

**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 OPPOSITION TO RESPONDENTS’ MOTION TO  
COMPEL COMPLAINT COUNSEL TO COMPLY WITH RESPONDENTS’ REQUEST  
FOR PRODUCTION**

The Court should deny Respondents’ untimely motion to compel Complaint Counsel “to provide a privilege log that complies with the requirements of Rule 38.A [sic]” because the discovery requests are irrelevant and inappropriate and the privilege log complies with Rule 3.38A.

First, the underlying documents are not within the scope of discovery. Respondents are improperly seeking to probe the Commission’s pre-Complaint investigation and deliberations authorizing the administrative complaint and a prior federal district court complaint. Respondents have not carried their threshold burden of showing that discovery of the Commission’s internal communications and confidential correspondence with law enforcement agencies is reasonably calculated to lead to the discovery of admissible evidence regarding the direct mail advertisements at issue in this proceeding.

Second, although the documents at issue are outside the proper scope of discovery, Complaint Counsel nevertheless produced a privilege log that complies with Rule 3.38A's requirements. Respondents' assertion that the privilege log fails to provide information required by the Rule is wrong, and Respondents fail to demonstrate that additional information is needed to assess whether the underlying documents are protected.

### **BACKGROUND**

Respondents served Traffic Jam Events, LLC, and David J. Jeanson II's First Set of Request for Production of Documents on October 16, 2020. Complaint Counsel filed Complaint Counsel's Responses and Objections on November 17, 2020, indicating it had previously produced relevant, non-privileged materials. *See, e.g.*, Resps' Mot. to Compel Compl. Counsel to Comply Resps' Req. for Prod., Exh. C. (Response to RFP No. 1). Complaint Counsel also objected to the requests based, in pertinent part here, on relevance, overbreadth, and privilege grounds. *See generally id.*

Respondents never timely raised any issue, or sought to meet and confer with Complaint Counsel, about the responses or objections; Respondents also never filed a motion to compel in compliance with Paragraph 8 of the September 4, 2020 Court's Scheduling Order, requiring any motion to compel to be "filed within 30 days of the responses and/or objections to the discovery requests," which would have been December 17, 2020.<sup>1</sup> *Scheduling Order*, ¶ 8, at 8 (Sept. 4, 2020).

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<sup>1</sup> The Court can deny the motion on that basis alone. Respondents were represented by counsel until December 21, 2020. Respondents have not shown their untimeliness was the result of excusable neglect or shown any good cause for extending the time limit provided by Paragraph 8 of this Court's Scheduling Order. *See* Rule 4.3(b). Indeed, recently produced text messages suggest that Respondents employed a knowing and willful strategy to disregard their discovery obligations and force Complaint Counsel to seek repeated relief from the Court. *See* Widor Dec., ¶ 3, Exh. A.

Seven months later during a meet and confer and follow-up email on June 11, 2021 to discuss Complaint Counsel's motion to extend the discovery deadlines, Respondents' counsel asked Complaint Counsel "to provide a privilege log regarding the items that the FTC is claiming as deliberative process privilege, to the extent those documents exist." Widor Dec. ¶ 4, Exh. B.

As reflected in Complaint Counsel's response and objections, Complaint Counsel objected to RFP Nos. 5-12 and 14-16, in part, based on the deliberative process privilege and the limitations imposed by Rule 3.31(c)(2). Because these documents consisted of internal FTC documents and communications outside the scope of Rule 3.31(c)(2)'s limitations, Complaint Counsel stated in its responses that it "will not produce internal communications and memoranda regarding its investigation of Respondents." Accordingly, Complaint Counsel also did not identify these materials on any privilege log. Rule 3.31(c)(2).

While maintaining its objections that these documents were irrelevant, Complaint Counsel objected that certain documents also are protected by the law enforcement evidentiary or investigatory files privileges, the work product doctrine, the attorney-client privilege, and the common interest doctrine. All of these documents fall within one of the following two sets of Respondents' document requests:

- Communications between the FTC and state Attorney General offices in Florida, Alabama, Indiana, and Kansas (*see* RFP Nos. 1-4); and
- Communications relating to Traffic Jam Events, LLC (*see* RFP No. 5).

Complaint Counsel prepared a privilege log by category, including (i) the date range; (ii) the type of document; (iii) the sender and recipients (to:, cc:, and bcc:); (iv) a description of the nature of

each category of documents; (v) the asserted privilege(s); and (vi) the number of withheld documents. *See* Resps’ Mot. to Compel, Exh. B.

On June 26, 2021, Respondents’ counsel responded that the privilege log was deficient because “each individual document -- by date -- must be set out in the log. . .[to] evaluate the privileges asserted.” and that “things like date, recipients and the subject matter of the discussion may pertain to the privilege analysis.” *Widor Dec.*, ¶ 5, Exh. C. On June 28, 2021, Complaint Counsel reiterated its relevance concerns and requested Respondents to identify “particular information that you contend is necessary for you to assess the privilege claims and that information may be revealed without compromising the privilege.” *Id.* The log already reflected things like dates, recipients, and the subject matter of the communications, and Rule 3.38A did not require a document-by-document analysis. Respondents never offered an explanation and instead filed a motion to compel.

