

**X200041**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**In the Matter of**

**TRAFFIC JAM EVENTS, LLC, a limited  
liability company, and**

**DAVID J. JEANSONNE II,  
individually and as an officer of  
TRAFFIC JAM EVENTS, LLC.**

**DOCKET NO. 9395**

**COMPLAINT COUNSEL'S MOTION TO PRECLUDE OR LIMIT THE DEPOSITION  
OF FORMER FTC PARALEGAL**

Pursuant to Administrative Rules 3.31 and 3.33(b), Complaint Counsel respectfully request the Court enter a protective order to preclude or restrict Respondents' deposition of former Federal Trade Commission paralegal Emile Saunders, noticed on July 14 for 3:00 pm on July 16, 2021. Respondents' notice seeking to depose a former paralegal is improper because (1) Respondents seek to use the deposition to probe the FTC's decision to initiate suits against Respondents, rather than the merits of this proceeding; and (2) the former paralegal's recollection of the investigation and decisions made in litigating against Respondents is protected by the work product doctrine.

Complaint Counsel has conferred with Respondents' counsel regarding this deposition. The parties have been unable to resolve the merits of the motion but, in order to allow sufficient time for Respondents to provide a response, and the Administrative Law Judge to rule on the motion, Complaint Counsel has proposed, and Counsel for Respondents has accepted, that the

deposition be held in abeyance until a ruling on this Motion is issued, and that if the motion is denied, the deponent will appear for deposition at a mutually convenient date and time.

### **BACKGROUND**

The FTC's complaint against Respondents alleges three Counts arising from deceptive advertising to promote auto dealership offers. Count I arises from advertisements containing statements about "IMPORTANT COVID-19 ECONOMIC STIMULUS DOCUMENTS" that the complaint alleges contain false and misleading representations. Compl. ¶¶ 9-10, 15, 16. Prior to the initiation of this administrative action in August 2020, the FTC brought suit in the Eastern District of Louisiana seeking preliminary relief prohibiting Respondents from continuing to promote and disseminate COVID-19 stimulus relief advertisements.<sup>1</sup> In that suit, the FTC submitted the declaration of paralegal, Emile Saunders, in support of a motion for a temporary restraining order ("TRO"). See Ex. A to Tankersley Decl.. Respondents did not contest the statements in the Saunders declaration. After the court denied the TRO because it viewed the COVID-19 advertising as an "isolated event" that Respondents claimed they would no longer promote, *FTC v. Traffic Jam Events, LLC*, 2020 WL 3490434, at \*3, 5, the FTC voluntarily dismissed the suit without prejudice.<sup>2</sup>

The Commission subsequently issued the three-count complaint in this administrative action, which alleges that Respondents' misconduct has not been isolated and involves multiple deceptive misrepresentations and improper disclosures. Compl., ¶¶ 9-23. Ms. Saunders left the

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<sup>1</sup> *FTC v. Traffic Jam Events, LLC, and David J. Jeanson II*, No. CV 20-1740, 2020 WL 3490434 (E.D. La., June 26, 2020). The Florida Attorney General brought suit for the Florida mailers. *Office of the State Attorney General, et al. v. Traffic Jam Events, LLC, et al.*, Case No. 20-CA-3536 (Fla. Cir. Ct., 13th Judicial Cir., Hillsborough Cty, filed April 23, 2020). The Florida Attorney General's action is pending.

<sup>2</sup> *FTC v. Traffic Jam Events, LLC*, No. CV 20-1740, Dkt. No. 30 (E.D. La., Aug. 7, 2020).

FTC; Complaint Counsel does not intend to rely upon her testimony in this action; and Respondents have been told that she will not be a witness. Tankersley Decl. ¶ 5.

Respondents' counsel has noticed the deposition of Ms. Saunders to question her regarding the basis for the FTC's decision to bring suit against Respondents in the district court in June 2020 and initiate the subsequent administrative complaint in August.<sup>3</sup> Respondents' counsel has stated that he is using discovery in this proceeding to contest the sufficiency of the information before the Commission when it initiated these proceedings and seeks to use the Saunders Deposition to inquire into "what factual information [the FTC] possessed as of June 16, 2020 and Aug. 7, 2020" – the dates that the Commission filed the district court suit and approved the administrative complaint. Tankersley Decl. Ex. C at 1(July 13, 2021 email). Respondents' counsel has insisted on pursuing this inquiry, despite Complaint Counsel's objection that these areas are outside the scope of permissible discovery and that Ms. Saunder's recollections as an FTC paralegal supporting litigation are protected from discovery. *Id.*

### **LEGAL STANDARD**

Rule 3.33(b) allows the Court to "rule on motion by a party that a deposition shall not be taken upon a determination that such deposition would not be reasonably expected to meet the scope of discovery set forth under § 3.31(c)." Thus, the Court may prevent the taking of a deposition when it is not reasonably expected to yield relevant information, or when the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient. 15 C.F.R. § 3.31(c)(1). Additionally, discovery shall be denied

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<sup>3</sup> Reply Memorandum at 2-3 (stating Respondents contend "the identity and sources of the factual information in the possession of the FTC as of August 7, 2020" are directly relevant to a "jurisdictional threshold," citing 15 U.S.C. § 45(n))

or limited in order to preserve privileges. *Id.* § 3.31(c)(4). Such relief is warranted where taking the deposition would invade complaint counsel’s work product. *In the Matter of Volkswagen of Am., Inc., et al.*, No. 9154, 1985 WL 260890, at \*3 (Mar. 12, 1985) (denying leave to subpoena former FTC employee); *In re School Services, Inc.*, 71 F.T.C. 1703, 1705, 1967 FTC LEXIS 125, at \*5-6 (June 16, 1967) (denying, based on deliberative process and work product privileges, deposition of FTC employees regarding “investigations of respondents prior to the issuance of complaint”). A party may also seek a protective order to prevent the taking of discovery “to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent undue delay in the proceeding.” 16 C.F.R. § 3.31(d).

### **ARGUMENT**

#### **I. Respondents’ Deposition of a Former FTC Paralegal Does Not Seek Discovery on Contested Issues Relevant to This Proceeding.**

This proceeding concerns allegations that Respondents generated ads for automobile dealerships that are false and misleading or violate disclosure mandates of the Truth in Lending Act. Complaint ¶¶ 15-23. Respondents have had ample opportunity to pursue discovery of the nonprivileged materials Complaint Counsel has to prove these claims on the merits and to develop their own defenses.

Respondents, however, seek to use discovery for an issue that is not subject to review in this proceeding, namely, what information prompted the Commission to bring a prior suit against the Respondents in the Eastern District of Louisiana and approve the subsequent complaint in this action. Respondents’ counsel acknowledges that he seeks to depose the FTC’s former paralegal regarding her work on the FTC’s litigation in 2020 to probe the Commission’s decision to initiate suit, including “what *factual* information the FTC possessed to include in the

Complaint, and the *source* of that *factual* information.” Tankersley Decl. Ex. B at 4 (July 12 email) (italics in original).

