

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson
 Alvaro M. Bedoya

In the Matter of

**HOMEADVISOR, INC., a corporation,
d/b/a ANGI LEADS,
d/b/a HOMEADVISOR POWERED BY ANGI.**

DOCKET NO. 9407

**COMPLAINT COUNSEL’S EXPEDITED MOTION TO
CONTINUE EVIDENTIARY HEARING DATE AND PREHEARING DEADLINES**

Complaint Counsel respectfully requests that the Commission continue the evidentiary hearing in this case, currently set to begin on November 9, 2022, by three months. Complaint Counsel also seeks a corresponding extension of all prehearing deadlines that have not already passed as of the date of this filing.

There is good cause for granting this continuance because Respondent has caused numerous delays in the proceedings. First, and most importantly, Respondent has repeatedly failed to produce usable sales call recordings in response to discovery requests, even when ordered to do so by the Administrative Law Judge (ALJ). As a result, Complaint Counsel has been unable to undertake an analysis of Respondent’s sales calls in advance of its expert report deadline, currently set for September 20. Moreover, Respondent has requested numerous extensions in this case, including three requests that caused substantial delays in the briefing and oral argument relating to Complaint Counsel’s summary decision motion and delaying

Complaint Counsel's corporate deposition of Respondent (which has yet to happen) until after the fact discovery cutoff.

EXPEDITION

Complaint Counsel further respectfully requests that the Commission give expedited consideration to this Motion because, under the current scheduling order, Complaint Counsel's expert reports are due on September 20 and its final witness disclosures are due less than a week later. In the absence of the requested expedited decision, these imminent deadlines will come due before this motion is determined. Complaint Counsel has requested that Respondent join this request, but as of the filing of this motion Respondent's counsel has not yet replied. Declaration of Sophia H. Calderón ("Calderón Decl.")¹ at PX09-0003; *see also* Calderón Decl. ¶ 3. Complaint Counsel requests that, pursuant to Rule 3.22(d), the Commission direct Respondent to file its response to this motion by **September 16, 2022**. Complaint Counsel further respectfully requests that the Commission rule on the Motion by **September 20, 2022**. A proposed order setting this expedited schedule is attached.

BACKGROUND

Current Case Schedule. The Commission initiated this administrative proceeding on March 11, 2022. At the outset of the case, Respondent requested, and Complaint Counsel did not oppose, a one-week extension of the deadline to answer the complaint and an 18-day extension of the initial scheduling conference. PX01-0001; PX02-0001.

Under the current case schedule, fact discovery in this matter closed on September 6 (with one exception, noted below). PX03-0001. Complaint Counsel's expert reports are currently due on September 20, with additional expert discovery and prehearing deadlines set soon

¹ Exhibits to the Calderón Declaration will hereinafter be referred to by their "PX" designation.

thereafter. PX03-0001. The evidentiary hearing is currently scheduled to begin on November 9. PX03-0004.

Motion for Summary Decision. On April 7, Complaint Counsel filed a motion for summary decision. Complaint Counsel's Motion for Summary Decision, April 7, 2022. Respondent requested, and Complaint Counsel did not oppose, two extensions of time for Respondent to respond to the motion for summary decision, together providing Respondent an extra six weeks to respond. *See* Order Extending Time to Oppose Motion for Summary Decision, April 20, 2022; Second Order Extending Time to Oppose Motion for Summary Decision, May 26, 2022. The Commission initially scheduled oral argument on the motion, as requested by Respondent, on July 14 but moved oral argument to July 21 at Respondent's request. Order Rescheduling Oral Argument, July 7, 2022. In its order denying the motion for summary decision, the Commission noted, "Because there were ***substantial delays requested by Respondent*** in the briefing of this summary decision motion as well as the timing of the oral argument on it, the Commission invites the parties to consider making a motion to reset deadlines in the underlying litigation." Order Denying Summary Decision, Aug. 2, 2022 (emphasis added).

Motion to Compel Sales Calls. On June 8, Complaint Counsel served Respondent with Requests for Production that, among other things, sought production of all recordings of HomeAdvisor's sales calls from a specified six-month period. PX10-0023. Respondent resisted producing the recordings as requested, although eventually, on August 7, it produced approximately 4,700 recordings from the relevant period. PX10-0031. Complaint Counsel proposed to accept those recordings as sufficient if HomeAdvisor stipulated to, *inter alia*, treating the calls as representative of all of the requested calls. PX10-0028. HomeAdvisor

refused, and Complaint Counsel successfully moved to compel; the ALJ gave Respondent 14 days to produce the full set of recordings or accept the stipulation that the approximately 4,700 sales calls be treated as representative. PX05-0004. Respondent has failed to produce or so stipulate; instead, Respondent made a data dump of between **30 and 50 million** largely irrelevant and nonresponsive records available to Complaint Counsel through a nearly unsearchable depository, expecting Complaint Counsel to sift through to find the responsive recordings. PX10-0034. Simultaneously with filing this Motion, Complaint Counsel has filed a motion for sanctions for failure to comply with the ALJ's order. PX10. The motion for sanctions asks the ALJ to enter an order making adverse rulings regarding the representativeness of the sales calls already produced, PX10-0008, -0009, but, ultimately, Complaint Counsel and its expert will still need to undertake an analysis of those calls. Under Rule 3.22(a), that motion will be fully briefed by September 26, and therefore the ALJ will rule no later than October 10, unless the ALJ permits determination on an expedited schedule.²

Corporate Deposition of HomeAdvisor. On July 8, 2022, Complaint Counsel served Respondent with a notice for its deposition, pursuant to Rule 3.33(c)(1). PX07-0001. On August 5, Respondent served objections to the notice, initially refusing to designate a witness for ten of the 14 deposition topics and failing to provide any information regarding designees and/or available deposition dates. PX04. The parties met and conferred during the month of August, and ultimately, on August 31, Respondent agreed to designate a witness on 12 topics and proposed moving the September 6 discovery cutoff to give it time to designate and prepare witnesses.

² Complaint Counsel simultaneously filed a motion to shorten time, asking that the ALJ shorten the time to respond to two days and issue its ruling within two days (by September 20).

PX06. On September 6, the parties filed a stipulated motion to move the discovery cutoff, for purposes of the corporate deposition, to September 20, PX07, which the ALJ granted.³

ARGUMENT

Under Rule 3.11(b)(4), evidentiary hearings are normally set eight months from the date of the issuance of a Part 3 administrative complaint. 16 C.F.R. § 3.11(b)(4). However, “[t]he Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence.” 16 C.F.R. § 3.41(b); *see also* 16 C.F.R. § 3.21(c)(1). Here, good cause exists for a continuance of the commencement of the evidentiary hearing—and all pending prehearing deadlines—by three months.

First, a continuance will allow time for Complaint Counsel and its expert to undertake an analysis of Respondent’s sales calls, following the ALJ’s ruling on its motion for sanctions. This case involves three counts alleging that Respondent misrepresented its products in advertising and sales calls to prospective service providers, Complaint ¶¶ 61-68, and therefore sales calls are plainly relevant to understanding what claims HomeAdvisor made to service providers. *See* PX05-0003. Complaint Counsel submitted numerous sales calls in support of its motion for summary decision, and Respondent strenuously asserted that those sales calls were not representative of its calls as a whole. *See* Respondent’s Statement of Material Facts at 186-187.

Due to Respondent’s assertions, just two days later, Complaint Counsel sought the production of a complete set of sales calls during a six-month timeframe, so that it and its expert could conduct further analysis. PX05-0003. But Complaint Counsel and its expert have been

³ Yet it was not until the late afternoon of September 13 that Respondent’s counsel notified Complaint Counsel of Respondent’s proposed timing for the corporate depositions and *four overlapping* intended designees—giving Complaint Counsel less than a week’s notice to prepare. PX09-0001. Such gamesmanship by Respondent creates further delays while the parties confer and schedule and underscores the necessity of Complaint Counsel’s proposed continuance.

unable to perform any analysis of sales calls due to Respondent's failure to produce a complete set. Once the ALJ rules on Complaint Counsel's motion for sanctions, PX10, Complaint Counsel will finally be able to undertake the analysis.⁴ An extension of three months is warranted because production of the calls was initially due on July 7—two and a half months before the September 20 expert report deadline. PX10-0021. Thus, the requested extension would put Complaint Counsel in roughly the position it was in on July 7, when Respondent's production of sales calls was initially due.

Second, good cause exists because Respondent has caused numerous significant delays in this case. Of course, Respondent itself created the delay in Complaint Counsel's ability to analyze sales calls by refusing to produce a complete set of calls, even in the face of an order to do so. *See supra*. Additionally, Respondent has requested numerous extensions in the case—which together total *more than 11 weeks*:

- At the outset of litigation, Respondent requested a one-week extension of the deadline to answer the complaint and an 18-day extension of the initial scheduling conference. PX01-0001; PX02-0001.
- Respondent requested three extensions, together resulting in delays of over seven weeks, relating to Complaint Counsel's motion for summary decision. Indeed, in its order denying the motion, the Commission noted, "there were *substantial delays requested by Respondent* in the briefing of this summary decision motion as well as the timing of the oral argument on it" and invited a motion to reset

⁴ Complaint Counsel's motion for sanctions seeks adverse rulings pertaining to one of two sets of sales calls: (a) the 100 calls submitted to the Commission in connection with Complaint Counsel's motion for summary decision; or (b) the subset of sales calls Respondent produced in early August. PX10-0008, -0009. Regardless of which set of sanctions the ALJ grants—or even if the ALJ denies any sanctions—Complaint Counsel and its expert will still need to analyze the calls in their possession in advance of the expert report deadline.

deadlines in this case. Order Denying Summary Decision, Aug. 2, 2022 (emphasis added).

- Respondent’s initial refusal to designate a witness for a corporate deposition resulted in the need to conduct the corporate deposition of Respondent two weeks *after* the fact discovery cutoff. PX04; PX06-0003-0004; PX07-0002.

Respondent’s delays⁵ have had a significant impact on Complaint Counsel’s ability to prepare for the evidentiary hearing. For example, under the current schedule, the corporate deposition will occur during the same week as Complaint Counsel’s expert report deadline, depriving Complaint Counsel and its expert time to review and consider corporate testimony prior to the report deadline.

⁵ In addition to Respondent’s delays, third party Triares, Inc. (“Triares”) belatedly contested a subpoena for a deposition scheduled for September 1, 2022 and refused to appear. *See* PX08 (Complaint Counsel’s filed opposition to a petition to quash served on Complaint Counsel on August 31, 2022, the day before deposition). Fact discovery has now closed, before Complaint Counsel could obtain testimony from Triares regarding its processes for gathering consumer “leads” it sent to Respondent, which Respondent then sold. Because Respondent’s representations regarding the characteristics of these Triares-obtained leads are the subject of the Complaint’s claims, *see* Complaint at ¶¶ 61-63, and Triares’ refusal to sit for deposition was untimely raised, Complaint Counsel’s position is that Triares should sit for deposition in this proceeding.

CONCLUSION

For the reasons stated herein, Complaint Counsel respectfully requests that the Commission continue the evidentiary hearing in this case by three months and that it grant a corresponding extension of all pre-hearing deadlines that have not yet lapsed.

Respectfully submitted,

Dated: September 14, 2022

s/ Colin D. A. MacDonald

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Counsel Supporting the Complaint

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair**
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In the Matter of

**HOMEADVISOR, INC., a corporation,
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d/b/a HOMEADVISOR POWERED BY ANGI.**

DOCKET NO. 9407

[PROPOSED] ORDER

Having carefully considered Complaint Counsel’s Expedited Motion to Continue Evidentiary Hearing Date and Prehearing Deadlines, and Respondent’s response thereto, if any, the Commission finds as follows:

Under Rule 3.11(b)(4), evidentiary hearings are normally set eight months from the date of the issuance of a Part 3 administrative complaint. 16 C.F.R. § 3.11(b)(4). However, “[t]he Commission, upon a showing of good cause, may order a later date for the evidentiary hearing to commence.” 16 C.F.R. § 3.41(b). Good cause exists for a continuance of the commencement of the evidentiary hearing and all pending prehearing deadlines by three months for numerous reasons. First, Respondent has repeatedly failed to produce sales calls to Respondent, depriving Complaint Counsel and their expert of the ability to conduct an analysis of Respondent’s sales calls prior to the expert report deadline. Second, good cause exists because Respondent has caused numerous significant delays in this case that total over 11 weeks, including: (a) a one-week extension of the deadline to answer the complaint and an 18-day extension of the initial

scheduling conference; (b) three extensions, together resulting in delays of over seven weeks, relating to the briefing of Complaint Counsel’s motion for summary decision and the timing of the oral argument; and (c) a two-week extension of the fact discovery deadline for the corporate deposition of Respondent. Accordingly,

IT IS HEREBY ORDERED that the evidentiary hearing in this case is continued by three months, until February 9, 2022. All prehearing deadlines shall be extended by a corresponding three months, as determined by the Administrative Law Judge.

By the Commission.

[April J. Tabor]
Secretary

[SEAL]
ISSUED:

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

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**HOMEADVISOR, INC., a corporation,
d/b/a ANGI LEADS,
d/b/a HOMEADVISOR POWERED BY ANGI.**

DOCKET NO. 9407

[PROPOSED] ORDER REQUIRING EXPEDITED RESPONSE

On September 14, 2022, Complaint Counsel filed an Expedited Motion to Continue Evidentiary Hearing Date and Prehearing Deadlines. Under the Scheduling Order in this case, as amended, expert discovery deadlines are approaching as soon as September 20, 2022, and final proposed witness lists are due as early as September 26, 2022, in the advance of the Evidentiary Hearing scheduled to begin on November 9, 2022.

Pursuant to FTC Rule 3.22(d), the Commission may shorten the time within which a response is due. It is **HEREBY ORDERED** that Respondent HomeAdvisor, Inc. shall file any response to the Motion no later than 5:00 p.m. on September 16, 2022.

SO ORDERED.

By the Commission.

[April J. Tabor]
Secretary

[SEAL]
ISSUED:

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<p>In the Matter of</p> <p>HOMEADVISOR, INC., a corporation, d/b/a ANGI LEADS, d/b/a HOMEADVISOR POWERED BY ANGI.</p>

DOCKET NO. 9407

DECLARATION OF SOPHIA H. CALDERÓN

I, Sophia H. Calderón, declare as follows:

1. I am an attorney at the Federal Trade Commission (“FTC” or “Commission”) and Complaint Counsel in this proceeding.
2. Attached to this declaration are Exhibits PX01 through PX010, submitted in support of Complaint Counsel’s Expedited Motion to Continue Evidentiary Hearing Date and Prehearing Deadlines. The below Exhibit Index includes further descriptions of each Exhibit; the “Description” column identifies the title and/or Bates number of the first page of each exhibit in the corresponding “Exhibit” column.

EXHIBIT INDEX	
Exhibit	Description
PX01	Administrative Law Judge’s Order on Respondent’s Unopposed Motion for Extension of Time, March 24, 2022
PX02	Administrative Law Judge’s Order Extending Time and Setting Initial Prehearing Conference, April 7, 2022
PX03	Administrative Law Judge’s Scheduling Order, April 25, 2022

EXHIBIT INDEX	
Exhibit	Description
PX04	HomeAdvisor’s Responses and Objections to Complaint Counsel’s Notice of Deposition to HomeAdvisor, Inc., August 5, 2022
PX05	Administrative Law Judge’s Order Granting Complaint Counsel’s Motion to Compel Documents Responsive to Request 14, Aug. 16, 2022
PX06	August 31, 2022 Letter from Respondent’s Counsel to Complaint Counsel
PX07	Joint Motion To Extend the Time to Complete Fact Discovery, September 6, 2022
PX08	Complaint Counsel’s Opposition to Non-Party Triares, Inc.’s Emergency Petition to Stay Deposition and to Quash or Limit Subpoena Ad Testificandum, September 12, 2022
PX09	September 13, 2022 Email from Complaint Counsel to Respondent’s Counsel
PX10	Complaint Counsel’s Expedited Motion for Sanctions Against HomeAdvisor, Inc., September 14, 2022

3. Complaint Counsel has requested that Respondent join its motion to continue the evidentiary hearing date. Complaint Counsel first made its request during a video conference on September 2. Complaint Counsel reiterated its request in an email on September 9 (*see* PX09). As of the filing of this declaration Respondent’s counsel has not yet replied.

I declare under penalty of perjury that to the best of my knowledge and belief the foregoing is true and accurate.

Respectfully submitted,

Dated: September 14, 2022

s/ Sophia H. Calderón

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Counsel Supporting the Complaint

PX01

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

_____)	
In the Matter of)	
)	
HomeAdvisor, Inc., a corporation,)	
d/b/a Angi Leads,)	Docket No. 9407
d/b/a HomeAdvisor Powered By Angi,)	
)	
Respondent.)	
_____)	

**ORDER ON RESPONDENT’S UNOPPOSED
MOTION FOR EXTENSION OF TIME**

On March 23, 2022, Respondent HomeAdvisor, Inc. filed an Unopposed Motion for Extension of Time to Answer the Complaint and Other Deadlines (“Motion”). Respondent seeks to extend the deadline for HomeAdvisor to answer the Complaint in this matter, issued on March 11, 2022, from March 28, 2022 to April 4, 2022. Respondent also requests an order establishing other dates and deadlines related to the initial scheduling conference and the conduct of initial discovery. Respondent represents that Complaint Counsel does not oppose this Motion.

FTC Rule 3.12(a) provides that a respondent shall file an answer within 14 days after being served with the complaint. 16 C.F.R. § 3.12(a). FTC Rule 4.3(b) provides that, except under circumstances not here presented, the Administrative Law Judge may, for good cause shown, extend any time limit prescribed or allowed by the rules. 16 C.F.R. § 4.3(b). Respondent states it is seeking extensions because of pre-existing commitments and unavailability of HomeAdvisor’s counsel.

Good cause exists to extend the deadline for Respondent to file its Answer. Respondent’s Motion to extend the deadline to file and answer the Complaint is GRANTED, and it is hereby ORDERED, that the deadline for filing Respondent’s Answer shall be April 4, 2022.

The deadlines for the mandatory initial disclosures, the meeting of the parties before the initial schedule conference, and the initial scheduling conference do not arise until after a respondent has filed an answer. See 16 C.F.R. §§ 3.21(a), (b), 3.31(a). Thus, Respondent’s request to extend these deadlines before an answer has been filed is DENIED as premature. In addition, deadlines related to discovery will be established within two days of the Initial

Scheduling Conference. Thus, Respondent's request to extend certain discovery deadlines is also DENIED as premature. Nothing in this Order is intended to limit or delay the parties' commencement of discovery to the extent allowed by the Rules or agreed to by the parties.

ORDERED:

D M Chappell

D. Michael Chappell
Chief Administrative Law Judge

Date: March 24, 2022

PX02

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

_____)	
In the Matter of)	
)	
HomeAdvisor, Inc., a corporation,)	
d/b/a Angi Leads,)	Docket No. 9407
d/b/a HomeAdvisor Powered By Angi,)	
)	
Respondent.)	
_____)	

**ORDER EXTENDING TIME AND SETTING
INITIAL PREHEARING CONFERENCE**

I.

On March 23, 2022, Respondent HomeAdvisor, Inc. filed an Unopposed Motion for Extension of Time to Answer the Complaint and Other Deadlines (“Motion to Extend”), which included, *inter alia*, a request to extend the deadline for holding the prehearing scheduling conference in this matter. Under Rule 3.21(b) of the Federal Trade Commission (“FTC”) Rules of Practice, the conference must be held “[n]ot later than 10 days after the answer is filed” 16 C.F.R. § 3.21(b).

By Order issued March 24, 2022, Respondent’s request to extend the deadline for filing an answer was granted based on a showing of good cause. The request to extend the deadline for holding the scheduling conference was denied as premature, as Respondent had not yet filed an answer. Respondent filed its Answer to the Complaint on April 4, 2022. Accordingly, the request to extend the deadline for holding the scheduling conference is now ripe.

II.

Under Rule 3.21(b) the last day to hold the scheduling conference would be April 14, 2022. In support of the request to extend the deadline, the Motion to Extend stated that various counsel for Respondent and Complaint Counsel would be unavailable during the weeks of April 11 and April 18, 2022. FTC Rule 4.3(b) provides that, except under circumstances not here presented, the Administrative Law Judge may, for good cause shown, extend any time limit prescribed or allowed by the rules. 16 C.F.R. § 4.3(b).

