

**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 MOTION TO COMPEL RESPONDENT TO COMPLY  
WITH COMPLAINT COUNSEL’S REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules of Practice 3.37 and 3.38, 16 C.F.R. §§ 3.37-3.38, Complaint Counsel moves for an order compelling Respondent HomeAdvisor, Inc. (“HomeAdvisor”) to comply with Complaint Counsel’s Request for Production of Documents, initially served on June 8, 2022. The parties have repeatedly met and conferred regarding this dispute and have reached an impasse. For the reasons stated herein, Respondent should be compelled to produce the requested documents and/or sanctioned.

**BACKGROUND**

On June 8, 2022, Complaint Counsel served Respondent with Complaint Counsel’s Second Set of Requests for Production of Documents (the “Requests”), containing three requests numbered 14-16. Declaration of Colin D. A. MacDonald (“MacDonald Decl.”), Exh. A. Request 14 sought production of all recordings of HomeAdvisor’s sales calls from a specified six-month period, while Requests 15 and 16 sought additional documents related to those recordings. *Id.* at 3. In particular, Request 16 asked for any quality assurance documents related to call recordings, *id.*, which only exist for the subset of call recordings subjected to the quality assurance process, Respondent’s Statement of Material Facts for Which There is a Genuine Issue

for Trial (“Respondent’s SMF”), attached to Respondent’s Opposition to Complaint Counsel’s Motion for Summary Decision, at 200-01.

Complaint Counsel’s Requests followed arguments by Respondent dismissing a previously produced call sample. Prior to litigation, the Commission issued a Civil Investigative Demand (“the CID”), that requested, among other things “[a] representative sample, to be agreed upon by Commission Counsel and [HomeAdvisor] following a meet and confer, of communications, between You and service providers, including telephone recordings . . . .” MacDonald Decl., Exh. C at 10. Though HomeAdvisor produced 1,710 call recordings in response to the CID, when Complaint Counsel introduced the content of those recordings in support of its Motion for Summary Decision (“SD Motion”), Respondent asserted that the selected recordings are not representative. *See* Respondent’s SMF at 186-87. In particular, during the recent oral argument on the SD Motion, Respondent repeatedly relied on this argument. MacDonald Decl., Exh. D, *e.g.*, at 35, 58-59, [REDACTED].

On July 8, 2022, Respondent served Complaint Counsel with its Responses and Objections (the “Responses”) to the Requests, objecting that the requested recordings were “unreasonably cumulative and duplicative of those HomeAdvisor already produced in connection with the FTC’s Civil Investigative Demands” in the investigation related to this matter and that the Requests were therefore “unduly burdensome and not proportional.” *Id.*, Exh. B at 2-3. Respondent further stated that “[s]ubject to these objections, HomeAdvisor will make reasonable, good-faith efforts to locate and produce additional sales call recordings that took place during the specified time period.” *Id.*

Since then, the parties have held three conferences to discuss what, if any, documents will be produced, with the most recent occurring on July 29, 2022. *See* accompanying Statement

Regarding Meet and Confers. During that meeting, Respondent informed Complaint Counsel that it intended to produce approximately 5,000-6,000 sales calls from the specified time period for which it had quality assurance documents – in other words, unilaterally limiting Request 14 to the scope of Request 16. Respondent’s Counsel asked whether Complaint Counsel would view this as a sufficient production in response to Request 14. Complaint Counsel responded that it would not, because it would exclude any extant recordings responsive to Request 14 for which documents responsive to Request 16 do not exist. During the call, and in a letter sent afterward, Complaint Counsel proposed to accept those recordings as sufficient if HomeAdvisor made certain stipulations and representations regarding them, such that they could be treated as representative. MacDonald Decl., Exh. G at 2.<sup>1</sup> Respondent declined to do so. *Id.* at Exh. H at 2-3. Respondent’s Counsel likewise declined to identify what efforts had been undertaken to locate responsive recordings and cited attorney-client privilege when asked to articulate why any such efforts were purportedly proving burdensome to Respondent. *Id.*, Ex. F at 1.

### **ARGUMENT**

“Parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant [ . . . ] to the defenses of any respondent.” 16 C.F.R. § 3.31(c)(1). “Parties resisting discovery of relevant information carry a heavy burden of showing why discovery should be denied.” *In re Matter of LabMD, Inc.*, No. 9357, 2014 WL 333621, at \*1 (Jan. 10, 2014) (quoting *In re Daniel Chapter One*, 2009 WL 569694, at \*2 (Jan. 9, 2009)). Respondent’s refusal to produce the requested recordings is plainly unreasonable and unsupported by law. Indeed, it is *HomeAdvisor* whose litigation positions necessitate the request: Respondent repeatedly insists that it cannot be held liable for misrepresentations in its sales calls unless

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<sup>1</sup> The proposed representations and stipulations would establish that the calls could be treated as representative of all calls during the relevant period.

Complaint Counsel shows that the calls cited are “representative” of all of its sales calls. *See* Respondent’s SMF at 186-87; MacDonald Decl., Exh. D, *e.g.*, at 35, 58-59, [REDACTED]. When asked why it had not produced the materials yet, Respondent took the position that such information on its burden was itself privileged. MacDonald Decl., Exh. F at 1. Neither the Court nor Complaint Counsel need accept such absurd and unsupported positions.

**1. The Requested Documents Are Plainly Relevant to the Claims and Defenses at Issue**

This case involves three counts alleging that HomeAdvisor misrepresented its products in its advertising and sales calls. *See* Complaint at 14-15. The first element of any deception claim is that the challenged representation was made to consumers. *In re POM Wonderful, LLC*, 155 F.T.C. 1, 10 (2013). [REDACTED]

[REDACTED]

Respondent’s SMF at 185. Thus, the contents of sales calls are vital to understanding what claims HomeAdvisor made to service providers.

Complaint Counsel has endeavored to show the contents of those calls through evidence already in its possession—through both copies of scripts and transcripts of actual sales calls. *See generally* SD Motion. In response, [REDACTED]

[REDACTED] *See, e.g.*, Respondent’s SMF at 186-87.<sup>2</sup> Moreover, in response to a randomly selected sample of 100 calls taken from the 1,710 produced in response to the CID, HomeAdvisor’s own expert asserted it is unclear whether the 1,710 calls are representative. *See, e.g., id.* at PDF pages 2522-23 (RX0063 at 3-4). If HomeAdvisor asserts the representativeness of the sample is relevant to its

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<sup>2</sup> HomeAdvisor cites no authority for the premise that the Court should assume sales agents never made claims in scripts provided by the respondent to its employees, the majority of which can also be found in the company’s national advertising.

probative value, and disputes that the 1,710 calls are representative, then Complaint Counsel must be permitted to obtain an additional selection of sales calls.

2. *HomeAdvisor Has Never Produced Comparable Materials nor Articulated How the Requests Are Burdensome*

In its Responses, HomeAdvisor asserts that the requested production would be “unreasonably cumulative or duplicative” of its production in response to the CID, but this is contradicted by the record. Although the CID *sought* a representative sample of sales calls, Respondent itself denies it actually *produced* one. Indeed, HomeAdvisor submitted an entire expert report in response to the SD Motion to buttress its argument that the calls previously produced were **not** representative. Respondent’s SMF at 2522-23 (RX0063 at 3-4). Thus, the 1,710 recordings previously produced cannot both be as unrepresentative as HomeAdvisor claims and yet also “cumulative or duplicative” of documents now sought in discovery.

As to burden, even after three conferrals with Respondent, Complaint Counsel can only guess what the alleged burden to Respondent in making a full production is. It is Respondent’s burden to explain *how* the request is burdensome, rather than relying on boilerplate objections. *LabMD*, 2014 WL 333621, at \*1; *cf. Bonanno v. Quizno’s Franchise Co., LLC*, 255 F.R.D. 550, 552-53 (D. Colo. 2009) (Mix, M.J.) (applying the analogous standard of Fed. R. Civ. P. 26(b)). When Complaint Counsel sought an explanation for why production was too burdensome to be made, MacDonald Decl., Exh. E, even weeks after the deadline under the rules, Respondent cited attorney-client privilege over its efforts to identify and produce responsive documents, *id.*, Exh. F at 1. Respondent has so far only identified recordings that are associated with quality assurance reviews, and neither the Court nor Complaint Counsel should be expected to rely on its bald assertion that requiring it to look elsewhere would be overly burdensome.

3. **The Need for the Recordings Vastly Outweighs Any Burden to Respondent**

Regardless of any burden that the Requests might pose to Respondent, the need for the recordings far outweighs the expense. Where evidence sought is vital to the central claims or defenses of a case, even a significant burden will not suffice to avoid production. *Cf. Manning v. General Motors*, 247 F.R.D. 646, 654 (D. Kan. 2007) (“Thus, even if the production of documents would cause great labor and expense or even considerable hardship and the possibility of injury to its business, Defendant would still be required to establish that the hardship would be undue and disproportionate to the benefits Plaintiff would gain from the document production.”). HomeAdvisor chose to assert that Complaint Counsel must present a “representative” sample to prove its claims, and disputed the representativeness of Complaint Counsel’s existing sample. Now, when Complaint Counsel seeks to do what the company demands and obtain the recordings to construct a “representative” sample, Respondent claims such production would be unduly burdensome.

Furthermore, Complaint Counsel proposed to accept *exactly* what Respondent wishes to produce as a sufficient production, so long as HomeAdvisor: (1) “represents that the [r]ecordings 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 [r]ecordings;” and (3) stipulates that the [r]ecordings are representative of all sales calls from the period of May 1, 2019 through October 31, 2019.” MacDonald Decl., Exh. G at 2. HomeAdvisor declined to do so. *Id.*, Exh. H. at 2-3.

Respondent suggests that it would prefer to produce records from a more recent period, arguing that conduct from 2019 is not relevant to this action for prospective relief. *Id.*, Exh. H at 2. But HomeAdvisor cannot simply escape liability for its past unlawful conduct by substituting

evidence regarding conduct entirely after it knew it was the subject of an FTC investigation. Respondent does not get to select the evidence against it. That a lawbreaker may clean up its act while under investigation is simply not dispositive as to whether it will resume its deception when the enforcer must turn its focus elsewhere. *See In re McWane, Inc.*, 2014 WL 556261, at \*39 (Jan. 30, 2014) (“[T]he Commission may issue a cease and desist order even when a respondent no longer engages in the illegal conduct if there is sufficient danger of recurrence.”), *accord FTC v. Affordable Media, LLC*, 179 F.3d 1228, 1237 (9th Cir. 1999). Accepting HomeAdvisor’s efforts to limit its production to a self-selected period after it received the CID would only incentivize respondents to drag out investigations and/or pause illicit activity just long enough to generate the favorable evidence necessary to escape liability.

Simply put, HomeAdvisor cannot have it both ways: it must either produce the recordings or abandon its position that makes them relevant in the first place. This is all the more true where, as here, Complaint Counsel has offered Respondent a path to easing its own alleged burden. MacDonald Decl., Exh. G. If Respondent could deny Complaint Counsel the ability to obtain the records it needs to draw a representative sample, and Respondent could simultaneously deny liability based on the purported unrepresentativeness of calls reviewed, this entire proceeding would descend into farce.

#### **4. This Matter Is Ripe for Adjudication**

The parties have reached an impasse, despite Respondent’s transparent efforts to avoid one by endlessly promising future updates. MacDonald Decl., Exh. G. HomeAdvisor was obligated to produce responsive documents on July 8, 2022. *Id.*, Exh. A; 16 C.F.R. § 3.37(b). It has delayed those productions, forcing repeated conferences while producing nothing, and now claims Complaint Counsel is “unilaterally declar[ing] an impasse.” *Id.*, Exh. H at 3. Despite Respondent’s “optimistic” promise to “conclude [its] investigation” and “provide Complaint

Counsel with further information” on August 5, it has made clear it does not intend to produce the full scope of recordings sought, making plain in its conferrals that HomeAdvisor will unilaterally limit its production due to unspecified claims of burden. *Id.* Further, it has rejected Complaint Counsel’s proposal that it make stipulations and representations necessary to treat its proposed production as a representative population. *Id.* Neither the Court nor Complaint Counsel need Respondent’s permission to observe the obvious: HomeAdvisor has not complied with the Requests despite their obvious relevance outweighing whatever burden production might pose to Respondent.