Multiple precedents hold that the bases for the Commission's commencement of an action are not relevant for purposes of discovery in an administrative adjudication. *See In re LabMD, Inc.*, 2014 FTC LEXIS 35, at \*9 (Feb. 21, 2014) (discovery into the type of information the Commissioners evaluated and considered prior to filing is outside the scope of discovery absent extraordinary circumstances); *In re Basic Research LLC*, 2004 FTC LEXIS 210, \*10-11 (Nov. 4, 2004) (denying, as not relevant, discovery into the Commission's decision to not file the complaint prior to a specified date); *In re Metagenics, Inc.*, 1995 FTC LEXIS 23, \*2 (Feb. 2, 1995) (denying discovery into how documents came into possession of counsel as irrelevant). “[T]he issue to be litigated is not the adequacy of the Commission’s pre-complaint information or the diligence of its study of the material in question but whether the alleged violation has in fact occurred.” *In re Exxon Corp.*, Docket No. 8934, 83 F.T.C. 1759, 1760, 1974 WL 175251 at \*2-3 (June 4, 1974).

Respondents also have suggested that they are entitled to question Ms. Saunders about the sources of documents identified in her Declaration from the Eastern District of Louisiana. *See* Ex. A to Tankersley Decl. The declaration, however, simply identifies documents whose sources are verifiable and uncontested:

- State corporate filings identifying Respondents (Attachments A-B)
- A motion, two complaints and three consent orders filed in state proceedings brought against Respondents (Attachments C-H).
- An advertisement for an event in Madison, Alabama that Respondents have acknowledged as their work (Attachment J), and an online map of the location of a Florida automotive sales

event listed in another ad Respondents have acknowledged. *See Answer and Defense of Respondents Traffic Jam Events, LLC, and David J. Jeansonne II at p. 2, p. 12 ¶ 4, p. 13 ¶¶ 9, 10 (filed Aug. 27, 2020) (identifying “Alabama Stimulus Mailer” attached to Answer as Exhibit B, and acknowledging location of automotive sales event in Bushnell, Florida in Exhibit A).*

Respondents have not contested the authenticity of these documents and do not claim that they lack the means to verify the documents come from state records offices, court proceedings in which Respondents participated, or Respondents’ own ads. Even if Respondents had questions about the records, they have ample other, more convenient, means to explore such issues than a deposition of a former FTC paralegal. Any argument that Respondents are pursuing the Saunders Deposition to test the genuineness of the documents described in the declaration is pretext for an unduly burdensome deposition intended to annoy and harass.

## **II. The Former Paralegal’s Recollections of the FTC’s Investigation are Protected by the Work Product Doctrine.**

“The work product doctrine shields materials ‘prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent).’” *Judicial Watch, Inc. v. Department of Justice*, 432 F.3d 366, 369 (D.C. Cir. 2005) (quoting FED. R. CIV. P. 26(b)(3)). The work product shield protects factual materials as well as opinions and impressions. *Id.* at 371. It applies to the work of non-lawyers like Ms. Saunders preparing for anticipated litigation. *See United States v. Nobles*, 422 U.S. 225, 238 (1975) (attorneys’ agents); *In the Matter of Volkswagen of Am., Inc., et al.*, No. 9154, 1985 WL 260890 (FTC consultants). It not only precludes discovery of records, but prevents the use of depositions and other discovery devices

to elicit recollections that would reveal work product. *United States v. One Tract of Real Prop.*, 95 F.3d 422, 428 n.10 (6th Cir. 1996).

Questions about Ms. Saunders' recollections of the 2020 investigation beyond the four corners of her declaration would invade the Commission's work product privilege. Inquiries about the development of the investigation and litigation preparations "will inevitably penetrate complaint counsel's mental impressions, thought processes, strategy, and conclusions." *In the Matter of Volkswagen of Am., Inc., et al.*, No. 9154, 1985 WL 260890, at \*3. For example, questions calling for her to disclose whether the investigation considered other documents or facts in preparing the Declaration would invariably reveal "mental impressions [and] personal beliefs," *Hickman v. Taylor*, 329 U.S. 495, 511 (1947), and therefore conflict with the work product doctrine. *See, e.g., In re Allen*, 106 F.3d 582, 608 (4th Cir. 1997) (choice and arrangement of documents that reveals thought processes and theories regarding litigation is protected); *Shelton v. American Motors Corp.*, 805 F.2d 1323, 1326 (8th Cir.1986) ("[W]here, as here, the deponent is opposing counsel and has engaged in a selective process of compiling documents from among voluminous files in preparation for litigation, the mere acknowledgment of the existence of those documents would reveal counsel's mental impressions, which are protected as work product."); *United States v. Dist. Council of New York City & Vicinity of United Bhd. of Carpenters & Joiners of Am.*, No. 90 CIV. 5722 (CSH), 1992 WL 208284, at \*11 (S.D.N.Y. Aug. 18, 1992) (prohibiting questioning investigator on basis for complaint allegations because "a party may not secure disclosure of an adversary's counsel's view of the case or trial preparation by seeking disclosure of those facts or sources of facts which counsel considers more significant than others and has devoted time to pursuing."). Information that would reveal decisions about the selection of documents, potential witnesses or other sources of

information is protected by the work product doctrine because “[c]learly such decisions constitute ‘strategy’ and a lawyer’s ‘mental process’ in preparing for litigation.” *Chiperas v. Rubin*, No. CIV.A. 96–130, 1998 WL 531845, at \*1 (D.D.C. Aug. 24, 1998).

Respondents’ counsel argues that complaint counsel has forfeited work product protection for questions regarding how the documents appended to the Saunders declaration or other materials identified in Complaint Counsel’s disclosures or discovery responses came to the attention of FTC staff. *See Tankersley Decl.*, Ex. C at 1. To the contrary, work product protection applies to information about how evidence comes to the attention of investigators and decisions to pursue the development of potential evidence are protected work product. *See In re Metagenics, Inc.*, 1995 FTC LEXIS 23, \*2-3 (Feb. 2, 1995) (denying discovery into informants and documents that “led up to the complaint” based on work product). Moreover, the selective disclosure of materials gathered in an investigation does not waive privileges for other materials in the investigative file. *See Appleton Papers, Inc. v. EPA*, 702 F.3d 1018, 1025-26 (7th Cir. 2012) (“disclosure of some documents does not necessarily destroy work-product protection for other documents of the same character.”); *Pittman v. Frazer*, 129 F.3d 983, 988 (8th Cir. 1997) (disclosure of some exhibits does not remove protection from the remainder of the investigative file). Consequently, if the deposition is permitted at all, it should be limited to asking the former paralegal to verify statements in her Declaration because her impressions and recollections are otherwise protected work product.