Based on the foregoing, good cause exists to extend the deadline for holding the prehearing scheduling conference. Accordingly, the unopposed request to extend the deadline is GRANTED.

It is hereby ORDERED that the prehearing scheduling conference pursuant to Rule 3.21(b) will be held on April 25, 3:00 p.m. EDT. Due to ongoing public health concerns related to COVID-19, the scheduling conference will be conducted telephonically. The proceedings will be stenographically recorded. To the extent practicable, members of the press and public will be allowed to access the proceedings of the scheduling conference via a public call-in number. Interested parties are directed to contact the FTC Office of Public Affairs for call-in information.

The parties are directed to confer in advance of the scheduling conference and to comply with Commission Rule 3.21(a) and (b). The expected scheduling order will be provided to the parties in advance of the scheduling conference.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: April 7, 2022

PX03

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

_____)	
In the Matter of)	
)	
HomeAdvisor, Inc., a corporation,)	
d/b/a Angi Leads,)	Docket No. 9407
d/b/a HomeAdvisor Powered By Angi,)	
)	
Respondent.)	
_____)	

SCHEDULING ORDER

- May 10, 2022 - Complaint Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
- May 24, 2022 - Respondent’s Counsel provides preliminary witness list (not including experts) with a brief summary of the proposed testimony.
- June 7, 2022 - Complaint Counsel provides expert witness list.
- June 21, 2022 - Respondent’s Counsel provides expert witness list.
- June 28, 2022 - Deadline for issuing document requests, interrogatories and subpoenas, except for discovery for purposes of authenticity and admissibility of exhibits.
- August 9, 2022 - Deadline for issuing requests for admissions, except for requests for admissions for purposes of authenticity of documents.
- September 6, 2022 - Close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.
- September 20, 2022 - Deadline for Complaint Counsel to provide expert witness reports.
- September 26, 2022 - Complaint Counsel provides to Respondent’s Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Complaint Counsel’s basis of

admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.

Complaint Counsel serves courtesy copies on ALJ of its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.

October 3, 2022 - Deadline for Respondent’s Counsel to provide expert witness reports (to be provided by 4 p.m. ET). Respondent’s expert report shall include (without limitation) rebuttal, if any, to Complaint Counsel’s expert witness report(s).

October 3, 2022 - Respondent’s Counsel provides to Complaint Counsel its final proposed witness and exhibit lists, including depositions, copies of all exhibits (except for demonstrative, illustrative or summary exhibits and expert related exhibits), Respondent’s basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness.

Respondent’s Counsel serves courtesy copies on ALJ its final proposed witness and exhibit lists, its basis of admissibility for each proposed exhibit, and a brief summary of the testimony of each witness, including its expert witnesses.

October 6, 2022 - Parties that intend to offer confidential materials of an opposing party or non-party as evidence at the hearing must provide notice to the opposing party or non-party, pursuant to 16 C.F.R. § 3.45(b).¹ See Additional Provision 12.

October 13, 2022 - Complaint Counsel to identify rebuttal expert(s) and provide rebuttal expert report(s). Any such reports are to be limited to rebuttal of matters set forth in Respondent’s expert reports. If material outside the scope of fair rebuttal is presented, Respondents will have the right to seek appropriate relief (such as striking Complaint Counsel’s rebuttal expert reports or seeking leave to submit surrebuttal expert reports on behalf of Respondents).

¹ Appendix A to Commission Rule 3.31, the Standard Protective Order, states that if a party or third party wishes *in camera* treatment for a document or transcript that a party intends to introduce into evidence, that party or third party shall file an appropriate motion with the Administrative Law Judge within 5 days after it receives notice of a party’s intent to introduce such material. Commission Rule 3.45(b) states that parties who seek to use material obtained from a third party subject to confidentiality restrictions must demonstrate that the third party has been given at least 10 days’ notice of the proposed use of such material. To resolve this apparent conflict, the Scheduling Order requires that the parties provide 10 days’ notice to the opposing party or third parties to allow for the filing of motions for *in camera* treatment.

- October 17, 2022 - Deadline for filing motions for *in camera* treatment of proposed trial exhibits.
- October 21, 2022 - Deadline for filing motions *in limine* to preclude admission of evidence. *See* Additional Provision 13.
- October 24, 2022 - Deadline for depositions of experts (including rebuttal experts) and exchange of expert related exhibits.
- October 26, 2022 - Complaint Counsel files pretrial brief supported by legal authority.
- October 26, 2022 - Deadline for filing responses to motions for *in camera* treatment of proposed trial exhibits.
- October 28, 2022 - Exchange and serve courtesy copy on ALJ objections to final proposed witness lists and exhibit lists. The Parties are directed to review the Commission’s Rules on admissibility of evidence before filing objections to exhibits and raise only objections that are necessary and valid.
- October 31, 2022 - Deadline for filing responses to motions *in limine* to preclude admission of evidence.
- November 2, 2022 - Exchange proposed stipulations of law, facts, and authenticity.
- November 4, 2022 - Respondent’s Counsel files pretrial brief supported by legal authority.
- November 8, 2022 - Final prehearing conference to begin at 1:00 p.m.

The parties shall meet and confer prior to the prehearing conference regarding trial logistics and proposed stipulations of law, facts, and authenticity of exhibits. To the extent the parties have agreed to stipulate to any issues of law, facts, and/or authenticity of exhibits, the parties shall prepare a list of such stipulations and submit a copy of the stipulations to the ALJ one business day prior to the conference. At the conference, the parties’ list of stipulations shall be marked as “JX1” and signed by each party, and the list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required. Any subsequent stipulations may be offered as agreed by the parties.

Counsel may present any objections to the final proposed witness lists and exhibits. All trial exhibits will be admitted or excluded to the extent practicable. To the extent the parties agree to the

admission of each other's exhibits, the parties shall prepare a list identifying each exhibit to which admissibility is agreed, marked as "JX2" and signed by each party, which list shall be offered into evidence as a joint exhibit. No signature by the ALJ is required.

November 9, 2022 - Commencement of Hearing, to begin at 10:00 a.m..

ADDITIONAL PROVISIONS

1. For all papers that are required to be filed with the Office of the Secretary, the parties shall serve a courtesy copy on the Administrative Law Judge by electronic mail to the following email address: oalj@ftc.gov. The courtesy copy should be transmitted at or shortly after the time of any electronic filing with the Office of the Secretary. Courtesy copies must be transmitted to Office of the Administrative Law Judge directly, and the FTC E-filing system shall not be used for this purpose. The oalj@ftc.gov email account is to be used only for courtesy copies of pleadings filed with the Office of the Secretary and for documents specifically requested of the parties by the Office of Administrative Law Judges. Certificates of service for any pleading shall not include the OALJ email address, or the email address of any OALJ personnel, including the Chief ALJ, but rather shall designate only 600 Pennsylvania Ave., NW, Rm. H-110 as the place of service. **The subject line of all electronic submissions to oalj@ftc.gov shall set forth only the docket number and the title of the submission.** The parties are not required to serve a courtesy copy to the OALJ in hard copy, except upon request. In any instance in which a courtesy copy of a pleading for the Administrative Law Judge cannot be effectuated by electronic mail, counsel shall hand deliver a hard copy to the Office of Administrative Law Judges. Discovery requests and discovery responses shall not be submitted to the Office of Administrative Law Judges.

2. The parties shall serve each other by electronic mail and shall include "Docket 9407" in the re: line and all attached documents in .pdf format. In the event that service through electronic mail is not possible, the parties may serve each other through any method authorized under the Commission's Rules of Practice.

3. Each pleading that cites to unpublished opinions or opinions not available on LEXIS or WESTLAW shall include such copies as exhibits.

4. Each motion (other than a motion to dismiss, motion for summary decision, or a motion for *in camera* treatment) shall be accompanied by a separate signed statement representing that counsel for the moving party has conferred with opposing counsel in an effort in good faith to resolve by agreement the issues raised by the motion and has been unable to reach such an agreement. In addition, pursuant to Rule 3.22(g), for each motion to quash filed pursuant to § 3.34(c), each motion to compel or determine sufficiency pursuant to § 3.38(a), or each motion for sanctions pursuant to § 3.38(b), the required signed statement must also "recite the date, time, and place of each . . . conference between counsel, and the names of all parties participating in each such conference." Motions that fail to include such separate statement may be denied on that ground.

5. Rule 3.22(c) states:

All written motions shall state the particular order, ruling, or action desired and the grounds therefor. Memoranda in support of, or in opposition to, any dispositive motion shall not exceed 10,000 words. Memoranda in support of, or in opposition to, any other motion shall not exceed 2,500 words. Any reply in support of a dispositive motion shall not exceed 5,000 words and any reply in support of any other motion authorized by the Administrative Law Judge or the Commission shall not exceed 1,250 words.

If a party chooses to submit a motion without a separate memorandum, the word count limits of 3.22(c) apply to the motion. If a party chooses to submit a motion with a separate memorandum, absent prior approval of the ALJ, the motion shall be limited to 750 words, and the word count limits of 3.22(c) apply to the memorandum in support of the motion. This provision applies to all motions filed with the Administrative Law Judge, including those filed under Rule 3.38.

6. If papers filed with the Office of the Secretary contain *in camera* or confidential material, the filing party shall mark any such material in the complete version of their submission with **{bold font and braces}**. 16 C.F.R. § 3.45(e). Parties shall be aware of the rules for filings containing such information, including 16 C.F.R. § 4.2.

7. Each party is limited to 50 document requests, including all discrete subparts; 25 interrogatories, including all discrete subparts; and 50 requests for admissions, including all discrete subparts, except that there shall be no limit on the number of requests for admission for authentication and admissibility of exhibits. Any single interrogatory inquiring as to a request for admissions response may address only a single such response. There is no limit to the number of sets of discovery requests the parties may issue, so long as the total number of each type of discovery request, including all subparts, does not exceed these limits. Within seven days of service of a document request, the parties shall confer about the format for the production of electronically stored information. If any federal court proceeding related to this administrative proceeding is initiated, any discovery obtained in this proceeding may be used in the related federal court litigation, and vice versa.

8. Compliance with the scheduled end of discovery requires that the parties serve subpoenas and discovery requests sufficiently in advance of the discovery cut-off and that all responses and objections will be due on or before that date, unless otherwise noted. Any motion to compel responses to discovery requests, or to seek certification of a request for court enforcement of a nonparty subpoena, shall be filed within 30 days of service of the responses and/or objections to the discovery requests or within 20 days after the close of discovery, whichever first occurs; except that, where the parties have been engaging in negotiations over a discovery dispute, including negotiations with any nonparty with regard to a subpoena, the deadline for the motion to compel shall be within 5 days of reaching an impasse.

9. The deposition of any person may be recorded by videotape, provided that the deposing party notifies the deponent and all parties of its intention to record the deposition by

videotape at least five days in advance of the deposition. No deposition, whether recorded by videotape or otherwise, may exceed a single, seven-hour day, unless otherwise agreed to by the parties or ordered by the Administrative Law Judge.

10. The parties shall serve upon one another, at the time of issuance, copies of all subpoenas *duces tecum* and subpoenas *ad testificandum*. For subpoenas *ad testificandum*, the party seeking the deposition shall consult with the other parties before the time and place of the deposition is scheduled. The parties need not separately notice the deposition of a non-party noticed by an opposing party. Unless the parties otherwise agree, at the request of any party, the time and allocation for a non-party deposition shall be divided evenly between them, but the noticing party may use any additional time not used by the opposing party. If no party makes such a request, cross-examination of the witness will be limited to one hour.

11. Non-parties shall provide copies or make available for inspection and copying of documents requested by subpoena to the party issuing the subpoena. The party that has requested documents from non-parties shall provide copies of the documents received from non-parties to the opposing party within three business days of receiving the documents. No deposition of a non-party shall be scheduled between the time a non-party provides documents in response to a subpoena *duces tecum* to a party, and 3 business days after the party provides those documents to the other party, unless a shorter time is required by unforeseen logistical issues in scheduling the deposition, or a non-party produces those documents at the time of the deposition, as agreed to by all parties involved.

12. If a party intends to offer confidential materials of an opposing party or non-party as evidence at the hearing, in providing notice to such non-party, the parties are required to inform each non-party of the strict standards for motions for *in camera* treatment for evidence to be introduced at trial set forth in 16 C.F.R. § 3.45; in *In re Otto Bock Healthcare North American*, 2018 WL 3491602 at *1 (July 2, 2018); and *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). Each party or non-party that files a motion for *in camera* treatment shall provide one copy of the documents for which *in camera* treatment is sought to the Administrative Law Judge.

13. Motions *in limine* are strongly discouraged. Motion *in limine* refers “to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered.” *In re Daniel Chapter One*, 2009 FTC LEXIS 85, *18-20 (April 20, 2009) (citing *Luce v. United States*, 469 U.S. 38, 40 n.2 (1984)). Evidence should be excluded in advance of trial on a motion *in limine* only when the evidence is clearly inadmissible on all potential grounds. *Id.* (citing *Hawthorne Partners v. AT&T Technologies, Inc.*, 831 F. Supp. 1398, 1400 (N.D. Ill. 1993); *Sec. Exch. Comm’n v. U.S. Environmental, Inc.*, 2002 U.S. Dist. LEXIS 19701, at *5-6 (S.D.N.Y. Oct. 16, 2002)). Moreover, the risk of prejudice from giving undue weight to marginally relevant evidence is minimal in a bench trial such as this where the judge is capable of assigning appropriate weight to evidence.

14. The final witness lists shall represent counsels' good faith designation of all potential witnesses who counsel reasonably expect may be called in their case-in-chief. A general designation that a party reserves the right to call anyone on the opposing party's witness list is not sufficient. Parties shall notify the opposing party promptly of changes in witness lists to facilitate completion of discovery within the dates of the scheduling order. The final proposed witness list may not include additional witnesses not listed in the preliminary or supplemental witness lists previously exchanged unless by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

15. If any party wishes to offer a rebuttal witness other than a rebuttal expert, the party shall file a request in writing in the form of a motion to request a rebuttal witness. That motion shall be filed as soon as possible after the testimony sought to be rebutted is known and shall include: (a) the name of any witness being proposed (b) a detailed description of the rebuttal evidence being offered; (c) citations to the record, by page and line number, to the evidence that the party intends to rebut; and shall demonstrate that the witness the party seeks to call has previously been designated on its witness list or adequately explain why the requested witness was not designated on its witness list.

16. Witnesses shall not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. F.R.E. 602.

17. Witnesses not properly designated as expert witnesses shall not provide opinions beyond what is allowed in F.R.E. 701.

18. The parties are required to comply with Rule 3.31A and with the following:

(a) At the time an expert is first listed as a witness by a party, that party shall provide to the other party:

(i) materials fully describing or identifying the background and qualifications of the expert, all publications authored by the expert within the preceding ten years, and all prior cases in which the expert has testified or has been deposed within the preceding four years; and

(ii) transcripts of such testimony in the possession, custody, or control of the producing party or the expert, except that transcript sections that are under seal in a separate proceeding need not be produced.

(b) At the time an expert report is produced, the producing party shall provide to the other party all documents and other written materials relied upon by the expert in formulating an opinion in this case, subject to the provisions of 19(g), except that documents and materials already produced in the case need only be listed by Bates number.

(c) It shall be the responsibility of a party designating an expert witness to ensure that the expert witness is reasonably available for deposition in keeping with this Scheduling Order. Unless otherwise agreed to by the parties or ordered by the Administrative Law Judge, expert

witnesses shall be deposed only once and each expert deposition shall be limited to one day for seven hours.

(d) Each expert report shall include a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the expert in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the expert; and the compensation to be paid for the study and testimony.

(e) A party may not discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of this litigation or preparation for hearing and who is not designated by a party as a testifying witness.

(f) At the time of service of the expert reports, a party shall provide opposing counsel:

(i) a list of all commercially-available computer programs used by the expert in the preparation of the report;

(ii) a copy of all data sets used by the expert, in native file format and processed data file format; and

(iii) all customized computer programs used by the expert in the preparation of the report or necessary to replicate the findings on which the expert report is based.

(g) Experts' disclosures and reports shall comply in all respects with Rule 3.31A, except that neither side must preserve or disclose:

(i) any form of communication or work product shared between any of the parties' counsel and their expert(s), or between any of the experts themselves;

(ii) any form of communication or work product shared between an expert(s) and persons assisting the expert(s);

(iii) expert's notes, unless they constitute the only record of a fact or an assumption relied upon by the expert in formulating an opinion in this case;

(iv) drafts of expert reports, analyses, or other work product; or

(v) data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in the opinions contained in his or her final report.

19. If the expert reports prepared for either party contain confidential information that has been granted *in camera* treatment, the party shall prepare two versions of its expert report(s) in accordance with Additional Provision 6 of this Scheduling Order and 16 C.F.R. § 3.45(e).

20. Due to ongoing public health Concerns related to COVID-19, it is possible that the evidentiary hearing in this matter will be conducted remotely by video conference. The parties are encouraged, in advance of the hearing, to take expert depositions for the purpose of perpetuating trial testimony (i.e., a trial deposition) and to submit such trial testimony as an exhibit in lieu of presenting the expert's testimony via live video at trial. This trial deposition may be conducted in addition to any deposition of an expert witness for purposes of discovery (discovery deposition). Although the parties are encouraged to submit trial depositions in lieu of

live video testimony at trial for all expert witnesses in the case, you may choose to do trial depositions for all or fewer than all experts.

21. Due to ongoing public health concerns related to COVID-19, it is possible that the evidentiary hearing in this matter will be conducted remotely by video conference. To accommodate safety or other concerns of witnesses and attorneys and staff, the parties may, in advance of the hearing, take trial depositions of fact witnesses who had been deposed before the close of discovery and to submit such trial deposition testimony (as video and/or transcript of trial deposition testimony) as an exhibit in lieu of presenting the fact witness' testimony via live video at trial. Although the parties may submit trial depositions in lieu of live video testimony at trial for all fact witnesses in the case, you may choose to do trial depositions for fewer than all fact witnesses

22. An expert witness's testimony is limited to opinions contained in the expert report that has been previously and properly provided to the opposing party. In addition, no opinion will be considered, even if included in an expert report, if the underlying and supporting documents and information have not been properly provided to the opposing party. Unless an expert witness is qualified as a fact witness, an expert witness is only allowed to provide opinion testimony; expert testimony is not considered for the purpose of establishing the underlying facts of the case.

23. The final exhibit lists shall represent counsels' good faith designation of all trial exhibits other than demonstrative, illustrative, or summary exhibits. Additional exhibits may be added after the submission of the final lists only by consent of all parties, or, if the parties do not consent, by an order of the Administrative Law Judge upon a showing of good cause.

24. Properly admitted deposition testimony and properly admitted investigational hearing transcripts are part of the record and need not be read in open court. Videotape deposition excerpts that have been admitted in evidence may be presented in open court only upon prior approval by the Administrative Law Judge.

25. The parties shall provide to one another, and to the Administrative Law Judge and the court reporter, no later than 48 hours in advance, not including weekends and holidays, a list of all witnesses to be called on each day of hearing, subject to possible delays or unforeseen circumstances.

26. The parties shall provide one another with copies of any demonstrative, illustrative or summary exhibits (other than those prepared for cross-examination) 24 hours before they are used with a witness.

27. Complaint Counsel's exhibits shall bear the designation PX and Respondent's exhibits shall bear the designation RX or some other appropriate designation. Complaint Counsel's demonstrative exhibits shall bear the designation PXD and Respondent's demonstrative exhibits shall bear the designation RXD or some other appropriate designation. If demonstrative exhibits are used with a witness, the exhibit will be marked and referred to for identification only. Any demonstrative exhibits referred to by any witness may be included in the

trial record, but they are not part of the evidentiary record and may not be cited to support any disputed fact. Both sides shall number the first page of each exhibit with a single series of consecutive numbers. When an exhibit consists of more than one piece of paper, each page of the exhibit must bear a consecutive control number or some other consecutive page number.