**5. Production Should Be Compelled or Alternative Sanctions Should Be Ordered**

HomeAdvisor has already had almost double the time permitted by the Rules of Practice to gather responsive materials and produce them—to say nothing of the *three years* it has known of the Commission’s interest in a representative sample of calls. Given upcoming expert discovery deadlines, Respondent should be ordered to make production immediately, and certainly no later than August 23, 2022. As a backstop, if Respondent fails to produce the recordings, the Court should order sanctions that would prevent it from capitalizing on its own obstructionism. Pursuant to Rule 3.38(b)(2)-(3), the Court should order that, should Respondent fail to produce the requested recordings, the sample of 100 calls submitted in support of Complaint Counsel’s SD Motion be treated as representative of all of Respondent’s sales calls. Additionally, pursuant to Rule 3.38(b)(4), Respondent should be prohibited from introducing evidence—including the testimony of experts—arguing that the sample of calls introduced by Complaint Counsel is not representative of all of Respondent’s sales calls.



## CONCLUSION

For the reasons stated herein, Complaint Counsel moves that the Court issue the Proposed Order attached hereto.

Respectfully submitted,

Dated: August 4, 2022

*s/ Colin D. A. MacDonald*

Sophia H. Calderón  
Colin D. A. MacDonald  
Breena M. Roos  
M. Elizabeth Howe

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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 **July 13, 2022 at 12:00pm Pacific Time**, Complaint Counsel Breena M. Roos and Colin D. A. MacDonald met via Zoom call with Respondent's Counsel Neil T. Phillips and Kathryn D. Bonacorsi. During this call, Complaint Counsel requested information on when a production would be forthcoming or when Respondent would identify the full scope of its intended production, and Respondent's Counsel declined to provide this information.

On **July 20, 2022 at 9:00am Pacific Time**, Complaint Counsel Breena M. Roos, M. Elizabeth Howe, and Katharine F. Barach met via Zoom call with Respondent's Counsel Neil T. Phillips and Kathryn D. Bonacorsi. During this call, Complaint Counsel again requested information on when a production would be forthcoming or when Respondent would identify the full scope of its intended production, and Respondent's Counsel declined to provide this information.

On **July 29, 2022 at 9:30am Pacific Time**, Complaint Counsel Colin D. A. MacDonald, M. Elizabeth Howe, and Sophia H. Calderón met via Zoom call with Respondent's Counsel Neil

T. Phillips and George T. Phillips. During this call, Complaint Counsel again requested information on when a production would be forthcoming, and Respondent indicated that it intended to produce approximately 5,000-6,000 calls for which associated quality assurance forms exist and hoped to do so the following week, but did not commit to a particular date and did not commit to producing all recordings that exist for the requested period.

Respectfully submitted,

Dated: August 4, 2022

*s/ Colin D. A. MacDonald*

Sophia H. Calderón  
Colin D. A. MacDonald  
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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,  
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**DOCKET NO. 9407**

**[PROPOSED] ORDER TO COMPEL RESPONDENT TO COMPLY WITH  
COMPLAINT COUNSEL'S REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules of Practice 3.37 and 3.38, 16 C.F.R. §§ 3.37-3.38, Complaint Counsel's Motion to Compel Respondent to Comply with Complaint Counsel's Request for Production of Documents is GRANTED and it is hereby:

ORDERED that Respondent shall comply with Complaint Counsel's Request for Production 14 in full within five days of entry of this Order; and

Further ORDERED that if Respondent does not comply with Complaint Counsel's Request for Production 14 in full within five days of entry of this Order, the sample of 100 calls transcribed and attached to Complaint Counsel's Motion for Summary Decision as attachments to PX0022 shall be treated as representative of all sales calls made by Respondent during the time period relevant to this litigation.

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,  
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**DOCKET NO. 9407**

**DECLARATION OF COLIN D. A. MACDONALD**

My name is Colin D. A. MacDonald, I am over eighteen years of age, and I am a citizen of the United States. I have personal knowledge of the information contained herein. If called as a witness, I could and would testify as follows:

1. I am an attorney licensed to practice law in Washington, Oregon, and Maryland; and am Complaint Counsel in the above-captioned matter.
2. Complaint Counsel's Second Set of Requests for Production of Documents were served by Complaint Counsel on Respondent's Counsel on June 8, 2022, and are attached hereto as Exhibit A.
3. HomeAdvisor, Inc.'s Responses and Objections to Complaint Counsel's Second Set of Requests for Production were served by Respondent's Counsel on Complaint Counsel on July 8, 2022, and are attached hereto as Exhibit B.
4. The Commission's Civil Investigative Demand to HomeAdvisor, Inc. was issued on July 3, 2019, and is attached hereto as Exhibit C.
5. On July 21, 2022, the Commission held oral argument on Complaint Counsel's Motion for Summary Decision, a transcript of which is attached hereto as Exhibit D.

6. Complaint Counsel sent a letter to Respondent's Counsel on July 22, 2022 seeking information regarding why responsive documents had not yet been produced, which is attached hereto as Exhibit E.
7. Respondent's Counsel sent a letter to Complaint Counsel on July 28, 2022 asserting privilege regarding the steps it had taken to comply with the Requests for Production, which is attached hereto as Exhibit F.
8. 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 calls as sufficient, and which is attached hereto as Exhibit G.
9. Respondent sent a letter to Complaint Counsel on August 2, 2022 rejecting that proposal, and which is attached hereto as Exhibit H.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 4, 2022.

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

*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.

**PUBLIC**

Respectfully,

Dated: June 8, 2022

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

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*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:

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Dawn Y. Yamane Hewett  
Kyra R. Simon  
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*Counsel for Respondent HomeAdvisor, Inc.*

Dated: June 8, 2022

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*Counsel Supporting the Complaint*

# EXHIBIT B

**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

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**HOMEADVISOR, INC.’S RESPONSES AND OBJECTIONS TO COMPLAINT  
COUNSEL’S SECOND SET OF REQUESTS FOR PRODUCTION**

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Respondent HomeAdvisor, Inc. (“HomeAdvisor”) submits the following responses and objections to Complaint Counsel’s Second Set of Requests for Production.

**INTRODUCTORY STATEMENT**

Any objection or lack of an objection to any portion of a request should not be deemed an admission that HomeAdvisor has information or documents sought by the request. HomeAdvisor’s objections and responses to any request 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 the request. HomeAdvisor’s failure to object to any request on a particular ground or grounds shall not be construed as a waiver of its right to object on any additional ground(s).

HomeAdvisor's responses to these requests are 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; and (iii) the right at any time to revise, correct, add to, or clarify any of the responses herein.

### **GENERAL OBJECTIONS**

1. HomeAdvisor objects to the requests because they include multiple, discrete subparts that accordingly count as separate requests.

2. 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.

3. 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."

### **REQUESTS FOR PRODUCTION**

**REQUEST 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.

**HOMEADVISOR'S RESPONSE:** HomeAdvisor objects to this request because it seeks materials that are unreasonably cumulative and duplicative of those HomeAdvisor already produced in connection with the FTC's Civil Investigative Demands to HomeAdvisor. HomeAdvisor previously produced close to 2,000 recorded sales calls, and has produced the voice log records associated with the FTC's service provider witnesses in this action. *See, e.g.*, Declaration of Kenneth H. Kelly (PX0021) ¶ 3; Declaration of Michael Metzger (RX0095) ¶ 9 & Exs. 1–12. Complaint Counsel never identified any deficiency in HomeAdvisor's production in this regard during the CID period, and its request that HomeAdvisor locate even more sales call recordings and associated data beyond that previously produced furthermore is unduly burdensome and not proportional.

Subject to these objections, HomeAdvisor will make reasonable, good-faith efforts to locate and produce additional sales call recordings that took place during the specified time period.

**REQUEST 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.

**HOMEADVISOR'S RESPONSE:** HomeAdvisor objects to this request because it seeks materials that are unreasonably cumulative and duplicative of those HomeAdvisor already



produced in connection with the FTC's Civil Investigative Demands to HomeAdvisor. HomeAdvisor previously produced close to 2,000 recorded sales calls, and has produced the voice log records associated with the FTC's service provider witnesses in this action. *See, e.g.*, Declaration of Kenneth H. Kelly (PX0021) ¶ 3; Declaration of Michael Metzger (RX0095) ¶ 9 & Exs. 1–12. HomeAdvisor also previously produced voluminous sales call quality assurance materials, including quality assurance scorecards, many of which are cited in the FTC's Motion for Summary Decision. *See, e.g.*, Motion for Summary Decision Statement of Material Facts ¶¶ 52–60. Moreover, Complaint Counsel previously took extensive deposition testimony from HomeAdvisor witnesses regarding its quality assurance processes and procedures. *See id.* (citing Deposition of Chad Schott). Complaint Counsel never identified any deficiency in HomeAdvisor's production in this regard during the CID period, and its request that HomeAdvisor locate even more sales call recordings and associated data beyond that previously produced furthermore is unduly burdensome and not proportional. Moreover, while HomeAdvisor continues to investigate this issue, HomeAdvisor's current understanding is that voice log records are accessible only through a manual, service provider-by-service provider search, and thus would be unduly burdensome to retrieve en masse across the voluminous sales call recordings sought here.

HomeAdvisor also objects to this request because certain data referenced in this request would be unduly burdensome to locate and produce, or would be equally available to Complaint Counsel. For example, "the duration of the telephone call" would be readily apparent from the length of the recording and the "Service Provider identification number[s]" assigned to service providers are present in the data previously produced in response to Complaint Counsel's First Set of Interrogatories. Relatedly, HomeAdvisor objects to this request as it would require

HomeAdvisor to compile and or create the requested information; as such it is not a proper request for production of existing documents or other materials. *See, e.g., Georgacarakos v. Wiley*, 2009 WL 924434, at \*2 (D. Colo. Apr. 3, 2009) (“[I]f a requested document is not in the possession of a party or non-party, such person need not create the non-existent document.”); *Thompson v. Lantz*, 2009 WL 3157561, at \*1 (D. Conn. Sept. 25, 2009) (“[A] party cannot be compelled to create, or cause to be prepared, new documents solely for their production.”).

In addition, HomeAdvisor objects to this request because it seeks multiple, discrete categories of information—including “[1] the date on which the telephone call occurred, [2] the duration of the telephone call, [3] the name of Your sales agent on the call, [4] Your unique identifier for the prospective Service Provider . . . , and [5] the membership price the prospective Service Provider was quoted during the Voice Log Process”—that accordingly count as at least five separate requests.

Subject to these objections, as noted above in response to Request 14, HomeAdvisor will make reasonable, good-faith efforts to locate and produce additional sales call recordings that took place during the specified time period. HomeAdvisor also will investigate whether any additional responsive information referenced in this request and associated with those recordings is reasonably accessible and available.

**REQUEST 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.

**HOMEADVISOR’S RESPONSE:** HomeAdvisor objects to this request because it seeks materials that are unreasonably cumulative and duplicative of those HomeAdvisor already produced in connection with the FTC’s Civil Investigative Demands to HomeAdvisor.

HomeAdvisor previously produced close to 2,000 recorded sales calls, and has produced the voice log records associated with the FTC's service provider witnesses in this action. *See, e.g.*, Declaration of Kenneth H. Kelly (PX0021) ¶ 3; Declaration of Michael Metzger (RX0095) ¶ 9 & Exs. 1–12. HomeAdvisor also previously produced voluminous sales call quality assurance materials, including quality assurance scorecards, many of which are cited in the FTC's Motion for Summary Decision. *See, e.g.*, Motion for Summary Decision Statement of Material Facts ¶¶ 52–60. Moreover, Complaint Counsel previously took extensive deposition testimony from HomeAdvisor witnesses regarding its quality assurance processes and procedures. *See id.* (citing Deposition of Chad Schott). Complaint Counsel never identified any deficiency in HomeAdvisor's production in this regard during the CID period, and its request that HomeAdvisor locate even more sales call recordings and associated data beyond that previously produced furthermore is unduly burdensome and not proportional.