**CONCLUSION**

The Court should enter an order precluding the deposition of Emilie Saunders. In the alternative, the Court should rule that Respondents' questions to Emilie Saunders must be limited to verifying the statements in her declaration of June 15, 2020.

Respectfully submitted,

July 15, 2021

By: /s/ Michael Tankersley  
Michael Tankersley  
Federal Trade Commission  
600 Pennsylvania Ave, NW  
Washington, D.C. 20580  
Telephone: (202) 326-2991  
Fax: (202) 326-3768  
Email: mtankersley@ftc.gov

**CERTIFICATE OF SERVICE**

I hereby certify that on July 15, 2021, I caused the foregoing Motion to Preclude or Limit the Deposition of Former FTC Paralegal, supporting declaration and separate meet and confer statement to be served via the FTC's E-filing system and electronic mail to:

The Honorable Michael Chappell  
Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-110  
Washington, DC 20580

Counsel for Respondents, Traffic Jam Events, LLC and David J. Jeansonne II:

L. Etienne Balart  
Jones Walker LLP  
201 St. Charles Ave  
New Orleans, LA 70170-5100  
ebalart@joneswalker.com

Taylor Wimberly  
Jones Walker LLP  
201 St. Charles Ave  
New Orleans, LA 70170-5100  
twimberly@joneswalker.com

July 15, 2021

By: /s/ Michael Tankersley  
Federal Trade Commission  
Bureau of Consumer Protection

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**DOCKET NO. 9395**

**SEPARATE MEET AND CONFER STATEMENT**

Consistent with this Court’s Scheduling Order, Complaint Counsel, Michael E. Tankersley, conferred with counsel, Etienne Balart for Respondents Traffic Jam Events, LLC regarding Respondents’ intent to depose former paralegal Emilie Saunders in a series of emails exchanged between July 7 and July 14, 2021. Complaint Counsel, Thomas Widor and Michael E. Tankersley also discussed the deposition during a telephone conference on July 9, 2021. Respondents’ Counsel has stated that he disagrees with Complaint Counsels’ view that the deposition is outside the scope of discovery and that the information Respondents Counsel seeks is protected work product. Respondents’ Counsel noticed the deposition, despite Complaint Counsel’s objections on July 14, 2021, and designated 2:00 pm Central Time on July 16, 2021 as the time for the deposition.

The parties have been unable to resolve the merits of the motion in the course of this exchange but, in order to allow sufficient time for Respondents to provide a response, and the Administrative Law Judge to rule on the motion, Complaint Counsel has proposed, and Counsel for Respondents has accepted, that the deposition be held in abeyance until the Court issues a

ruling, and that if the motion is denied, the deponent will appear for deposition at a mutually convenient date and time.

Respectfully submitted,

July 15, 2021

By: /s/ Michael Tankersley  
Michael Tankersley  
Federal Trade Commission  
600 Pennsylvania Ave, NW  
Washington, D.C. 20580  
Telephone: (202) 326-2991  
Fax: (202) 326-3768  
Email: mtankersley@ftc.gov

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**DOCKET NO. 9395**

**[PROPOSED] ORDER GRANTING COMPLAINT COUNSEL'S MOTION TO  
PRECLUDE OR LIMIT DEPOSITION OF FORMER FTC PARALEGAL**

Upon consideration of Complaint Counsel's Motion:

IT IS HEREBY ORDERED that Complaint Counsel's Motion is GRANTED.

IT IS FURTHER ORDERED that Respondents shall not take the deposition of Emilie Saunders.

ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date:

**X200041**

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
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**DOCKET NO. 9395**

**DECLARATION OF MICHAEL E. TANKERSLEY**

1. I have knowledge of the facts set forth in this declaration, and if called as a witness, I could and would testify competently under oath to such facts. This declaration is submitted in support of Complaint Counsel's Motion to Preclude or Limit the Deposition of a Former FTC Paralegal.

2. I am an attorney at the Federal Trade Commission and Complaint Counsel in this proceeding.

3. On July 14, 2021, Complaint Counsel received a notice for the deposition of Emilie Saunders on Friday, July 16, 2021, at 3:00 p.m., via a Zoom video link.

4. Emilie Saunders was a Paralegal Specialist assigned to the Division of Financial Practices in the FTC's Bureau of Consumer Protection in in June 2020. **Exhibit A** is a copy of the text of the Declaration of Emilie Saunders, filed on the FTC's behalf in *FTC v. Traffic Jam Events, LLC, and David J. Jeansonne II*, No. CV 20-1740, in the Eastern District of Louisiana.

5. Emilie Saunders left the agency in 2020. She will not be a witness for the FTC in this administrative action, and complaint counsel has notified Respondents that she will not be a witness. *See Exhibit B at pp. 5, 9.*

6. **Exhibit B** is a copy of a series of e-mails that I exchanged with Respondents' Counsel, Etienne Balart, between July 7 and July 12, 2021. Portions of these emails discuss Respondents' Counsel's intention to depose former FTC paralegal Emilie Saunders and I have marked the left hand margin of Exhibit B where the text regarding this deposition appears.

7. **Exhibit C** is a copy of an exchange of e-mails between myself and Respondents' Counsel, Etienne Balart, on July 13, 2021, regarding Respondents' Counsel's plan to depose former FTC paralegal Emilie Saunders in which Respondents' Counsel's explains that he seeks this deposition because he believes he is "entitled to ask some human being within the FTC what factual information it possessed as of June 16, 2020 and Aug. 7, 2020," and "to examine from where and when" unspecified evidence "came into the FTC's possession."

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on July 15, 2021

By: /s/ Michael E. Tankersley

**DECLARATION OF EMILIE SAUNDERS  
PURSUANT TO 28 U.S.C. §1746**

I, Emilie Saunders, have personal knowledge of the facts and matters discussed in this declaration and, if called as a witness, could and would testify as follows:

1. I am a citizen of the United States and am over eighteen (18) years of age. I am employed by the Federal Trade Commission (“FTC”) as a Paralegal Specialist in the Bureau of Consumer Protection. I have been assigned to the FTC’s Division of Financial Practices since July 2018.

2. My responsibilities at the FTC include investigating suspected violations of consumer protection laws, including the FTC Act. In the normal course of carrying out my investigative responsibilities, I regularly use Internet search engines, electronic databases, and other software-based investigative and organizational tools.

3. I have been working on the Commission’s investigation concerning Traffic Jam Events, LLC and David Jeansonne II. Collectively, Traffic Jam Events, LLC and David Jeansonne II are the Defendants in this matter.

4. As the custodian of documents and information collected in the course of this investigation, I maintain all such evidence in my custody and control on a secure FTC server.

Below, I describe those documents and information.