28. At the final prehearing conference, counsel will be required to introduce all exhibits they intend to introduce at trial. The parties shall confer and shall eliminate duplicative exhibits in advance of the final prehearing conference and, if necessary, during trial. For example, if PX100 and RX200 are different copies of the same document, only one of those documents shall be offered into evidence. The parties shall agree in advance as to which exhibit number they intend to use. Counsel shall contact the court reporter regarding submission of exhibits.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: April 25, 2022

PX04

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair
Noah Joshua Phillips
Rebecca Kelly Slaughter
Christine S. Wilson
Alvaro M. Bedoya**

In the Matter of

HOMEADVISOR, INC.,

a corporation,

d/b/a ANGI LEADS,

**d/b/a HOMEADVISOR POWERED
BY ANGI.**

Docket No. 9407

**HOMEADVISOR, INC.’S OBJECTIONS AND RESPONSES TO COMPLAINT
COUNSEL’S NOTICE OF DEPOSITION TO HOMEADVISOR, INC.**

Respondent HomeAdvisor, Inc. (“**HomeAdvisor**”) submits the following responses and objections to Complaint Counsel’s Notice of Deposition to HomeAdvisor.

INTRODUCTORY STATEMENT

All of the General Objections set forth herein apply to and are incorporated into each of HomeAdvisor’s specific responses and objections to each of the topics (the “**Topics**”) contained in Complaint Counsel’s Notice of Deposition Pursuant to Federal Trade Commission Regulation 3.33(c)(1). Any objection or lack of an objection to any portion of any Topic should not be deemed an admission that HomeAdvisor has information sought thereby. HomeAdvisor’s objections and responses to a Topic do not constitute, and shall not be interpreted as, its agreement with or admission as to the truth or accuracy of any legal or factual characterizations

or other allegations stated or implied in any of the Topics. HomeAdvisor's failure to object to any specific Topic on a particular ground or grounds shall not be construed as a waiver of its rights to object on any additional ground(s).

Each of HomeAdvisor's responses to the Topics is made subject to, and without waiving, limiting, or intending to waive: (i) each of HomeAdvisor's General Objections and the above stated reservations; (ii) the right to object on the grounds of privilege, relevancy, or materiality, or any other proper grounds, to the use of information, for any purpose, in whole or in part, in any subsequent step or proceeding in this action or any other action; (iii) the right to object on any and all grounds, at any time, to other discovery requests involving or relating to the subject matter of the present dispute; and (iv) the right at any time to revise, correct and add to or clarify any of the responses herein.

GENERAL OBJECTIONS

1. HomeAdvisor objects to the Topics, and to each definition and instruction they incorporate, to the extent they purport to impose burdens other than or beyond those imposed by the Federal Trade Commission Regulations (the "Regulations"), the applicable practice rules of Chief Administrative Law Judge Chappell, and/or any order issued by the Chief Administrative Law Judge in this case. HomeAdvisor will respond to the Topics pursuant to requirements of the Regulations, and in accordance with any order issued by the Chief Administrative Law Judge in this case.

2. HomeAdvisor objects to the Topics, and to each definition and instruction they incorporate, to the extent they purport to call for the disclosure of documents or information protected by the attorney-client privilege, work product doctrine, the joint defense privilege, the

common interest privilege, or any other applicable privileges or protections on the ground that such discovery is impermissible under Regulation 3.31(c)(4).

3. HomeAdvisor objects to the Topics, and to the definitions and instructions they incorporate, to the extent that they call for legal conclusions and/or are predicated upon unsupported legal conclusions asserted by Complaint Counsel.

4. HomeAdvisor objects to the Topics, and to the definitions and instructions they incorporate, to the extent that they are cumulative and duplicative of other discovery and testimony provided in this matter and the FTC's investigation of HomeAdvisor, especially with respect to the corporate testimony HomeAdvisor provided in response to Specification II.A.1-13 of the FTC's Civil Investigative Demand to HomeAdvisor, FTC File No. 1923106, dated October 5, 2020 ("**October 5, 2020 CID Topics**").

5. HomeAdvisor objects to the Topics, and to the definitions and instructions they incorporate, to the extent that they seek information regarding materials in the possession, custody or control of any person or entity other than HomeAdvisor, or the knowledge of third parties.

6. HomeAdvisor objects to the definition of "**Advertisement**" as overbroad, ambiguous, and unduly burdensome because it encompasses *any* "written or verbal statement, illustration, or depiction that promotes the sale or use of a good or service or is designed to increase consumer interest in a brand, product, or service."

7. HomeAdvisor objects to the definition of "**Lead**" as vague and ambiguous because it encompasses "any set of information sold or otherwise provided" by HomeAdvisor to any service provider, including any information about any "Person" (i) "who has expressed an interest in, or has visited a website related to, home services, or (ii) who has been identified as a

potential customer for home services.” HomeAdvisor will respond based on its understanding of the term “lead” as that term is used within HomeAdvisor.

8. HomeAdvisor objects to the term “**Person**” as overly broad, vague, and not proportional because it means, without limitation, “any natural person, corporation, partnership, or other business association and any other legal entity, including all members, officers, predecessors, assigns, divisions, affiliates, and subsidiaries.”

9. HomeAdvisor objects to the “**Relevant Time Period**” as overbroad, unduly burdensome, irrelevant, and not proportional because it goes beyond the 3-year statute of limitations period prescribed by Section 19 of the FTC Act, 15 U.S. Code § 57b(d).

OBJECTIONS TO TOPICS

DEPOSITION TOPIC 1:

Your development and use of **Advertisements** directed at **Service Providers** or prospective **Service Providers**, including the following types of **Advertisements**:

- a. Mass email or direct mail communications;
- b. Audio or visual media **Advertisements**, including radio spots and magazine ads;
- c. Social media advertising; and
- d. Websites, including but not limited to current and past versions of <https://pro.homeadvisor.com/> and its subpages.

OBJECTION TO DEPOSITION TOPIC 1:

HomeAdvisor objects to this Topic as failing to describe with reasonable particularity the matters on which examination is requested in accordance with Rule 3.33(c)(1), especially to the extent that it seeks testimony about unidentified Advertisements, as that term is expansively and unreasonably defined by Complaint Counsel. This Topic is overbroad, vague, and ambiguous with respect to the terms “development and use.” HomeAdvisor further objects to this Topic as beyond the scope of discovery specified in Rule 3.31(c)(1) to the extent it incorporates Advertisements with representations that are not at issue in this case. HomeAdvisor further objects to this Topic because it is unreasonably cumulative or duplicative of other discovery sought in this case and during Complaint Counsel’s investigation of HomeAdvisor, including but not limited to testimony HomeAdvisor provided on Topics 6 & 7 of the October 5, 2020 CID. Complaint Counsel therefore should identify the additional Advertisements, if any, for which they seek testimony beyond the testimony already provided by HomeAdvisor’s Investigational Hearing on Topics 6 & 7 of the October 5, 2020 CID before HomeAdvisor can agree to prepare a witness on this topic.

DEPOSITION TOPIC 2:

Your maintenance and use of data regarding the frequency with which **Advertisements** identified in Topic 1, above, were viewed, dispatched via physical or electronic mail, or otherwise engaged with, including any web analytics data, impression data, and/or viewer data.

OBJECTION TO DEPOSITION TOPIC 2:

HomeAdvisor objects to this Topic as failing to describe with reasonable particularity the matters on which examination is requested in accordance with Rule 3.33(c)(1). This Topic is also broad, ambiguous, and vague because it seeks testimony about the unidentified Advertisements from Topic 1. Further, this Topic is overbroad, vague, and ambiguous with respect to the terms “maintenance and use.” HomeAdvisor further objects to this Topic as

beyond the scope of discovery specified in Rule 3.31(c)(1) to the extent it incorporates Advertisements with representations that are not at issue in this case.

Subject to and without waiving the foregoing objections, HomeAdvisor will provide non-privileged testimony regarding Advertisements cited in the Complaint.

DEPOSITION TOPIC 3:

The sources for and use of call lists used by **Your** sales agents to place sales calls to prospective **Service Providers**.

OBJECTION TO DEPOSITION TOPIC 3:

HomeAdvisor objects to this Topic as failing to describe with reasonable particularity the matters on which examination is requested in accordance with Rule 3.33(c)(1). HomeAdvisor further objects to this Topic as beyond the scope of discovery specified in Rule 3.31(c)(1) because it is beyond the allegations of the complaint, the proposed relief, and Respondent's Defenses.

DEPOSITION TOPIC 4:

Your policies, practices, procedures, and guidelines regarding the generation, maintenance, and retention of recordings of sales calls to prospective **Service Providers**.

OBJECTION TO DEPOSITION TOPIC 4:

HomeAdvisor objects to this Topic as failing to describe with reasonable particularity the matters on which examination is requested in accordance with Rule 3.33(c)(1). HomeAdvisor further objects to this Topic because the terms "policies, practices, procedures, and guidelines" are overbroad, vague, and ambiguous.

Subject to and without waiving the foregoing objections, HomeAdvisor will provide non-privileged testimony regarding the generation, maintenance, and retention of recordings of sales calls to prospective Service Providers.

DEPOSITION TOPIC 5:

Your policies, practices, procedures, and guidelines regarding **Your** quality assurance department's assessment of sales agents' sales calls with prospective **Service Providers**, including:

- a. The frequency of quality assurance reviews of sales calls;
- b. Any sales agents or categories of sales agents excluded from the quality assurance reviews, either permanently or temporarily;
- c. The methods and forms used to assess, evaluate, or grade **Your** sales agents' sales calls with prospective **Service Providers**; and
- d. The results of quality assurance assessments, evaluations, or grading of **Your** sales agents' sales calls with prospective **Service Providers**.

OBJECTION TO DEPOSITION TOPIC 5:

HomeAdvisor objects to this Topic as failing to describe with reasonable particularity the matters on which examination is requested in accordance with Rule 3.33(c)(1). This Topic is compound as it constitutes at least 4 separate topics. HomeAdvisor further objects to this Topic because the terms "policies, practices, procedures, and guidelines" are overbroad, vague, and ambiguous. HomeAdvisor further objects to this Topic because it is unreasonably cumulative or duplicative of other discovery sought in this case and during Complaint Counsel's investigation of HomeAdvisor, including but not limited to testimony HomeAdvisor provided on Topic 12 of the October 5, 2020 CID. HomeAdvisor therefore will not produce a witness to testify on this topic.

DEPOSITION TOPIC 6:

Your use of CallMiner software or other speech analytics software, including:

- a. **Your** policies, practices, procedures, and guidelines regarding the use of CallMiner software or other speech analytics software for **Your** sales calls to **prospective Service Providers**; and
- b. The data available in the CallMiner software, including any data produced in response to Request for Production Nos. 10 and 23.

OBJECTION TO DEPOSITION TOPIC 6:

HomeAdvisor objects to this Topic as failing to describe with reasonable particularity the matters on which examination is requested in accordance with Rule 3.33(c)(1). This Topic is compound as it constitutes at least 2 separate topics. HomeAdvisor further objects to this Topic because the terms “policies, practices, procedures, and guidelines” are overbroad, vague, and ambiguous. HomeAdvisor further objects to this Topic because it is unreasonably cumulative or duplicative of other discovery sought in this case and during Complaint Counsel’s investigation of HomeAdvisor, including but not limited to testimony HomeAdvisor provided on Topic 12 of the October 5, 2020 CID.

Subject to and without waiving the foregoing objections, HomeAdvisor will provide non-privileged testimony regarding HomeAdvisor’s the use of CallMiner for calls to prospective Service Providers.

DEPOSITION TOPIC 7:

Your policies, practices, procedures, and guidelines regarding the generation of **Service Requests**, including:

- a. All websites (whether operated by You or by an affiliate company) that **You** are aware has generated **Service Requests** that **You** have sold as **Leads** to **Service Providers**; and
- b. Information about the **Service Request** requested from the customer seeking home services and the context and format in which the information is requested.

OBJECTION TO DEPOSITION TOPIC 7:

HomeAdvisor objects to this Topic as failing to describe with reasonable particularity the matters on which examination is requested in accordance with Rule 3.33(c)(1). HomeAdvisor further objects to this Topic as overbroad, vague, and ambiguous because it purports to seek anything relating in **any way** to the generation of Service Requests across “**All websites.**” It is not reasonable to request that a witness memorize and provide testimony on every single website

used to generate service requests throughout the relevant time period at issue in this case, and HomeAdvisor will not undertake that impossible task. HomeAdvisor further objects to this Topic as overbroad, vague, and ambiguous because the phrase “information about the Service Request” is unclear. HomeAdvisor further objects to this Topic as inapt for a topic of deposition testimony because a list of “All websites . . . that You are aware has generated Service Requests . . .” is more appropriate for another discovery device, such as an interrogatory or document request. HomeAdvisor further objects to this request because “context and format” is unclear, vague, and ambiguous. HomeAdvisor further objects to this Topic as beyond the scope of discovery specified in Rule 3.31(c)(1). HomeAdvisor further objects to this Topic because it is unreasonably cumulative or duplicative of other discovery sought in this case and during Complaint Counsel’s investigation of HomeAdvisor, including but not limited to testimony HomeAdvisor provided on Topic 1 of the October 5, 2020 CID. HomeAdvisor therefore will not produce a witness to testify on this topic.

DEPOSITION TOPIC 8:

The automatic and manual filtering process that **You** apply to **Service Requests** and **Leads** prior to matching them with **Service Providers**, including the portion of **Service Requests** and **Leads** that undergo each step in the filtering process.

OBJECTION TO DEPOSITION TOPIC 8:

HomeAdvisor objects to this Topic as failing to describe with reasonable particularity the matters on which examination is requested in accordance with Rule 3.33(c)(1). HomeAdvisor further objects to this Topic as overbroad, vague, and ambiguous because it unclear what is meant by the phrase “the portion of the Service Requests and Leads that undergo each step in the filtering process.” HomeAdvisor further objects to this Topic to the extent it incorporates the false premise that both “Service Requests *and* Leads” are filtered prior to matching to Service Providers. HomeAdvisor further objects to this Topic because it is unreasonably cumulative or

duplicative of other discovery sought in this case and during Complaint Counsel’s investigation of HomeAdvisor. In particular, HomeAdvisor already provided testimony in for Topic 1 of the October 5, 2020 CID regarding the filtering process, and produced an extremely detailed 30(b)(6) deposition taken in the *In re HomeAdvisor, Inc. Litigation*, 16-cv-1849 (D. Colo.) that contains testimony from HomeAdvisor’s designee Joseph Puccio regarding all aspects of HomeAdvisor’s filtering processes. Complaint Counsel therefore should identify the additional testimony, if any, they seek beyond that provided by Mr. Puccio and the remainder of the discovery already provided to Complaint Counsel on this topic before HomeAdvisor can agree to—once again—prepare a witness on this topic.

DEPOSITION TOPIC 9:

Your policies, practices, procedures, and guidelines regarding the matching of **Service Providers** with **Service Requests** and **Leads**, including the circumstances in which a single **Service Request** can be sold by **You** as more than one **Lead**.

OBJECTION TO DEPOSITION TOPIC 9:

HomeAdvisor objects to this Topic as failing to describe with reasonable particularity the matters on which examination is requested in accordance with Rule 3.33(c)(1). HomeAdvisor further objects to this Topic as beyond the scope of discovery specified in Rule 3.31(c)(1) because “circumstances in which a single Service Request can be sold by [HomeAdvisor] as more than one Lead” is not related to the allegations of the complaint, proposed relief, or defenses in this case. HomeAdvisor further objects to this Topic to the extent it incorporates the false premise that both “Service Requests *and* Leads” are matched to Service Providers. HomeAdvisor further objects to this Topic as beyond the scope of discovery specified in Rule 3.31(c)(1) because it appears to encompass lead types not at issue in this case, such as opportunity leads. HomeAdvisor further objects to this Topic because it is unreasonably cumulative or duplicative of other discovery sought in this case and during Complaint Counsel’s investigation of

HomeAdvisor, including but not limited to testimony HomeAdvisor provided on Topic 2 of the October 5, 2020 CID. HomeAdvisor therefore will not produce a witness to testify on this topic.

DEPOSITION TOPIC 10:

Your policies, practices, procedures, and guidelines for reviewing, denying, and/or granting requests for **Lead Credits**, including:

- a. The automated credit request process and the circumstances under which lead credits are automatically granted and/or denied; and
- b. The non-automated credit request process.

OBJECTION TO DEPOSITION TOPIC 10:

HomeAdvisor objects to this Topic as failing to describe with reasonable particularity the matters on which examination is requested in accordance with Rule 3.33(c)(1). HomeAdvisor further objects to this Topic as beyond the scope of discovery specified in Rule 3.31(c)(1) because “circumstances in which a single Service Request can be sold by [HomeAdvisor] as more than one Lead” is not within the scope of the complaint, proposed relief, or defenses in this case. HomeAdvisor further objects to this Topic to the extent it incorporates the false premise that both “Service Requests *and* Leads” are matched to Service Providers. HomeAdvisor further objects to this Topic because it is unreasonably cumulative or duplicative of other discovery sought in this case and during Complaint Counsel’s investigation of HomeAdvisor, including but not limited to testimony HomeAdvisor provided on Topic 5 of the October 5, 2020 CID. HomeAdvisor therefore will not produce a witness to testify on this topic.

DEPOSITION TOPIC 11:

Surveys and/or responses to surveys of current or departing **Service Providers**, including:

- a. Surveys relating to satisfaction with **Your** products and services and relating to the reasons that **Service Providers** end their memberships; and
- b. Any analyses, reporting, and use of such surveys.

OBJECTION TO DEPOSITION TOPIC 11:

HomeAdvisor objects to this Topic as failing to describe with reasonable particularity the matters on which examination is requested in accordance with Rule 3.33(c)(1). HomeAdvisor further objects to this Topic as overbroad, vague, ambiguous, and not proportionate to the needs of the case to the extent it seeks all surveys conducted by HomeAdvisor. HomeAdvisor further objects to this Topic because it is unreasonably cumulative or duplicative of other discovery sought in this case and during Complaint Counsel's investigation of HomeAdvisor.

Subject to and without waiving the foregoing objections, HomeAdvisor will provide non-privileged testimony regarding the surveys relating to SP satisfaction and surveys of SPs ending their memberships that were produced in discovery.

DEPOSITION TOPIC 12:

The manner(s) in which **You** calculate the rate at which **Your Leads** convert into jobs for **Service Providers**, and the results of such calculations.

OBJECTION TO DEPOSITION TOPIC 12:

HomeAdvisor objects to this Topic as failing to describe with reasonable particularity the matters on which examination is requested in accordance with Rule 3.33(c)(1). HomeAdvisor further objects to this Topic as overbroad, vague, ambiguous, and unclear with respect to the phrases "manner(s) in which You calculate the win rate" and the "results of such calculations." HomeAdvisor further objects to this Topic as overly broad, unduly burdensome, and not proportional because it seeks testimony regarding every "manner" in which HomeAdvisor calculates win rates, regardless of how such calculations are used. HomeAdvisor further objects to this Topic because it is unreasonably cumulative or duplicative of other discovery sought in this case and during Complaint Counsel's investigation of HomeAdvisor, including but not

limited to testimony HomeAdvisor provided on Topics 10 & 13 of the October 5, 2020 CID. HomeAdvisor therefore will not produce a witness to testify on this topic.

DEPOSITION TOPIC 13:

Data **You** produce or have produced in response to Interrogatory Nos. 1 and 2.

OBJECTION TO DEPOSITION TOPIC 13:

HomeAdvisor objects to this Topic as failing to describe with reasonable particularity the matters on which examination is requested in accordance with Rule 3.33(c)(1). HomeAdvisor further objects to this Topic as overbroad, vague, ambiguous, and unclear with respect to what particular testimony about the data Complaint Counsel is seeking. It is impossible for HomeAdvisor to meaningfully prepare a witness to provide testimony on the topic “Data You produce[d],” which is so broad it is meaningless. HomeAdvisor further objects to this Topic because it is unreasonably cumulative or duplicative of other discovery sought in this case and during Complaint Counsel’s investigation of HomeAdvisor.

Subject to and without waiving the foregoing objections, HomeAdvisor will provide non-privileged testimony regarding data produced in response to Interrogatory Nos. 1 and 2 generally.

DEPOSITION TOPIC 14:

Documents **You** produce or have produced in response to Complaint Counsel’s Requests for Production in this matter.