### **LEGAL STANDARD**

As an initial matter, Commission rules permit Respondents to obtain discovery “to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent.” 16 C.F.R. § 3.31(c)(1). Respondents therefore must first make a threshold showing that the requested information falls within the permissible scope of discovery. *Cf. Hofer v. Mack Trucks, Inc.*, 981 F.2d 377, 380 (8th Cir. 1992) (“Some threshold showing of relevance must be made before parties are required to open wide the doors of discovery and to produce a variety of information which does not reasonably bear upon the issues in the case.”). The rules do not require a privilege log to list materials that are not otherwise discoverable. *Cf. Oceana, Inc. v. Ross*, 920 F.3d 855, 865 (D.C. Cir. 2019) (“The federal rules do not require parties to provide logs of all documents that were

not produced because they were deemed immaterial or irrelevant.”). To determine if a matter is discoverable, the discovery requests should be evaluated in relation to the Complaint allegations, the Respondents’ defenses, and the proposed relief. *See In re Rambus Inc.*, No. 9302, 2002 FTC LEXIS 90, at \*4 (Nov. 18, 2002).

Rule 3.38A requires, if directed, production of “a schedule which describes the nature of the documents, communications, or tangible things not produced or disclosed – and does so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.” The Commission amended Rule 3.38A in 2009 “to eliminate the requirement that a privilege log must always contain specific information for each item being withheld” and substituted Fed. R. Civ. P. 26(b)(5)(A)’s more flexible requirement that recognizes the appropriateness of categorical privilege logs. 73 Fed. Reg. 58,832, 58,839 (Oct. 7, 2008).<sup>2</sup>

## ARGUMENT

### I. Respondents Have Not Demonstrated That The Disputed Documents Are Discoverable Under Rule 3.31(c)(1)

Respondents’ Motion to Compel makes clear that Respondents seek discovery for improper purposes that are outside the scope of these proceedings:

who, under the FTC Act, initiated the Complaint; what consumers contacted the FTC to lodge any complaint; what consumers the FTC interviewed and presented to the Commission to satisfy the obligation and legal requirement under the FTC Act. . .,<sup>3</sup> and what evidence the Commission looked at to make this determination.

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<sup>2</sup> Respondents cite *In re Schering-Plough Corp.*, 2001 FTC Lexis 188 (Oct. 23, 2001) as supposed judicial authority for the proposition that a privilege log requires privilege assertions on a “document-by-document basis.” Respondents fail to mention that the citation, however, is not to an order of this Court but a party brief concerning a prior version of Rule 3.38A predating the amendment. *See Resps’ Mot. to Compel* at 4.

<sup>3</sup> In the omitted section, Respondents inexplicably recite the unfairness standard, which does not form the basis for any of the Complaint counts.

Resps' Mot. to Compel, at 2.<sup>4</sup> Respondents similarly complained that “Respondents [are] unable to conduct any discovery on what facts were used to (i) obtain the Commission vote required under the FTC Act; and (ii) substantiate the Complaint,” declaring that “a great deal of this case involves the FTC’s compliance with the APA. . . .” Widor Dec., Exh. C. It is well settled that “[o]nce the Commission has. . . issued a complaint, the 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.*, 83 F.T.C. 1759, 1760 (1974); *In re Basic Research, LLC*, 2004 F.T.C. 2010 (Nov. 4, 2004) (denying motion to compel and finding “[t]he issue to be tried is whether Respondents disseminated false and misleading advertising, not the Commission’s decision to file the Complaint”); *In re Tower Loan of Miss., Inc.*, 1991 FTC Lexis 24, at \*1-\*3 (Jan. 17, 1991) (holding that Complaint Counsel properly refused to provide information in response to discovery asking about the Commission’s pre-complaint investigation and other privileged information).

As discussed above, Respondents have not been denied discovery into the facts about the conduct at issue in this action. Complaint Counsel has produced responsive material as part of its initial disclosures and in response to Respondents’ RFPs and otherwise properly objected to inappropriate requests. Respondents, however, are dissatisfied because they want evidence about the Commission’s pre-complaint investigation and deliberations, and staff communications with state attorney generals and the U.S. Postal Service. Respondents make no showing that such materials provide relevant information to the claims or defenses in this case. Consequently, the

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<sup>4</sup> Contrary to Respondents’ claims, Complaint Counsel produced consumer complaints as part of its initial disclosures, *see* Widor Dec. ¶ 6, Exh. D, in addition to identifying potential consumers in its preliminary witness list. In contrast, Respondents continue to refuse to produce requested by Complaint Counsel’s September 2020 Requests for Production such as consumer leads and then complain, for example, that Complaint Counsel’s investigator testified that “she has spoken to no consumers. . . .” Resps’ Mot. to Compel, at 2.

underlying documents are outside the scope of allowable discovery and any such privileged materials are not required to be listed on a privilege log.

II. Complaint Counsel's Privilege Log Satisfies Rule 3.38A

Without waiving Complaint Counsel's objections, Complaint Counsel provided a privilege log that properly identified communications that had been withheld to objectionable requests. Indeed, Complaint Counsel's privilege log was overly conservative and included materials that were not even required to be identified under the rules because of the irrelevance of the requests. Complaint Counsel's privilege log lists documents by category and includes the date range; the type of document; the sender and recipients (to:, cc:, and bcc:); a description of the nature of each category of documents; the asserted privilege(s); and the number of withheld documents.