Subject to these objections, as noted above in response to Request 14, HomeAdvisor will make reasonable, good-faith efforts to locate and produce additional sales call recordings that took place during the specified time period. HomeAdvisor also will investigate whether any additional responsive information referenced in this request and associated with those recordings is reasonably accessible and available.

Submitted this 8th day of July 2022.

QUINN EMANUEL URQUHART & SULLIVAN, LLP

/s/ Jennifer J. Barrett

William A. Burck

Dawn Y. Yamane Hewett

Kyra R. Simon

1300 I Street NW, 9th Floor

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*Attorneys for Respondent HomeAdvisor, Inc.*

**CERTIFICATE OF SERVICE**

I certify that on July 8, 2022, I caused the foregoing document to be served via email to:

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  
[scalderon@ftc.gov](mailto:scalderon@ftc.gov)  
[cmacdonald@ftc.gov](mailto:cmacdonald@ftc.gov)  
[broos@ftc.gov](mailto:broos@ftc.gov)  
[mhowe@ftc.gov](mailto:mhowe@ftc.gov)

*Counsel Supporting the Complaint*

/s/ Neil T. Phillips  
Neil T. Phillips

# EXHIBIT C

**PUBLIC**



United States of America  
Federal Trade Commission

**CIVIL INVESTIGATIVE DEMAND**

1. TO  HomeAdvisor, Inc. c/o The Corporation Trust Company, Registered Agent Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	1a. MATTER NUMBER  1923106
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This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED <input type="checkbox"/> You are required to appear and testify.	
LOCATION OF HEARING	YOUR APPEARANCE WILL BE BEFORE
	DATE AND TIME OF HEARING OR DEPOSITION

- You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.
- You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.
- You are required to produce the tangible things described on the attached schedule. Produce such things to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS, ANSWERS TO INTERROGATORIES, REPORTS, AND/OR TANGIBLE THINGS MUST BE AVAILABLE

**AUG 05 2019 at 5:00 pm**

3. SUBJECT OF INVESTIGATION See attached Schedule and attached resolution(s).
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4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN Erik Winker / Lauren France Federal Trade Commission 915 2nd Ave, Suite 2896 Seattle, WA 98174	5. COMMISSION COUNSEL Sophie Calderon Federal Trade Commission 915 2nd Ave, Suite 2896 Seattle, WA 98174 206 220-4486
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DATE ISSUED 7/31/19	COMMISSIONER'S SIGNATURE 
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**INSTRUCTIONS AND NOTICES**  
 The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1990.

**PETITION TO LIMIT OR QUASH**  
 The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

**YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS**  
 The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

**TRAVEL EXPENSES**  
 Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCSRulesofPractice>. Paper copies are available upon request.

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### Form of Certificate of Compliance\*

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We do certify that all of the documents, information and tangible things required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document or tangible thing responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to its submission and the reasons for the objections have been stated.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Sworn to before me this day

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

\*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.



**FEDERAL TRADE COMMISSION (“FTC”)  
CIVIL INVESTIGATIVE DEMAND (“CID”) SCHEDULE  
FTC File No. 1923106**

**Meet and Confer:** You must contact FTC counsel, Sophie Calderón ((206) 220-4486; [scaideron@ftc.gov](mailto:scaideron@ftc.gov)), as soon as possible to schedule a meeting (telephonic or in person) to be held within fourteen (14) days after You receive this CID. At the meeting, You must discuss with FTC counsel any questions You have regarding this CID or any possible CID modifications that could reduce Your cost, burden, or response time yet still provide the FTC with the information it needs to pursue its investigation. The meeting also will address how to assert any claims of protected status (e.g., privilege, work-product, etc.) and the production of electronically stored information. You must make available at the meeting personnel knowledgeable about Your information or records management systems, Your systems for electronically stored information, custodians likely to have information responsive to this CID, and any other issues relevant to compliance with this CID.

**Document Retention:** You must retain all documentary materials used in preparing responses to this CID. The FTC may require the submission of additional Documents later during this investigation. Accordingly, You must suspend any routine procedures for Document destruction and take other measures to prevent the destruction of Documents in Your possession, custody, or control that are in any way relevant to this investigation, even if those Documents are being retained by a third-party or You believe those Documents are protected from discovery. See 15 U.S.C. § 50; see also 18 U.S.C. §§ 1505, 1519.

**Sharing of Information:** The FTC will use information You provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces. We will not disclose such information under the Freedom of Information Act, 5 U.S.C. § 552. We also will not disclose such information, except as allowed under the FTC Act (15 U.S.C. § 57b-2), the Commission’s Rules of Practice (16 C.F.R. §§ 4.10 & 4.11), or if required by a legal obligation. Under the FTC Act, we may provide Your information in response to a request from Congress or a proper request from another law enforcement agency. However, we will not publicly disclose such information without giving You prior notice.

**Manner of Production:** You may produce documentary material or tangible things by making them available for inspection and copying at Your principal place of business. Alternatively, You may send all responsive Documents and tangible things to Erik Winker, Federal Trade Commission, 915 2nd Avenue, Suite 2896, Seattle, Washington 98174. If You are sending the materials, use a courier service such as Federal Express or UPS because heightened security measures delay postal delivery to the FTC. You must inform FTC counsel by email or telephone of how You intend to produce materials responsive to this CID at least five days before the return date.

**Certification of Compliance:** You or any person with knowledge of the facts and circumstances relating to the responses to this CID must certify that such responses are complete by signing the “Certification of Compliance” attached to this CID.

**Certification of Records of Regularly Conducted Activity:** Attached is a Certification of Records of Regularly Conducted Activity. Please execute and return this Certification with Your response. Completing this certification may reduce the need to subpoena You to testify at future proceedings to establish the admissibility of Documents produced in response to this CID.

**Definitions and Instructions:** Please review carefully the Definitions and Instructions that appear after the Specifications and provide important information regarding compliance with this CID.

## **I. SUBJECT OF INVESTIGATION**

Whether the “Company” as defined herein has engaged in deceptive or unfair practices in connection with the marketing, sale, and provision of its products or services to home service providers, in violation of the FTC Act, 15 U.S.C. § 45, and the Telemarketing Sales Rule, 16 C.F.R. Part 310, and whether Commission action to obtain monetary relief would be in the public interest. See also attached resolution(s).

## **II. SPECIFICATIONS**

**Applicable Time Period:** Unless otherwise directed, the applicable time period for the requests set forth below is from **July 31, 2014, until the date of full and complete compliance with this CID.**

A. **Interrogatories:** Provide answers to each specification and subspecification below, separately and fully in writing and under oath:

1. Provide the following information about HomeAdvisor, Inc., including its wholly or partially owned subsidiaries, affiliated businesses or companies, joint ventures, operations under assumed names, and unincorporated divisions:
  - a. state its full legal name(s) and corporate form, and all other names and corporate forms under which it has done business;
  - b. state its place(s) of business, including mailing and physical addresses;
  - c. Identify all of its owners and for each owner state the portion(s) of ownership interest held by each owner and the period during which this interest was held; and
  - d. Identify all of its officers, directors, members, and managers; state the position(s) held by each individual; describe the job duties for each position; and state the period during which they held each position.
2. Identify former employees of HomeAdvisor, Inc., whose job duties included marketing or selling Your products or services to service providers.
3. For each product or service You offer to service providers, including membership, Exact Match, Market Match, Instant Booking, Job Opportunities, LiveDirectory,

Professional Website, HomeAdvisor Seal of Approval, and mHelpDesk (referenced at, for example, [pro.homeadvisor.com/terms/terms-conditions/](http://pro.homeadvisor.com/terms/terms-conditions/) and [pro.homeadvisor.com/how-it-works/](http://pro.homeadvisor.com/how-it-works/));

- a. describe the product or service;
  - b. describe how a service provider can agree to purchase it (e.g., online, over the telephone, mail, etc.);
  - c. state the price(s) You charge service providers (including per-Lead price(s)) and, to the extent the price(s) vary, describe the relevant variables and how they impact price;
  - d. explain whether it can be purchased in isolation or must be purchased in combination with another product or service;
  - e. describe how and when the service provider is charged and billed; and
  - f. describe any applicable refund and/or credit policy or procedure.
4. Describe the circumstances in which a service provider's purchase of one of Your products or services automatically enrolls the service provider in one or more additional product(s) or service(s) offered by You. Include in Your description whether the service provider has the opportunity to opt out of the additional product(s) or service(s), what the service provider must do to opt out of the additional product(s) or service(s), and what You do to inform the service provider of what they must do to opt out of the additional product(s) or service(s).
5. Describe any circumstances in which a service provider must have a "spend target" (referenced at, for example, [pro.homeadvisor.com/how-it-works/](http://pro.homeadvisor.com/how-it-works/)) that exceeds a certain amount. provide that amount, and explain why the spend target must exceed a certain amount.
6. Describe each of the methods by which You obtain Leads.
7. Identify each Person from which You purchased Leads and state the period(s) during which You purchased Leads from the Person.
8. For each Person You Identify in Your response to Interrogatory A.7, provide the following information about the Leads You purchased:
- a. state, by month and year, the number of Leads that You provided to service providers;
  - b. state, by month and year, the number of times in total You provided Leads to service providers;

- c. describe each method used to solicit consumer information for the purpose of generating the Leads;
  - d. provide the domain of each website used to solicit consumer information for the purpose of generating the Leads;
  - e. Identify the owner of each website used to solicit consumer information for the purpose of generating the Leads; and
  - f. describe the categories of information You required for the Leads, including any requirements concerning the format or content of such information (e.g., number of characters, type of characters).
9. Provide the domain of each website, excluding domains provided in Your response to Interrogatory A.8.d, used to solicit consumer information for the purpose of generating Leads for You.
10. For each domain You Identify in Your response to Interrogatory A.9, provide the following information about the Leads You obtained:
  - a. state, by month and year, the number of Leads that You provided to service providers;
  - b. state, by month and year, the number of times in total You provided Leads to service providers;
  - c. Identify the owner of each website used to solicit consumer information for the purpose of generating the Leads; and
  - d. describe the categories of information You required for the Leads, including any requirements concerning the format or content of such information (e.g., number of characters, type of characters).
11. Provide the following information, by month and year, about Leads that You provided to service providers:
  - a. state the number of Leads that You provided;
  - b. state the number of times in total You provided Leads;
  - c. state the number of Leads that converted into a job for the service provider to whom You provided the Lead;
  - d. state the number of times in total that a Lead converted into a job for the service provider to whom You provided the Lead;
  - e. state the number of Leads for which a service provider sought a refund or credit or otherwise complained to You about the quality of the Lead;

- f. state the number of times in total that a service provider sought a refund or credit or otherwise complained to You about the quality of a Lead;
  - g. state the total amount You paid for the Leads;
  - h. state the gross revenue, and the percentage of Your total gross revenue, You received from selling the Leads; and
  - i. state the number of times that a service provider did not pay You for a Lead, and describe the reason(s) why each such service provider did not pay You (e.g., they requested and received a credit, they requested and received a refund, You provided the Lead at no cost as a promotion, they refused to pay for the Lead).
12. Describe Your relationship with the following websites:
- a. Acechimneyservices.com
  - b. Atticladderinstallationpros.com
  - c. Basketballcourtservicepros.com
  - d. Billsboilerservice.com
  - e. Fireplacepaintingpros.com
  - f. Flatroofrepairnow.com
  - g. Frozenpipethawingnow.com
  - h. Getsnowremoved.com
  - i. Jwbuildinginspection.com
  - j. Jwcabinetpainters.com
  - k. Jwstructuralinspection.com
  - l. Leafvacuumservicenow.com
  - m. Masonryrepointingpros.com
  - n. Mosquitocontrolnow.com
  - o. Mothcontrolpros.com
  - p. Muskratremovals.com
  - q. Paverpatioinstallationnow.com

