In the Matter of

UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION OFFICE OF ADMINISTRATIVE tAW JUDGES

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Jerk, LLC, a limited liability company, also d/b/a JERK.COM, and

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DOCKET NO. 9361

John Fanning, individually and as a member of
Jerk, LLC,
Respondents.

ORDER GRANTING CONSENT MOTION OF RESPONDENT FANNING
FOR LEAVE TO AMEND ANSWERS TO SECOND .REQUEST FOR ADMISSIONS A,.~D TO SERVE ANSWERS LATE

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On Deceniber9, 2014,. R~spondent John Fanning ("'Fanning") filed an Assented to
Motion fot Leave to Amend Answers to Second Request for Admissions and to Serve Answers Late ("Motion"). Federal Trad.e Commission ("FTC") Complaint Counsel has not responded to the Motion. As set forth below, the Motion is GRANTED.

II.

Fanning states that he was served with Complaint Counsel's second request for
admissions ("RF As"} 011 November 4, 2014, but that he failed to submit his responses during the 1 0-day response period allowed by FTC Rule of Practice 3.32(b) because of "extensive activity in the case," including Fanning's filing of his opposition to the pending Motion for Summary Decision. Fanning further states that he was unable to '"keep track" of extensive emails and filings occurring d1mng the response period. Fanning further states that he first realized the oversight of failing -to respond to the RFAs on November 25, 2014, when Complaint Counsel filed a motion to supplement its Motion for Summary Decision, seeking to add facts derived from the constructive admissions resulting from

Fanning asserts that upon realizing the failure, his co_Wlsel took immediate steps to
complete answers to Complaint Counsel's RF As, and served them on December 4, 2014. Fanning arg11es that no prejudice will result to Complaint Counsel by allowing the late filing, while Fanning will be prejudiced if he is bound by the constructive admissions.

III.

The title ofFanning's Motion states that the Motion is "assented to" and Complaint
Counsel h.as not filed any opposition to the Motion. FTC Rule of Practice 3.22(d) provides that; "Within 10 days after service of any written motion •.. th.e opposing party shall answer or shall be deemed to have consented to the granting of the relief asked for in the motion.'' 16 C.F .R. § 3.22(d). In addition, 3.32(c) authorizes "withdrawal or amendment [of admissions] wheR the presentation of the merits of the pro.ceeding will be subserved thereby and the party who obtained the admission fails to satisfY the Administrative Law Judge that withdrawal or ~endment will prejudice him in maintaining his action or defense on the merits." 16 C.F.R. § 3,32(c).

Based on the foregoing,