Respondents' main complaint that the log must provide a document-by-document analysis is unsupported by Rule 3.38A and not otherwise justified. Each and every category provided in Complaint Counsel's privilege log adequately supports an assessment of the asserted privilege claims. *See Auto. Club of N.Y., Inc. v. Port Auth. of N.Y. & N.J.*, 297 F.R.D. 55, 59 (S.D.N.Y. 2013) (finding the description "Privileged memoranda, White Paper Reports drafted to help readers understand an issue facing the Port Authority, non-final versions of documents of various types that are covered by one of the claimed privileges, and/or other documents that are not communications, memoranda, or white papers" adequate and offering more than a conclusory privilege assertion). Furthermore, the log identifies the date range of the documents by category. Although Respondents claim that listing "documents separate *by date and time* is *critically important*," Respondents fail to explain why the date ranges do not suffice. Though irrelevant to any issue in this case, the date ranges readily allow Respondents determine whether the communications occurred before or after certain dates. The privilege log adequately enables

Respondents to assess the asserted privilege claims, and Respondents have failed to show that any additional information is essential to any such determination. *See In re R.J. Reynolds Tobacco Co.*, 1998 FTC Lexis 179 (Sept. 24, 1998) (finding Complaint Counsel’s privilege log to comply with former Rule 3.38A and adding “respondent was not able to explain how a more detailed privilege log would assist it in determining whether the privileges claimed were applicable to documents.”).

**CONCLUSION**

For the foregoing reasons, Complaint Counsel respectfully requests that the Court deny Respondents’ motion.

Respectfully submitted,

July 12, 2021

By: /s/ Thomas J. Widor  
Thomas J. Widor  
Federal Trade Commission  
Bureau of Consumer Protection  
600 Pennsylvania Avenue, NW  
Mailstop CC-10232  
Washington, DC 20506



**PUBLIC**

**CERTIFICATE OF SERVICE**

I hereby certify that on July 12, 2021, I caused the foregoing document to be served via the FTC's E-filing system and electronic mail to:

April Tabor  
Acting Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW, Rm. H-113  
Washington, DC 20580

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

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

Counsel for Respondents

I further certify that on July 12, 2021, I caused the foregoing document to be served via electronic mail to:

David Jeansonne  
david@trafficjamevents.com

July 12, 2021

By: /s/ Thomas J. Widor  
Thomas J. Widor  
Federal Trade Commission  
Bureau of Consumer Protection

**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**

**DECLARATION OF THOMAS J. WIDOR**

1. I have personal 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 Opposition to Respondents' Motion to Compel Complaint Counsel to Comply with Respondents' Request for Production.
2. I am an attorney at the Federal Trade Commission and Complaint Counsel in this proceeding.
3. Exhibit A is a true and correct copy of text messages involving Respondent Jeansonne that were produced by former employee William Lilley in response to a third-party subpoena served by Complaint Counsel.
4. Exhibit B is a true and correct copy of e-mail correspondence between Complaint Counsel and Respondent's counsel on June 11, 2020.

5. Exhibit C is a true and correct copy of an e-mail chain, including correspondence between Complaint Counsel and Respondent’s counsel from June 26, 2020 to June 28, 2020 regarding the privilege log.
6. Exhibit D is a true and correct copy of an email from Complaint Counsel on September 4, 2020 providing a secure file transfer link producing responsive material, including numerous internet complaints and “a folder of consumer complaints containing personal identifying information that has been designated Confidential – Consumer Sentinel Complaints.” The production also included materials relating to the state law enforcement actions.

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

Executed on July 12, 2021

By: /s/ Thomas J. Widor

# EXHIBIT A

To: David Jeansonne, Chad Bullock, Jim Whelan

do it), I then sent back my email you read yesterday.  
Etienne then sent his email to the judge withdrawing and asking for a departure conference with me present as I can't pay but he needs to hear my plea as I am trying to settle but they won't.

DJ

Jim Whelan

JW

Gotcha

David Jeansonne

Then today Weasel Tom sends that late this afternoon....  
but he still has NOT filed before the court the motion.  
This means..... so far, he's moving his wheel!!

DJ

Meaning, he's scared if he files that motion the judge will get pissed at him for being unreasonable which plays into our strategy.  
See....

Jim Whelan

JW

Yep

to: David Jeansonne, Chad Bullock, Jim Whelan

David Jeansonne

Check y'all email. Hold on the headlights are getting closer and it's the Fucking Government in the other car!!

DJ I'm not turning my wheel. I just hope Tom Widor does.