**I. CORPORATE FILINGS AND STATUS**

5. The Defendants created legal entities by filing company records with the states of Florida and Louisiana. Florida and Louisiana allows the public to access, search for, and download company records from state-run websites. I obtained company records filed by the



1 Defendants through this process. True and correct copies of company filings I obtained  
2 regarding Traffic Jam Events, LLC are appended hereto as *Attachment A-B*.

3 **A. Traffic Jam Events**

4 6. On August 29, 2007, Traffic Jam Events with registered with the Secretary of  
5 State as a limited liability company. Att. A.

6 7. David Jeansonne II is identified as the registered agent and officer with the titles  
7 of Manager and Member. *Id.* The street address for the registered agent and the domicile and  
8 mailing address of the company is 2232 Idaho Avenue, Kenner, LA 70062.<sup>1</sup> *Id.*

9 8. On July 27, 2010, David Jeansonne II also registered Traffic Jam Events, LLC as  
10 a fictitious name in Florida. Att. B. The application is signed by David Jeansonne II as the  
11 owner and lists the mailing address of the business as 2020 Dickory Avenue, Ste 102, Harahan,  
12 LA 70123. *Id.*

13 **II. INDIVIDUAL RESIDENCE**

14 9. Using the public records database called LexisNexis Accurint, I searched for the  
15 residential address of David Jeansonne II. Accurint is a subscription-based database of  
16 individual and corporate public records. The most recent address for Mr. Jeansonne is in  
17 Metairie, LA. A true and correct copy of this record is available upon request.

18 **III. LAW ENFORCEMENT ACTIONS**

19 10. FTC staff learned that the Florida Attorney General sued Traffic Jam Events and  
20 Mr. Jeansonne for alleged deceptive marketing, including the use of fake COVID-19 stimulus  
21 mailers and checks, in *Office of the State Attorney General, et al. v. Traffic Jam Events, LLC, et*  
22 *al.*, Case No. 20-CA-3536 (Fla. Cir. Ct., 13th Judicial Cir., Hillsborough Cty). The Florida  
23  
24  
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26 \_\_\_\_\_  
<sup>1</sup> Mr. Jeansonne's name is correctly spelled as an officer but incorrectly spelled as Jeansonnc as the registered agent.

1 Attorney General also filed a motion for temporary injunction and subsequently amended its  
2 complaint. True and correct copies of the motion for temporary injunction and amended  
3 complaint are attached respectively as **Attachment C** and **Attachment D**.

4 11. During the investigation, FTC staff identified additional law enforcement actions  
5 against Defendants for deceptive advertising or marketing.

6 12. FTC staff obtained documents from *State of Kansas v. Traffic Jam Events, LLC*,  
7 Case No. 10-C-1278 (Ks. Dist. Ct., Shawnee Cty). The lawsuit alleged that Traffic Jam Events  
8 sent approximately 100,000 deceptive fliers misrepresenting that consumers won a grand prize to  
9 induce them to attend various auto sales events, among other things. Traffic Jam Events entered  
10 into a consent judgment, paying a \$25,000 monetary judgment and agreeing to be permanently  
11 enjoined committing the acts or practices alleged therein. A true and correct copy of the 2010  
12 consent judgment is attached hereto as **Attachment E**.

13 13. FTC Staff also learned that Kansas again sued Traffic Jam Events in 2012 for  
14 using deceptive advertising and marketing in *State of Kansas v. Traffic Jam Events, LLC*, Case  
15 No. 12-CV-8191 (Ks. Dist. Ct., Johnson Cty). On July 10, 2013, the court entered a consent  
16 judgment against Traffic Jam Events for violations of the Kansas Consumer Protection Act. A  
17 true and correct copy of the 2013 consent judgment is attached hereto as **Attachment F**.

18 14. As part of the 2013 consent judgment, Traffic Jam Events stipulated and agreed to  
19 the following facts:

- 20 A. Traffic Jam Events “operates as a marketing firm that provides services  
21 for client car dealers” and provides services as part of contracts denoted as  
22 “Staff Event Sale[s].” Att. F ¶¶ 10-11.  
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1 B. As part of those services, Traffic Jam Events creates and sends, or causes  
2 to be created and sent, direct mail advertising solicitations as well as radio  
3 and television spots. *Id.* ¶ 12.

4 15. As a result of the 2013 consent judgment, Traffic Jam Events is “permanently  
5 enjoined from entering into any consumer transactions originating within Kansas.” *Id.* ¶ 18.

6 16. FTC Staff further learned that the State of Indiana sued Traffic Jam Events in  
7 2018 for similar deceptive advertising and marketing in *State of Indiana v. Traffic Jam Events,*  
8 *LLC*, Cause No. 49D10-1806-PL-021546 (Ind. Marion Cty. Sup. Ct.). A true and correct copy of  
9 the complaint is attached hereto as **Attachment G**. On February 7, 2019, Traffic Jam Events  
10 entered into a consent agreement with Indiana. A true and correct copy of the 2019 consent  
11 judgment is attached hereto as **Attachment H**.

12 17. David Jeanson II signed the consent agreement on behalf of Traffic Jam Events  
13 as its President. Att. H.

#### 14 **IV. ADVERTISEMENTS**

15 18. FTC staff conducted internet and social media searches relating to Defendants’  
16 Florida marketing campaign. Using Google Maps, I searched the address identified in the notice:  
17 5925 SW 20th St., Bushnell, FL 33513. Google Maps shows an entrance to a lot with tents and  
18 cars. A true and correct screen capture of Google Maps is attached hereto as **Attachment I**.

19 19. In addition to the advertisement obtained from Florida’s lawsuit, FTC staff also  
20 conducted internet and social media searches for advertising related to Defendants. Through  
21 these searches, FTC staff located at least one similar COVID-19 stimulus-related advertisement  
22 that may be associated with Defendants.  
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20. The advertisement for an Alabama dealership uses a similar envelope that claims to be “TIME-SENSITIVE” and that direct recipients to “OPEN IMMEDIATELY” because it contains “ECONOMIC STIMULUS DOCUMENTS.” The mailer uses the same U.S. Postal Service permit number—Permit 11, Statesboro, GA—used by Defendants to mail their Florida marketing material. An image of the advertisement taken from Twitter is attached hereto as

**Attachment J.**

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of June, 2020.

