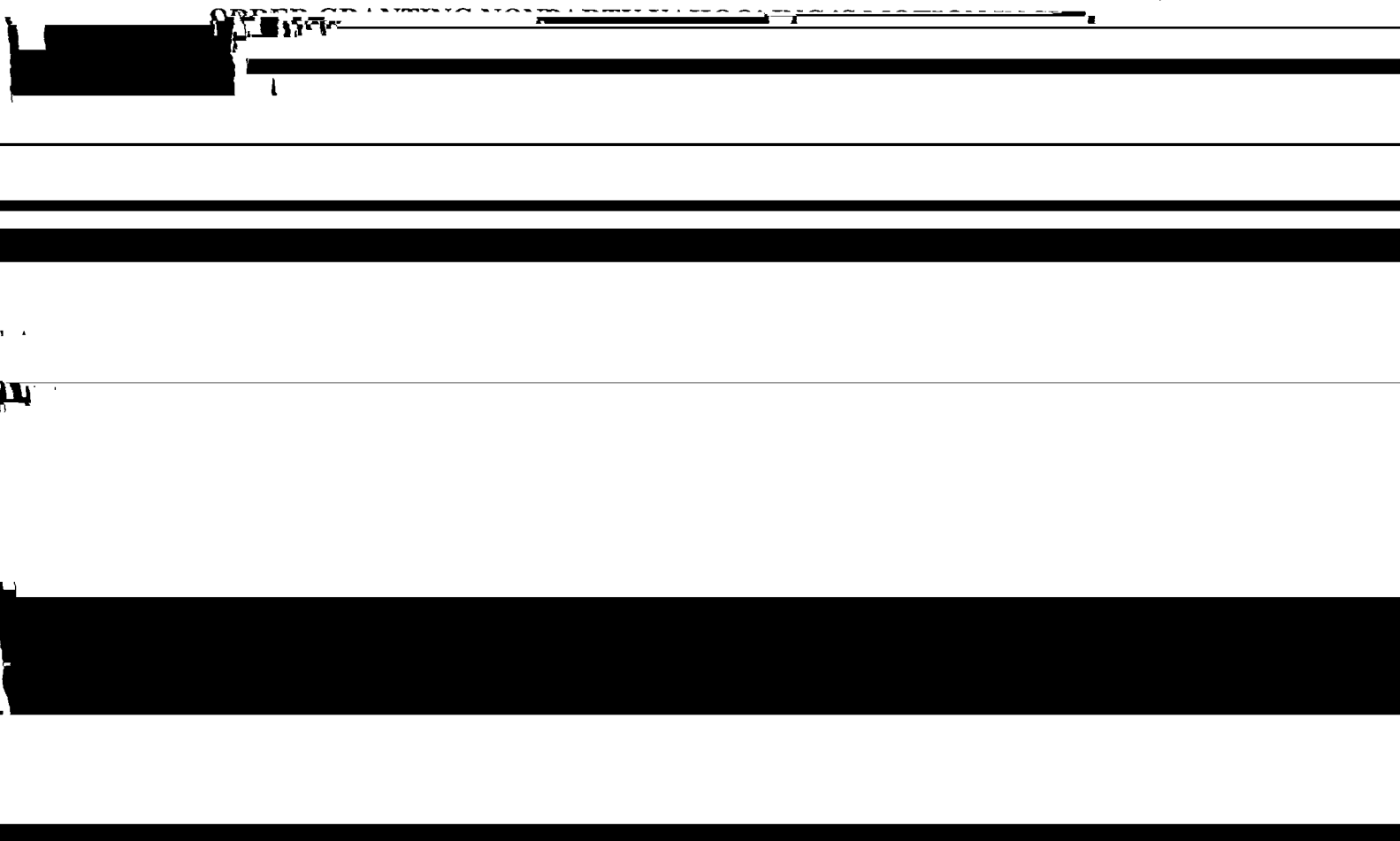
In the Matter of)
)
BASIC RESEARCH, L.L.C.,)
A.G. WATERHOUSE, L.L.C.,)
KLEIN-BECKER USA, L.L.C.,)
NUTRASPORT, L.L.C.,)
SOVAGE DERMALOGIC)
LABORATORIES, L.L.C.)

Docket No. 9318

BASIC RESEARCH, L.L.C.)

EXHIBIT DOCUMENT

DENNIS GAY,)
DANIEL B. MOWREY, and)
MITCHELL K. FRIEDLANDER,)
Respondents.)
_____)



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 14, 2005 via Hand Delivery with Donald S. Clark, Secretary, Room H-159, Federal Trade Commission, Washington, D.C. 20580

Rachel Shachter
Rachel Shachter