OBJECTION TO DEPOSITION TOPIC 14:

HomeAdvisor objects to this Topic because it does not even attempt to describe with reasonable particularity the matters on which examination is requested in accordance with Rule 3.33(c)(1). It would be overly burdensome and disproportionate to prepare a witness to

testimony on *every single* document that HomeAdvisor has produced in this matter, amounting to thousands of pages of material. HomeAdvisor further objects to this Topic as overbroad, vague, ambiguous, and not proportionate to the needs of the case. It is impossible for HomeAdvisor to meaningfully prepare a witness to provide testimony on the topic “Documents You produce[d],” which is so broad it is meaningless. HomeAdvisor therefore will not produce a witness to testify on this topic.

Submitted this 5th day of August 2022.

QUINN EMANUEL URQUHART & SULLIVAN, LLP

/s/ William A. Burck

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Attorneys for Respondent HomeAdvisor, Inc.

CERTIFICATE OF SERVICE

I certify that on August 5, 2022, I caused the foregoing document to be served via email to:

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Counsel Supporting the Complaint

/s/ Kyra R. Simon
Kyra Simon

PX05

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

_____)	
In the Matter of)	
)	
HomeAdvisor, Inc., a corporation,)	
d/b/a Angi Leads,)	Docket No. 9407
d/b/a HomeAdvisor Powered By Angi,)	
)	
Respondent.)	
_____)	

**ORDER GRANTING COMPLAINT COUNSEL’S MOTION TO
COMPEL DOCUMENTS RESPONSIVE TO REQUEST 14**

I.

On August 4, 2022, Federal Trade Commission (“FTC”) Complaint Counsel filed a motion to compel Respondent HomeAdvisor, Inc. (“Respondent” or “HomeAdvisor”) to produce documents responsive to Complaint Counsel’s Request for Production of Documents (“Motion”). Respondent filed an opposition to the Motion on August 11, 2022 (“Opposition”). For the reasons set forth below, the Motion is GRANTED.

II.

On June 8, 2022, Complaint Counsel served Respondent with Complaint Counsel’s Second Set of Requests for Production of Documents (“Requests”), containing three requests numbered 14-16. Request 14 seeks production of all recordings of HomeAdvisor’s sales calls from a specified six-month period, May through October 2019, while Request 15 seeks additional documents related to those recordings, and Request 16 asks for any quality assurance documents relating to call recordings (“Quality Assurance Recordings”). Complaint Counsel seeks an order requiring Respondent to produce documents responsive to Request 14 within five days.

Complaint Counsel states that during the investigation prior to this litigation, the Commission issued a Civil Investigative Demand (“the CID”) in July 2019, that requested, among other things “[a] representative sample . . . between You and service providers, including telephone recordings . . .” and that Respondent produced 1,710 call recordings in response to the CID. Complaint Counsel asserts that when Complaint Counsel

introduced the content of a selected sample of those recordings in support of its April 7, 2022 motion for summary decision, which was denied on August 2, 2022, Respondent asserted that the selected recordings were not representative.

Complaint Counsel states that Respondent informed Complaint Counsel that Respondent would produce approximately 5,000-6,000 sales calls from the specified time period for which it had quality assurance documents (*i.e.*, documents responsive to Complaint Counsel’s Document Request 16, Quality Assurance Recordings). Complaint Counsel states that it proposed to accept those recordings as sufficient in response to Request 14 if Respondent made certain stipulations and representations regarding them, so that the Quality Assurance Recordings could be treated as representative.¹

Respondent states that: in response to the CID, it produced 1,710 recordings of sales calls with prospective service provider customers; it has produced thousands more audio recordings subject to its quality assurance review of sales calls from the May through October 2019 period²; and has offered to produce sales recordings from a later time period that are easier for Respondent to retrieve and produce.³

III.

Pursuant to Commission Rule 3.31(c)(1): “Parties may 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). Discovery shall be limited if the Administrative Law Judge determines that it is “unreasonably cumulative or duplicative,” or the “burden and expense of the proposed discovery . . . outweigh its likely benefit.” 16 C.F.R. § 3.31(c)(2). “Parties resisting discovery of relevant information carry a heavy burden of showing why discovery should be denied.” *In re Daniel Chapter One*, No. 9329, 2009 WL 569694, at *2 (Jan. 9, 2009).

¹ Complaint Counsel stated that it will accept the Quality Assurance Recordings as sufficient production in response to Request 14 if Respondent: (1) “represents that the Quality Assurance Recordings consist of all extant recorded calls from its internal Quality Assurance process from the period of May 1, 2019 through October 31, 2019 for which quality assurance forms exist”; (2) “represents that no retention or deletion policy or procedures have resulted in any particular category of recorded call being omitted from the Quality Assurance Recordings”; and (3) “stipulates that the Quality Assurance Recordings are representative of all sales calls from the period of May 1, 2019 through October 31, 2019.” MacDonald Declaration, Exh. G at 2.

² Respondent states that Quality Assurance Recordings are stored separately from other sales call audio files, making them far easier to retrieve.

³ Respondent states that sales calls from the specified period have been archived and are retrievable only via a “legacy” system that HomeAdvisor no longer operates in its ordinary course of business, and that sales calls from a more recent period are less burdensome to retrieve and produce. Complaint Counsel argues the sales calls from a more recent period would be after Respondent knew it was the subject of an FTC investigation. Respondent will not be allowed to substitute sales calls from a more recent period for the sales calls from the requested period.

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If a party fails to comply with any discovery obligation under the rules, Rule 3.38 authorizes the opposing party to seek an order compelling such compliance. “Unless the Administrative Law Judge determines that the objection is justified, the Administrative Law Judge shall order that . . . [response] be made.” 16 C.F.R. § 3.38(a).

This case involves three counts alleging that HomeAdvisor misrepresented its products in its advertising and sales calls to service providers. *See* Complaint at 14-15. The first element of a deception claim is that the challenged representation was made to consumers. *In re POM Wonderful, LLC*, 155 F.T.C. 1, 6 (2013). In its statement of material facts in opposition to Complaint Counsel’s motion for summary decision, Respondent stated that all sales of HomeAdvisor’s memberships require a telephone conversation between the prospective member and a HomeAdvisor sales agent. (Respondent’s Statement of Material Facts at page 185, attached to Respondent’s Opposition to Complaint Counsel’s Motion for Summary Decision, filed June 6, 2022). Thus, the contents of sales calls are clearly relevant to understanding what claims HomeAdvisor may have made to service providers. Respondent does not dispute that the requested recordings are relevant, but instead asserts that the Request is unduly burdensome and seeks material that is cumulative of sales calls Respondent has already produced.

To support its claim of undue burden, Respondent submitted a declaration from a Senior Manager of Enterprise Infrastructure at HomeAdvisor’s parent company, Angi, Inc. (“Angi”). (“Tracy Declaration”). According to the Tracy Declaration: the audio recording database that retains these calls is no longer in use; the calls have been moved into archival storage; personnel have already spent approximately 80 hours trying to retrieve responsive files; and Tracy anticipates it will take approximately 160 hours for Angi to complete its review for responsive material. Tracy Declaration ¶¶ 2, 3, 5, 6. This explanation does not satisfy Respondent’s heavy burden of showing why discovery should be denied.

Respondent’s argument that sales calls from May through October 2019 are cumulative of sales calls Respondent has already produced also fails. The parties dispute whether the call recordings Respondent has already produced are a representative sample. If the 1,710 calls Respondent has already produced are not a representative sample, then the calls from May through October 2019 would not be cumulative. If the Quality Assurance Recordings are not a representative sample, then the calls from May through October 2019 would not be cumulative. Complaint Counsel will be permitted to obtain the requested additional selections of sales calls.

IV.

For the above stated reasons, the Motion is GRANTED, and it is hereby ORDERED Respondent shall produce material responsive to Complaint Counsel’s Request for Production Request 14 within 14 days. Notwithstanding the foregoing, Respondent may accept the stipulations and conditions regarding the Quality Assurance Recordings offered by Complaint Counsel, as set forth in footnote 1 of this Order, as an alternative to

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producing the documents directed by this Order; provided Respondent's acceptance of those conditions takes place in advance of the production deadline under this Order.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: August 16, 2022

PX06

PUBLIC**quinn emanuel trial lawyers | washington, dc**

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WRITER'S DIRECT DIAL NO.
(202) 538-8276WRITER'S EMAIL ADDRESS
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August 31, 2022

VIA E-MAIL

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Re: In the Matter of HomeAdvisor, Inc. FTC Docket No. 9407

Counsel:

We write on behalf of HomeAdvisor, Inc. (“HomeAdvisor”) regarding your letter dated August 24, 2022 regarding Complaint Counsel’s Notice of Deposition to HomeAdvisor. We address each of the issues raised in your letter in turn below.

Topics That Overlap With the Investigational Hearing of HomeAdvisor (Topics 1, 5, 7-10, 12). Topics 1, 5, 7-10, & 12 are nearly identical to the Investigational Hearing Topics and thus “unreasonably cumulative or duplicative.” See 16 C.F.R. § 3.31(c)(2)(i). During the August 19 meet and confer, you stated that Complaint Counsel did not intend to duplicate the Investigational Hearing. We thus requested that you narrow these Topics to specify the testimony you *do* seek. Your August 24 letter fails to do so.

In your August 24 letter, your assertion that the “specific testimony sought in the Deposition Topics differ from the Specifications in many respects,” is belied by the comparison chart that you appended to your letter. Your letter otherwise fails to explain in any meaningful way how the Topics differ. With respect to Topic 1, your assertion that the “development and use” of advertisements clearly differs from Specifications A.6. & A.7.’s focus on the “decision to make” marketing claims and the “format” and “time periods” in which such claims were made is a

quinn emanuel urquhart & sullivan, llp

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PX06-0001

distinction without a difference. And the fact that Topic 1 encompasses every single advertisement directed at Service Providers whereas Specifications A.6. and A.7. concerned specific claims only underscores the overbreadth of Topic 1. Furthermore, you admit that both Topic 5 and Specification 12 concern the policies, practices, and procedures governing the quality assurance department's review of sales calls *in general*. Your assertion that the "specific subtopics delineated in each are distinct" is meaningless. First, the "subtopics" are essentially the same. *Compare* subpart (c) of Topic 5 ("The methods and forms used to assess, evaluate, or grade **Your** sales agents' sales calls with prospective **Service Providers**") *with* subpart (a) of Specification 12 ("The metrics or standards used to evaluate such calls."). Second, neither Topic 5 nor Specific 12 are limited to the "subtopics," but concern the quality assurance process generally. This is underscored by the fact that although sub-part (a) of Topic 5—"[t]he frequency of quality assurance reviews of sales calls"—does not appear in Specification 12, this very question was asked (and answered) during the Investigational Hearing on this topic. *See* Chad Schott Inv. Hr'g Tr. at 23:8–24:6. You make no attempt to distinguish Topics 7-10 & 12 from the corresponding Investigational Hearing Topics.

The fact that Topics 1, 5, 7-10 & 12 are duplicative of the Investigational Hearing Topics is not cured by your representation that you "do not intend to re-ask questions that were asked and answered by corporate designees speaking for HomeAdvisor during" the Investigational Hearing, (August 24 letter at 1). As the noticing party, Complaint Counsel must "describe with reasonable particularity the matters on which examination is requested," so that HomeAdvisor can prepare a witness(es) on "matters known or reasonably available to the organization." 16 C.F.R. § 3.33(c)(1). Instead, Complaint Counsel improperly puts the onus on HomeAdvisor to try to figure out what Complaint Counsel intends to cover for these Topics that was not covered by the Investigational Hearing.

As we have stated multiple times, HomeAdvisor cannot adequately prepare witnesses to testify on these boundless topics. Nevertheless, we will agree to provide testimony on the general subject matter areas listed in Topics 1, 5, 7–10 & 12. Given Complaint Counsel's refusal to narrow the scope of these Topics in any way, we again emphasize that HomeAdvisor cannot possibly prepare a witness to provide a witness to testify to any greater level of detail.

Topics 1 & 2. Topic 1—which seeks testimony regarding the "development and use of Advertisements directed at Service Providers or prospective Service Providers"—and Topic 2—which seeks testimony regarding Respondent's maintenance and use of data regarding the frequency with which those advertisements were viewed—are overly broad because they cover *all* advertisements made by HomeAdvisor during an eight-year time period (from July 2014 to the present), and are not even limited to the alleged claims at issue in the Complaint. During the meet and confer on August 19, we requested that you identify specific advertisements for Topics 1 & 2. Your August 24 letter does not dispute that these topics are overly broad.

Instead, Complaint Counsel makes the false claim that "Respondent has failed to produce Advertisements in line with its discovery obligations, and thus has itself foreclosed any ability for Complaint Counsel to narrow" Topics 1 & 2. That is wrong. As we recently described in our August 19, 2022 letter, HomeAdvisor has already produced countless advertisements, and has

offered to produce even more in response to Complaint Counsel’s unceasing demands. *See* 8/19/22 N. Phillips Ltr. at 3–4. There is nothing prevent Complaint Counsel from identifying the specific advertisements—or at a minimum identifying specific claims like it did for Specifications A.6 and A.7 covered by the Investigational Hearing. HomeAdvisor cannot possibly prepare a witness to testify about every single advertisement in an eight-year period, and thus HomeAdvisor will designate a witness to testify generally about HomeAdvisor’s advertising practices.

Topic 3. We disagree with your unsupported assertion that how HomeAdvisor identified the prospective Service Providers that received sales calls is relevant to the sophistication or understanding of such Service Providers. HomeAdvisor has also not “waived” any objection to the relevance of such information. Nevertheless, in the spirit of compromise, HomeAdvisor agrees to designate a witness for this Topic. In so doing, HomeAdvisor does not concede the relevance of this information and does not waive its right to argue that such information is irrelevant at trial.

Topic 5. From your August 24 letter, we understand that you are not seeking testimony regarding the policies, practices, procedures, and guidelines regarding the quality assurance of sales calls beyond the information identified in subparts (a)—(d) of Topic 5. All of this material was covered by the Investigational Hearing. As stated above, we agree to designate a witness to provide only general testimony on this Topic.

Topic 7. From your August 24 letter, we understand that you are seeking testimony regarding “HomeAdvisor’s own policies, practices, procedures, and guidelines regarding the generation of Service Requests on HomeAdvisor’s own website as well as affiliate websites generally,” rather than seeking testimony about every single website that has generated a service request. As stated above, we agree to designate a witness to testify about the generation of service requests generally.

Topic 8. In your August 24 letter, you agreed to stipulate to treat the June 24, 2021 transcript of the deposition of Joseph Puccio in his capacity as a 30(b)(6) witness as corporate testimony provided in this case and withdraw Topic 8 if HomeAdvisor produced the deposition exhibits. The exhibits were produced on Friday August 26, and thus any dispute on this now-withdrawn topic is moot.

Topic 12. HomeAdvisor objected this Topic because it seeks testimony about the calculation of win rates regardless of which the purpose that such calculations were used for. As you are aware from discovery, many departments relied on win rates for various internal purposes that cannot be meaningfully compared to any claims about win rates. Given Complaint Counsel’s refusal to narrow this Topic, HomeAdvisor will designate a witness to testify about win rates generally.

* * *

Given the delay in receiving your August 19 letter, which refuses to narrow the scope of the Topics in any meaningful way, contrary to your representations during the meet and confer process, we are unable to provide dates before the close of fact discovery set for September 6,

2022. We thus propose submitting a joint stipulation that permits these depositions to be taken after the close of fact discovery, set for September 6, 2022.

Very truly yours,

/s/ Kyra Simon

Kyra Simon

PX07

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

In the Matter of

HOMEADVISOR, INC.,

a corporation,

d/b/a ANGI LEADS,

**d/b/a HOMEADVISOR POWERED
BY ANGI.**

Docket No. 9407

**JOINT MOTION TO EXTEND THE TIME TO
COMPLETE FACT DISCOVERY**

Counsel for Respondent HomeAdvisor, Inc. (“**HomeAdvisor**” or “**Respondent**”) and Complaint Counsel (collectively, the “**Parties**”) jointly move this Court under 16 C.F.R. § 4.3(b), to extend the time for the completion of fact discovery to allow for the completion of the deposition of HomeAdvisor.

Complaint Counsel served a Notice of Deposition to HomeAdvisor pursuant to 16 C.F.R. § 3.33(c)(1) (the “**Notice**”) on July 8, 2022. The Notice lists 14 separate topics for which HomeAdvisor must designate a witness(es) to testify (the “**Topics**”). HomeAdvisor served responses and objections to the Notice on August 5, 2022. For the remainder of the month of August, the Parties engaged in good faith negotiations regarding the scope of the Topics, and successfully resolved all disputes concerning the Topics as of August 31, 2022. HomeAdvisor anticipates designating multiple witnesses to cover the 12 Topics for which it agreed to provide

testimony. Under the Scheduling Order, fact discovery closes on September 6, 2022.* Thus, to provide the Parties with a reasonable time to schedule the deposition for each of the designees, and to prepare for the depositions, the Parties propose a two-week extension to the deadline to complete fact discovery to **September 20, 2022**, solely for purposes of completing the deposition of HomeAdvisor. All other fact discovery shall be completed by September 6, 2022. By joining this motion, the parties do not preclude or otherwise limit their rights to subsequently file any motion to compel. Although the parties reserve their rights to propose further adjustments to the pre-hearing schedule, HomeAdvisor and Complaint Counsel do not currently propose any further adjustments to the pre-hearing schedule.

The Administrative Law Judge may extend deadlines for “good cause shown.” 16 C.F.R. § 4.3(b). Good cause exists for the brief extension sought in this motion because (1) it will provide the Parties reasonable time to schedule the depositions of multiple witnesses designated to testify on behalf of HomeAdvisor; (2) it will provide HomeAdvisor reasonable time fulfill its obligation under to 16 C.F.R. § 3.33(c)(1) to prepare its designees on “matters known or reasonably available to” HomeAdvisor; and (3) none of the proposed extensions will delay the overall schedule or require a change to the hearing date.

No party will suffer any undue prejudice from the brief extensions requested. Moreover, the limited extension will not delay other procedural deadlines or the hearing date set for November, 9, 2022.

* The Scheduling Order sets September 6 as the “close of discovery, other than discovery permitted under Rule 3.24(a)(4), depositions of experts, and discovery for purposes of authenticity and admissibility of exhibits.” For brevity, the Parties herein refer to this as the close of “fact discovery.”

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For these reasons, the Parties respectfully request that the Court enter the attached proposed Order.

Dated: September 6, 2022

Respectfully Submitted,

/s/ Jennifer J. Barrett

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

In the Matter of

HOMEADVISOR, INC.,

a corporation,

d/b/a ANGI LEADS,

**d/b/a HOMEADVISOR POWERED
BY ANGI.**

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Docket No. 9407

[PROPOSED] ORDER

Having carefully considered Respondent’s and Complaint Counsel’s Joint Motion To Extend the Time to Complete Fact Discovery, it is hereby

ORDERED, that the close of fact discovery is extended to September 20, 2022, solely for the purposes of allowing the completion of the deposition of HomeAdvisor.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

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CERTIFICATE OF SERVICE

I hereby certify that on September 6, 2022, I filed the foregoing document electronically through the Office of the Secretary’s FTC E-filing system, which will send notification of such filing to:

April Tabor
Secretary Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113 Washington, DC 20580
electronicfilings@ftc.gov

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-110
Washington, DC 20580

I also certify that I caused a true and correct copy of the foregoing documents to be served via email upon the following:

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Counsel Supporting the Complaint

Dated: September 6, 2022

By: /s/ George T. Phillips
George T. Phillips

Counsel for Respondent HomeAdvisor, Inc.

CERTIFICATE FOR ELECTRONIC FILING

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

Dated: September 6, 2022

By: /s/ George T. Phillips
George T. Phillips

Counsel for Respondent HomeAdvisor, Inc.

PX08

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

In the Matter of

**HOMEADVISOR, INC., a corporation,
d/b/a ANGI LEADS,
d/b/a HOMEADVISOR POWERED BY ANGI.**

DOCKET NO. 9407

**COMPLAINT COUNSEL’S OPPOSITION TO
NON-PARTY TRIARES, INC.’S EMERGENCY PETITION TO STAY DEPOSITION
AND TO QUASH OR LIMIT SUBPOENA AD TESTIFICANDUM**

Triares, Inc. (“Triares”), brought its “emergency” motion to quash (“Motion”) twenty-four hours before a deposition it had known about—and had been trying to evade—since early July.¹ This untimely Motion relies on a nonexistent agreement: that Complaint Counsel agreed it would withdraw its deposition subpoena in exchange for a supplemental production. As Triares acknowledged in its own correspondence (*see* Motion Exhibit J), Complaint Counsel never made such an agreement and agreed only to consider the possibility of voluntary withdrawal if the production rendered the deposition unnecessary. After receiving a production that was not what Triares’ Counsel described and that contained documents that do not speak for themselves, Complaint Counsel determined in good faith that the deposition would go forward.