  
Emilie Saunders

**From:** [Balart, Etienne](#)  
**To:** [Tankersley, Michael](#)  
**Cc:** [Wimberly, Taylor](#); [Widor, Thomas](#); [Brickman, Jennifer](#); [David Jeansonne](#); [Shahrasbi, Sanya](#)  
**Subject:** RE: Traffic Jam Events-- June 29 Order and Former Employee Addresses  
**Date:** Monday, July 12, 2021 5:45:01 PM

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Michael,

Thanks Michael, I was aware of that, and stand by my description. If memory serves, the “complaints,” at least for the COVID ad, are the same ones in the possession of the Florida AG, from which I assume we can deduce that the answer is that yes, you based all of your Complaint on what the Florida AG told you (despite the denial in the RFAs) meaning no, we do not have a single reasonable consumer we intend to call to the September hearing. Just so you are aware, there are also a bunch of Reddit entires which I presume Tom, Sanya or Emilie (or maybe Eleni) performed and other semi-anonymous sourcing. I am not sure how you intend to introduce that as “evidence” yet prevent me from asking questions about the source of the Reddit posts, Yelp entries and the like, but I learn something new every day. Part of this makes me wonder whether you have read though all the materials Tom list in the IDs, to determine how exactly that matches up to the statutory requirement in 15 USC s. 45(n) regarding your standard of proof for any unfair act or practice (not just competition, as you attempted to contend in our call Thursday before I cited the language to you).

Since the EDLA action, and then the follow on FTC Complaint, was based on the declaration of Emilie Saunders, we would like to depose her and I am not sure how one could claim what she testified to, including its source, to be “protected.” Her affidavit was submitted as an initial disclosure. And just for the record, so that we are all clear, we obviously could not ask Kathleen Nolan (appointed *after the Initial Disclosures were filed*) about the sourcing of documents she had no business in identifying. So let’s get the deposition of Ms. Saunders set ASAP. I propose Friday the 16<sup>th</sup> starting at 9 central.

We can make the Mindset server available to you whenever you would like to set up a call with David and your ESI vendor. Please let me know.

With respect to the Commissioner addresses, especially since some of them are gone or leaving, my plan is certainly within the Rules. Although I do not agree with your interpretation and think Rule 3.34(a) applies, Complain Counsel has previously asked me the comply with Rule 3.36. To comply with 3.36, and to provide the ALJ with an order that could result in a Subpoena, I need the addresses of the requested folks.

Thanks,

Etienne

**L. Etienne Balart** | Partner  
Jones Walker LLP  
D: 504.582.8584 | M: 504.756.2192  
[ebalart@joneswalker.com](mailto:ebalart@joneswalker.com)

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**From:** Tankersley, Michael <MTANKERSLEY@ftc.gov>  
**Sent:** Monday, July 12, 2021 4:12 PM  
**To:** Balart, Etienne <ebalart@joneswalker.com>  
**Cc:** Wimberly, Taylor <twimberly@joneswalker.com>; Widor, Thomas <twidor@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>; David Jeanson <david@trafficjamevents.com>; Shahrabi, Sanya <sshahrabi@ftc.gov>  
**Subject:** [EXTERNAL] RE: Traffic Jam Events-- June 29 Order and Former Employee Addresses

Etienne:

With regard to your statements regarding Complaint Counsels' response to discovery, Complaint Counsel has already produced any relevant, non-privileged documents responsive to Respondents' discovery requests. However, neither Respondents' requests nor the Commission's Rules mandate that Complaint Counsel produce "all information in the form of documents etc that it intends to prove its case." Discovery is ongoing and Complaint Counsel will continue to produce relevant, non-privileged documents responsive to Respondents Requests that are in Complaint Counsels' possession, custody, or control, and required to be disclosed under Commission Rules. In particular, following our telephone call on Friday, we have confirmed that the consumer complaints were produced as part of Complaint Counsels' productions to Respondents. See Attached (Sept. 4, 2020 transmittal message listing Secure File Downloads). Your accusations that Respondents have improperly withheld materials have no foundation.

With respect to Respondents' obligation to produce documents, I will reiterate that the Mindset email server has never been made available to us, nor have we had the opportunity to start "the ESI collection process." Moreover, the document production that Respondents owe us is not limited to emails – as the document requests and the Court's orders make clear. Respondents are obligated to produce the materials and identify the materials for which they claim privilege, and may not withhold the production because Respondents have chosen not to review their own materials. Respondents have had ample time to identify any privileged materials in advance of the Court's July 13 deadline for compliance. Once again, please provide us with details regarding the material Respondents have collected for production including what (if any) documents are not digital, the format and volume of the digital files, and the means by which Respondents will produce them.

In addition to the document production and interrogatory responses, Respondents also owe us supplemental initial disclosures -- including the last known addresses for former employees. Your position that Respondents demand that we provide the Commissioners' addresses as a precondition for Respondents to comply with this obligation is improper and unfounded. Your plan is inconsistent with the Rule requiring prior authorization to examine the Commissioners.

Finally, the Commission's decision to seek injunctive relief against Respondents last year is not under review in this proceeding and our former paralegal's recollection of the investigation is protected. If you, nonetheless, notice her deposition, we are authorized to accept the subpoena but will oppose the deposition as improper.

Michael Tankersley  
Federal Trade Commission  
Bureau of Consumer Protection  
(202) 631-7091

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**From:** Balart, Etienne <[ebalart@joneswalker.com](mailto:ebalart@joneswalker.com)>  
**Sent:** Monday, July 12, 2021 10:57 AM  
**To:** Tankersley, Michael <[MTANKERSLEY@ftc.gov](mailto:MTANKERSLEY@ftc.gov)>  
**Cc:** Wimberly, Taylor <[twimberly@joneswalker.com](mailto:twimberly@joneswalker.com)>; Widor, Thomas <[twidor@ftc.gov](mailto:twidor@ftc.gov)>; Brickman, Jennifer <[jbrickman@joneswalker.com](mailto:jbrickman@joneswalker.com)>; David Jeansonne <[david@trafficjamevents.com](mailto:david@trafficjamevents.com)>; Shahrabi, Sanya <[sshahrabi@ftc.gov](mailto:sshahrabi@ftc.gov)>  
**Subject:** RE: Traffic Jam Events-- June 29 Order and Former Employee Addresses

Michael,

We will get you full and complete Interrogatory responses, so you can dot that "i." I also confirm that by Tuesday, Complaint Counsel will produce, as responsive to our prior discovery requests, all information in the form of documents etc that it intends to prove its case. As we discussed, to date, Complaint Counsel has hidden behind a barrage of asserted privileges (deliberative process/law enforcement/work product etc) to not produce a single contemporaneous document that it had in its possession prior to the filing of the Complaint on Aug. 7 (other than what the Florida AG's office provided you). As I explained during our lengthy call, all Respondents are asking for is candor from Complaint Counsel as to how they intend to try this case. It is either (a) we don't need any consumer complaints and decided to do it ourselves as a political favor; or (b) we have hundreds of consumers who complained and that's why the acts are so deceptive. As you well know, this "administrative" record matters, and if it is path (a) that you intend to pursue, that is your prerogative, but we are entitled to know that.

