UNITED STATES OF AMERICA

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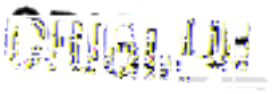

discovery requests." Sept. 7, 2016 Scheduling Order ¶ 10. Complaint Counsel's motion was timely filed December 22, 2016.

There is good reason for the Order's requirement that a motion to compel be triggered by the service of interrogatory responses rather than the date of the meet-and-confer: when a party has made clear that it plans to re-file its interrogatory responses to address inadequacies raised by the serving party, the serving party must await the updated responses to evaluate whether they satisfactorily address those inadequacies or whether, instead, a motion to compel is necessary. To require the serving party to file a motion to compel regarding some portion of the responses while awaiting revisions to other portions—before knowing whether the revised responses will necessitate an additional motion to compel responses to the same set of interrogatories—would be highly inefficient. It would multiply the number of motions that the parties must brief and the Court must consider. Fortunately, the Order allows the serving party to raise all of its concerns with the interrogatory responses in a single motion, filed within 30 days after the complete set of responses are served, thus avoiding seriatim motions.

Second, regarding the specificity with which Respondent identified the documents from which its response may be ascertained, Respondent's Opposition incorrectly states "1-800 Contacts did not merely tell Complaint Counsel to review the entire set of produced documents. . . . Instead, Respondent pointed Complaint Counsel to the particular advertisements attached to letters or emails between 1-800 Contacts and one or more of the Settling Parties (*e.g.*, cease-and-desist letters sent by 1-800 Contacts), as well as the advertisements attached to pleadings filed by 1-800 Contacts in litigation against a Settling Party." Opposition at 4-5.

Had Respondent actually identified that set of documents—***and only that set of documents***—as the files from which the interrogatory response could be ascertained, then we

would have no dispute regarding the specificity of the response. But Respondent's answer to the interrogatory was different. It stated the responsive information:

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Declaration of Kathleen Clair (Dec. 22, 2016) Tab 6, at 23 (emphasis added). As noted in Complaint Counsel's opening brief, Respondent merely parroted back the language of the request, and its use of the word "including" undid any specificity that might have otherwise been provided by identifying categories of correspondence and pleadings. *See* Mem. in Supp. of Mot. to Compel at 5-6. This response is insufficient. *See id.* (citing *Rainbow Pioneer No. 44-18-04A v. Hawaii-Nevada Inv. Corp.*, 711 F.2d 902, 906 (9th Cir. 1983)).

If Respondent would strike the word "including" from its response and otherwise make

CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2017, I filed the foregoing documents electronically using the FTC's E-Filing System, which will send notification of such filing to:

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The Honorable D. Michael Chappell
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I also certify that I delivered via electronic mail a copy of the foregoing documents to:

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CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

January 10, 2017 By: /s/ Daniel J. Matheson
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