- r. Playgroundmulching.com
  - s. Privacyfencepainting.com
  - t. Radiantfloorheatingpros.com
  - u. Rooftrussrepair.com
  - v. Shrubremovalpros.com
  - w. Slidinggatepros.com
  - x. Spademowing.com
  - y. Texturedrywallpros.com
  - z. Voleexterminationpros.com
  - aa. Wisechandeliers.com
  - bb. Woodenramppros.com
  - cc. Yardleafremoval.com
13. Describe all efforts that You undertake to determine the accuracy, completeness, and authenticity of the Leads You provide to service providers, including determining:
- a. that the contact information is valid (e.g., the phone number is active);
  - b. that the contact information is accurate (e.g., the phone number is associated with the consumer's name);
  - c. that the consumer owns a home;
  - d. that the consumer's home is located within the service area of the service providers to whom the Lead is sent;
  - e. that the consumer is ready to begin a project related to home services;
  - f. that the consumer is ready to pay for a project related to home services;
  - g. that the consumer is aware that You will receive their information;
  - h. that the consumer has consented to a service provider contacting them;
  - i. that, if the service provider calls the consumer, the service provider will not be violating Section 310.4(b)(iii)(B) of the Telemarketing Sales Rule, 16 C.F.R. Part 310;



- j. that the consumer recently submitted the information to which the Lead pertains; and
  - k. that the Lead is not duplicative of a Lead You have already provided to service providers.
14. Describe all policies and procedures that You have in place to measure the likelihood that a Lead You provide to a service provider will convert into a job for that service provider.
15. Describe the process(es) by which You provide Leads to service providers, including:
- a. how You notify the service providers of the Lead;
  - b. the information about the Lead initially provided to the service provider;
  - c. the point at which the service provider is obligated to pay You for the Lead;
  - d. the number of service providers who receive the same Lead, and how that number is determined;
  - e. how much time elapses between when a Lead is provided to You and when You provide the Lead to the service providers; and
  - f. how You determine which service providers receive a Lead, including circumstances in which the number of service providers who receive the Lead is less than the number of service providers who are otherwise eligible to receive the Lead.
16. Describe how service providers can control the amount, frequency, cost, and types of Leads they receive from You (e.g., pausing or turning off Leads). Include in Your response a description of:
- a. the process(es) by which service providers can exercise that control (e.g., logging into their account, calling customer service, etc.); and
  - b. any limitations or exceptions to that control, including any limitations or exceptions unique to the process(es) by which the service provider exercises control.
17. Describe what You do to inform service providers of Your response(s) to Interrogatory A.16.
18. Describe what You do to inform service providers of Your response(s) to Interrogatory A.3.f.

19. Describe all policies and procedures that You have in place regarding how You process service providers' complaints about Your products and services, including the Leads they receive. Include in Your response any policies and procedures regarding responding to, issuing refunds or credits for, documenting, escalating, and monitoring those complaints.
20. Describe all policies and procedures that You have in place that measure service providers' satisfaction with Your products and services, including the Leads they receive. Include in Your response retention rates, refund rates, cancellation rates, complaint rates, and the rates at which accounts are sent to collections.
21. Provide the following information regarding mHelpDesk:
  - a. describe Your ownership of mHelpDesk, including the date and the means by which You acquired any ownership interest in mHelpDesk;
  - b. describe the terms of the arrangement You have with mHelpDesk, including the terms under which You and mHelpDesk remit funds to one another in connection with the sale or offering for sale of mHelpDesk's services to service providers;
  - c. describe Your promotion and marketing of mHelpDesk's services to service providers, including:
    - i. to the extent that You bundle mHelpDesk's services in the sale of any of Your products or services, all disclosures You provide to service providers regarding how much of their payment is for mHelpDesk's services; and
    - ii. all disclosures You provide to service providers regarding any opt-out provisions governing service providers' subscription to mHelpDesk's services, including how long service providers have to opt out and any process(es) that service providers must follow in order to opt out; and
  - d. state, by month and year, the number and percentage of service providers who opt out of mHelpDesk within the first month of their subscription to mHelpDesk; and
  - e. state, by month and year, the number and percentage of service providers with a subscription to mHelpDesk who use mHelpDesk.
22. For each instance in which You have revised the terms and conditions governing Your relationship with service providers, provide the date of the revision and list the revisions made.
23. Describe Your policies and procedures relating to processing and collecting payment from service providers. Your response should Identify any Persons You



- use to process and collect payment from service providers, and describe the terms of Your agreement(s) with such Persons.
24. Describe Your policies and procedures relating to requests by service providers that they not receive phone calls from You or on Your behalf regarding Your products or services.
  25. Describe any policies, procedures, or processes that You have had in place to ensure that the marketing, sale, and provision of Your products or services to service providers comply with the FTC Act, 15 U.S.C. § 45, and the Telemarketing Sales Rule, 16 C.F.R. Part 310. Identify the individual(s) at the Company responsible for developing, reviewing, implementing, monitoring, or supervising these policies, procedures, or processes.
  26. List all lawsuits that have been filed by or against You, including arbitration, relating to Your marketing, sale, or provision of products or services to service providers. For each lawsuit, describe:
    - a. the nature of the suit;
    - b. the parties involved;
    - c. the case number, jurisdiction, and any other identifying information about the lawsuit;
    - d. the date it was filed;
    - e. whether You implemented any litigation hold in connection with the lawsuit, and if so, the scope and duration of the litigation hold; and
    - f. the status of the lawsuit, including, if applicable, how and the date it was resolved.
  27. List all investigations by any federal or state law enforcement or regulatory agency relating to Your marketing, sale, or provision of products or services to service providers. For each investigation, describe:
    - a. the nature of the investigation;
    - b. the investigating agency;
    - c. the date You were informed of the investigation;
    - d. whether You implemented any litigation hold in connection with the investigation, and if so, the scope and duration of the litigation hold; and
    - e. the status of the investigation, including, if applicable, how and the date it was resolved.

28. Describe any Documents that would be responsive to Document Requests B.1 through B.29 below, but that have been deleted, destroyed, mislaid, transferred, or are otherwise unavailable, and describe the circumstances and date on which they were deleted, destroyed, mislaid, transferred, or made unavailable.

**B. Document Requests:** Produce all Documents described below that were created, in use, or in effect during the Applicable Period.

1. Documents You considered or reviewed in formulating Your responses to the Interrogatories posed in this CID.
2. Documents sufficient to show Your organizational structure.
3. All materially different advertising or marketing materials used to advertise or market Your products and services to service providers.
4. All materially different documents relating to Your responses to Interrogatory A.3, and not provided in response to Document Request B.3 that You have displayed, provided, or otherwise made available to service providers.
5. A representative sample, to be agreed upon by Commission Counsel and the Company following a meet and confer, of communications, and documentation of communications, between You and service providers, including telephone recordings, chat logs, emails, and notes in any customer relationship management system You use.
6. Policies, procedures, guidance, training materials, or scripts regarding Your communications with service providers.
7. Communications between custodians to be agreed upon by Commission Counsel and the Company following a meet and confer, regarding policies, procedures, guidance, training materials, or scripts regarding Your communications with service providers.
8. Documents sufficient to show any disclosures to service providers about opting out of additional products and services that You describe in Your response to Interrogatory A.4.
9. Communications between You and the Persons You Identify in Your response to Interrogatory A.7 regarding Leads.
10. Agreements between You and the Persons You Identify in Your response to Interrogatory A.7.
11. Evaluations of the Persons, or Leads provided by the Persons, You Identify in Your response to Interrogatory A.7.

12. Documents related to Your relationship with the websites listed in Interrogatory A.12.
13. Communications between custodians to be agreed upon by Commission Counsel and the Company following a meet and confer, regarding the accuracy, completeness, and authenticity of the Leads You provide to service providers.
14. All materially different forms, templates, or other Documents designed to solicit consumer information and used to generate Leads that You provide to service providers, including any such Documents displayed on third-party websites.
15. Documents sufficient to show, by month and year, the job conversion rate of Leads that You provide to service providers.
16. Documents sufficient to show any disclosure to service providers You describe in Your response to Interrogatory A.17.
17. Complaints by service providers about the products or services You provide to service providers, including the Leads they receive.
18. Complaints by consumers about becoming the subject of a Lead without the consumer's knowledge or consent.
19. Any spreadsheet, data compilation, report, analysis, or other summary regarding Your response to Interrogatory A.20.
20. Non-privileged Documents relating to any investigation, inquiry, action, arbitration, or other proceeding, from or on behalf of any governmental agency or private consumer protection entity (e.g., Better Business Bureau) relating to business activities carried out by You.
21. Discovery produced by You in *In re HomeAdvisor, Inc. Litigation*, No. 16-cv-01849-PAB-KLM (D. Colo. filed July 19, 2016).
22. Agreements between HomeAdvisor, Inc. and mHelpDesk.
23. Documents sufficient to show any disclosure to service providers You describe in Your response to Interrogatory A.21.
24. Agreements governing any relationship between You and service providers, including any attachments or appendices to which they refer.
25. Policies, procedures, and agreements relating to collecting payment from service providers.
26. Non-privileged Documents related to any internal or external audits regarding whether the marketing, sale, and provision of Your products or services to service

providers comply with the FTC Act, 15 U.S.C. § 45, and the Telemarketing Sales Rule, 16 C.F.R. Part 310.

27. Documents sufficient to show Your revenue from each of the products and services You offer to service providers, by month and year.
28. Documents sufficient to show Your compensation structure(s) for employees who are involved in the marketing and sale of Your products and services to service providers.
29. Documents related to Your Document retention policies.

### **III. DEFINITIONS**

The following definitions apply to this CID:

D-1. “**Advertisement**” or “**Advertising**” or “**Ad**” means any written or verbal statement, illustration, or depiction that promotes the sale of a good or service or is designed to increase consumer interest in a brand, good, or service. Advertising media includes, but is not limited to: packaging and labeling; promotional materials; print; television; radio; and Internet, social media, and other digital content.

D-2. “**Company**,” “**You**,” or “**Your**” means **HomeAdvisor, Inc.**, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

D-3. “**Document**” means the complete original, all drafts, and any non-identical copy, whether different from the original because of notations on the copy, different metadata, or otherwise, of any item covered by 15 U.S.C. § 57b-1(a)(5), 16 C.F.R. § 2.7(a)(2), or Federal Rule of Civil Procedure 34(a)(1)(A).

D-4. “**Identify**” or “**the Identity of**” requires identification of (a) natural persons by name, title, present business affiliation, present business address, telephone number, and email address or, if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, and the identities of Your contact persons at the business or organization.

D-5. “**Lead**” means any set of information about a consumer (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, including Instant Booking, Instant Connect, Exact Match, Job Opportunity, and Market Match (ProFinder) leads (referenced at, for example, [pro.homeadvisor.com/how-it-works/](https://pro.homeadvisor.com/how-it-works/)).

D-6. “**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.

#### IV. INSTRUCTIONS

**1-1. Petitions to Limit or Quash:** You must file any petition to limit or quash this CID with the Secretary of the FTC no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition must set forth all assertions of protected status or other factual and legal objections to the CID and comply with the requirements set forth in 16 C.F.R. § 2.10(a)(1) – (2). **The FTC will not consider petitions to quash or limit if You have not previously met and conferred with FTC staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process.** 16 C.F.R. § 2.7(k); *see also* § 2.11(b). **If You file a petition to limit or quash, You must still timely respond to all requests that You do not seek to modify or set aside in Your petition.** 15 U.S.C. § 57b-1(f); 16 C.F.R. § 2.10(b).

**1-2. Withholding Requested Material / Privilege Claims:** For specifications requesting production of Documents or answers to written interrogatories, if You withhold from production any material responsive to this CID based on a claim of privilege, work product protection, statutory exemption, or any similar claim, You must assert the claim no later than the return date of this CID, and You must submit a detailed log, in a searchable electronic format, of the items withheld that identifies the basis for withholding the material and meets all the requirements set forth in 16 C.F.R. § 2.11(a) – (c). The information in the log must be of sufficient detail to enable FTC staff to assess the validity of the claim for each Document, including attachments, without disclosing the protected information. If only some portion of any responsive material is privileged, You must submit all non-privileged portions of the material. Otherwise, produce all responsive information and material without redaction. 16 C.F.R. § 2.11(c). The failure to provide information sufficient to support a claim of protected status may result in denial of the claim. 16 C.F.R. § 2.11(a)(1).