Jim Whelan

JW I was just reading it, i really dont understand all that legal jargon

David Jeansonne

Lol me either but I'm getting better...  
So Sanya threatened me yesterday that if I don't respond that they were filing a motion to compel with the judge (which asks him to MAKE me

# EXHIBIT B

**From:** [Balart, Etienne](#)  
**To:** [Shahrasbi, Sanya](#); [Brickman, Jennifer](#); [David Jeansonne](#); [Wimberly, Taylor](#)  
**Cc:** [Widor, Thomas](#); [Broadwell, Eleni](#)  
**Subject:** RE: In the Matter of Traffic Jam Events, Do. 9395-- Motion to Extend the Discovery Deadlines Meet and Confer  
**Date:** Friday, June 11, 2021 5:52:06 PM

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Sanya – Respondents do not plan on opposing this motion, and simply ask that a notation be made concerning that. Also, as discussed, can you provide a privilege log regarding the items that the FTC is claiming as deliberative process privilege, to the extent those documents exist.

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:** Shahrasbi, Sanya <sshahrasbi@ftc.gov>  
**Sent:** Friday, June 11, 2021 12:19 PM  
**To:** Balart, Etienne <ebalart@joneswalker.com>; Brickman, Jennifer <jbrickman@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>; Wimberly, Taylor <twimberly@joneswalker.com>  
**Cc:** Widor, Thomas <twidor@ftc.gov>; Broadwell, Eleni <ebroadwell@ftc.gov>  
**Subject:** [EXTERNAL] In the Matter of Traffic Jam Events, Do. 9395-- Motion to Extend the Discovery Deadlines Meet and Confer

Hi Etienne,

Please find attached Complaint Counsel's motion to extend the discovery deadlines and corresponding proposed order. We are planning to file this motion today. Do Respondents consent to this motion or are you available this afternoon for a meet and confer to discuss?

Also, now that you have entered your appearance, should we continue to copy David on filings and correspondences?

Best,  
Sanya

**Sanya Shahrasbi**  
Attorney  
Federal Trade Commission-Division of Financial Practices  
600 Pennsylvania Ave NW, CC-10218  
Washington, D.C. 20580  
(202) 326-2709



# EXHIBIT C

**Widor, Thomas**

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**From:** Shahrabi, Sanya  
**Sent:** Monday, June 28, 2021 7:03 PM  
**To:** Balart, Etienne  
**Cc:** Wimberly, Taylor; Brickman, Jennifer; David Jeansonne; Broadwell, Eleni; Widor, Thomas  
**Subject:** RE: [EXTERNAL] RE: In re Traffic Jam Events, Subpoenas Ad Testificandum

Etienne,

The privilege log complies with Rule 3.38A, as it “describes the nature of the documents, communications, or tangible things not produced or disclosed” and “does so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.” *See also Auto. Club of N.Y., Inc. v. Port Auth. of N.Y. & N.J.*, 297 F.R.D. 55, 59 (S.D.N.Y. 2013) (“Fed. R. Civ. P. 26 applies with the same force to a categorical log as it does to a traditional log that lists each document individually.”). Your request that each document be separately identified by date is unfounded as such detail is not necessary to assess the privileges grounds for withholding. The log provides the date range of the communications and describes the subject matter: Categories 1-4 concern law enforcement activities; the subject of the communications in Category 5 is Respondents' advertisements and mailers; the subject of the communications in Category 6 is prize advertising complaints. If there is particular information that you contend is necessary for you to assess the privilege claims and that information may be revealed without compromising the privilege, please let us know by identifying the information and the reason you maintain it is necessary to assess the log.

Moreover, your discussion of the Commission's vote as a justification for your discovery indicates that Respondents' are using discovery for purposes that are outside the scope of this proceeding. “Once the Commission has . . . issued a complaint, the 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.*, 83 F.T.C. 1759, 1760 (1974); *In re Basic Research, LLC*, 2004 F.T.C. 2010 (Nov. 4, 2004) (denying motion to compel and finding “[t]he issue to be tried is whether Respondents disseminated false and misleading advertising, not the Commission's decision to file the Complaint”). Respondents have not been denied discovery into the facts supporting this action; Complaint Counsel has produced responsive material as part of its initial disclosures and in response to Respondents' RFPs. The privilege log properly identifies communications that have been withheld and these communications are not “facts” upon which this action rests.

We also note that Respondents have not produced any privilege log with their prior response—we request that Respondents provide their log no later than July 3.

Lastly, please provide us the contact information for the former employees Mariela Everst and Mercedes Lozano. David stated during his deposition that he has contact information for these individuals, but it has not been provided to us.

Sanya

**Sanya Shahrabi**  
Attorney  
Federal Trade Commission-Division of Financial Practices  
600 Pennsylvania Ave NW, CC-10218  
Washington, D.C. 20580  
(202) 326-2709

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**From:** Balart, Etienne <ebalart@joneswalker.com>  
**Sent:** Saturday, June 26, 2021 10:12 AM

**To:** Widor, Thomas <twidor@ftc.gov>; Shahrabi, Sanya <sshahrabi@ftc.gov>

**Cc:** Wimberly, Taylor <twimberly@joneswalker.com>; Brickman, Jennifer <jbrickman@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>; Broadwell, Eleni <ebroadwell@ftc.gov>

**Subject:** RE: [EXTERNAL] RE: In re Traffic Jam Events, Subpoenas Ad Testificandum

Tom --

Thank you for this, but we view this log as deficient in a variety of respects. As far as I can tell, there are 116 "documents" identified in the 5 groupings. We believe that each individual document -- by date -- must be set out in the log so that we can evaluate the privileges asserted. That is especially true for the claimed privileges in Categories 1, 3, 4 and 5, as things like date, recipients and the subject matter of the discussion may pertain to the privilege analysis. As we would like to include this in one motion directed at the various privileges asserted by your office at the deposition, unless we receive an update privilege log by Tuesday we will include this as an exhibit to Respondents' Motion to Compel.