Triares’ unilateral assumption that the deposition would be cancelled should not permit it to dodge providing testimony on subjects that are highly relevant to the claims in this action, especially where the robust Protective Order governing this matter will shield Triares’ claimed

¹ Complaint Counsel convened the deposition September 1, 2022, without a deponent. Complaint Counsel reserved all rights on the record and considers the deposition to be pending.

trade secrets from disclosure. Triares' baseless and untimely Motion should be denied, and Triares should appear for deposition at a mutually agreeable date.

I. BACKGROUND

A. Complaint Counsel's Subpoenas, the First-Agreed Deposition Date, and Triares' Much-Delayed Initial Document Production

Triares sold consumer information to Respondent HomeAdvisor, Inc. ("HomeAdvisor"), which HomeAdvisor sold as "leads." Motion at 2. The Complaint alleges HomeAdvisor misrepresents characteristics of its leads, including those received from Triares. Compl. ¶¶ 61-63. On June 28, 2022, Complaint Counsel issued a Subpoena Duces Tecum ("Document Subpoena") and a Subpoena Ad Testificandum ("Deposition Subpoena") to Triares for information relating to the characteristics of leads it gathered and sold to HomeAdvisor. *See* PX01, attached to the accompanying Declaration of Mary Elizabeth Howe ("Howe Decl.").² Triares was required to produce documents on or before July 28, 2022, and sit for deposition on August 11, 2022. Triares' Motion concedes it was served with these subpoenas on or about July 7, 2022. Motion at 2.

To accommodate Triares' counsel's travel schedule, Complaint Counsel agreed that Triares would not be deemed out of compliance with either subpoena if it engaged in a meet-and-confer by August 1, 2022. PX02 p. 12. At an August 1, 2022 meet-and-confer, Triares' counsel stated a production responsive to the Document Subpoena would be forthcoming that day; however, Complaint Counsel received nothing. Howe Decl. ¶ 3.a.i. Complaint Counsel repeatedly followed up by email, PX02 pp. 5-9, and Triares' counsel responded with delays. PX03 p. 1; PX02 p. 6; PX04 p. 1.

² Exhibits to the Howe Decl. are referred to herein by their "PX" designation.

While production was pending, Triares' counsel emailed its availability for deposition on August 26, 2022, and later wrote that he "would like to discuss further whether [deposition] is even necessary once you have a chance to review what we provide." PX02 p. 6. On August 18, 2022—forty-two days after service—Triares produced *two* documents along with lengthy objections, many of which were not previously raised with Complaint Counsel. *See* PX05. Both documents produced appear to have originated from HomeAdvisor rather than Triares, *id.* pp. 16-62, and Triares objected in full to producing in response to four of the five document requests. On August 19, 2022, Complaint Counsel wrote to Triares' counsel that Triares' deposition would go forward as agreed on August 26, 2022. PX02 p.3.

B. Complaint Counsel's Agreement to Consider Voluntary Withdrawal of the Deposition Subpoena if Triares Made a Supplemental Document Production

Triares' counsel asked to confer again on August 22, 2022. PX02 pp. 1-2. On that call, Triares' counsel asked if Complaint Counsel would consider accepting an additional document production in lieu of taking Triares' deposition. Howe Decl. ¶ 3.b.ii. Complaint Counsel agreed to consider the possibility that a supplemental production might obviate the need for a deposition, but Complaint Counsel explained it could not consider withdrawing the deposition without seeing the production and could not guarantee would cancel the deposition even if Triares provided additional documents. *Id.* Complaint Counsel later memorialized this position via email. PX06 p. 17 (Aug. 24, 2022 Howe email); *see also* Motion Exhibit H. Complaint Counsel made clear the parameters for its agreement to consider voluntarily cancelling the deposition: (i) the deposition would be rescheduled to a date before the end of fact discovery to ensure it could go forward if necessary; (ii) Triares would execute two records certifications included with the Document Subpoena; and (iii) Triares would provide a concrete proposal for

the scope and timing of a supplemental production within 24 hours. *Id.* ¶ 3.b.iii. By subsequent email, Triares’ deposition was rescheduled to September 1, 2022. PX06 p. 14.

Complaint Counsel never agreed during any of its conferrals with Triares’ counsel or subsequent email correspondence that it would cancel Triares’ deposition in exchange for an additional document production. *See* Howe Decl. ¶ 3; PX06; PX08.

C. Triares’ Supplemental Document Productions and Failure to Appear at Deposition

Complaint Counsel and Triares’ counsel further conferred on August 24, 2022, regarding the scope of Triares’ proposed supplemental production, including that Triares was preparing to produce a “spreadsheet” of consumer data shared with HomeAdvisor. Howe Decl. ¶ 3.c.i. On August 26, 2022, Triares produced 11 additional documents and a supplemental written response. *Id.* ¶¶ 4.b., 5; PX07. Complaint Counsel confirmed by email with Triares’ counsel that it had received the full scope of what Triares intended to produce. PX08 pp. 15-16.

The eleven documents produced consist of:

- i. One of the two records certifications Complaint Counsel requested, Howe Decl. ¶ 4.b.ix.;
- ii. Eight .pdf-format documents that appear to be image captures of the “submission form” portion of eight websites, none of which contain the date the webpage was captured or the websites’ respective URLs, and one of does not indicate what website it is, *id.* ¶ 4.b.i.-viii. (responsive to Req. 1);
- iii. Two .pdf-format documents that each appear to be approximately 25,000 pages of raw XML (eXtensible Markup Language) code of Triares’ consumer data, rather than the single spreadsheet of organized data that Complaint Counsel was told to expect, *id.* ¶ 4.b.x.-xi (responsive to Req. 4).

Complaint Counsel reviewed these documents immediately and, on the next business day, informed Triares' Counsel that Triares' deposition would go forward on September 1, as previously agreed. *Id.* ¶ 5. Triares' Counsel thereafter filed the Motion and stated by email that Triares would not appear at the deposition. PX06 p.1.

Triares did not serve Complaint Counsel with formal written objections and responses to the Deposition Subpoena before filing the Motion, Howe Decl. ¶ 6, and Triares' Counsel did not ask for specific limitations or modifications to any deposition topic until an August 31, 2022 email sent after service of the Motion. *See* PX08 pp. 1-3. On September 1, 2022, Complaint Counsel appeared at the deposition; Triares did not. Howe Decl. ¶ 7.

II. ARGUMENT

Triares' untimely Motion grossly misstates the parties' conferrals and course of dealing, referencing nonexistent "agreements" to narrow or abandon discovery. In reality, Triares has engaged in a campaign to evade providing any meaningful discovery, providing only 13 documents (most of which do not speak for themselves) and failing to appear for a duly-noticed deposition on an agreed-upon date.

In bringing its Motion, Triares bore the burden of showing why discovery should be denied, *see In re Polypore Int'l, Inc.*, 2008 WL 4947490, at *6 (F.T.C. Nov. 18, 2008), and has failed to do so. The testimony sought is directly relevant to Complaint Counsel's claims: HomeAdvisor is alleged to have made false or misleading claims about leads received from Triares, and Triares is the sole party in possession of the truth regarding how it gathered leads. Indeed, Triares explicitly relies on being the only party in possession of that information, stating that its means of gathering leads are secrets that HomeAdvisor does not know. Where, as here, a strict Protective Order bars disclosure of information Triares designates as "Confidential" from

the public *and from HomeAdvisor itself*, Protective Order at ¶¶ 7-8, and the information sought is centrally relevant, Complaint Counsel’s ability to take testimony from Triares should not be limited or forestalled.

Triares’ complete disregard of this proceeding, the Rules of Procedure, and its own representations to Complaint Counsel should not be permitted to stand. Triares’ Motion should be denied, and Triares should sit for deposition.

A. Triares’ Motion is Untimely

Triares’ motion is plainly untimely and violates the Rules of Practice.³ Under Commission Rule 3.34(c), Triares was bound to file the Motion “within the earlier of 10 days after service thereof or the time for compliance therewith.” 16 C.F.R. § 3.34(c). Triares acknowledges it received the Deposition Subpoena on or around July 7, 2022, and the subpoena itself originally set the deposition for August 11, 2022. The “earlier” date by which Triares should have moved was therefore July 18, 2022, nearly two months ago. Instead, in that time, Triares rescheduled the deposition twice on mutually convenient dates, without serving even cursory written objections to the Deposition Subpoena or its scope, in apparent hope that the deposition would be voluntarily cancelled. *See* Howe Decl. ¶¶ 5-6; PX02 p. 8; PX06 p. 14. Triares’ failure to file until August 31, 2022—55 days after service, 30 days after the initial meet-and-confer, and the day before the agreed-upon date for the deposition—is fatal to Triares’ Motion.⁴

³ Triares’ Motion lacks a statement under 16 C.F.R. §3.22(g); although Triares’ Counsel conferred regarding concerns including relevance and trade secrets, it did not raise its request to limit the deposition until after filing the Motion. PX08 pp. 1-3. The Scheduling Order makes clear that this failure alone is fatal to Triares’ Motion. Scheduling Order Additional Provision ¶ 4.

⁴ Even considering Complaint Counsel’s agreement that it would not view Triares as out of compliance before August 1, 2022, *see* PX02, the filing deadline expired at the latest on August 11, 2022.

B. Complaint Counsel Never Agreed to Withdraw the Deposition Subpoena in Exchange for a Supplemental Production

Triares’ “understanding” that its deposition would not go forward flies in the face of explicit admonitions—both verbal and written—that Complaint Counsel would not guarantee cancellation of the deposition. Even the highly selective exhibits attached by Triares make plain that no agreement to cancel the deposition existed:

- i. Exhibit H, August 24, 2022 (Complaint Counsel): “As we discussed, an additional production does not guarantee that Complaint Counsel will consent to forego your client’s deposition; we will have to review what your client ultimately produces to make that determination.” (emphasis added).
- ii. Exhibit J, August 24, 2022 (Triares’ Counsel): “As discussed, you have agreed to review the additional documentation/data we expect to send you tomorrow in consideration of withdrawing the deposition subpoena. I understand you cannot make that determination until you review the documentation/data”

Rather than obviating the need for deposition, Triares’ production ensured its necessity. The webpages produced do not contain URLs, timestamps, or, in one case, even the name of the website, and they do not contain the terms and conditions that the consumer was accepting by submitting their information. Howe Decl. ¶ 4.b.i.-viii. Moreover, when Triares touts that it produced 50,000 pages of documents, it neglects to mention that thousands of pages consist of *raw code* in place of the single organized spreadsheet of consumer data that Triares claimed it would provide. *Id.* ¶¶ 3.c.i., 4.b.x.-xi. Neither this inscrutable code nor the haphazard website captures speak for themselves; it is necessary for Triares to testify about these documents.

Complaint Counsel considered in good faith whether Triares' deposition was necessary and determined that it was. Complaint Counsel cannot be bound by a fictional agreement or an unfounded "understanding." Triares should sit for deposition.

C. The Testimony Sought is Highly Relevant and Should Not Be Limited

Triares' motion woefully misconstrues its relevance to this case. Complaint Counsel alleges HomeAdvisor made false or misleading statements about the leads it sells, including *inter alia*, that they concern consumers who are "serious" about hiring a service professional, not "just window-shop[ping]," "actively seeking the services you provide in your area," and/or who knowingly sought HomeAdvisor's assistance in selecting a service provider. *See, e.g.*, Compl. ¶¶ 27-29, 44, 61-63. Where Triares actually collected consumers' information, Triares, and not HomeAdvisor, possesses the proof of what those consumers actually expressed and what they were told when they submitted their information—i.e., proof of falsity, especially where Triares avers that it does not share this information with HomeAdvisor. Motion at 2 ("To generate Leads, Triares uses proprietary technology and methodologies that it closely guards and protects from public disclosure including, especially, the Respondent"). Triares' position also confirms this discovery is neither cumulative or duplicative because Triares alone possesses this information, which falls squarely within permissible discovery under Rule 3.31(c)(1). *See In re Otto Block HeathCare N. Am. Inc.*, 2018 WL 1836647 (F.T.C Mar. 28, 2018) (denying motion to quash where respondent argued third party deponent was "uniquely in possession of" information "critical to the claims and defenses in this case").

D. The Protective Order More Than Adequately Addresses Triares' Trade Secret Concerns

The trade secret limitation Triares has requested—and never properly sought prior to the Motion—must be rejected. The Motion crystalizes that Triares' supposed trade secrets are the

key relevant testimony that Triares must provide and no limitation should be ordered.

Triares' argues that testifying regarding its non-public methods will result in its "inevitable demise." Motion at 10. Its hyperbole should not be credited because Triares has not explained why this action's robust Protective Order is insufficient. *See In re Lab. Corp.*, 2011 FTC LEXIS 5, at *3-5 (Jan. 28, 2011) (denying a third party's request to restrict discovery because an existing protective order would adequately protect trade secrets); *see also In re Lab. Corp.*, 2011 WL 668514, at *2 (F.T.C. Feb. 17, 2011) ("The fact that discovery might result in the disclosure of sensitive competitive information is not a basis for denying such discovery.") (quoting *LeBaron v. Rohm & Hass Co.*, 441 F.2d 575, 577 (9th Cir. 1971)). Complaint Counsel's subpoenas do not demand that Triares' "proprietary, highly confidential, and competitively sensitive information" be revealed to the public *or even to Respondent*. Triares is free to designate its testimony "Confidential" and ensure that (i) it may not be disclosed beyond "outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s) provided they are not employees of a respondent," under Paragraph 7, and (ii) it may not be used other than in this proceeding any appeal therefrom, under Paragraph 8. Because Triares' claimed interest in secrecy is adequately addressed by the Protective Order, its Motion should be denied.

CONCLUSION

For the foregoing reasons, Triares' Motion should be denied.

Respectfully submitted,

Dated: September 12, 2022

s/ M. Elizabeth Howe
Sophia H. Calderón
Colin D. A. MacDonald
Breena M. Roos
M. Elizabeth Howe
Katharine F. Barach
Nadine S. Samter
Ben A. Halpern-Meeken

Federal Trade Commission
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Counsel Supporting the Complaint

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2022, I filed the foregoing document electronically using the FTC’s E-Filing system, which will send notification of such filing to:

April Tabor
Office of the Secretary
Federal Trade Commission
Constitution Center
400 Seventh Street, SW, Suite 5610
Washington, D.C. 20024
ElectronicFilings@ftc.gov

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

I further certify that on September 12, 2022, I caused the foregoing document to be served via email to:

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Dawn Y. Yamane Hewett
Kyra R. Simon
Quinn Emanuel Urquhart & Sullivan, LLP
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Washington, DC 20005
(202) 538-8000
williamburck@quinnemanuel.com
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Counsel for Respondent HomeAdvisor, Inc.

Travis J. Jacobs
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Boston, MA 02108
(800) 642-4783
tjacobs@thejacobsllaw.com

Counsel for Triares, Inc.

Dated: September 12, 2022

By: s/ M. Elizabeth Howe
M. Elizabeth Howe

Counsel Supporting the Complaint

PX09

PUBLIC**Howe, Beth**

From: Calderon, Sophie
Sent: Tuesday, September 13, 2022 8:51 PM
To: Kyra Simon; Roos, Breena; Howe, Beth; MacDonald, Colin; Barach, Kate; Samter, Nadine S.; Halpern-Meekin, Ben
Cc: JenniferBarrett-contact; Neil Phillips; George Phillips; Kathryn Bonacorsi
Subject: RE: HomeAdvisor - Dkt. No. 9407: proposed joint motion for extending deadline for deposition of HomeAdvisor

Counsel,

Notifying us that Respondent intends to designate **four** separate witnesses, and offering them on overlapping days with less than a week's notice, is not sufficient under Rule 3.33(c)(1). *In the Matter of LabMD*, [Order Granting Respondent's Motion to Require Complaint Counsel to Designate Witness For Rule 3.33 Deposition](#) (ruling that Rule 3.33(c)(1) deponent has duty to designate witnesses in advance of deposition and providing noticing party option to push deposition date to two weeks after such designation was made); *see also* Fed. R. Civ. P. 30, Advisory Committee Notes, 2000 Amendment ("For purposes of [the] durational limit, the deposition of each person designated under Rule 30(b)(6) should be considered a separate deposition."). Further, as addressed in my earlier email below, we still have not received complete productions in response to RFP Nos. 6, 7, 8, which relate to topics designated to Mr. Zurcher (RFP 8, which overlaps with Deposition Topic 3) and Ms. Mead (RFPs 6 and 7, which overlap with Deposition Topics 1 and 2).

We therefore ask that you provide additional dates for and stipulate to a second extension of the fact discovery cutoff for purposes of this deposition. With respect to Mr. Alff, please let us know if he is available on September 20. With respect to the remaining three witnesses, please provide available dates during the week of September 26.

Best,
 Sophie

From: Kyra Simon <kyrasimon@quinnemanuel.com>
Sent: Tuesday, September 13, 2022 3:28 PM
To: Calderon, Sophie <scalderon@ftc.gov>; Roos, Breena <broos@ftc.gov>; Howe, Beth <mhowe@ftc.gov>; MacDonald, Colin <cmacdonald@ftc.gov>; Barach, Kate <kbarach@ftc.gov>; Samter, Nadine S. <NSAMTER@ftc.gov>
Cc: JenniferBarrett-contact <jenniferbarrett@quinnemanuel.com>; Neil Phillips <neilphillips@quinnemanuel.com>; George Phillips <georgephillips@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>
Subject: RE: HomeAdvisor - Dkt. No. 9407: proposed joint motion for extending deadline for deposition of HomeAdvisor

Counsel,

For the deposition of HomeAdvisor, Matt Zurcher will testify on Topics 3, 7, 9, 10, 11, & 12, Chris Alff will testify on Topics 4-6, Julie Mead will testify on Topics 1 & 2, and James Gagliardo will testify on Topic 13. These designations are subject to our objections and reservations memorialized in our responses and objections to the notice of deposition dated August 5, 2022, and our letter dated August 31, 2022.

Mr. Zurcher and Mr. Alff are available for a deposition in their capacity as corporate designees on September 19 and Ms. Mead and Mr. Gagliardo are available on September 20.

Please let confirm that these dates work on your end and let us what time you plan to start for each witness.

Thanks,

PUBLIC

Kyra

From: Calderon, Sophie <scalderon@ftc.gov>
Sent: Monday, September 12, 2022 6:45 PM
To: Kyra Simon <kyrasimon@quinnemanuel.com>; Roos, Breena <broos@ftc.gov>; Howe, Beth <mhowe@ftc.gov>; MacDonald, Colin <cmacdonald@ftc.gov>; Barach, Kate <kbarach@ftc.gov>; Samter, Nadine S. <NSAMTER@ftc.gov>
Cc: Jennifer Barrett <jenniferbarrett@quinnemanuel.com>; Neil Phillips <neilphillips@quinnemanuel.com>; George Phillips <georgephillips@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>
Subject: RE: HomeAdvisor - Dkt. No. 9407: proposed joint motion for extending deadline for deposition of HomeAdvisor

[EXTERNAL EMAIL from scalderon@ftc.gov]

Counsel,

We'd like to follow up on several outstanding items.

First, we have not heard from you regarding Respondent's designees for Complaint Counsel's deposition of HomeAdvisor. Please identify designees and topics, as well as proposed deposition dates, no later than close of business tomorrow.

Second, regarding the VPI recording database, during our call with Mr. Tracy last week, Respondent agreed to look into whether it is possible to produce a text-searchable spreadsheet of the recordings in VPI. We have not heard back from you on that question, and we have not been able to identify a way to export a spreadsheet in our own explorations of the database. Further, we have significant concerns regarding Respondent's choice to provide this database in response to the ALJ's August 16, 2022 Order, given that the database is largely unsearchable, that a vast majority of the records in the database appear to be non-responsive to Request 14 and/or irrelevant to this case, and that records can only be bulk-exported in batches of up to 100 records. We therefore request a meet and confer conference to discuss these issues. We are available tomorrow, Sept. 13, 9am-3pm PT.