**1-3. Modification of Specifications:** The Bureau Director, a Deputy Bureau Director, Associate Director, Regional Director, or Assistant Regional Director must agree in writing to any modifications of this CID. 16 C.F.R. § 2.7(l).

**1-4. Scope of Search:** This CID covers Documents and information in Your possession or under Your actual or constructive custody or control, including Documents and information in the possession, custody, or control of Your attorneys, accountants, directors, officers, employees, service providers, and other agents and consultants, whether or not such Documents or information were received from or disseminated to any person or entity.

**1-5. Identification of Responsive Documents:** For specifications requesting production of Documents, You must identify in writing the Documents that are responsive to the specification. Documents that may be responsive to more than one specification of this CID need not be produced more than once. If any Documents responsive to this CID have been previously supplied to the FTC, You may identify the Documents previously provided and the date of submission.

**1-6. Maintain Document Order:** For specifications requesting production of Documents, You must produce Documents in the order in which they appear in Your files or as electronically stored. If Documents are removed from their original folders, binders, covers, containers, or



electronic source. You must specify the folder, binder, cover, container, or electronic media or file paths from which such Documents came.

**I-7. Numbering of Documents:** For specifications requesting production of Documents, You must number all Documents in Your submission with a unique identifier such as a Bates number or a Document ID.

**I-8. Production of Copies:** For specifications requesting production of Documents, unless otherwise stated, You may submit copies in lieu of original Documents if they are true, correct, and complete copies of the originals and You preserve and retain the originals in their same state as of the time You received this CID. Submission of copies constitutes a waiver of any claim as to the authenticity of the copies should the FTC introduce such copies as evidence in any legal proceeding.

**I-9. Production in Color:** For specifications requesting production of Documents, You must produce copies of Advertisements in color, and You must produce copies of other materials in color if necessary to interpret them or render them intelligible.

**I-10. Electronically Stored Information:** For specifications requesting production of Documents, see the attached FTC Bureau of Consumer Protection Production Requirements (“Production Requirements”), which detail all requirements for the production of electronically stored information to the FTC. You must discuss issues relating to the production of electronically stored information with FTC staff prior to production.

**I-11. Sensitive Personally Identifiable Information (“Sensitive PII”) or Sensitive Health Information (“SHI”):** For specifications requesting production of Documents or answers to written interrogatories, if any responsive materials contain Sensitive PII or SHI, please contact FTC counsel before producing those materials to discuss whether there are steps You can take to minimize the amount of Sensitive PII or SHI You produce, and how to securely transmit such information to the FTC.

Sensitive PII includes an individual’s Social Security number; an individual’s biometric data (such as fingerprints or retina scans, but not photographs); and an individual’s name, address, or phone number in combination with one or more of the following: date of birth, Social Security number, driver’s license or state identification number (or foreign country equivalent), passport number, financial account number, credit card number, or debit card number. SHI includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

**I-12. Interrogatory Responses:** For specifications requesting answers to written interrogatories: (a) answer each interrogatory and each interrogatory subpart separately, fully, and in writing; and (b) verify that Your answers are true and correct to Your knowledge by signing the “Certification of Compliance” attached to this CID.

**I-13. Submission of Documents in Lieu of Interrogatory Answers:** You may answer any written interrogatory by submitting previously existing Documents that contain the information

requested in the interrogatory so long as You clearly indicate in each written interrogatory response which Documents contain the responsive information. For any interrogatory that asks You to identify Documents, You may, at Your option, produce the Documents responsive to the interrogatory so long as You clearly indicate the specific interrogatory to which such Documents are responsive.

**Federal Trade Commission Bureau of Consumer Protection**  
**Production Requirements**  
 Revised February 2018

In producing information in to the FTC, you must comply with the following production requirements, unless the FTC agrees otherwise. If you have any questions about these requirements, please contact FTC Counsel before production.

**Production Format**

1. **General Format:** Provide load-ready electronic productions with: (a) an Opticon image load file (.OPT) containing a line for every image file; and (b) a delimited data load file (.DAT) containing a line for every document, with bates references, metadata fields, and native file links, where applicable.
2. **Electronically Stored Information (“ESI”):** Documents stored in electronic format in the ordinary course of business must be produced in the following format:
  - a. For ESI other than the categories described below, submit in native electronic format with extracted text or Optical Character Recognition (OCR), all metadata, and corresponding image renderings converted to Group IV, 300 DPI, single-page Tagged Image File Format (TIFF) or color JPEG images (if color is necessary to interpret the contents or render them intelligible).
  - b. For Microsoft Excel, Access, or PowerPoint files, submit in native format with extracted text and metadata. Data compilations in Excel spreadsheets or in delimited text formats must contain all underlying data, formulas, and algorithms without redaction.
  - c. For other spreadsheet, database, presentation, or multimedia formats; instant messages; or proprietary applications, discuss production format during the meet and confer.
3. **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business must be scanned and submitted as 300 DPI individual single page TIFFs (or color JPGs when necessary to interpret documents or render them intelligible), with corresponding document-level OCR text and logical document determination in an accompanying load file.
4. **Extracted Text/OCR:** Submit text as document-level text files, named for the beginning bates number, and organized into a folder separate from images. We cannot accept Unicode text files.
5. **Document Identification:** Provide a unique DocId or bates number for each hard copy or electronic document, consisting of a prefix and a consistent number of numerals using leading zeros. Do not use a space to separate the prefix from numbers.
6. **Attachments:** Preserve the parent/child relationship by producing attachments as separate documents, numbering them consecutively to the parent email, and including a reference to all attachments.
7. **Metadata Production:** For each document submitted electronically, include standard metadata fields in a standard ASCII delimited data load file. The first line of the data load file shall include the field names. Submit date and time data in separate fields. Use these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	<	20
Quote Character	”	254



Multi Entry delimiter	®	174
<Return> Value in data	~	126

8. **De-duplication:** Do not use de-duplication or email threading software without FTC counsel approval.
9. **Password-Protected Files:** Remove passwords prior to production. If password removal is not possible, provide the original and production filenames and the password under separate cover.
10. **Sensitive PII or SHI:** Use data encryption to protect any Sensitive PII or SHI (as defined in the CID Schedule). Provide encryption passwords in advance of delivery, under separate cover.

### Producing and Submitting Media to the FTC

1. Prior to production, scan all media and data for viruses and confirm the media and data are virus-free.
2. For productions smaller than 50 GB, the FTC can accept electronic file transfer via FTC-hosted secure file transfer protocol (Accellion or SecureZip). Contact FTC counsel to request this option. The FTC cannot accept files via Dropbox, Google Drive, OneDrive, or other third-party file transfer sites.
3. Use the least amount of media necessary for productions. Acceptable media formats are CDs, DVDs, flash drives, and hard drives. Format all media for use with Windows 7.
4. Use a courier service (e.g., Federal Express, UPS) because heightened security measures delay postal delivery. Mark the exterior of all packages containing electronic media with the following:

MAGNETIC MEDIA – DO NOT X-RAY  
MAY BE OPENED FOR INSPECTION

5. Provide a production transmittal letter with each production that includes:
  - a. Production volume name (e.g., Volume 1), date of production, and numeric DocID number range of all documents included in the production;
  - b. List of custodians and the DocID number range for each custodian;
  - c. Total number of records and all underlying images, emails, and associated attachments, native files, and databases in the production
  - d. List of load file fields in the order in which they are organized in the data file.

**PUBLIC**

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS:                    **Edith Ramirez, Chairwoman**  
   **Maureen K. Ohlhausen**  
   **Terrell McSweeney**

**RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC  
INVESTIGATION OF TELEMARETERS, SELLERS, SUPPLIERS, OR OTHERS**

File No. 012 3145

Nature and Scope of Investigation:


To determine whether unnamed telemarketers, sellers, or others assisting them have engaged or are engaging in: (1) unfair or deceptive acts or practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45 (as amended); and/or (2) deceptive or abusive telemarketing acts or practices in violation of the Commission's Telemarketing Sales Rule, 16 C.F.R. pt 310 (as amended), including but not limited to the provision of substantial assistance or support — such as mailing lists, scripts, merchant accounts, and other information, products, or services — to telemarketers engaged in unlawful practices. The investigation is also to determine whether Commission action to obtain monetary relief would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, 57b-1 (as amended); and FTC Procedures and Rules of Practice, 16 C.F.R. §§ 1.1 *et seq.* and supplements thereto.

By direction of the Commission.

  
Donald S. Clark  
Secretary

Issued: April 1, 2016

**CERTIFICATION OF COMPLIANCE**  
**Pursuant to 28 U.S.C. § 1746**

I, \_\_\_\_\_, certify the following with respect to the Federal Trade Commission's ("FTC") Civil Investigative Demand directed to HomeAdvisor, Inc. (the "Company") (FTC File No. 1923106) (the "CID"):

1. The Company has identified all documents, information, and/or tangible things ("responsive information") in the Company's possession, custody, or control responsive to the CID and either:

- (a) provided such responsive information to the FTC; or
- (b) for any responsive information not provided, given the FTC written objections setting forth the basis for withholding the responsive information.

2. I verify that the responses to the CID are complete and true and correct to my knowledge.

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

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**CERTIFICATION OF RECORDS OF REGULARLY CONDUCTED ACTIVITY**  
**Pursuant to 28 U.S.C. § 1746**

1. I, \_\_\_\_\_, have personal knowledge of the facts set forth below and am competent to testify as follows:
2. I have authority to certify the authenticity of the records produced by HomeAdvisor, Inc. (the "Company") and attached hereto.
3. The documents produced and attached hereto by the Company are originals or true copies of records of regularly conducted activity that:
  - a) Were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters;
  - b) Were kept in the course of the regularly conducted activity of the Company; and
  - c) Were made by the regularly conducted activity as a regular practice of the Company.

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

Date: \_\_\_\_\_

Signature \_\_\_\_\_

# EXHIBIT D

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UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION

ORAL ARGUMENT

HOMEADVISOR

Docket Number 9407

Remote Meeting via Zoom

Thursday, July 21, 2022

1:05 p.m.

BEFORE: CHAIR LINA KHAN  
COMMISSIONER CHRISTINE WILSON  
COMMISSIONER ALVARO BEDOYA  
COMMISSIONER NOAH PHILLIPS  
COMMISSIONER REBECCA SLAUGHTER

Oral Argument

HomeAdvisor, Inc.

7/21/2022

1 ON BEHALF OF THE COMPLAINT:

2 SOPHIA CALDERON, ESQUIRE

3 BREENA ROOS, ESQUIRE

4 M. ELIZABETH HOWE, ESQUIRE

5 Federal Trade Commission

6 915 Second Avenue, Suite 2896

7 Seattle, Washington 98174

8 scalderon@ftc.gov

9

10 ON BEHALF OF RESPONDENT:

11 STEPHEN R. NEUWIRTH, ESQUIRE

12 JENNIFER BARRETT, ESQUIRE

13 KATHRYN BONACORSI, ESQUIRE

14 NEIL PHILLIPS, ESQUIRE

15 KYRA SIMON, ESQUIRE

16 GEORGE T. PHILLIPS, ESQUIRE

17 Quinn Emanuel Urquhart & Sullivan

18 51 Madison Avenue, 22nd Floor

19 New York, New York 10010

20 (212) 849-7000

21 stephenneuwirth@quinnemanuel.com

22

23 ALSO PRESENT:

24 ANISHA DASGUPTA, GENERAL COUNSEL

25

For The Record, Inc.  
(301) 870-8025 - www.ftrinc.net - (800) 921-5555

## Oral Argument

HomeAdvisor, Inc.

7/21/2022

1 P R O C E E D I N G S

2 - - - - -

3 CHAIR KHAN: Good afternoon, everyone.

4 The Commission is meeting today in open session  
5 to hear oral argument in the matter of  
6 HomeAdvisor, Docket Number 9407, on the motion  
7 for summary decision filed by counsel supporting  
8 the complainant. The respondent is responded by  
9 Mr. Stephen Neuwirth, and counsel supporting the  
10 complaint is represented by Ms. Sophia Calderon.