An addition issue, which is indicated by the belated production of the log, is your office's communications with the various consumers. Based on yesterday's deposition, no FTC investigator provided any facts supporting what was asserted in either the FTC Complaint in the EDLA or the FTC Complaint pending. Accordingly, the only other source of "facts" to support the pleading had to come from the communications identified in #6. As I understand it, FTC Counsel is asserting a blanket privilege over all such communications, resulting in Respondents being unable to conduct any discovery on what facts were used to (i) obtain the Commission vote required under the FTC Act; and (ii) substantiate the Complaint. I am not an expert, but I believe this means that you are taking position that the FTC had no "discoverable" facts to justify its actions. As a great deal of this case involves the FTC's compliance with the APA, in particular s. 554 of the APA, I just want to make sure that we are all on the same page with respect to the distinction between facts that the FTC was in possession of at the time the Complaint was filed (and who obtained those facts), and your "privileged" work as counsel investigating the matter. If I am mistaken in what facts you are going to allow us to discover, please advise immediately so that we may schedule the necessary depositions.

Etienne

L. Etienne Balart | Partner

Jones Walker LLP

D: 504.582.8584 | M: 504.756.2192

ebalart@joneswalker.com

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

From: Widor, Thomas <twidor@ftc.gov>

Sent: Friday, June 25, 2021 9:24 PM

To: Balart, Etienne <ebalart@joneswalker.com>; Shahrabi, Sanya <sshahrabi@ftc.gov>

Cc: Wimberly, Taylor <twimberly@joneswalker.com>; Brickman, Jennifer <jbrickman@joneswalker.com>; David

Jeansonne <david@trafficjamevents.com>; Broadwell, Eleni <ebroadwell@ftc.gov>

Subject: RE: [EXTERNAL] RE: In re Traffic Jam Events, Subpoenas Ad Testificandum

Etienne,

Attached is Complaint Counsel's privilege log.

Tom

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

From: Balart, Etienne <ebalart@joneswalker.com>

Sent: Friday, June 25, 2021 7:08 PM

To: Shahrasbi, Sanya <sshahrasbi@ftc.gov>

Cc: Wimberly, Taylor <twimberly@joneswalker.com>; Brickman, Jennifer <jbrickman@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>; Broadwell, Eleni <ebroadwell@ftc.gov>; Widor, Thomas <twidor@ftc.gov>  
Subject: Re: [EXTERNAL] RE: In re Traffic Jam Events, Subpoenas Ad Testificandum

Sanya,

I did not hear back from you regarding the privilege log issue. As today's deposition establishes a potentially large source of factual information that has not been produced, unless a privilege log is provided by Monday at the latest, we will be moving for relief from the Court. If you feel that we have not already had at least two meaningful meet and confers on this issue (Tom W agreed to provide one during a call a few weeks back), please let me know.

Thanks, and have a good weekend.

Etienne

Sent from my iPhone

On Jun 24, 2021, at 5:22 PM, Shahrasbi, Sanya <sshahrasbi@ftc.gov> wrote:

Etienne,

Following up on our last email, here is Emilie Saunders' contact number: Redacted Confidential Personal Information

Sanya

Sanya Shahrasbi  
Attorney  
Federal Trade Commission-Division of Financial Practices  
600 Pennsylvania Ave NW, CC-10218  
Washington, D.C. 20580  
(202) 326-2709

From: Balart, Etienne <ebalart@joneswalker.com>

Sent: Monday, June 21, 2021 5:31 PM

To: Shahrasbi, Sanya <sshahrasbi@ftc.gov>

Cc: Wimberly, Taylor <twimberly@joneswalker.com>; Brickman, Jennifer <jbrickman@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>; Broadwell, Eleni <ebroadwell@ftc.gov>; Widor, Thomas <twidor@ftc.gov>  
Subject: RE: [EXTERNAL] RE: In re Traffic Jam Events, Subpoenas Ad Testificandum

Sanya –

If the depositions are noticed on days I have signified our unavailability, we will just move for relief from the Court. We will notice the depositions of the Commissioners according to the rules. Please reserve July 6th for those depositions. I do not expect any one of them to last more than 1.5 hours. Please send along Ms. Saunders last known contact information.

Etienne

L. Etienne Balart | Partner  
Jones Walker LLP

ebalart@joneswalker.com<mailto:ebalart@joneswalker.com>

From: Shahrasbi, Sanya <sshahrasbi@ftc.gov>  
Sent: Monday, June 21, 2021 7:21 PM  
To: Balart, Etienne <ebalart@joneswalker.com>  
Cc: Wimberly, Taylor <twimberly@joneswalker.com>; Brickman, Jennifer <jbrickman@joneswalker.com>; David Jeansonne <david@trafficjamevents.com>; Broadwell, Eleni <ebroadwell@ftc.gov>; Widor, Thomas <twidor@ftc.gov>  
Subject: RE: [EXTERNAL] RE: In re Traffic Jam Events, Subpoenas Ad Testificandum

Etienne,

We have discussed with management, and we cannot agree to extend the discovery cutoff for depositions until July 31. Respondents will need to seek any relief separately from the Court. As we previously said, we will check if any of the proposed deponents are available earlier.