As far as documents, I have to say that it appears that Mr. Widor is backtracking on his earlier agreement to access the ESI that Mr. Jeansonne identified, and that you intent to do the same. To state the obvious, right now Mr. Jeansonne has no employees and the business is shut down. We have identified for you the ESI in the form of the Mindset email server that is hosted by a third party. We are under no obligation to access and produce that material to you; rather, the Rules specifically contemplate that we can make the ESI available for your review and inspection (16 CFR 3.37(a)). I don't understand why you have cited to the Rules on a Motion to Compel, given that to respond to that motion we have offered you access to everything. You, or at least your co-counsel, has previously identified the email accounts you wish to access, and back on June 8<sup>th</sup>, so now more than 30 days have elapsed with nothing more than changing the terms by Complaint Counsel. You could have started the ESI collection process (which, pursuant to 3.37(a) we are not obliged to pay

for) back then, if that is what you truly wanted to do.

So let me provide clarity: Respondents have identified, and previously disclosed to Complaint Counsel all email communications of the personnel identified by Complaint Counsel as responsive to the categories of documents ordered to be produced in the MTC. While we would typically agree to a defined set of keywords to identify responsive information, given the breadth of your requests, and the lack of employees at Traffic Jam, Respondents have decided to simply give you access to all ESI maintained on the server for the last six (6) years. That *may* include privileged information, so the only condition we have placed on this is that once the ESI is obtained, we be allowed a brief period of time to conduct a privilege review, which Complaint Counsel has refused. Alternatively, if you agree to exclude “Etienne”, “Jones Walker”, “joneswalker.com” or “attorney” from your search of the ESI, we can handle it that way.

As far as the Commissioners go, and last knowns, I need the addresses to prepare subpoenas for testimony at trial, so please send that to me and I will provide you with the last knowns. With respect to the paralegal, I was told earlier that I would have to coordinate her deposition, which is why I was provided a phone number that simply rings out. If you would like to produce her this week, let me know a time and date. I intend to ask her the simple questions of what *factual* information the FTC possessed to include in the Complaint, and the *source* of that *factual* information. Although I may be dense, I don’t see how either of those lines of inquiry could possibly be “privileged,” especially if the answer is “only the stuff that the Florida AG sent over to us” plus everything that Tom had me try to dig up between the time we filed in EDLA (July 16) and the PI hearing. Of course, we would not ask for anything that Tom directed her to do, but are certainly entitled to know if she interviewed any consumers (which you indicated is discoverable in our call Friday) and/or obtained any documents.

Etienne

**L. Etienne Balart** | Partner  
Jones Walker LLP  
D: 504.582.8584 | M: 504.756.2192  
[ebalart@joneswalker.com](mailto:ebalart@joneswalker.com)

---

**From:** Tankersley, Michael <[MTANKERSLEY@ftc.gov](mailto:MTANKERSLEY@ftc.gov)>  
**Sent:** Friday, July 9, 2021 4:22 PM  
**To:** Balart, Etienne <[ebalart@joneswalker.com](mailto:ebalart@joneswalker.com)>  
**Cc:** Wimberly, Taylor <[twimberly@joneswalker.com](mailto:twimberly@joneswalker.com)>; Widor, Thomas <[twidor@ftc.gov](mailto:twidor@ftc.gov)>; Brickman, Jennifer <[jbrickman@joneswalker.com](mailto:jbrickman@joneswalker.com)>; David Jeanson <[david@trafficjamevents.com](mailto:david@trafficjamevents.com)>; Shahrashbi, Sanya <[sshahrashbi@ftc.gov](mailto:sshahrashbi@ftc.gov)>  
**Subject:** [EXTERNAL] Traffic Jam Events-- June 29 Order and Former Employee Addresses

Etienne,

To reiterate the discussion from our telephone call earlier, we have yet to receive proper



responses to any of the Interrogatories covered by the Court's June 29 Order. The responses should answer each interrogatory separately and be signed under oath. 16 CFR § 3.35(a)(2).

With respect to the documents, we have not been provided with access to Respondents' ESI or responsive hard-copy material. Mr. Jeansonne provided the name of a vendor (Mindset) but no access. Respondents are responsible for identifying responsive materials and asserting privilege for withheld material. 16 C.F.R. § 3.38A. A partial list of the categories of documents the Court has ordered to be produced is set forth at pages 4-5 of the Court's December 16, 2020 order. We also would note that production is not limited to e-mail and should encompass any other sources where Respondents stored responsive material, such as material stored in Dropbox, the ACT database, text messages, and Mr. Jeansonne's yahoo account. Again, please provide us with details regarding the material Respondents have collected for production including what (if any) documents are not digital, the format and volume of the digital files, and the means by which Respondents will produce them.

We again request the addresses for the former Traffic Jam Events employees. The Court ordered Respondents to provide amended disclosures in October, and the Court's most recent order confirmed that Respondents have not fulfilled their duty to supplement their prior disclosures to provide updated contact information for TJE's former employees. Your request that we provide the addresses of Commissioners in exchange is not appropriate and certainly not a condition of the Court's order. Depositions of the Commissioners are governed by Rule 3.36; Respondents cannot satisfy the standard set forth in the Rule and have not even filed an application for such discovery.

With regard to our former paralegal, you can contact us if you intend to notice her deposition. As I stated earlier, we ask that you identify what testimony you seek through such a deposition that would be within the scope of discovery and not protected by the work product doctrine or applicable privileges. She will not be a witness for the Commission in this proceeding.

**Michael Tankersley**  
Federal Trade Commission  
Bureau of Consumer Protection  
(202) 631-7091

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**From:** Balart, Etienne <[ebalart@joneswalker.com](mailto:ebalart@joneswalker.com)>

**Sent:** Friday, July 9, 2021 9:46 AM

**To:** Tankersley, Michael <[MTANKERSLEY@ftc.gov](mailto:MTANKERSLEY@ftc.gov)>

**Cc:** Wimberly, Taylor <[twimberly@joneswalker.com](mailto:twimberly@joneswalker.com)>; Widor, Thomas <[twidor@ftc.gov](mailto:twidor@ftc.gov)>; Brickman, Jennifer <[jbrickman@joneswalker.com](mailto:jbrickman@joneswalker.com)>; David Jeansonne <[david@trafficjamevents.com](mailto:david@trafficjamevents.com)>; Shahrasbi, Sanya <[sshahrasbi@ftc.gov](mailto:sshahrasbi@ftc.gov)>

**Subject:** RE: Traffic Jam Events-- Subpoenas Ad Testificandum

Michael –

Let's discuss in more detail during our call. As for designation of ESI, I disagree. We had multiple conferences and emails with Mr. Widor and Ms. Shahrabi concerning what ESI existed – as you could likely imagine, it is email located on a server that we identified. Once that data is accumulated, we have the right to identify privileged information and designate it as such. So what I am asking for is a protocol of how your ESI vendor proposes to access the materials, how they propose to accumulate the material, and how, once it is accumulated, we are allowed a chance to review for privilege. What program/platform do they propose using to store the information (we use Relativity, so I would prefer that, to speed things along), and, most importantly, what procedures are in place to make sure that Complaint Counsel does not have access to the information until after the review. These are details only Complaint Counsel can provide. For your reference, Mr. Widor sent the contours of a proposed protocol in the attached, but this needs to be updated to reflect the actual recovery of data. Respondents do not plan on sharing any of these costs, and we do not think there is any authority for such.