11 Each side will have 45 minutes to  
12 present their arguments. Counsel supporting the  
13 complaint will make the first presentation and  
14 may reserve time for rebuttal. Counsel for the  
15 respondent will then make their presentation.  
16 Counsel supporting the complainant may conclude  
17 argument with a rebuttal presentation.

18 Because there are a large number of  
19 confidential documents referenced in this case,  
20 the Commission voted last week to close portions  
21 of this meeting to discuss confidential  
22 information pursuant to 5 USC 552b(c)(4) and  
23 (10).

24 As a reminder, each side is permitted  
25 to reserve up to 20 minutes of their total

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## Oral Argument

HomeAdvisor, Inc.

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1 presentation time for discussion of confidential  
2 information. You each should ensure that any  
3 discussion of confidential information occurs at  
4 the end of your presentations. When you are  
5 ready to discuss the confidential information,  
6 please let us know so that we can go into  
7 confidential session. During that time, the  
8 argument will not be web cast to the public.  
9 However, we will resume the web cast once any  
10 confidential discussion has ended.

11 Ms. Calderon, do you want to reserve  
12 any time for rebuttal?

13 MS. CALDERON: Thank you, Chair Khan.  
14 I'd like to reserve 10 minutes for rebuttal,  
15 please.

16 CHAIR KHAN: Great. Please begin when  
17 you're ready.

18 MS. CALDERON: Good afternoon, Chair  
19 Khan and commissioners.

20 This is a straightforward case about  
21 deception. For many years and across many  
22 advertising and marketing channels, HomeAdvisor  
23 has consistently and unabashedly misrepresented  
24 central aspects of its products so that home  
25 service providers, primarily small businesses,

## Oral Argument

HomeAdvisor, Inc.

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1 would buy them.

2 As you know from the parties'  
3 briefing, at a very basic level, HomeAdvisor  
4 sells leads, consumer contact information that  
5 service providers like plumbers and electricians  
6 can use to identify potential clients and land  
7 jobs. HomeAdvisor generates these leads  
8 primarily from its own website and from  
9 third-party lead generators. Service providers  
10 buy these leads from HomeAdvisor without  
11 previewing them in advance, making HomeAdvisor's  
12 representations about their quality and their  
13 characteristics all the more important.

14 This case isn't about whether  
15 HomeAdvisor is a valuable business. It's not  
16 about whether HomeAdvisor is innovative, and it's  
17 not about whether HomeAdvisor's leads ever turn  
18 into jobs for service providers. This case is  
19 simply about whether the representations that  
20 HomeAdvisor made about its products were true,  
21 and they weren't. Specifically, this case --

22 COMMISSIONER PHILLIPS: Before we get  
23 into, and my apologies for the interruption,  
24 defense counsel cite a number of cases for the  
25 propositions that questions of falsity and

## Oral Argument

HomeAdvisor, Inc.

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1 questions of materiality are factual questions.

2 Do you agree with that proposition?

3 MS. CALDERON: Thank you,  
4 Commissioner. Complaint counsel would agree that  
5 there are factual questions, but the overwhelming  
6 evidence in the record makes clear that there's  
7 no genuine dispute here as to what the facts are  
8 at hand in this matter.

9 COMMISSIONER PHILLIPS: To the extent  
10 that we disagree with that proposition, if we  
11 were to believe that there were disputes as to  
12 falsity or as to materiality, would you agree  
13 that the proper resolution of this question would  
14 be to deny summary decision?

15 MS. CALDERON: Commissioner, only if  
16 the conclusion is that those disputes are in fact  
17 genuine and that they concern issues that are  
18 material, which falsity would be an issue that is  
19 material here.

20 COMMISSIONER PHILLIPS: Thank you,  
21 Counselor.

22 MS. CALDERON: Thank you.  
23 Specifically this case and complaint counsel's  
24 motion for summary decision is about three types  
25 of deceptive claims that HomeAdvisor has

## Oral Argument

HomeAdvisor, Inc.

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1 systematically made to service providers.

2 The first type of deceptive claims are  
3 what I'll refer to as the lead quality claims,  
4 claims that HomeAdvisor's leads were homeowners  
5 who were ready to hire concerned projects that  
6 matched service providers tasks and location  
7 preferences and that the source of those leads  
8 were people who had sought out HomeAdvisor's  
9 assistance in finding a service provider.

10 As I'll explain in the confidential  
11 portion of my argument, all of those lead quality  
12 claims simply weren't true. Indeed, service  
13 providers received leads from HomeAdvisor  
14 concerning people who have no interest in getting  
15 any work done at all, leads with patently fake  
16 information, and leads concerning people who have  
17 no idea how HomeAdvisor got their information.  
18 Those are the lead quality claims.

19 The second type of deceptive claims  
20 are what I'll refer to as the win rate claims,  
21 claims that HomeAdvisor's leads converted into  
22 jobs for service providers at specific known  
23 rates, despite the fact that HomeAdvisor had no  
24 substantiation whatsoever for these rates.

25 And the third type of deceptive claims

## Oral Argument

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1 are the mHelpDesk claims, claims that a  
2 HomeAdvisor's mHelpDesk prescription product was  
3 free for the first month, when in fact it cost  
4 \$59.99.

5 COMMISSIONER WILSON: Counselor,  
6 before you proceed, can I ask a question?

7 Do we have evidence on the net  
8 impression that service providers took from the  
9 language that the leads were from customers  
10 "ready to hire," "ready to buy," or "looking to  
11 hire"?

12 MS. CALDERON: Thank you,  
13 Commissioner.

14 Yes. The record includes, for  
15 example, complaints made to the Better Business  
16 Bureau in which service providers specifically  
17 articulate that they were made these  
18 representations and that their complaint is that  
19 those representations were not true.

20 COMMISSIONER WILSON: Do you believe  
21 that a copy test would be necessary to facilitate  
22 figuring out what the net impression of the  
23 claims was?

24 MS. CALDERON: Thank you,  
25 Commissioner.

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## Oral Argument

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1                   Not with the claims that are at issue  
2     in this case. These claims have a plain meaning  
3     that is readily apparent, "ready to buy,"  
4     "looking to hire," "exactly what you want to do  
5     in the exact location you want to do it."

6                   And the Commission has held before  
7     that it has both the common sense and the  
8     expertise to decide when -- what claims are made  
9     when they are readily apparent as these are.

10                  COMMISSIONER WILSON: So although the  
11     words may have a plain language meaning, in the  
12     context of providing a lead, a service provider  
13     has to know they need to convert the customer and  
14     the "ready to buy" assertion could mean different  
15     things to different people. So if this case were  
16     to litigate, would you expect to submit copy test  
17     evidence?

18                  MS. CALDERON: Complaint counsel's  
19     position at this point in the proceeding is that  
20     copy testing is unnecessary to establish the  
21     complaints that were actually made.

22                  COMMISSIONER WILSON: Thank you,  
23     Counselor.

24                  MS. CALDERON: Thank you.

25                  CHAIR KHAN: If I could ask one

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1 follow-up to that. You noted that this language  
2 really had clear, plain meaning.

3 What do you think of respondent's  
4 argument that these were sophisticated service  
5 providers that really understood how the business  
6 works and that it doesn't always entail actually  
7 seeing a ready job at the end of the day? How  
8 should we assess that if not through net  
9 impressions and what seems to be a very factual  
10 question?

11 MS. CALDERON: Thank you, Chair Khan.

12 The complaint counsel agrees that  
13 respondent has gone to great lengths going into  
14 the sophistication of the service providers.  
15 However, respondent has not connected the  
16 sophistication of the service providers to their  
17 interpretation of the actual claims, which  
18 complaint counsel in this case contends have a  
19 very plain meaning.

20 Respondent's counsel focuses on the  
21 fact that leads are not guaranteed jobs. That is  
22 not a claim that complaint counsel is alleging  
23 HomeAdvisor made. What complaint counsel is  
24 alleging is that HomeAdvisor made claims about  
25 the leads, not about what a lead in and of

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1     itself, but adjectives that are applied to those  
2     leads, "ready to buy," "ready to hire," "exactly  
3     what you want to do in the exact location you  
4     want to do it."

5                     It is those additional qualifiers or  
6     descriptors of what a lead is and descriptors  
7     that have a plain meaning that respondent has  
8     introduced no evidence that service providers  
9     would interpret those descriptors any differently  
10    from anybody else.

11                    CHAIR KHAN: Thank you.

12                    MS. CALDERON: Because this case is  
13    only about deception, there are only three issues  
14    that are relevant to the motion for summary  
15    decision.

16                    First, whether HomeAdvisor in fact  
17    made the three types of deceptive claims; second,  
18    whether those claims were in fact false or  
19    misleading; and third, whether those claims were  
20    material to service providers.

21                    As is apparent from the abundance of  
22    evidence in the record, there is no genuine  
23    dispute about any of these three issues, and the  
24    Commission should grant the motion. I will  
25    address each of the three issues in turn, but



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1 before I get started, I wanted to note that while  
2 this portion of my argument is open to the  
3 public, prior to discussing the falsity of each  
4 claim, I will need to transition to an in camera  
5 portion because the vast majority of the evidence  
6 relevant to the motion for summary decision was  
7 designated confidential by HomeAdvisor. I'll  
8 make clear to both the Commission and to the  
9 video conference operator when I'm transitioning  
10 to an in camera portion.

11 The first issue relevant --

12 COMMISSIONER PHILLIPS: My apologies  
13 for another interruption. The defendants make a  
14 great deal in their briefing about complaint  
15 counsel's alleged failure in their view to show  
16 that the misrepresentations at issue, the alleged  
17 misrepresentations at issue, were a pattern or  
18 that they were systemic in nature.

19 What do you think is your burden in  
20 that regard? What do you need to show or what  
21 level of misrepresentation or commonality do you  
22 need to show under the case law to prevail here?

23 MS. CALDERON: Thank you,  
24 Commissioner.

25 Complaint counsel's position is that

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1 complaint counsel -- is that we need to show a  
2 pattern, basically evidence that these were not  
3 isolated instances, that there was more than  
4 simply one-off events. And as I will argue  
5 during my argument, we believe that the record is  
6 replete with exactly that kind of evidence, that  
7 these claims appeared in HomeAdvisor's national  
8 advertising, HomeAdvisor's training materials,  
9 HomeAdvisor's internal guidance for its sales  
10 agents, and in fact were made in actual recorded  
11 sales calls to service providers.

12 COMMISSIONER PHILLIPS: Thank you,  
13 Counselor.

14 MS. CALDERON: Thank you.

15 So the first issue relevant to the  
16 motion for summary decision is whether  
17 HomeAdvisor in fact made each of the three  
18 deceptive claims, and there is no genuine dispute  
19 that it did.

20 As a preliminary matter, HomeAdvisor  
21 does not genuinely dispute with actual evidence  
22 that its national advertising consistently  
23 contained all of the lead quality claims. Its  
24 advertising, including its website and other  
25 marketing materials, regularly claim that its

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1 leads concern homeowners who are ready to hire a  
2 service provider. For example, its website has  
3 stated HomeAdvisor connects contractors with  
4 homeowners who are ready to hire pros for their  
5 home projects. Another portion of its website  
6 said, you won't have to waste your time with  
7 customers who just window shop. HomeAdvisor  
8 allows you to spend your time with the right  
9 ready-to-buy customers. Still another portion.  
10 We'll connect you with homeowners looking to hire  
11 pros in your area.

12 In addition to its website,  
13 HomeAdvisor's other marketing materials,  
14 including its e-mail marketing, its magazine  
15 marketing, and radio spots also contained similar  
16 claims. These materials were designated  
17 confidential by HomeAdvisor but the slide  
18 contains citations to where they are in the  
19 record.

20 The plain meaning of these claims is  
21 clear. HomeAdvisor's leads don't concern people  
22 who are just poking around on the Internet. They  
23 are homeowners who are actually ready to hire a  
24 service provider. Of course, that doesn't mean  
25 that they're ready to hire just anyone. It's not

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1 a guaranteed job. But they're ready to hire  
2 someone.