We have not received, and do not have, contact information for Bullock, Whelan, Brophy, and Everst. Please provide their last known addresses, telephone numbers, and email addresses.

As to the proposed Commissioner depositions Respondents seek, your reading of the rules, and Rule 3.33 in particular, is off base. The rules specify the process for seeking such depositions. You have not invoked this process and the topics you identify are outside the scope of discovery.

Emilie Saunders is no longer with the FTC, and you will need to subpoena her if you pursue deposing her. Her deposition does not warrant extending discovery or your time and effort. We do not intend to use her testimony or rely on her declaration in this proceeding. Her declaration in case no. 2:20-cv-01740 was limited to introducing corporate records, David's city and state, law enforcement filings, and searches relating to the COVID-19 mailers. If you nonetheless wish to subpoena her to appear for deposition, we will need to confirm her contact information.

Lastly, Kathleen Nolan is available at 8:30 CT on June 25th. Please provide her notice of the deposition.

Sanya

Sanya Shahrasbi  
Attorney  
Federal Trade Commission-Division of Financial Practices  
600 Pennsylvania Ave NW, CC-10218  
Washington, D.C. 20580  
(202) 326-2709

From: Balart, Etienne <ebalart@joneswalker.com<mailto:ebalart@joneswalker.com>>  
Sent: Friday, June 18, 2021 11:41 AM  
To: Shahrasbi, Sanya <sshahrasbi@ftc.gov<mailto:sshahrasbi@ftc.gov>>  
Cc: Wimberly, Taylor <twimberly@joneswalker.com<mailto:twimberly@joneswalker.com>>; Brickman, Jennifer <jbrickman@joneswalker.com<mailto:jbrickman@joneswalker.com>>; David Jeansonne <david@trafficjamevents.com<mailto:david@trafficjamevents.com>>; Broadwell, Eleni <ebroadwell@ftc.gov<mailto:ebroadwell@ftc.gov>>; Widor, Thomas <twidor@ftc.gov<mailto:twidor@ftc.gov>>  
Subject: RE: [EXTERNAL] RE: In re Traffic Jam Events, Subpoenas Ad Testificandum

Sanya --

I would propose a few things, including that we extend the discovery cutoff for depositions until July 31. I understand that you negotiated the Amended Scheduling order with David directly, but he was not represented at the time and certainly did not know my trial schedule. As much as Taylor and I would like to be in two places at once, that's just not going to be physically possible.

While we are attempting to be cooperative on discovery issues, I would like to understand Complaint Counsel's position regarding why we depositions of the FTC Commissioners who voted on the Complaint, as well as those that spoke with David about the allegations of the Complaint, are not proper under 16 CFR 3.33. As I have set out in prior emails, Respondents believe that each of these persons has information that "may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent." As far as an agreement to dates and locations for these depositions, I am not asking you or Tom to agree with me on this point, but simply refusing any cooperation on this issue does not seem to be within the Rules of practice or the spirit of good faith. A motion to quash the noticed depositions for the grounds that Tom cited earlier can only be filed after we get some dates and locations agreed to, and unless I am missing something seems like the correct way to handle this discovery dispute, as indicated by 16 CFR 3.33(b). As we intend on taking these depositions regarding their actions as Commissioners, and the FTC can only act through the Commission, I am not understanding how these depositions should not be initially arranged through your office, as counsel to the FTC. The persons below voted on the Complaint, and given the lack of evidence provided to Respondents in FTC's document responses, Respondents are entitled to information they relied upon to vote on the Complaint, as well as to ask questions concerning the evaluative standards employed by the FTC at the time the Complaint was voted on, as well as the circumstances concerning the dismissal of the federal court action. These questions, in addition to being probative as to the merits of the Complaint, also relate to Respondents defenses. We would like to depose the following:

<image001.png>

I do not have the records of what conversations were had with what commissioners, but my client informs me that was arranged through you and Tom, and that you all participated in these calls. I request that Complainant identify these Commissioners (to the extent they vary from the above list) and that we schedule their depositions as well. To conclude, I understand a disagreement over relevance, but that does not mean a party (the FTC) can refuse to make its personnel available. Let's get the dates locked in and you all can file your motion under 3.33(b).

Also, we would like to schedule the deposition of Emilie Saunders regarding the Affidavit she submitted in case no. 2:20-cv-01740. We could probably do it the same day as Ms. Nolan. Can you advise ASAP on that. Can we start Nolan at 8:30 Central? Finally, my understanding is that David has provided last knowns, and that contact information for all of the ex-employees can be found in the voluminous documents that the FTC already has (emails, etc.). If you cannot locate that information in the document responses already received, please advise.