On the interrogatories, what specific interrogatories (that were not also already addressed in the deposition) does Complaint Counsel think are unanswered/outstanding?

I too have not been provided with addresses for the FTC former employees. I find it strange that the FTC does not have the wherewithal to locate the address of US citizens (even a private practitioner like myself can do that), but if you agree to produce Ms. Broadwell's last known address, as well as the addresses of the Commissioners as previously requested of Ms. Shahrabi, then we will reciprocate.

Etienne

**L. Etienne Balart** | Partner  
Jones Walker LLP  
D: 504.582.8584 | M: 504.756.2192  
[ebalart@joneswalker.com](mailto:ebalart@joneswalker.com)

---

**From:** Tankersley, Michael <[MTANKERSLEY@ftc.gov](mailto:MTANKERSLEY@ftc.gov)>  
**Sent:** Thursday, July 8, 2021 5:00 PM  
**To:** Balart, Etienne <[ebalart@joneswalker.com](mailto:ebalart@joneswalker.com)>  
**Cc:** Wimberly, Taylor <[twimberly@joneswalker.com](mailto:twimberly@joneswalker.com)>; Widor, Thomas <[twidor@ftc.gov](mailto:twidor@ftc.gov)>; Brickman, Jennifer <[jbrickman@joneswalker.com](mailto:jbrickman@joneswalker.com)>; David Jeanson <[david@trafficjamevents.com](mailto:david@trafficjamevents.com)>; Shahrabi, Sanya <[sshahrabi@ftc.gov](mailto:sshahrabi@ftc.gov)>  
**Subject:** [EXTERNAL] RE: Traffic Jam Events-- Subpoenas Ad Testificandum

Etienne,

We have not been provided with the addresses for the former employees. David indicated during this deposition that he believed he had addresses, not just telephone numbers.

With regard to compliance with the discovery order, we have not received interrogatory responses. Nor have we received a description of documents Respondents are ready to produce. Respondents are responsible for identifying materials for which they claim privilege and which materials are responsive. ESI must be produced in native form or reasonably usable form that does not eliminate information or functionality. 16 C.F.R. § 3.37(c)(ii). Inadvertent disclosures are governed by Rule 3.31(g).

Please provide us with details regarding the material Respondents have collected for production including what (if any) documents are not digital, the format and volume of the digital files, and the means by which Respondents will produce them.

Michael Tankersley  
Federal Trade Commission  
Bureau of Consumer Protection  
600 Pennsylvania Ave., NW CC-10232  
Washington, DC 20580  
(202) 631-7091

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**From:** Balart, Etienne <[ebalart@joneswalker.com](mailto:ebalart@joneswalker.com)>  
**Sent:** Wednesday, July 7, 2021 3:27 PM  
**To:** Tankersley, Michael <[MTANKERSLEY@ftc.gov](mailto:MTANKERSLEY@ftc.gov)>  
**Cc:** Wimberly, Taylor <[twimberly@joneswalker.com](mailto:twimberly@joneswalker.com)>; Widor, Thomas <[twidor@ftc.gov](mailto:twidor@ftc.gov)>; Broadwell, Eleni <[ebroadwell@ftc.gov](mailto:ebroadwell@ftc.gov)>; Brickman, Jennifer <[jbrickman@joneswalker.com](mailto:jbrickman@joneswalker.com)>; David Jeansonne <[david@trafficjamevents.com](mailto:david@trafficjamevents.com)>; Shahrabi, Sanya <[sshahrabi@ftc.gov](mailto:sshahrabi@ftc.gov)>  
**Subject:** RE: Traffic Jam Events-- Subpoenas Ad Testificandum

Michael – we can attend to this after the deposition tomorrow. Please note that in his deposition, David gave last known numbers for all of those employees. I don't have the transcript in front of me, but let me know if I am wrong in that regard.

And to bring you up to speed, Tom had agreed to the production of the ESI and any paper files stored at Traffic jam to be collected by the FTC. I had asked Tom for a proposed protocol on who, when and how this was going to happen, as well as a proposal on how we could ensure privileged material is not accessed by the FTC. I never received a response other than the motion for sanctions. We can talk in more detail tomorrow, but I have been waiting on the proposed protocol to satisfy the FTC's discovery interests.

Etienne

**L. Etienne Balart** | Partner  
Jones Walker LLP  
D: 504.582.8584 | M: 504.756.2192  
[ebalart@joneswalker.com](mailto:ebalart@joneswalker.com)

**From:** Tankersley, Michael <[MTANKERSLEY@ftc.gov](mailto:MTANKERSLEY@ftc.gov)>  
**Sent:** Wednesday, July 7, 2021 10:13 AM  
**To:** Balart, Etienne <[ebalart@joneswalker.com](mailto:ebalart@joneswalker.com)>  
**Cc:** Wimberly, Taylor <[twimberly@joneswalker.com](mailto:twimberly@joneswalker.com)>; Widor, Thomas <[twidor@ftc.gov](mailto:twidor@ftc.gov)>; Broadwell, Eleni <[ebroadwell@ftc.gov](mailto:ebroadwell@ftc.gov)>; Brickman, Jennifer <[jbrickman@joneswalker.com](mailto:jbrickman@joneswalker.com)>; David Jeansonne <[david@trafficjamevents.com](mailto:david@trafficjamevents.com)>; Shahrabi, Sanya <[sshahrabi@ftc.gov](mailto:sshahrabi@ftc.gov)>  
**Subject:** [EXTERNAL] RE: Traffic Jam Events-- Subpoenas Ad Testificandum

Etienne:

We have not received the last known addresses for former employees. In particular, Mr. Jeansonne indicated he had current address information for Justin Brophy, Chad Bullock, Jim Whelan, and Mariela Everst. These addresses have not been provided to us.