Finally, during our call last Wednesday, September 7, Neil promised to report back on several outstanding discovery issues. Neil addressed one of those issues (Respondent's response to RFPs 19 and 20) on Friday. We'd appreciate an update on the remaining outstanding issues:

- Regarding RFP 6, Neil indicated that Respondent is assessing the feasibility of producing the service provider communication templates identified in our September 1, 2022 letter.
- Regarding RFP 7, Neil stated that Respondent will look into whether it has web analytics data.
- Regarding RFP 8, Neil stated that he is looking into whether there are any additional places to search for responsive documents in light of Michael Metzger's testimony regarding the "prospecting team."

Best,
 Sophie

From: Calderon, Sophie
Sent: Friday, September 9, 2022 3:58 PM
To: Kyra Simon <kyrasimon@quinnemanuel.com>; Roos, Breena <broos@ftc.gov>; Howe, Beth <mhowe@ftc.gov>; MacDonald, Colin <cmacdonald@ftc.gov>; Barach, Kate <kbarach@ftc.gov>; Samter, Nadine S. <NSAMTER@ftc.gov>
Cc: JenniferBarrett-contact <jenniferbarrett@quinnemanuel.com>; Neil Phillips <neilphillips@quinnemanuel.com>; George Phillips <georgephillips@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>
Subject: RE: HomeAdvisor - Dkt. No. 9407: proposed joint motion for extending deadline for deposition of HomeAdvisor

Counsel,

PUBLIC

Last Friday we proposed that the parties ask the Commission to push back the evidentiary hearing and all upcoming deadlines. We have not heard from you regarding that proposal. We'd appreciate a response by Monday; if we cannot reach an agreement on a joint motion, Complaint Counsel does intend to file an expedited motion with the Commission. We are happy to discuss this further.

Best,
Sophie

From: Kyra Simon <kyrasimon@quinnemanuel.com>

Sent: Tuesday, September 6, 2022 1:32 PM

To: Calderon, Sophie <scalderon@ftc.gov>; Roos, Breena <broos@ftc.gov>; Howe, Beth <mhowe@ftc.gov>; MacDonald, Colin <cmacdonald@ftc.gov>; Barach, Kate <kbarach@ftc.gov>; Samter, Nadine S. <NSAMTER@ftc.gov>

Cc: JenniferBarrett-contact <jenniferbarrett@quinnemanuel.com>; Neil Phillips <neilphillips@quinnemanuel.com>; George Phillips <georgephillips@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>

Subject: RE: HomeAdvisor - Dkt. No. 9407: proposed joint motion for extending deadline for deposition of HomeAdvisor

Thank you Sophie

From: Calderon, Sophie <scalderon@ftc.gov>

Sent: Tuesday, September 6, 2022 4:29 PM

To: Kyra Simon <kyrasimon@quinnemanuel.com>; Roos, Breena <broos@ftc.gov>; Howe, Beth <mhowe@ftc.gov>; MacDonald, Colin <cmacdonald@ftc.gov>; Barach, Kate <kbarach@ftc.gov>; Samter, Nadine S. <NSAMTER@ftc.gov>

Cc: Jennifer Barrett <jenniferbarrett@quinnemanuel.com>; Neil Phillips <neilphillips@quinnemanuel.com>; George Phillips <georgephillips@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>

Subject: RE: HomeAdvisor - Dkt. No. 9407: proposed joint motion for extending deadline for deposition of HomeAdvisor

[EXTERNAL EMAIL from scalderon@ftc.gov]

Thanks, Kyra. Yes, you have our consent.

From: Kyra Simon <kyrasimon@quinnemanuel.com>

Sent: Tuesday, September 6, 2022 1:00 PM

To: Roos, Breena <broos@ftc.gov>; Calderon, Sophie <scalderon@ftc.gov>; Howe, Beth <mhowe@ftc.gov>; MacDonald, Colin <cmacdonald@ftc.gov>; Barach, Kate <kbarach@ftc.gov>; Samter, Nadine S. <NSAMTER@ftc.gov>

Cc: JenniferBarrett-contact <jenniferbarrett@quinnemanuel.com>; Neil Phillips <neilphillips@quinnemanuel.com>; George Phillips <georgephillips@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>

Subject: RE: HomeAdvisor - Dkt. No. 9407: proposed joint motion for extending deadline for deposition of HomeAdvisor

Breena,

We agree to include your additions to the joint motion. We will get this on file this afternoon. Can you please confirm that we have your consent to sign for you electronically?

We will get back to you on your proposal to move the hearing date as soon as we can.

Thank you,
Kyra

PUBLIC

From: Roos, Breena <broos@ftc.gov>
Sent: Tuesday, September 6, 2022 2:55 PM
To: Kyra Simon <kyrasimon@quinnemanuel.com>; Calderon, Sophie <scalderon@ftc.gov>; Howe, Beth <mhowe@ftc.gov>; MacDonald, Colin <cmacdonald@ftc.gov>; Barach, Kate <kbarach@ftc.gov>; Samter, Nadine S. <NSAMTER@ftc.gov>
Cc: Jennifer Barrett <jenniferbarrett@quinnemanuel.com>; Neil Phillips <neilphillips@quinnemanuel.com>; George Phillips <georgephillips@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Tyler Stapleton <tylerstapleton@quinnemanuel.com>
Subject: RE: HomeAdvisor - Dkt. No. 9407: proposed joint motion for extending deadline for deposition of HomeAdvisor

[EXTERNAL EMAIL from broos@ftc.gov]

Kyra,

Thanks for drafting. We'd like to include the addition in the attached.

As to the expert dates, we have again reviewed the current case schedule, and don't see any room to push the expert dates without further modifications to the case schedule. We look forward to hearing back from you regarding our proposal to move the hearing date.

Regards,
Breena

Breena M. Roos | Attorney | Federal Trade Commission | Northwest Regional Office
915 Second Ave., Ste. 2896 | Seattle, WA 98174
Tel.: (206) 220-4472 | Email: broos@ftc.gov | she/her

From: Kyra Simon <kyrasimon@quinnemanuel.com>
Sent: Tuesday, September 6, 2022 9:10 AM
To: Calderon, Sophie <scalderon@ftc.gov>; Roos, Breena <broos@ftc.gov>; Howe, Beth <mhowe@ftc.gov>; MacDonald, Colin <cmacdonald@ftc.gov>; Barach, Kate <kbarach@ftc.gov>; Samter, Nadine S. <NSAMTER@ftc.gov>
Cc: JenniferBarrett-contact <jenniferbarrett@quinnemanuel.com>; Neil Phillips <neilphillips@quinnemanuel.com>; George Phillips <georgephillips@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; Tyler Stapleton <tylerstapleton@quinnemanuel.com>
Subject: HomeAdvisor - Dkt. No. 9407: proposed joint motion for extending deadline for deposition of HomeAdvisor

Counsel,

Please see attached for a proposed joint motion to extend fact discovery for purposes of completing the deposition of HomeAdvisor.

I also wanted to reiterate that we are willing to push the expert dates in the interim while we consider Complaint Counsel's broader request to push back all upcoming deadlines by 90 days. Please let us know if you have a proposal for extending the expert deadlines that can be incorporated into this joint motion.

Please provide comments or approval to file the attached joint motion at your earliest convenience so that we can get it on file today.

PUBLIC

Thanks,
Kyra

Kyra Simon
Associate,
Quinn Emanuel Urquhart & Sullivan, LLP

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PX10

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

In the Matter of

**HOMEADVISOR, INC., a corporation,
d/b/a ANGI LEADS,
d/b/a HOMEADVISOR POWERED BY ANGI.**

DOCKET NO. 9407

**COMPLAINT COUNSEL’S EXPEDITED MOTION FOR
DISCOVERY SANCTIONS AGAINST HOMEADVISOR, INC.**

For months, Respondent HomeAdvisor, Inc. (“HomeAdvisor”) has evaded its basic discovery obligations by resisting production of relevant sales call recordings. After this Court ordered production of those recordings, HomeAdvisor instead dumped **30-50 million** data files, many of which are nonresponsive, into a practically unsearchable depository. Because HomeAdvisor’s conduct undermines the Court’s authority and its ability to evaluate Respondent’s business practices, Complaint Counsel moves pursuant to Commission Rule 3.38(b) to sanction HomeAdvisor by ordering that previously produced sales call recordings will be treated as representative, by prohibiting HomeAdvisor from objecting to the introduction and use of those recordings, and by prohibiting HomeAdvisor from introducing evidence to the contrary.

EXPEDITION

Fact discovery has closed, expert deadlines are imminent, and Complaint Counsel’s expert cannot prepare a report without the recordings HomeAdvisor effectively refuses to produce. Pursuant to Rule 3.22(d), Complaint Counsel respectfully requests that HomeAdvisor be required to respond to this motion by **September 16, 2022**, and that the Court rule on the

motion by **September 20, 2022**, to expeditiously address HomeAdvisor's conduct and resolve this issue. A proposed order is attached.

BACKGROUND

The Complaint alleges that HomeAdvisor's sales representatives misled service providers about the viability of HomeAdvisor's leads and the cost of an annual membership with an mHelpDesk subscription. Sales call recordings are critical evidence of HomeAdvisor's misleading practices.

On April 7, 2022, Complaint Counsel moved for summary decision and attached, *inter alia*, transcripts of 100 sales call recordings randomly selected from the recordings produced by Respondent in response to the Commission's CID. Complaint Counsel's Motion for Summary Decision ("SD Motion"). In its June 6 opposition, Respondent argued that the sample introduced was not representative. Respondent's Statement of Material Facts for Which There is a Genuine Issue for Trial, attached to Respondent's Opposition to Complaint Counsel's Motion for Summary Decision at 186-87. On June 8, Complaint Counsel served HomeAdvisor with its Second Set of Requests for Production of Documents, including Request 14 (the "Request"). Declaration of Sophia H. Calderón ("Calderón Decl."), Exh. A. The Request sought all sales call recordings for which Respondent's voice log process was completed¹ from May 1 through October 31, 2019, to be produced "via electronic mail, or at such time and place as may be agreed upon by all counsel." *Id.*

HomeAdvisor resisted the requested production, eventually representing that it would produce approximately 5,000-6,000 sales call recordings from the specified time period. Calderón Decl., Exh. B. Complaint Counsel proposed accepting those recordings as sufficient if

¹ Completion of the voice log process is a proxy for identifying calls that resulted in a sale.

HomeAdvisor stipulated to, *inter alia*, treating them as representative. *Id.* HomeAdvisor refused, and Complaint Counsel moved to compel. On August 7, Respondent produced via FTP approximately 4,700 recordings, Calderón Decl., Exh. C, which Complaint Counsel understands to be the approximately 5,000-6,000 recordings that Respondent represented it would produce.

On August 16, this Court granted Complaint Counsel's motion and ordered HomeAdvisor to either produce all material responsive to the Request or stipulate to treating the prior production of sales call recordings as representative. Order Granting Complaint Counsel's Mot. to Compel Documents Responsive to Request 14 at 3-4 ("Order").

HomeAdvisor did neither. On August 30, the last day possible to comply with the Order, HomeAdvisor sent Complaint Counsel a link to a virtual machine that the company claimed would allow access to a HomeAdvisor database containing the requested recordings. Calderón Decl., Exh. D. Complaint Counsel was initially unable to access the database. Calderón Decl. ¶ 7. On September 2, Complaint Counsel attended a videoconference that included HomeAdvisor's counsel and William Cole Bryant Tracy, a Senior Manager of Enterprise Infrastructure with Respondent's parent company. *Id.* ¶ 8. During that videoconference, Mr. Tracy shared his screen, demonstrated how to access the database, and explained how to search for, listen to, and download files in the database. *Id.* ¶ 9. He explained that the database contained millions of data files that correspond to audio files, that some data files contained audio files accessible to Complaint Counsel, that Complaint Counsel could determine whether a data file contained an accessible audio file only by checking it individually, and that records could be downloaded only in groups of 100 or less. *Id.*

On September 13, 2022, Complaint Counsel accessed the database and confirmed that not all of the data files contained accessible audio files and that Complaint Counsel could determine

whether a data file contained an accessible audio file only by checking it individually. *Id.* ¶ 11. Complaint Counsel also determined that records could be searched for only by date, that records containing accessible audio files did not necessarily concern calls on which the voice log process was completed, and that it is seemingly impossible to download a complete list of the records. *Id.*

ARGUMENT

HomeAdvisor has chosen, repeatedly, to withhold and obscure responsive, highly relevant recordings. Rather than produce a reasonable amount of usable, electronically stored information (ESI), HomeAdvisor dumped *millions of files* in a virtual repository and told Complaint Counsel to check their responsiveness individually. No matter the form HomeAdvisor stores recordings, “it is not enough for a party who produces documents as they are kept in the ordinary course of business to simply invite the requesting party to sift through its file cabinets in an effort to locate those documents that are responsive to its requests.” *In the Matter of Traffic Jam Events, LLC*, 2021 WL 3701656, at *3-4 (F.T.C. Aug. 9, 2021) (quoting *Henderson v. Holiday CVS, L.L.C.*, No. 09-80909-CIV, 2010 WL 11505168, at *2 (S.D. Fla. Aug. 11, 2010)). Because this is little more than a “document dump with an instruction to the requesting party to go fish,” *id.* (internal quotation marks omitted), HomeAdvisor has violated this Court’s Order and Commission Rule 3.37(e).

1. Legal Standards

Rule 3.37(c), which governs discovery of ESI, provides that ESI must be produced in the form requested, 16 C.F.R. § 3.37(c)(ii); *see also* Fed. R. Civ. P. 34(b)(2)(E)(ii),² or, if no form was requested, in a form in which it is ordinarily maintained or in a reasonably usable form.

Landry v. Swire Oilfield Servs., L.L.C., 323 F.R.D. 360, 390 (D.N.M. 2018) (quoting Federal

² Because Rule 3.37(c) is similar to Federal Rule 34(b)(2)(E), this Court may look to cases applying the federal rule for guidance. *Traffic Jam*, 2021 WL 3701656, at *4 n.5.

Rule 34(b)(2)(E)(i)-(ii)). Where ESI is produced as ordinarily maintained, a producing party cannot merely facilitate access to voluminous documents without regard for responsiveness. *Traffic Jam*, 2021 WL 3701656, at *3. Furthermore, whether ESI is searchable is a factor in determining its reasonable usability. *See, e.g., Landry*, 323 F.R.D. at 390. ESI usability is critical to evaluating responsiveness because Commission Rule 3.37(c) is not satisfied where the requesting party cannot reasonably determine which documents are responsive to its requests. *See Traffic Jam*, 2021 WL 3701656, at *3; *see also Landry*, 323 F.R.D. at 388 (“ESI can be jumbled beyond usefulness—by dumping them out of their file directories and onto the requesting party—just as easily as hard copy documents can.”); *cf. Nat’l Jewish Health v. WebMD Health Servs. Grp., Inc.*, 305 F.R.D. 247, 254 (D. Colo. 2014) (applying Federal Rule 34(b)(2)(E)(i)) (quoting *Armor Screen Corp. v. Storm Catcher, Inc.*, No. 07-81091-Civ-Ryskamp/Vitunac, 2009 WL 291160, at *2 (S.D. Fla. Feb. 5, 2009)).

2. The Millions of Data Files Are Not Reasonably Usable

HomeAdvisor created a functionally unsearchable depository of millions of data files rather than actually produce the responsive recordings.³ There is no functional way to narrow to responsive recordings. Indeed, the millions of data files: (a) can be searched only by date; (b) cannot be narrowed by whether they have an accessible audio file; (c) cannot be narrowed by whether the audio file, if accessible, concerns a call on which the voice log process was completed; and (d) can be downloaded only in batches of up to 100. Calderón Decl. ¶¶ 9, 11. Further, there is seemingly no way to export a list of the of data files. *Id.* ¶ 11.

³ HomeAdvisor acknowledges this investigation began in July 2019, *see* Memorandum of Law in Opposition to Complaint Counsel’s Motion to Compel Respondent to Comply with Complaint Counsel’s Request for Production of Documents at 2, yet its own declarant says Respondent moved certain of the files in question to “extreme long term retention” in 2020 or 2021. *Id.*, RX8 at 2-3. If, as Respondent asserts, its own actions—after litigation became reasonably foreseeable—functionally destroyed or obscured evidence, then HomeAdvisor ignored retention obligations for years.

These issues were foreseeable, but HomeAdvisor chose to provide this data dump on the last day possible. HomeAdvisor could have attempted a technological workaround months ago. Alternatively, HomeAdvisor could have accepted Complaint Counsel's offered stipulation that another set of recordings be treated as responsive. Instead, HomeAdvisor dumped millions of files into a pile and told Complaint Counsel, "Go fish." Rule 3.37(c)(ii) requires more. *Cf. Henderson*, 2010 WL 11505168, at *3 ("A party exercising Rule 34's option to produce records as they are kept in the usual course of business should organize the documents in such a manner that [the requesting party] may obtain, with reasonable effort, the documents responsive to their requests.") (quoting *Armor Screen Corp.*, 2009 WL 291160, at *2) (alteration in original).

HomeAdvisor's foot-dragging has severely impinged Complaint Counsel's ability to analyze relevant evidence to meet fast-approaching expert discovery deadlines and prepare for trial. Indeed, Complaint Counsel cannot create a representative sample of recordings from a vastly overinclusive database of files that provides no mechanism to facially identify which files are actually responsive. HomeAdvisor should have raised these technological hurdles months ago,⁴ rather than as a surprise at the close of discovery.

Because HomeAdvisor produced essentially unsearchable ESI and has not provided the ability to make the ESI searchable, its production is unusable. *See Landry*, 323 F.R.D. at 390. And because Complaint Counsel is unable to determine which, if any, of the recordings are responsive, Rule 3.37(c) is unsatisfied. *Cf. Nat'l Jewish Health*, 305 F.R.D. at 254 (applying Fed. R. Civ. P. 34(b)(2)(E)(i)).

⁴ In its opposition to Complaint Counsel's motion to compel, HomeAdvisor submitted a declaration from Mr. Tracy purporting to outline the burden in complying with the Request. In outlining the efforts it would take to *restore* responsive recordings, Mr. Tracy made no mention to the Court that HomeAdvisor's production would be in this unusable form.

3. *Sanctions Are Warranted*

HomeAdvisor violated this Court’s Order and Rule 3.37(c). Sanctions are warranted under Rule 3.38. “Sanctions may be imposed for failing to comply with a discovery obligation where the failure to comply was ‘unjustified and the sanction imposed is reasonable in light of the material withheld and the purposes of Rule 3.38(b).’” *Traffic Jam*, 2021 WL 3701656, at *3 (quoting *In re ECM BioFilms, Inc.*, 2014 FTC LEXIS 44, at *5 (Mar. 11, 2014)). “Rule 3.38 is designed both to prohibit a party from resting on its own concealment and to maintain the integrity of the administrative process.” *In the Matter of LabMD, Inc.*, 2014 WL 1100693, at *4 (F.T.C. Mar. 10, 2014) (quoting *In re Grand Union Co.*, 102 F.T.C. 812, 1983 WL 486347, at *208 (1983)). Because HomeAdvisor has not complied with discovery obligations imposed by both Rule 3.37 and this Court, the Court may impose sanctions, including but not limited to, the following:

[...]

(2) Order that the matter be admitted or that the admission, testimony, documents, or other evidence would have been adverse to the party;

(3) Rule that for the purposes of the proceeding the matter or matters concerning which the order or subpoena was issued be taken as established adversely to the party;

(4) Rule that the party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer, agent, expert, or fact witness, or the documents or other evidence, or upon any other improperly withheld or undisclosed materials, information, witnesses, or other discovery[.]

16 C.F.R. § 3.38(b).

Here, HomeAdvisor resisted production of these responsive and highly relevant recordings practically until the close of discovery. And what it “produced” is unusable. Recently, in *Traffic Jam*, this Court concluded that merely providing access to a large volume of records

without the ability to identify responsive documents was sanctionable and an adverse inference was warranted. 2021 WL 3701656, at *6-7. Similarly, HomeAdvisor did no more than tell Complaint Counsel where it can access records and took no steps to designate or describe responsive recordings. Regardless of how these records were originally maintained, HomeAdvisor must do more than provide access to a massive depository of unusable data. *Henderson*, 2010 WL 11505168, at *3 (citing *Alford v. Aaron Rents, Inc.*, 2010 WL 2765260, at *22 (S.D. Ill. May 17, 2010)). As in *Traffic Jam*, sanctions are warranted.