Etienne

L. Etienne Balart | Partner

Jones Walker LLP

D: 504.582.8584 | M: 504.756.2192

ebalart@joneswalker.com<mailto:ebalart@joneswalker.com>

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

From: Shahrasbi, Sanya <sshahrasbi@ftc.gov<mailto:sshahrasbi@ftc.gov>>

Sent: Friday, June 18, 2021 12:02 PM

To: Balart, Etienne <ebalart@joneswalker.com<mailto:ebalart@joneswalker.com>>

Cc: Wimberly, Taylor <twimberly@joneswalker.com<mailto:twimberly@joneswalker.com>>; Brickman, Jennifer

<jbrickman@joneswalker.com<mailto:jbrickman@joneswalker.com>>; David Jeansonne

<david@trafficjamevents.com<mailto:david@trafficjamevents.com>>; Broadwell, Eleni

<ebroadwell@ftc.gov<mailto:ebroadwell@ftc.gov>>; Widor, Thomas <twidor@ftc.gov<mailto:twidor@ftc.gov>>

Subject: RE: [EXTERNAL] RE: In re Traffic Jam Events, Subpoenas Ad Testificandum

Etienne,

The parties agreed to this scheduling order in May. If you want to propose some relief from the court because of your scheduling conflicts, we are open to considering it. We also are willing to check if any of the proposed deponents are available the week of June 28, but we are not going to agree to effectively cut off discovery 2 weeks early. As you know, we are still seeking to depose Bullock, Whelan, Brophy, and Everst but have not received a reply from you or Respondents about their status or last knowns, which you had said on May 28 that you would provide.

Sanya

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

From: Balart, Etienne <ebalart@joneswalker.com<mailto:ebalart@joneswalker.com>>

Sent: Thursday, June 17, 2021 5:15 PM

To: Shahrasbi, Sanya <sshahrasbi@ftc.gov<mailto:sshahrasbi@ftc.gov>>

Cc: Wimberly, Taylor <twimberly@joneswalker.com<mailto:twimberly@joneswalker.com>>; Brickman, Jennifer

<jbrickman@joneswalker.com<mailto:jbrickman@joneswalker.com>>; David Jeansonne

<david@trafficjamevents.com<mailto:david@trafficjamevents.com>>; Broadwell, Eleni

<ebroadwell@ftc.gov<mailto:ebroadwell@ftc.gov>>; Widor, Thomas <twidor@ftc.gov<mailto:twidor@ftc.gov>>

Subject: Re: [EXTERNAL] RE: In re Traffic Jam Events, Subpoenas Ad Testificandum

Sanya, these depositions could have been done in May, or June. You happened to pick the last two weeks before discovery closes, and in which both Taylor and I are in trial. We can do them the week of June 28. Or before.

Sent from my iPhone

On Jun 17, 2021, at 7:09 PM, Shahrasbi, Sanya <sshahrasbi@ftc.gov<mailto:sshahrasbi@ftc.gov>> wrote:

Etienne,

The close of discovery and the deadline for depositions is July 16. We had previously discussed and negotiated the scheduling order dates with David in May when the case returned to adjudication. We don't have much flexibility as a result if you are not available during the first two weeks of July. Please let us know how Respondents would like to proceed.

Kathleen Nolan is available both of those days, with a preference for Friday, June 25th. Please do provide her with formal notice.

Sanya

Sanya Shahrasbi

Attorney

Federal Trade Commission-Division of Financial Practices

600 Pennsylvania Ave NW, CC-10218

Washington, D.C. 20580

(202) 326-2709



From: Balart, Etienne <ebalart@joneswalker.com<mailto:ebalart@joneswalker.com>>

Sent: Thursday, June 17, 2021 2:19 PM

To: Shahrasbi, Sanya <sshahrasbi@ftc.gov<mailto:sshahrasbi@ftc.gov>>; Wimberly, Taylor <twimberly@joneswalker.com<mailto:twimberly@joneswalker.com>>; Brickman, Jennifer <jbrickman@joneswalker.com<mailto:jbrickman@joneswalker.com>>; 'David Jeansonne' <david@trafficjamevents.com<mailto:david@trafficjamevents.com>>

Cc: Broadwell, Eleni <ebroadwell@ftc.gov<mailto:ebroadwell@ftc.gov>>; Widor, Thomas <twidor@ftc.gov<mailto:twidor@ftc.gov>>

Subject: RE: In re Traffic Jam Events, Subpoenas Ad Testificandum

Sanya,

I am unfortunately unable to commit to depositions right now for the week of July 12. I have a trial in federal court [2:19-cv-12948] where I am lead trial counsel [Taylor is also enrolled]. It is set as a five day jury trial. We will need to get other dates from those deponents. Given my trial schedule, the week of July 6 is also going to be problematic as I will be preparing for this trial. Unless David does not want me to attend, can we get some other dates?

I do plan on taking the investigator, but need to schedule it for the 24th/ or 25th if that is possible?