I am available to confer this afternoon regarding production of the material covered by the Court's July 29 order. Let me know when you are available. We would like to know when we can expect production of these materials and avoid last-minute disputes over the production. We are awaiting:

- Complete and responsive answers to Complaint Counsel's First Set of Interrogatories
- Material responsive to Complaint Counsel's Requests for Production of Documents, including, without limitation:
  1. each unique Advertisement and Promotional Material;
  2. invoices;
  3. work orders;
  4. documents sufficient to show the relationship between Respondent TJE and Platinum Plus Printing, including any agreements;
  5. documents sufficient to show the relationship between Respondent TJE and the telephone numbers and websites listed on Respondents' Advertising;
  6. data files showing mailing information relating to Respondents' Advertising;
  7. sales logs and any other materials tracking leads or consumer responses to Respondents' Advertising through a customer relationship management database or otherwise;
  8. email, text messages, and any other communications to, from, or copying
    - David J. Jeansonne II,
    - Justin Brophy,
    - Chad Bullock,
    - Jim Whelan,
    - William Lilley, and
    - Mariela Everst
 relating to Respondents' Advertising;
  9. business plans, proposals, financial analyses, market or sales strategies, sales projections, sales pitches or prospectuses, or return on investment analyses relating to Respondents' Advertising
  10. all complaints relating to Respondents' Advertising;
  11. all documents relating to the FTC or compliance with consumer protection laws;

12. all documents relating to the Florida, Kansas, and Indiana investigations and lawsuits;  
and
13. documents sufficient to show all persons having any responsibilities for or on Respondents' behalf for any Advertising.

For all of these categories we have received either no production or a limited production that does not cover the relevant period.

With regard to Emilie Saunders, as you know, she was a paralegal specialist and is no longer with the Commission. The facts covered by her declaration are not contested. She will not be a witness for the Commission in this proceeding. Her knowledge of the Traffic Jam investigation is covered by work product protection. If you intend to notice her deposition, we ask that you identify what testimony within the scope of discovery she would be able to give that is not protected by the work product doctrine or applicable privileges.

Michael Tankersley  
Federal Trade Commission  
Bureau of Consumer Protection  
600 Pennsylvania Ave., NW  
CC-10232  
Washington, DC 20580  
(202) 326-2991

-----Original Message-----

From: Balart, Etienne <[ebalart@joneswalker.com](mailto:ebalart@joneswalker.com)>  
Sent: Tuesday, July 6, 2021 9:34 PM  
To: Shahrabi, Sanya <[sshahrabi@ftc.gov](mailto:sshahrabi@ftc.gov)>  
Cc: Wimberly, Taylor <[twimberly@joneswalker.com](mailto:twimberly@joneswalker.com)>; Widor, Thomas <[twidor@ftc.gov](mailto:twidor@ftc.gov)>; Tankersley, Michael <[MTANKERSLEY@ftc.gov](mailto:MTANKERSLEY@ftc.gov)>; Broadwell, Eleni <[ebroadwell@ftc.gov](mailto:ebroadwell@ftc.gov)>; Brickman, Jennifer <[jbrickman@joneswalker.com](mailto:jbrickman@joneswalker.com)>; David Jeansonne <[david@trafficjamevents.com](mailto:david@trafficjamevents.com)>  
Subject: RE: [EXTERNAL] Traffic Jam Events-- Subpoenas Ad Testificandum

Sanya --

I never heard back from you, Tom or Michael concerning a call to discuss production of ESI and any outstanding information that you do not have. I believe you have all last known contact information of all former THE employees. We still do not have the address for Emilie Saunders per my prior request.

Please send me the email address of Will Lilley's counsel, as there are documents I intend to send to them prior to the deposition.

Etienne

L. Etienne Balart | Partner  
Jones Walker LLP

D: 504.582.8584 | M: 504.756.2192  
[ebalart@joneswalker.com](mailto:ebalart@joneswalker.com)

**From:** [Balart, Etienne](#)  
**To:** [Tankersley, Michael](#)  
**Cc:** [Wimberly, Taylor](#); [Widor, Thomas](#); [Brickman, Jennifer](#); [David Jeansonne](#); [Shahrasbi, Sanya](#)  
**Subject:** RE: Traffic Jam Events-- Former Paralegal Deposition  
**Date:** Tuesday, July 13, 2021 6:28:19 PM

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Michael,

I respectfully disagree. She submitted a declaration that may reveal the provenance of factual information used in the case. As you pointed out yesterday, there are a series of “documents” (Reddits/yelps, etc.) that have been identified and produced. Ms. Nolan (appointed after the initial disclosures) could not have any information about them. Hopefully Ms. Saunders does.

In the first part of your email, you cite the deliberative process privilege. You then contend, later in your email, that there is a work product doctrine. So, I am confused on how questions about the provenance of the documents you identified yesterday (who obtained them and when) can automatically be privileged because you say it is. I don’t think I have to list out all of my questions, but am entitled to ask some human being within the FTC what factual information it possessed as of June 16, 2020 and Aug. 7, 2020. By the very definition of the privilege, both of those actions are post-decisional, meaning there can be no deliberative process privilege, and even if they are “work product,” your decision to identify them as the evidence in Initial Disclosures means I get to examine from where and when they came into the FTC’s possession. My assistant will send out the Zoom notice for 2 central on Friday.

Etienne

**L. Etienne Balart** | Partner  
Jones Walker LLP  
D: 504.582.8584 | M: 504.756.2192  
[ebalart@joneswalker.com](mailto:ebalart@joneswalker.com)

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**From:** Tankersley, Michael <MTANKERSLEY@ftc.gov>  
**Sent:** Tuesday, July 13, 2021 4:02 PM  
**To:** Balart, Etienne <ebalart@joneswalker.com>  
**Cc:** Wimberly, Taylor <twimberly@joneswalker.com>; Widor, Thomas <twidor@ftc.gov>; Brickman, Jennifer <jbrickman@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>; Shahrasbi, Sanya <sshahrasbi@ftc.gov>  
**Subject:** [EXTERNAL] Traffic Jam Events-- Former Paralegal Deposition

Etienne:

Your statement that you intend to depose Emilie Saunders on the source of her declaration does not explain your wish to depose her. The materials appended to her declaration are public records and court filings. Respondents know the sources of these materials and have not contested the authenticity of these documents. Indeed, most of the court filings are appended to the Answer you filed. The Alabama advertisement that is Attachment J to the declaration is also appended to your Answer and Traffic Jam has already admitted the authenticity of this ad. Even if the sources were

not in doubt, Respondents have ample other, more convenient, means to investigate the sources of these records than a deposition of Ms. Saunders on the final day of discovery. Moreover, your statement that you intend to question her about “what factual information the FTC possessed to include in the Complaint,” shows your inquiry does not seek non-privileged information. The Commission’s deliberative process is not at issue in this proceeding and questions regarding the selection of materials for her declaration in support of the Commission’s suit, how it came to be prepared, or her recollection of the investigation would impermissibly invade the Commission’s work product protection.

If you intend to pursue this deposition, we will oppose it and want to give the Court the opportunity to rule on barring or limiting the deposition. Ms. Saunders is not available at 9 central on the 16th. She is available after 3pm EDT. Please tell us what questions you contend warrant this deposition given the work product doctrine and the limitations of 16 C.F.R. § 3.31(c), and how you propose to proceed.

**Michael Tankersley**  
**Federal Trade Commission**  
**Bureau of Consumer Protection**  
**(202) 631-7091**