3 HomeAdvisor's advertising also  
4 regularly claimed that its leads matched service  
5 providers' tasks and location preferences. Its  
6 website stated tell us what you do and where, and  
7 we deliver prospects that meet your exact needs.  
8 Another portion of its website said you're in  
9 control. Only get the leads you want. You pick  
10 your service types and location preferences, and  
11 we bring you prospects that match what you want.

12 Again, the plain meaning of these  
13 claims is clear. HomeAdvisor's leads will match  
14 the task and location preferences of the service  
15 providers who receive them. An indoor painter in  
16 D.C. isn't going to get leads for outdoor  
17 painting in Baltimore.

18 And HomeAdvisor's advertising also  
19 claimed that the source of its leads were  
20 homeowners who had intentionally sought out  
21 HomeAdvisor for assistance in finding a service  
22 provider. For example, one portion of its  
23 website said, while you're on the job,  
24 HomeAdvisor is finding qualified customers for  
25 you. We spend millions of dollars driving

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1 customers to our website.

2 And another portion of its website  
3 said over 30 million homeowners have trusted  
4 HomeAdvisor to help them find quality pros with  
5 the expertise to turn their home improvement  
6 dreams into reality. The plain meaning of these  
7 claims is the same. HomeAdvisor's leads aren't  
8 bundles of consumer information that HomeAdvisor  
9 has somehow obtained from third parties.  
10 Instead, HomeAdvisor's leads concern homeowners  
11 who knowingly came directly to HomeAdvisor for  
12 assistance in selecting a service provider.

13 As is evident from the multiple  
14 advertisements I just displayed, there is no  
15 genuine dispute that HomeAdvisor made the  
16 deceptive lead quality claims in its national  
17 advertising. But HomeAdvisor deception was not  
18 limited to its national advertising.

19 HomeAdvisor sales agents in their  
20 sales calls with service providers also regularly  
21 made all three of the deceptive claims, the lead  
22 quality claims, the win rate claims, and the  
23 mHelpDesk claims. In fact, HomeAdvisor sales  
24 agents were trained to make these claims. There  
25 is substantial evidence of this in the record,

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1 and HomeAdvisor does not genuinely dispute it.

2 I'll start with the lead quality  
3 claims. HomeAdvisor sales agents repeatedly told  
4 service providers in sales calls that  
5 HomeAdvisor's leads concerned homeowners who were  
6 ready to hire, who had projects that matched  
7 service providers tasks and location preferences,  
8 and had sought out HomeAdvisor directly for  
9 assistance in selecting a service provider.

10 As I'll explain in the confidential  
11 portion of my argument, all of these claims were  
12 misleading. There are numerous examples in the  
13 record of HomeAdvisor sales agents making these  
14 claims in recorded sales calls. I won't read any  
15 of the call transcripts aloud, but I would direct  
16 the Commission's attention to the appendix to  
17 complaint counsel's statement of material facts.

18 The appendix is filled with excerpts  
19 from sales calls in which sales agents make the  
20 lead quality claims. As is apparent from the  
21 excerpts in the appendix, sales agents lead  
22 quality claims were predictably consistent with  
23 the claims made in HomeAdvisor's national  
24 advertising, but they were also consistent with  
25 HomeAdvisor's approved claims for its sales

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1 agents and HomeAdvisor's sales scripts and  
2 training materials and the slide shows citations  
3 to where these materials appear in the record.

4 The appendix shows that in numerous  
5 instances sales agents made the lead quality  
6 claims using practically the exact same phrasing  
7 that appeared in HomeAdvisor's advertisements,  
8 HomeAdvisor's scripts, and HomeAdvisor's training  
9 materials. In other words, HomeAdvisor sales  
10 agents made the same claims that HomeAdvisor's  
11 advertisements made, and they did so because that  
12 is how they were trained.

13 I'd like to turn now to the win rate  
14 claims, but before I do so, unless the Commission  
15 has any questions so far that can be discussed on  
16 the open record, I'd like to enter an in camera  
17 portion of oral argument. I'd like to reserve  
18 three minutes of the in camera argument for  
19 rebuttal, which I understand means I have 17  
20 minutes of non-rebuttal time. And can the video  
21 conference operator please confirm.

22 COMMISSIONER PHILLIPS: Before we go  
23 into confidential or we sort of break, I just  
24 have one additional question. Earlier in  
25 response to my question you agreed that you would

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1 need to show a pattern of deceptive claims. Is  
2 the question of whether there is in fact a  
3 pattern, is that a -- would you agree with me  
4 that that's a factual question?

5 MS. CALDERON: Yes. I would agree  
6 that that is a factual question.

7 COMMISSIONER PHILLIPS: Okay. I  
8 understand your position as it's not in dispute,  
9 but I just wanted to ask, that's a factual  
10 question.

11 MS. CALDERON: Yes. One that is not  
12 in genuine dispute.

13 COMMISSIONER PHILLIPS: Thank you for  
14 correcting me, Counsel.

15 CHAIR KHAN: At this time, we will go  
16 into confidential session. Please pause  
17 complaint counsel's time and turn off the public  
18 web cast.

19 VIDEOTAPE OPERATOR: You are clear.  
20 You are no longer live.

21 (Whereupon, the proceedings were held in in  
22 camera session.)

23 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]



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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]

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[REDACTED]



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1                   The question before the Commission  
2   today is not whether the FTC ultimately should  
3   prevail on its claims. Rather, the sole question  
4   is whether at this time when every material fact  
5   is contested and the subject of conflicting  
6   evidence, when discovery on these material facts  
7   is ongoing and when fact-finding in an  
8   administrative law judge trial is just months  
9   away scheduled for November, the Commission  
10   should short-circuit and terminate the entire  
11   fact-finding process and enter a summary decision  
12   as requested by complaint counsel, disregarding  
13   all of the documentary evidence, all of the fact  
14   witness testimony from complaint counsel's own  
15   witnesses, as well as others, as well as expert  
16   opinion that has been submitted and not rebutted  
17   by complaint counsel that contradicts the FTC's  
18   claims.

19                   The record evidence includes  
20   HomeAdvisor data, documents, and witness  
21   testimony demonstrating that the leads  
22   HomeAdvisor provides to its service professional  
23   members are legitimate and provide real value and  
24   that HomeAdvisor has not made the  
25   misrepresentations asserted by complaint counsel

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1 and certainly not in any widespread or systemic  
2 way.

3 HomeAdvisor has submitted the opinions  
4 of a lead industry expert refuting the  
5 fundamental premises of the FTC's complaints, an  
6 expert opinion that remains wholly unanswered by  
7 complaint counsel. HomeAdvisor also has  
8 submitted the opinion of an expert statistician  
9 demonstrating the complete lack of standards,  
10 statistical steps to confirm the  
11 representativeness of the sales call sample set  
12 that Ms. Calderon referred to today and which  
13 comprises one of the few bits of actual evidence  
14 on which complaint counsel relies.

15 And again, the expert opinion of our  
16 statistician remains wholly unrebutted. Even  
17 more so --

18 COMMISSIONER PHILLIPS: Counselor.

19 MR. NEUWIRTH: Yes, I'm sorry.

20 COMMISSIONER PHILLIPS: I think  
21 somewhere in complaint counsel's briefing they  
22 raise a question what additional discovery you  
23 want. Can you help explain to us what you hope  
24 to get in discovery?

25 MR. NEUWIRTH: Certainly. There are



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1 many matters that would be the subject of ongoing  
2 discovery. First, as I mentioned, we've offered  
3 un rebutted expert opinion, and we need to say  
4 what -- see what, if anything, complaint counsel  
5 can say in response to that.

6 Second, there have actually been 23  
7 declarations, not just the ones that Ms. Calderon  
8 mentioned, but also declarations of four FTC  
9 employees. And one of the things that came out  
10 in the depositions that we took was that the  
11 declarations of the service providers, former  
12 employees, and homeowners were all written by a  
13 FTC investigator, and the declarants testified  
14 that in fact they -- their recollection was often  
15 different from what had been written in their  
16 declarations about what it was that they were  
17 told, what it was that was relevant to their  
18 decision to join HomeAdvisor, what happened with  
19 the leads that they received from HomeAdvisor.  
20 And remarkably, the Federal Trade Commission  
21 complaint counsel took the position during the  
22 deposition of the investigator who put in a  
23 declaration that we were not entitled to ask her  
24 any questions about the preparation of those  
25 declarations.

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1                   Even though the other declarants whose  
2   declarations they were had testified about their  
3   communications with this investigator who wrote  
4   the declarations, the FTC complaint counsel took  
5   the position that we couldn't ask the  
6   investigator any questions about those  
7   declarations or the discrepancies that had come  
8   out between what was written and what these  
9   declarants were now testifying.

10                   So certainly one of the things we want  
11   to do is go to the ALJ to get relief and to be  
12   able to inquire about the writing of these  
13   declarations and all those discrepancies, and  
14   these are completely material discrepancies.

15                   It's hard to believe that complaint  
16   counsel would have submitted these declarations  
17   with the motion if they really didn't bear in any  
18   material way on the motion. They clearly were  
19   put forward with the intention to be evidence of  
20   how these misrepresentations worked and what  
21   affect they had on people, and all of these  
22   declarants actually ended up testifying either  
23   that the misrepresentations were not made in the  
24   way that complaint counsel's complaint suggests,  
25   that they weren't relied on in the way that

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1 complaint counsel's complaint suggests, that when  
2 complaints were made, they weren't even about the  
3 subject matter of this case, that they had to do  
4 with other issues. So what could be more  
5 important than follow-up discovery after all of  
6 these depositions which showed that the  
7 declarants didn't really believe or feel what it  
8 was that their declarations stated.

9 Moreover, it's critical to note that I  
10 believe Commissioner Wilson asked about whether  
11 the FTC complaint counsel had any further  
12 discovery that they wanted to do. It has to be  
13 noted that complaint counsel has served 46  
14 document requests in the ALJ proceeding,  
15 including many with multiple parts, which must  
16 have some materiality to the case or it's hard to  
17 understand why they would have served them. All  
18 of that discovery is still underway. HomeAdvisor  
19 has served many document requests on the  
20 government as to documents and other material  
21 which is relevant to the claims and the  
22 affirmative defenses.

23 So we would respectfully submit,  
24 Commissioner Phillips, that we are just at the  
25 beginning of this multi-month discovery process

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1 that the ALJ proceeding contemplated, and it  
2 really makes no sense, with the ALJ hearing just  
3 a couple of months away, to now short-circuit all  
4 of that and jump to summary decision.

5 In fact, if we look at our  
6 demonstrative number 9, which I believe will be  
7 put up now, when this action started, the  
8 Commission publicly represented that the  
9 allegations against HomeAdvisor "will be tried in  
10 a formal hearing before an administrative law  
11 judge."

12 It's difficult to understand why now  
13 at this point in the process we would suddenly  
14 abandon that as complaint counsel suggests and  
15 just have a short-circuiting of it and rush to  
16 judgment, which really would be a rubber-stamping  
17 of the complaint, because all that Ms. Calderon  
18 presented to you today was a graphic version of  
19 the complaint and statements about how to  
20 interpret the complaint. There was no evidence  
21 beyond the complaint's allegations that was put  
22 forward to the Commission today. &&

23 And if we look at our tab number 8,  
24 certainly the procedure here really raises a  
25 question about what complaint counsel is trying

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1 to do is an end run to sidestep the Supreme  
2 Court's mandate in AMG Capital because, as we  
3 know, AMG held that the FTC cannot obtain  
4 monetary relief without first finding that a  
5 practice violates Section 5, and AMG Capital  
6 expressly contemplated that the Commission would  
7 only take action under Section 5 following an ALJ  
8 trial on a fully developed record. In fact, AMG  
9 Capital talks four times about an ALJ trial in  
10 the decision.

11 So what complaint counsel is now  
12 asking the Commission to do is to have a rush to  
13 judgment when all we have to do is wait a couple  
14 of months to complete the process before the ALJ  
15 and be able to have a fully developed record on  
16 which the Commission can --

17 COMMISSIONER PHILLIPS: Counselor,  
18 this argument struck me as rather novel, and I  
19 just wanted to make sure I understand what you're  
20 saying. Your position is that Section 19 would  
21 not be available ultimately later on in the  
22 process unless there had been a trial before the  
23 ALJ?