Etienne

L. Etienne Balart | Partner

Jones Walker LLP

D: 504.582.8584 | M: 504.756.2192

ebalart@joneswalker.com<mailto:ebalart@joneswalker.com<mailto:ebalart@joneswalker.com  
%3cmailto:ebalart@joneswalker.com>>

From: Shahrasbi, Sanya <sshahrasbi@ftc.gov<mailto:sshahrasbi@ftc.gov>>

Sent: Thursday, June 17, 2021 2:51 PM

FEDERAL TRADE COMMISSION | OFFICE OF THE SECRETARY | FILED 7/12/2021 | Document No. 601935 | PAGE Page 26 of 31 PUBLIC \*  
To: Balart, Etienne <ebalart@joneswalker.com<mailto:ebalart@joneswalker.com>>; Wimberly, Taylor  
<twimberly@joneswalker.com<mailto:twimberly@joneswalker.com>>; Brickman, Jennifer  
<jbrickman@joneswalker.com<mailto:jbrickman@joneswalker.com>>; 'David Jeansonne'  
<david@trafficjamevents.com<mailto:david@trafficjamevents.com>>

Cc: Broadwell, Eleni <ebroadwell@ftc.gov<mailto:ebroadwell@ftc.gov>>; Widor, Thomas  
<twidor@ftc.gov<mailto:twidor@ftc.gov>>

Subject: [EXTERNAL] RE: In re Traffic Jam Events, Subpoenas Ad Testificandum

Hi Etienne,

We wanted to follow up on our last email regarding third party depositions. We plan to notice the depositions of (1) a representative of Landers McLarty, (2) a representative of Dothan Chrysler Dodge, (3) Matthew Dennis of DealerApps, (4) Michael Kastrenakes, (5) Michael Taylor, and (6) William Lilley during the weeks of July 6 and July 12.

We have spoken to Bill Cox from Dothan and have him tentatively scheduled for Wednesday, July 14th at 10am CT.

Please let us know if you want to participate and if there are any days we should try to avoid. We plan to send the depositions out tomorrow.

Also, we have not received a deposition notice for our investigator, Kathleen Nolan. Do you still intend to depose her? If so, we would propose Wednesday, June 23rd.

Sanya

Sanya Shahrabi

Attorney

Federal Trade Commission-Division of Financial Practices

600 Pennsylvania Ave NW, CC-10218

Washington, D.C. 20580

(202) 326-2709

From: Widor, Thomas <twidor@ftc.gov<mailto:twidor@ftc.gov>>

Sent: Tuesday, June 15, 2021 2:34 PM

To: Balart, Etienne <ebalart@joneswalker.com<mailto:ebalart@joneswalker.com>>;  
twimberly@joneswalker.com<mailto:twimberly@joneswalker.com>; Brickman, Jennifer  
<jbrickman@joneswalker.com<mailto:jbrickman@joneswalker.com>>; 'David Jeansonne'  
<david@trafficjamevents.com<mailto:david@trafficjamevents.com>>

Cc: Shahrasbi, Sanya <sshahrasbi@ftc.gov<mailto:sshahrasbi@ftc.gov>>; Broadwell, Eleni  
<ebroadwell@ftc.gov<mailto:ebroadwell@ftc.gov>>

Subject: In re Traffic Jam Events, Subpoenas Ad Testificandum

Etienne,

We intend to notice the depositions of (1) a representative of Landers McLarty, (2) a representative of Dothan Chrysler Dodge, (3) Matthew Dennis of DealerApps, (4) Michael Kastrenakes, and (5) Michael Taylor during the weeks of July 6 and July 12. We also intend to notice William Lilley's deposition during that time as David had informed us of his departure in December and provided his contact information.

Pursuant to the Court's scheduling order, we wanted to coordinate with you regarding your availability for the depositions prior to issuing the notices and subpoenas. Would you let us know your availability those two weeks.

Tom

Thomas J. Widor

Attorney, Division of Financial Practices Bureau of Consumer Protection Federal Trade Commission

600 Pennsylvania Avenue, NW

Mail Stop: CC-10232

Washington, DC 20580

Phone: (202) 326-3039

Fax: (202) 326-3768



# EXHIBIT D

**From:** [Broadwell, Eleni](#)  
**To:** [lmastio@joneswalker.com](mailto:lmastio@joneswalker.com); [ebalart@joneswalker.com](mailto:ebalart@joneswalker.com); [jbrickman@joneswalker.com](mailto:jbrickman@joneswalker.com)  
**Cc:** [Widor, Thomas](#); [Shahrasbi, Sanya](#)  
**Subject:** Initial Disclosures, In the Matter of Traffic Jam Events, LLC and David J. Jeansonne II, Docket No. 9395  
**Date:** Friday, September 4, 2020 11:09:00 AM

**You have received 59 secure files from [ebroadwell@ftc.gov](mailto:ebroadwell@ftc.gov).**

Use the secure links below to download.

Counsel,

Attached is a link to documents being produced as part of Complaint Counsel's initial disclosures. These documents are being produced in native format subject to the August 11, 2020 Protective Order and include a folder of consumer complaints containing personal identifying information that has been designated Confidential – Consumer Sentinel Complaints. We plan to supplement this production with bates-numbered versions formatted for Relativity.

We also anticipate supplementing the production with additional, third-party documents by the end of next week after allowing an opportunity to object pursuant to Rule 4.10(g).

**Secure File Downloads:**

Available until: **08 September 2020**

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