Further, HomeAdvisor should not benefit from defying this Court's authority by limiting Complaint Counsel's ability to meet upcoming expert discovery deadlines and prepare for trial through a last-minute data dump. HomeAdvisor's latest ploy has made it functionally impossible for Complaint Counsel and/or an expert to analyze the recordings, including by selecting a random sample of recordings that resulted in sales. This burden should fall on its creator: HomeAdvisor.

The Court has discretion to fashion appropriate sanctions. 16 C.F.R. § 3.38(b). A proportionate sanction under Rule 3.38(b)(2)-(3) would nullify the evidentiary injuries⁵ caused by HomeAdvisor's discovery abuses by ordering that a set of HomeAdvisor's previously produced sales call recordings be treated as representative of Respondent's sales calls. Accordingly, the Court should order that the sample of 100 recordings submitted in support of the SD Motion be treated as representative of all of Respondent's sales calls. Alternatively, the Court should order that the approximately 4,700 sales call recordings produced on August 7 be

⁵ Additionally, HomeAdvisor's discovery abuses have caused temporal injuries to Complaint Counsel, who cannot even *begin* to analyze the responsive recordings. Simultaneous with this filing, Complaint Counsel has therefore filed a motion with the Commission to continue the current evidentiary hearing date.

treated as representative of all of Respondent's sales calls for the time period from May 1 through October 31, 2019.

To effectuate these sanctions, related and necessary sanctions pursuant to Rule 3.38(b)(4) should prohibit HomeAdvisor from: (1) objecting to the introduction of the representative sample; (2) relying upon withheld recordings; and (3) introducing and using secondary evidence to show what withheld evidence would have shown. These sanctions are appropriate to HomeAdvisor's conduct and proportionate to the significance of the withheld evidence. *Traffic Jam*, 2021 WL 3701656, at *5-6.

CONCLUSION

For three months, HomeAdvisor has failed to uphold its discovery obligations by resisting compliance with Complaint Counsel's Request for relevant evidence, by rejecting Complaint Counsel's reasonable compromise offer, and by defying this Court's Order. Now, it has deposited millions of effectively unusable files in an electronic depository under its sole control. Sanctions are appropriate and necessary under Rule 3.38(b) to protect the integrity of this proceeding and ameliorate the consequences of HomeAdvisor's discovery abuses.

Respectfully submitted,

Dated: September 14, 2022

s/ Sophia H. Calderón

Sophia H. Calderón
Colin D. A. MacDonald
Breena M. Roos
M. Elizabeth Howe
Katharine F. Barach
Nadine S. Samter
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Counsel Supporting the Complaint

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

In the Matter of

**HOMEADVISOR, INC., a corporation,
d/b/a ANGI LEADS,
d/b/a HOMEADVISOR POWERED BY ANGI.**

DOCKET NO. 9407

STATEMENT REGARDING MEET AND CONFERS

Pursuant to Paragraph 4 of the Scheduling Order issued in this matter, Complaint Counsel submits this Statement regarding its conferences with Respondent's Counsel regarding the Requests for Production which form the basis of its contemporaneously filed motion:

On **September 2, 2022, at 1:00pm Pacific Time**, Complaint Counsel Sophia H. Calderón, Breena M. Roos, and Ben A. Halpern-MeeKin met via Zoom with Neil T. Phillips, Respondent's Counsel, and William Cole Bryant Tracy, a Senior Manager of Enterprise Infrastructure with Respondent's parent company, to discuss the virtual machine (VM) and virtual private network (VPN) that HomeAdvisor set up to provide access to the recordings produced. Mr. Tracy explained the steps by which Complaint Counsel were supposed to be able to access the VM through the VPN. Complaint Counsel asked how to identify recordings produced that were responsive to the request for production, and Mr. Tracy explained that each recording would need to be accessed individually to do so.

On **September 7, 2022, at 12:15pm Pacific Time**, Complaint Counsel Sophia H. Calderón, Colin D. A. MacDonald, Breena M. Roos, and Ben A. Halpern-MeeKin met via Zoom with Respondent's Counsel Neil T. Phillips. Technology support employees from both Respondent and Complaint Counsel participated in the call. During this call, Complaint Counsel

explained that it was having ongoing difficulties accessing the repository, and Respondent made technical modifications and provided additional access information which allowed Complaint Counsel to access the repository itself for the first time.

On **September 13, 2022, at 12:00pm Pacific Time**, Complaint Counsel Sophia H. Calderón, Colin D. A. MacDonald, and Ben A. Halpern-Meekin met via Zoom call with Respondent's Counsel Neil T. Phillips and Kyra Simon. During this call, Complaint Counsel explained that the technical limitations of the repository system made accessing the responsive calls and separating them from nonresponsive calls functionally impossible. Complaint Counsel stated that it viewed this as insufficient to meet Respondent's obligations under the Court's August 16 order. Respondent disagreed. Complaint Counsel invited Respondent to reconsider its position regarding stipulating to the representativeness of previously produced sales call recordings. Respondent declined.

Respectfully submitted,

Dated: September 14, 2022

s/ Sophia H. Calderón

Sophia H. Calderón
Colin D. A. MacDonald
Breena M. Roos
M. Elizabeth Howe
Katharine F. Barach
Nadine S. Samter
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Counsel Supporting the Complaint

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
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In the Matter of

**HOMEADVISOR, INC., a corporation,
d/b/a ANGI LEADS,
d/b/a HOMEADVISOR POWERED BY ANGI.**

DOCKET NO. 9407

**[PROPOSED] ORDER GRANTING COMPLAINT COUNSEL’S MOTION FOR
DISCOVERY SANCTIONS**

Pursuant to FTC Rule of Practice 3.38, 16 C.F.R. § 3.38, Complaint Counsel’s Motion for Discovery Sanctions Against HomeAdvisor, Inc. is GRANTED and it is hereby:

[Complaint Counsel has offered two proposed sanctions below. For the Court’s convenience, proposed order language for both are listed below.]

[Proposed Sanctions No. 1:]

ORDERED that the sample of 100 calls transcribed and attached to Complaint Counsel’s Motion for Summary Decision as attachments to PX0022 (referred to herein as the “Representative Calls”) shall be treated as representative of all sales calls made by Respondent during the time period relevant to this litigation, AND

ORDERED that Respondent is prohibited from challenging the reliability or admissibility of the Representative Calls, AND

ORDERED that Respondent is prohibited from introducing as evidence: (a) any call recordings not produced to Complaint Counsel before September 6, 2022, the close of discovery in this matter; and (b) any secondary evidence that purport to show the contents of any call recordings not produced to Complaint Counsel before September 6, 2022, the close of discovery in this matter. Respondent is prohibited from introducing as evidence any call recording, or any

secondary evidence that purports to show the contents of any call recording, that was only accessible to Complaint Counsel via the virtual machine referenced in Respondent's August 30, 2022 email to Complaint Counsel.

[Proposed Sanctions No. 2]

ORDERED that the approximately 4,700 sales calls Respondent produced on August 7, 2022 (referred to herein as the "Representative Calls") shall be treated as representative of all sales calls made by Respondent during the time period from May 1, 2019 through October 31, 2019, AND

ORDERED that Respondent is prohibited from challenging the reliability or admissibility of the Representative Calls, AND

ORDERED that Respondent is prohibited from introducing as evidence: (a) any call recordings not produced to Complaint Counsel before September 6, 2022, the close of discovery in this matter; and (b) any secondary evidence that purport to show the contents of any call recordings not produced to Complaint Counsel before September 6, 2022, the close of discovery in this matter. Respondent is prohibited from introducing as evidence any call recording, or any secondary evidence that purports to show the contents of any call recording, that was only accessible to Complaint Counsel via the virtual machine referenced in Respondent's August 30, 2022 email to Complaint Counsel.

SO ORDERED.

Dated:

D. Michael Chappell
Chief Administrative Law Judge

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

In the Matter of

**HOMEADVISOR, INC., a corporation,
d/b/a ANGI LEADS,
d/b/a HOMEADVISOR POWERED BY ANGI.**

DOCKET NO. 9407

[PROPOSED] ORDER REQUIRING EXPEDITED RESPONSE

On September 14, 2022, Complaint Counsel filed an Expedited Motion for Discovery Sanctions Against HomeAdvisor, Inc. with respect to compliance with this Court's August 16 Order Granting Complaint Counsel's Motion to Compel Documents Responsive to Request 14. Under the Scheduling Order in this case, as amended, fact discovery closed on September 6, 2022, Respondent is due to sit for a corporate deposition, and expert discovery deadlines are approaching as soon as September 20, 2022.

Pursuant to FTC Rule 3.22(d), the Administrative Law Judge may shorten the time within which a response is due. It is HEREBY ORDERED that Respondent HomeAdvisor, Inc. shall file any response to the Motion no later than 5:00 p.m. on September 16, 2022.

SO ORDERED.

Dated:

D. Michael Chappell
Chief Administrative Law Judge

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

In the Matter of

**HOMEADVISOR, INC., a corporation,
d/b/a ANGI LEADS,
d/b/a HOMEADVISOR POWERED BY ANGI.**

DOCKET NO. 9407

DECLARATION OF SOPHIA H. CALDERÓN

I, Sophia H. Calderón, declare as follows:

1. I am an attorney at the Federal Trade Commission (“FTC”) and Complaint Counsel in this proceeding. Unless otherwise stated, I have personal knowledge of the information contained herein.

2. Complaint Counsel’s Second Set of Requests for Production of Documents (the “Requests”) were served by Complaint Counsel on Respondent’s Counsel on June 8, 2022, and are attached as Exhibit A. As reflected in Exhibit A, Request 14 sought production of:

For the time period from May 1, 2019, through October 31, 2019, recordings of all telephone calls between **Your** sales agents and prospective **Service Providers** during which the prospective **Service Provider** completed **Your Voice Log Process** and responded affirmatively to all of the questions asked in **Your Voice Log Process**. This request seeks, to the extent available, recordings of the entirety of such telephone calls, and is not limited to the recordings of the **Voice Log Process**.

The Requests defined “Voice Log Process” as “the process that is described in paragraphs 4 and 5 of the Declaration of Michael Metzger, RX0095 to Respondent HomeAdvisor, Inc.’s Memorandum of Law in Opposition to Complaint Counsel’s Motion for Summary Decision.” Completion of the voice log process is a proxy for identifying calls that resulted in a sale.

3. Complaint Counsel sent a letter to Respondent’s Counsel on July 29, 2022, proposing particular circumstances in which it would accept Respondent’s production of 5,000-6,000 sales call recordings as sufficient in response to Request 14. Complaint Counsel’s July 29 letter is attached as Exhibit B.

4. On August 7, 2022, I received an email from Mr. Neil Phillips, counsel for Respondent, stating that the email contained a file transfer protocol (FTP) link by which Complaint Counsel could download a production that included approximately 4,700 “QA audio recordings.” Mr. Phillips’ August 7 email is attached as Exhibit C.

5. Prior to August 30, 2022, Respondent’s document productions in the above-captioned matter (including the August 7 production referenced above in Paragraph 4) were sent via emails to Complaint Counsel containing an FTP link by which Complaint Counsel could download the production.

6. On August 30, 2022, I received an email from Mr. Phillips containing instructions on how to access a virtual machine that would purportedly provide Complaint Counsel with access to a database containing “the requested archived sales audio recordings from May 1, 2019 through October 31, 2019.” In his August 30 email, Mr. Phillips noted that the database contained icons for both responsive and non-responsive audio recordings and that only the icons for responsive audio recording would contain actual audio files accessible to Complaint Counsel. Mr. Phillips’ August 30 email is attached as Exhibit D.

7. Despite following the instructions provided by Mr. Phillips, I was initially unable to access the database because accessing the database required me to download a software to my computer that security features on my computer put in place by the FTC would not allow me to download. I informed Mr. Phillips of this by email on September 1, 2022. My September 1 email is attached as Exhibit E.

8. On September 2, 2022, I attended a meeting, via Zoom, with Mr. Phillips and Mr. William Cole Bryant Tracy, who I understand is a Senior Manager of Enterprise Infrastructure with Respondent’s parent company, Angi. Also present were Breena Roos and Ben Halpern-Meekin, who are Complaint Counsel.

9. During this meeting, Mr. Tracy shared his screen, demonstrated how to access the database containing the audio recordings, and explained how to search for, listen to, and download files in the database. Mr. Tracy explained the database contained between 30 and 50 million data files that correspond to audio files, that not all of the data files contained audio files

accessible to Complaint Counsel, that Complaint Counsel could determine whether a data file contained an accessible audio file only by checking it individually, and that records could only be viewed and downloaded in groups of 100 or fewer.

10. Complaint Counsel was not able to access the database until September 7, 2022.

11. On September 13, 2022, I accessed the database and confirmed that not all of the data files contained accessible audio files, and that I could determine whether a data file contained an accessible audio file only by checking it individually. I listened to four audio files accessible in the database: the voice log process did not occur during any of them and one of them was not a sales call. I also determined that the only way to search the records in the database was by date, and that there were approximately 13.4 million data files between May 1, 2019, and October 31, 2019. Exporting a complete list of the records in the database did not appear to be possible.

I declare under penalty of perjury that to the best of my knowledge and belief the foregoing is true and accurate.

Dated: September 14, 2022

s/ Sophia H. Calderón

Sophia H. Calderón

Federal Trade Commission

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Counsel Supporting the Complaint

EXHIBIT A

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

**HOMEADVISOR, INC., a corporation,
d/b/a ANGI LEADS,
d/b/a HOMEADVISOR POWERED BY ANGI.**

DOCKET NO. 9407

**COMPLAINT COUNSEL'S SECOND SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS**

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.37(a), Complaint Counsel hereby requests that Respondent HomeAdvisor, Inc. produce all documents, electronically stored information, and other things in its possession, custody, or control responsive to the following requests within 30 days via electronic mail, or at such time and place as may be agreed upon by all counsel.

I. DEFINITIONS

Notwithstanding any definition below, each word, term, or phrase used in this Schedule is intended to have the broadest meaning permitted under the Federal Trade Commission's Rules of Practice.

1. "And" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request any information that might otherwise be construed to be outside its scope.
2. "Any" shall be construed to include "all," and "all" shall be construed to include the word "any."
3. "Each" shall be construed to include "every," and "every" shall be construed to include "each."
4. "Includes" or "including" means "including, but not limited to," so as to avoid excluding any information that might otherwise be construed to be within the scope of any request for information.
5. "Relating to" or "related to" means discussing, describing, reflecting, referring, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

6. **“Lead”** means any set of information sold or otherwise provided by **You** to a **Service Provider** about a **Person** (i) who has expressed an interest in, or has visited a website related to, home services, or (ii) who has been identified as a potential customer for home services.
7. **“Person”** means any natural person, corporation, partnership, or other business association and any other legal entity, including all members, officers, predecessors, assigns, divisions, affiliates, and subsidiaries.
8. **“Service Provider”** means a **Person** who sells home services and has purchased a membership and/or **Leads** from **You**.
9. **“You,” “Your,”** or **“Yourself”** means HomeAdvisor, Inc., also doing business as Angi Leads, also doing business as HomeAdvisor Powered by Angi, or any agent, employee, officer, or representative thereof.
10. **“Voice Log Process”** means the process that is described in paragraphs 4 and 5 of the Declaration of Michael Metzger, RX0095 to Respondent HomeAdvisor, Inc.’s Memorandum of Law in Opposition to Complaint Counsel’s Motion for Summary Decision.
11. The use of the singular includes the plural, and the plural includes the singular.
12. The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
13. The spelling of a name shall be construed to include all similar variants thereof.

II. INSTRUCTIONS

1. All documents produced in response to these requests shall be clearly and precisely identified as to the Request(s) to which they are responsive. Documents that may be responsive to more than one Request need not be submitted more than once; however, **Your** response shall indicate, for each document submitted, all Requests to which the documents are responsive.
2. A complete copy of each document should be submitted even if only a portion of the document is within the terms of the document Request. The document shall not be edited, cut, or expunged and shall include all covering letters and memoranda, transmittal slips, appendices, tables, or other attachments.
3. Each page submitted should be marked with a unique “Bates” document tracking number.
4. Documents covered by these specifications are those that are in **Your** possession or under **Your** actual or constructive custody or control, whether or not such documents were

received from or disseminated to any other **Person** or entity including attorneys, accountants, directors, officers, employees, independent contractors, and volunteers.

5. If any requested material is withheld based on a claim of privilege, submit, together with such claim, a schedule of items withheld that states individually for each item withheld: (a) the type, title, specific subject matter, and date of the item; (b) the names, addresses, positions, and organizations of all authors and recipients of the item; and (c) the specific grounds for claiming that item as privileged. If only part of a responsive document is privileged, all non-privileged portions of the document must be submitted.
6. The document Requests are continuing in character so as to require **You** to produce additional information promptly upon obtaining or discovering different, new, or further information before the close of discovery as set forth in the Scheduling Order in this matter.
7. **You** are hereby advised that Complaint Counsel will move, if any party files any dispositive motion, or at the commencement of trial, to preclude **You** from presenting evidence regarding responsive matters **You** have failed to set forth in **Your** answers to these document Requests.

III. REQUESTS FOR PRODUCTION

Demand is hereby made of Respondent HomeAdvisor, Inc. for the following documentary and tangible things:

14. For the time period from May 1, 2019, through October 31, 2019, recordings of all telephone calls between **Your** sales agents and prospective **Service Providers** during which the prospective **Service Provider** completed **Your Voice Log Process** and responded affirmatively to all of the questions asked in **Your Voice Log Process**. This request seeks, to the extent available, recordings of the entirety of such telephone calls, and is not limited to the recordings of the **Voice Log Process**.
15. For each recording responsive to Request for Production No. 14, above, all records and/or data pertaining to the telephone call, including but not limited to the date on which the telephone call occurred, the duration of the telephone call, the name of **Your** sales agent on the call, **Your** unique identifier for the prospective **Service Provider** (*i.e.*, the “**Service Provider** identification number”) on the telephone call, if one was eventually assigned, and the membership price the prospective **Service Provider** was quoted during the **Voice Log Process**.
16. For each recording responsive to Request for Production No. 14, above, any quality assurance assessments, evaluations, or grading of **Your** sales agent’s performance during the specific telephone call.

Respectfully,

Dated: June 8, 2022

By: s/ Sophia H. Calderón
Sophia H. Calderón
Colin D. A. MacDonald
Breena M. Roos
M. Elizabeth Howe

Federal Trade Commission
Northwest Region
915 Second Ave., Suite 2896
Seattle, WA 98174
Tel.: (206) 220-6350
Fax: (206) 220-6366
Email: scalderon@ftc.gov
cmacdonald@ftc.gov
broos@ftc.gov
mhowe@ftc.gov

Counsel Supporting the Complaint

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2022, I caused a true and correct copy of the foregoing to be served via electronic mail to:

William A. Burck
Dawn Y. Yamane Hewett
Kyra R. Simon
Quinn Emanuel Urquhart & Sullivan, LLP
1300 I Street NW, 9th Floor
Washington, DC 20005
(202) 538-8000
williamburck@quinnemanuel.com
dawnhewett@quinnemanuel.com
kyrasimon@quinnemanuel.com

Stephen R. Neuwirth
Jennifer J. Barrett
Neil T. Phillips
George T. Phillips
Jared Ruocco
Kathryn D. Bonacorsi
Quinn Emanuel Urquhart & Sullivan, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
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stephenneuwirth@quinnemanuel.com
jenniferbarrett@quinnemanuel.com
neilphillips@quinnemanuel.com
georgephillips@quinnemanuel.com
jaredruocco@quinnemanuel.com
kathrynbonacorsi@quinnemanuel.com

Counsel for Respondent HomeAdvisor, Inc.

Dated: June 8, 2022

By: s/ Sophia H. Calderón
Sophia H. Calderón
Federal Trade Commission
Northwest Region
915 Second Ave., Suite 2896
Seattle, WA 98174

Counsel Supporting the Complaint

EXHIBIT B



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
Northwest Regional Office

Colin D. A. MacDonald
Attorney
(206) 220-4474
cmacdonald@ftc.gov

July 29, 2022

BY EMAIL

HomeAdvisor, Inc.
c/o Quinn Emanuel Urquhart & Sullivan, LLP
Attn: Neil T. Phillips, Esq. (neilphillips@quinnemanuel.com)
George T. Phillips, Esq. (georgephillips@quinnemanuel.com)

Re: **In the Matter of HomeAdvisor, Inc., Docket No. 9407**
HomeAdvisor, Inc.'s Responses and Objections to Complaint Counsel's
Second Set of Requests for Production and First Set of Interrogatories

Dear Counsel:

Thank you for meeting with Complaint Counsel today to discuss HomeAdvisor, Inc.'s Responses and Objections to Complaint Counsel's Second Set of Requests for Production and HomeAdvisor, Inc.'s Responses and Objections to Complaint Counsel's First Set of Interrogatories. Based on today's conversation and your letter, dated July 28, 2022, we expect to see significant productions in response to both the Requests for Production and the Interrogatories next week (by August 5, 2022). Details on the anticipated productions follow.

Second Set of Requests for Production. Based on our conversation, we understand that HomeAdvisor, Inc. has identified approximately 5,000-6,000 call recordings from the time period specified in Request for Production 14 and for which quality assurance reviews responsive to Request for Production 16 have been similarly identified (collectively referred to hereafter as the "Quality Assurance Recordings"). It is also our understanding based on your representations regarding your client's collection efforts that these Quality Assurance Recordings do not include any recordings for which no quality assurance form exists. We understand that this is because the recordings for which such forms exist are stored in a different location than other recordings. You stated that you would produce the Quality Assurance Recordings by August 5, 2022, and asked whether we would consider production of the Quality Assurance Recordings sufficient for purposes of Request for Production 14.

The plain reading of Request for Production 14 requires production of recordings from the relevant period regardless of whether associated quality assurance forms exist (or ever existed). These recordings are plainly relevant to the claims and defenses at issue in this case. Indeed, HomeAdvisor, Inc. has repeatedly argued that the calls transcribed and attached to

Complaint Counsel's Motion for Summary Decision are insufficiently representative of all sales calls. Thus, it is HomeAdvisor, Inc.'s own litigation position which makes this production vital to the litigation. Our proposal below seeks to address that objection and your client's simultaneous claims of burden in retrieving additional recordings. However, as discussed on today's call, your client's suggestion that it be permitted to select a smaller population of more recent calls is not viable, as such a proposal would permit your client to unilaterally limit the scope of discovery to a recent period for claims that extend back several years.

That said, in order to expedite resolution of this matter without need for motions practice, Complaint Counsel will accept the Quality Assurance Recordings as a sufficient production in response to Request for Production 14 if:

1. HomeAdvisor, Inc. represents that the Quality Assurance Recordings consist of all extant recorded calls from its internal Quality Assurance process from the period of May 1, 2019 through October 31, 2019 for which quality assurance forms exist (*i.e.*, the search parameters would identify all such calls and no calls from this population have been withheld);
2. HomeAdvisor, Inc. represents that no retention or deletion policy or procedures have resulted in any particular category of recorded call being omitted from the Quality Assurance Recordings (*e.g.*, calls resulting in termination); and
3. HomeAdvisor, Inc. stipulates that the Quality Assurance Recordings are representative of all sales calls from the period of May 1, 2019 through October 31, 2019.

We ask that you either 1) agree to the above three conditions and commit to producing the Quality Assurance Recordings as well as associated documents responsive to Requests for Production 15 and 16 by August 5, 2022, or 2) you commit to producing by August 5, 2022, all recordings from the relevant period regardless of whether associated quality assurance forms exist. Please provide us with your final position by August 2, 2022, so that we can determine whether a motion to compel is necessary.

First Set of Interrogatories. As we discussed on the call, we understand that HomeAdvisor, Inc. intends to produce additional data responsive to Interrogatory No. 1 by August 5, 2022. At the time of that production, we understand HomeAdvisor, Inc. intends to identify with a chart the tables which are explicitly responsive to each interrogatory and subpart. Pursuant to Rule of Practice 3.35(c), we request that you ensure that this chart indicates with specificity where within (such as which column(s) and/or row(s)) each identified table the responsive information can be found, as our position is that, because the data has been produced according to HomeAdvisor, Inc.'s internal taxonomy rather than rendered for general consumption, failure to provide sufficient information to decipher the data you have produced will impose substantially greater burden on Complaint Counsel in deriving or ascertaining the answers to Interrogatories.

If you have additional questions regarding the substance or manner of these productions, please let us know. We are available if needed for a further meet and confer next week. Otherwise, we look forward to receiving your response by August 2, 2022, and the productions outlined above by August 5, 2022.

Sincerely,

s/ Colin D. A. MacDonald
Colin D. A. MacDonald

Cc: All Counsel of Record (by email)

EXHIBIT C

From: [Neil Phillips](#)
To: [Calderon, Sophie](#); [MacDonald, Colin](#); [Roos, Breena](#); [Howe, Beth](#)
Cc: [JenniferBarrett-contact](#); [Kyra Simon](#); [George Phillips](#); [Kathryn Bonacorsi](#); [Tyler Stapleton](#); [Todd Riegler](#)
Subject: HomeAdvisor Production Volumes 56-59 / Docket No. 9407
Date: Sunday, August 7, 2022 8:11:41 PM
Attachments: [8.7.22- FTC Privilege Log \(Withheld & Redaction\).XLSX](#)
[8.7.22 - HomeAdvisor's Amended Responses to First Set of RFPs.pdf](#)

Counsel,

The FTP below contains four production volumes—including approximately 4,700 QA audio recordings and accompanying materials—the details of which are below. Also attached is HomeAdvisor’s most recent privilege log, as well as our amended responses and objections to Complaint Counsel’s first set of document requests.

Volume: HOMEADVISOR_FTC059

Bates Range: HOMEADVISOR_FTC0138544 - HOMEADVISOR_FTC0144209

Total Documents: 5,448

Total Images: 5,666

Volume: HOMEADVISOR_FTC058

Bates Range: HOMEADVISOR_FTC0137313 - HOMEADVISOR_FTC0138543

Total Documents: 334

Total Images: 1,231

Volume: HOMEADVISOR_FTC057

Bates Range: HOMEADVISOR_FTC0129554 - HOMEADVISOR_FTC0137312

Total Documents: 7,322

Total Images: 7,759

Volume: HOMEADVISOR_FTC056

Bates Range: HOMEADVISOR_FTC0127728 - HOMEADVISOR_FTC0129553

Total Documents: 713

Total Images: 1,826

[Click here to download the file\(s\) listed below](#)

HOMEADVISOR_FTC056.zip	2.70 GB
HOMEADVISOR_FTC057.zip	7.91 GB
HOMEADVISOR_FTC058.zip	457.99 MB
HOMEADVISOR_FTC059.zip	6.70 GB

If the link above does not open, please copy and paste the following URL into your browser:
<https://sendfile.quinnemanuel.com?p=aa13ceee-ae12-47ce-8bf3-bbe1ca7b4228>

Regards,
Neil

Neil Phillips
Associate

Quinn Emanuel Urquhart & Sullivan, LLP

51 Madison Avenue, 22nd Floor
New York, NY 10010
212-849-7651 Direct
212-849-7000 Main Office Number
212-849-7100 FAX
neilphillips@quinnemanuel.com
www.quinnemanuel.com

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EXHIBIT D

From: [Neil Phillips](#)
To: [Calderon, Sophie](#); [Roos, Breena](#); [MacDonald, Colin](#); [Howe, Beth](#)
Cc: [JenniferBarrett-contact](#); [Kathryn Bonacorsi](#); [George Phillips](#); [Kyra Simon](#); [Tyler Stapleton](#)
Subject: HomeAdvisor - Docket No. 9407 / Sales Audio Files
Date: Tuesday, August 30, 2022 5:05:02 PM

Counsel,

In accordance with Chief Judge Chappell's August 16, 2022 order, HomeAdvisor has retrieved the requested archived sales audio recordings from May 1, 2019 through October 31, 2019. As previously explained, these files were retained in HomeAdvisor's now-legacy audio recording database, VPI, and in approximately October 2021 were moved into archival storage on full virtual machine backups within the Amazon Web Services Glacier database. In order to successfully restore the audio, the files first needed to be extracted from Glacier and imported back into the VPI database where they originally were stored in their proprietary VP2 file format and through which they are capable of being accessed.

In light of the above, we have created a virtual VPI machine for the FTC within which it can view, listen to, and download files as needed in .WAV or VP2 format. This virtual machine contains an instance of VPI that currently houses the requested sales call recordings, along with other data associated with those recordings, including the representative's name, date, and the length of the call.

To access the virtual machine:

- Navigate to vpn.angi.com.
- Login with the following credentials:
 - **User:** [REDACTED]
 - **Password:** [REDACTED]
- Set up multi-factor authentication as prompted following login.

Once connected, click on the VPI icon on the desktop and again login with the credentials above.

Please note that because you will be logging into the legacy VPI database, the VPI interface will show icons for all of the audio recordings previously housed in VPI that took place during the requested time period, including both customer care and sales calls. However, **only** responsive sales call audio files have been re-populated into VPI. Thus, while the records for non-responsive calls will still populate in the database, they will have no associated audio. As stated above, you will be able to sort by date and listen to the sales call audio files directly within VPI. However, should you wish to export files from the database, you may access the export function from the "actions" menu.

Regards,
Neil

Neil Phillips

PX10-0034

Associate

Quinn Emanuel Urquhart & Sullivan, LLP

51 Madison Avenue, 22nd Floor
New York, NY 10010
212-849-7651 Direct
212-849-7000 Main Office Number
212-849-7100 FAX
neilphillips@quinnemanuel.com
www.quinnemanuel.com

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EXHIBIT E

From: Calderon, Sophie
Sent: Thursday, September 1, 2022 12:23 PM
To: Neil Phillips; Roos, Breena; MacDonald, Colin; Howe, Beth
Cc: JenniferBarrett-contact; Kathryn Bonacorsi; George Phillips; Kyra Simon; Tyler Stapleton
Subject: RE: HomeAdvisor - Docket No. 9407 / Sales Audio Files

Neil,

We were able to get past the two-factor login authentication but cannot access the VPN without downloading additional software (screenshot below). The required software has not been previously vetted and approved by our agency, which means that Complaint Counsel is barred from downloading that software absent special approval by the appropriate technology office. Furthermore, we have been informed that, due to federal government data security measures, the internal process of receiving approval to download this software to our devices, to the extent we receive it at all, can be quite delayed. While we are working to begin that approval process, please let us know when you are available today or tomorrow to discuss alternatives to how your client can make the ordered production so that Complaint Counsel can access the recordings immediately.

In the meantime, we view Respondent as currently in violation of the ALJ's August 16, 2022 order to produce documents responsive to RFP 14 within 14 days, given that Respondent did not produce the documents in the manner requested in the original Requests for Production (and indeed, the manner in which previous sales calls have been produced), nor did it seek Complaint Counsel's agreement regarding a new method of production in advance of the production deadline.

Best,
Sophie

VPN Portal

[Download Windows 32 bit GlobalProtect agent](#)

[Download Windows 64 bit GlobalProtect agent](#)

[Download Mac 32/64 bit GlobalProtect agent](#)

Windows 32 bit OS needs to download and install Windows 32 bit GlobalProtect agent.

Windows 64 bit OS needs to download and install Windows 64 bit GlobalProtect agent.

Mac OS needs to download and install Mac 32/64 bit GlobalProtect agent.

From: Neil Phillips <neilphillips@quinnemanuel.com>

Sent: Thursday, September 1, 2022 8:44 AM

To: Calderon, Sophie <scalderon@ftc.gov>; Roos, Breena <broos@ftc.gov>; MacDonald, Colin <cmacdonald@ftc.gov>; Howe, Beth <mhowe@ftc.gov>

Cc: JenniferBarrett-contact <jenniferbarrett@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbbonacorsi@quinnemanuel.com>; George Phillips <georgephillips@quinnemanuel.com>; Kyra Simon <kyrasimon@quinnemanuel.com>; Tyler Stapleton <tylerstapleton@quinnemanuel.com>

Subject: RE: HomeAdvisor - Docket No. 9407 / Sales Audio Files

Sophie,

HomeAdvisor's technical team is concerned that removing the two-factor login authentication would expose the recordings and any PII or other sensitive service provider information they contain to an unnecessary security risk. Multi-factor authentication is a standard method of accessing secure data, and one HomeAdvisor insists that its employees utilize (just as we do at Quinn Emanuel to log into our servers). What technology does the FTC typically use to handle two-factor authentication? If helpful, we can convene a Zoom with HomeAdvisor's technical team to walk you through the login process and any potential workaround that may exist.

Regards,
Neil

From: Neil Phillips

Sent: Wednesday, August 31, 2022 4:41 PM

To: Calderon, Sophie <scalderon@ftc.gov>; Roos, Breena <broos@ftc.gov>; MacDonald, Colin <cmacdonald@ftc.gov>; Howe, Beth <mhowe@ftc.gov>
Cc: Jennifer Barrett <jenniferbarrett@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; George Phillips <georgephillips@quinnemanuel.com>; Kyra Simon <kyrasimon@quinnemanuel.com>; Tyler Stapleton <tylerstapleton@quinnemanuel.com>
Subject: RE: HomeAdvisor - Docket No. 9407 / Sales Audio Files

Sophie,

We are reviewing this issue now with HomeAdvisor's technical personnel to provide Complaint Counsel with access to the VPI database as soon as possible given that you cannot download the two-factor authentication security software. To be clear, however, we have complied with Judge Chappell's order and produced the requested audio files yesterday as stored in their ordinary course within the VPI database that created and housed the files in their proprietary VPI VP2 file format prior to archiving. We will provide you with an update on the access process promptly.

Regards,
Neil

From: Calderon, Sophie <scalderon@ftc.gov>
Sent: Wednesday, August 31, 2022 3:28 PM
To: Neil Phillips <neilphillips@quinnemanuel.com>; Roos, Breena <broos@ftc.gov>; MacDonald, Colin <cmacdonald@ftc.gov>; Howe, Beth <mhowe@ftc.gov>
Cc: Jennifer Barrett <jenniferbarrett@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; George Phillips <georgephillips@quinnemanuel.com>; Kyra Simon <kyrasimon@quinnemanuel.com>; Tyler Stapleton <tylerstapleton@quinnemanuel.com>
Subject: RE: HomeAdvisor - Docket No. 9407 / Sales Audio Files

[EXTERNAL EMAIL from scalderon@ftc.gov]

Neil,

We cannot access the virtual VPI machine (I've provided screenshots below of what we see – we cannot download the app to our mobile devices). Please immediately produce the responsive calls, as ordered by Judge Chappell.

Best,
Sophie

Angi

Set up multifactor authentication

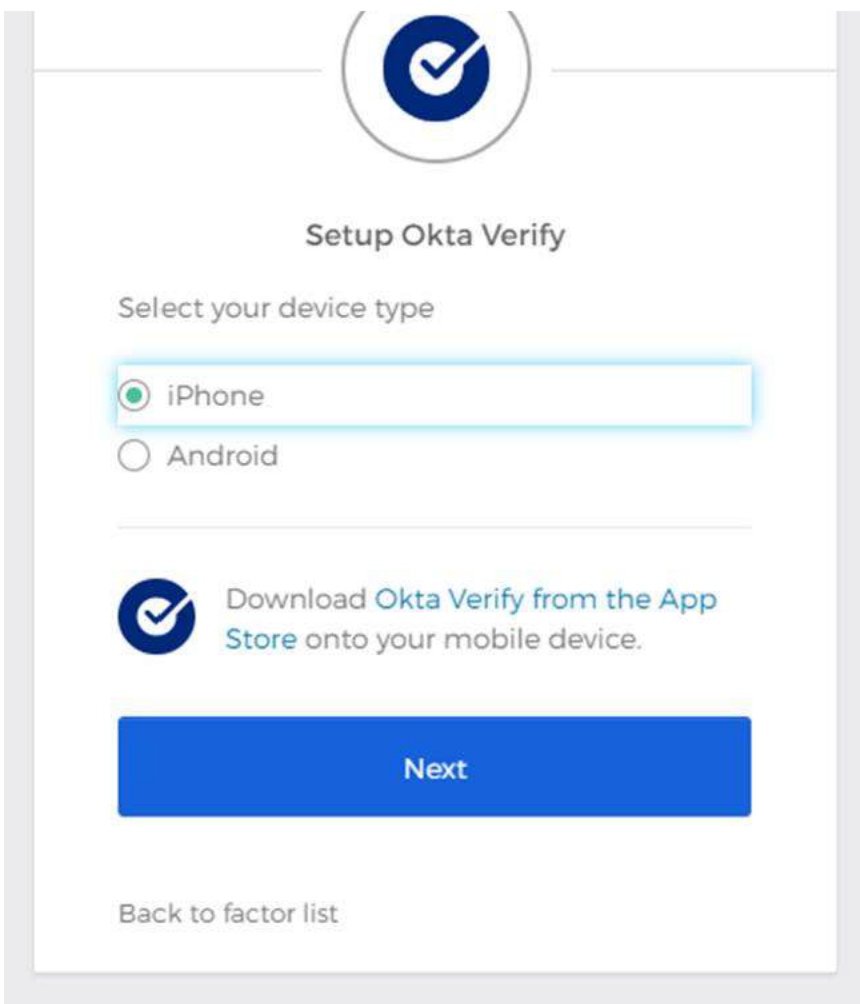
Your company requires multifactor authentication to add an additional layer of security when signing in to your Okta account

Setup required

- Okta Verify**
Use a push notification sent to the mobile app.
- SMS Authentication**

[Configure factor](#)

Angi



From: Neil Phillips <neilphillips@quinnemanuel.com>
Sent: Tuesday, August 30, 2022 5:05 PM
To: Calderon, Sophie <scalderon@ftc.gov>; Roos, Breena <broos@ftc.gov>; MacDonald, Colin <cmacdonald@ftc.gov>; Howe, Beth <mhowe@ftc.gov>
Cc: JenniferBarrett-contact <jenniferbarrett@quinnemanuel.com>; Kathryn Bonacorsi <kathrynbonacorsi@quinnemanuel.com>; George Phillips <georgephillips@quinnemanuel.com>; Kyra Simon <kyrasimon@quinnemanuel.com>; Tyler Stapleton <tylerstapleton@quinnemanuel.com>
Subject: HomeAdvisor - Docket No. 9407 / Sales Audio Files

Counsel,

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originally were stored in their proprietary VP2 file format and through which they are capable of being accessed.

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- Login with the following credentials:
 - **User:** [REDACTED]
 - **Password:** [REDACTED]
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Regards,
Neil

Neil Phillips
Associate
Quinn Emanuel Urquhart & Sullivan, LLP

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CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2022, I filed the foregoing document electronically using the FTC's E-Filing system, which will send notification of such filing to:

April Tabor
Office of the Secretary
Federal Trade Commission
Constitution Center
400 Seventh Street, SW, Suite 5610
Washington, D.C. 20024
ElectronicFilings@ftc.gov

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

I further certify that on September 14, 2022, I caused the foregoing document to be served via email to:

William A. Burck
Dawn Y. Yamane Hewett
Kyra R. Simon
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neilphillips@quinnemanuel.com
georgephillips@quinnemanuel.com
jaredruocco@quinnemanuel.com
kathrynbacorsi@quinnemanuel.com

Counsel for Respondent HomeAdvisor, Inc.

Dated: September 14, 2022

By: s/ Sophia H. Calderón
Sophia H. Calderón

Counsel Supporting the Complaint

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2022, I filed the foregoing document electronically using the FTC's E-Filing system, which will send notification of such filing to:

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Washington, D.C. 20024
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The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that on September 14, 2022, I caused the foregoing document to be served via email to:

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Dawn Y. Yamane Hewett
Kyra R. Simon
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dawnhewett@quinnemanuel.com
kyrasimon@quinnemanuel.com

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neilphillips@quinnemanuel.com
georgephillips@quinnemanuel.com
jaredruocco@quinnemanuel.com
kathrynbacorsi@quinnemanuel.com

Counsel for Respondent HomeAdvisor, Inc.

Dated: September 14, 2022

By: s/ Colin D. A. MacDonald
Colin D. A. MacDonald

Counsel Supporting the Complaint