24 MR. NEUWIRTH: What we are saying is  
25 that -- I think that the fair way to characterize

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1 it is that the Supreme Court clearly said that no  
2 action can be started in district court under  
3 Section 19 unless there was first a finding that  
4 a practice violated Section 5.

5 COMMISSIONER PHILLIPS: Right. An  
6 issuance of the order, but it's not -- the  
7 statute doesn't speak to how we get there, and  
8 we're clearly able, under the statute, to make  
9 rules for how we conduct our proceeding.

10 Am I wrong about that?

11 MR. NEUWIRTH: What I would say is  
12 you're not wrong about the notion that you can do  
13 fact-finding. But what AMG Capital said is that  
14 there needs to be a fully developed record. So  
15 the question here is would granting summary  
16 decision here take place on a fully developed  
17 record. Clearly not.

18 The ALJ process that this Commission  
19 mentioned when it brought this case is the one  
20 that allows you to have a fully developed record  
21 here, and that's all we're suggesting, that AMG  
22 contemplates a fully developed record before the  
23 Commission would bring a case in federal court  
24 under Section 19.

25 And what complaint counsel is asking

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1 for here would short-circuit that and prevent us  
2 from having a fully developed record.

3 COMMISSIONER SLAUGHTER: Counsel, I  
4 have a question to follow-up on this point.

5 You started out by saying the issue  
6 before the Commission here on a motion for  
7 summary judgment is whether there's any genuine  
8 issue of material fact. But now what I hear you  
9 to be saying -- and therefore, summary judgment  
10 is not appropriate in this particular case.

11 But it seems that the argument you're  
12 making now is that summary judgment is never  
13 appropriate for the Commission to issue under  
14 AMG. Is that your argument?

15 MR. NEUWIRTH: No. Our argument is  
16 that under the circumstances here, to grant the  
17 summary decision would fly in the face of AMG,  
18 which contemplates a fully developed record, and  
19 here the record is not fully developed. We're  
20 not --

21 COMMISSIONER SLAUGHTER: So what would  
22 be a situation where summary judgment would be  
23 appropriate for the Commission under the standard  
24 that you're reading into AMG?

25 MR. NEUWIRTH: I -- I don't have a

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1 case before me to be able to evaluate that. But  
2 it would certainly have to be a case unlike here  
3 where there's not any material facts, any ongoing  
4 discovery or any issues that require further  
5 fact-finding. But we're so far from that here  
6 and here certainly where discovery hasn't even  
7 closed in this case. One could imagine a  
8 situation further in the process. But here we're  
9 still at the initial stages of discovery in the  
10 ALJ proceeding.

11 So I don't know that we have to reach  
12 that ultimate question to know that where we are  
13 in this case is in a zone that would fly in the  
14 face of what's contemplated by AMG Capital.

15 If we can turn to our slide number 1,  
16 the burden is on complaint counsel to establish  
17 with --

18 COMMISSIONER PHILLIPS: Counselor,  
19 sorry to interrupt you. One more question.

20 You also make these sort of  
21 constitutional arguments. The relief -- it's not  
22 your motion. But what you're seeking here is for  
23 denial of the motion for summary decision; is  
24 that correct?

25 MR. NEUWIRTH: That is correct.



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1                   COMMISSIONER PHILLIPS: Okay. Thank  
2 you.

3                   MR. NEUWIRTH: That is all we are  
4 seeking, and we believe that's the only issue the  
5 Commission needs to decide today.

6                   CHAIR KHAN: In light of that, I'd  
7 like to ask you a little bit about -- in addition  
8 to the constitutional argument, you also raise a  
9 defense under the Communications Decency Act. I  
10 want to understand if you're raising that defense  
11 across the board, or if it's specific to some of  
12 the claims and not others.

13                   So specifically the claims relating to  
14 the source of the leads and the mHelpDesk  
15 subscription don't appear to me to touch on  
16 anyway -- in any way on information that  
17 consumers or customers are submitting. So I  
18 wouldn't see how the CDA defense would apply  
19 there.

20                   Do you agree with that? And if not,  
21 could you explain why those two claims would also  
22 be protected under CDA? I'd like to understand  
23 the scope of the defense you're alleging there.

24                   MR. NEUWIRTH: We certainly allege  
25 that the CDA would apply anywhere as you said,

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1 Chairman -- Chair Khan, with respect to anything  
2 that is providing information that would have  
3 come from homeowners or some outside party. And  
4 that is obviously a very substantial part of what  
5 is being alleged here.

6 To the extent that there are claims  
7 that are just related to what was said about  
8 mHelpDesk or other matters that just relate to  
9 HomeAdvisor's own representations, I don't think  
10 we would be claiming that it applies there.

11 CHAIR KHAN: So both with mHelpDesk  
12 and presumably the source of the lead, which only  
13 relate to HomeAdvisor's representations and not  
14 at all dependent on information submitted by  
15 customers, you would not be claiming a CDA with  
16 those two counts; is that right?

17 MR. NEUWIRTH: With respect to the  
18 second count on sources of the lead, I'm not sure  
19 we would say today that there's no allegation  
20 that there's some connection to information that  
21 was provided by homeowners. But I certainly  
22 agree with your premise that to the extent a  
23 claim does not relate to the information from  
24 homeowners, we would not be asserting that the  
25 CDA applies there.

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1 CHAIR KHAN: Okay. Thank you.

2 COMMISSIONER WILSON: To pick up on  
3 Chair Khan's questions about the CDA respondent,  
4 you said in your brief if information is entered  
5 by a customer, you're merely the conduit passing  
6 along that information to the service provider,  
7 and you're not responsible for inaccuracies and  
8 you're entitled to immunity as a publisher under  
9 the act. But your materials also emphasize that  
10 HomeAdvisor uses a vetting process to ensure the  
11 leads are accurate and from "serious buyers."

12 So I'm wondering conducting this  
13 review and vetting these submissions by customers  
14 would make immunity less likely. So can you help  
15 me understand where the line should be drawn?

16 MR. NEUWIRTH: Yes. I believe that  
17 the case law we cite, Commissioner Wilson,  
18 suggests that the immunity under the CDA would  
19 apply regardless of what HomeAdvisor may have  
20 done subsequently. But we certainly believe that  
21 whether the CDA did or did not apply all the  
22 steps that HomeAdvisor took to vet the leads is  
23 one of the key facts here that is a material fact  
24 that complaint counsel has not responded to,  
25 demonstrating that the representations that

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1 HomeAdvisor made were not false.

2 And I think we can see this clearly.  
3 If I could ask if we could put up what I believe  
4 was slide 13 from complaint counsel's  
5 presentation because one of the things that has  
6 been glossed over today is whether the statements  
7 here were even false to begin with.

8 The sort of starting premise here was  
9 that these were false -- that these were  
10 misrepresentations. Why don't we look at this  
11 here. For example, under the third  
12 representation here, how it works, it says, "Over  
13 30 million homeowners have trusted HomeAdvisor to  
14 help them find quality pros with the expertise to  
15 turn their home improvement dreams into reality.  
16 It's just one of the reasons you can depend on us  
17 to bring you highly targeted prospects that will  
18 grow your business."

19 Now, Ms. Calderon told you that that  
20 statement is false and a misrepresentation  
21 because it would lead one to think that every  
22 lead comes from HomeAdvisor itself and that no  
23 leads come from affiliates. This statement  
24 doesn't say anything about affiliates. It is a  
25 fact issue whether someone would interpret this

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1 statement to mean that HomeAdvisor gets no leads  
2 from affiliates.

3 It is absolutely true that over 30  
4 million homeowners have trusted HomeAdvisor to  
5 help them find quality pros with the expertise to  
6 turn their home improvement dreams into a  
7 reality. That is an absolutely true statement.  
8 Only 15 percent of HomeAdvisor leads come from  
9 affiliates.

10 Ms. Calderon did not show you a single  
11 statement, other than this one, and there is  
12 nothing false about this statement. The first  
13 statement that's up here, "We'll connect you with  
14 homeowners who are looking to hire pros in your  
15 area," that's not a false statement. There are  
16 certainly homeowners who may say they want to  
17 hire someone tomorrow. There are certainly some  
18 homeowners who say that they're looking for an  
19 estimate. Those are types of information that  
20 HomeAdvisor provides.

21 Ms. Calderon didn't have an ability to  
22 tell you what it is that HomeAdvisor tells people  
23 when they get their leads. That information  
24 about someone -- whether someone wants an  
25 estimate or whether someone says "ready to hire,"

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1 that information is provided when the lead is  
2 given to the service provider. And we have  
3 testimony from the FTC's own witnesses that when  
4 someone gets a lead from someone who's looking  
5 for an estimate, that can be someone who is ready  
6 to hire. When someone says, "I need an  
7 estimate," that is one of the steps that you take  
8 when you decide to go forward with a job. I  
9 think we've all had the experience of wanting to  
10 do a job, like a car repair, but first getting an  
11 estimate.

12 So the witnesses here testified that  
13 someone who says that they want an estimate might  
14 be ready to hire. And one of the great examples  
15 of this is one of the people who was a declarant  
16 for the FTC was a service provider who provided  
17 pest elimination services, like termites. And  
18 they testified that what happens in their  
19 business is that someone who wants to have work  
20 done has to ask for an inspection, which is  
21 usually done for free. If the inspection doesn't  
22 yield any termites, there won't be any work to  
23 do. But they testified that that is a completely  
24 legitimate lead in their business because that's  
25 the way the business works. Somebody says, "I

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1 need to have an inspection." And it's only after  
2 the inspection that they decide whether to have a  
3 job.

4 We had one witness, one service  
5 provider, actually testify "I don't ever want to  
6 have to negotiate on price. I don't want people  
7 who have an interest in low prices. I want  
8 people who will only pay high prices for my good  
9 services." Now that's fine. It's a free  
10 country. People can do that. If certain leads  
11 decided not to hire that person, that doesn't  
12 mean they weren't ready to hire. It just means  
13 they were interested in someone who was going to  
14 give them a competitive price, and this service  
15 provider wasn't willing to do it. So there was  
16 no misrepresentation.

17 And finally, in the middle category  
18 here, which says "You're in control, only get the  
19 leads you want," look at the quote. "You pick  
20 your service types and location preferences and  
21 we bring you prospects that match what you want."  
22 That's a true statement. The service providers  
23 pick the location and the service types they  
24 want, and HomeAdvisor's system works to get them  
25 homeowners who have selected their service type

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1 or have selected -- in their geographic location.

2 Now, are there sometimes that things  
3 don't work out where there can be mistakes where  
4 somebody enters the wrong information or where  
5 there's an inadvertent lead sent? Sure.

6 Remember, there are hundreds of thousands of  
7 leads every year, probably millions over the time  
8 period we're talking about. And the fact that  
9 there are isolated instances that complaint  
10 counsel has provided here where a lead didn't  
11 match either the location or the type of job that  
12 a service provider had selected doesn't mean that  
13 there's something wrong with the system or that  
14 false statements are being made.

15 What is left out here as well is  
16 HomeAdvisor has a clear policy of providing  
17 credits to any service provider who can  
18 demonstrate that they received a lead that was  
19 not for their service area or for their service  
20 type.

21 So this after two years of  
22 investigation and all the work that's been done,  
23 look at the statements that you've been shown  
24 here. What is false about these statements?

25 COMMISSIONER BEDOYA: Counsel, if I



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1 may, page 6 of complaint counsel's presentation  
2 public says, "Does HomeAdvisor increase the  
3 service provider's profit? Absolutely. You  
4 won't have to waste your time with customers who  
5 just window shop. HomeAdvisor allows you to  
6 spend your time with the right ready-to-buy  
7 customers."

8                   Could you read that first sentence?  
9 "You won't have to waste your time with customers  
10 who just window shop." Doesn't that imply that  
11 the customers are ready to buy and that there's  
12 not people in there who are just getting  
13 estimates or just budgeting?

14                   MR. NEUWIRTH: Well, there's a very  
15 big space, Commissioner, between window shopping  
16 and ready to buy. Window shopping is someone  
17 who --

18                   COMMISSIONER BEDOYA: I agree.

19                   MR. NEUWIRTH: Window shopping is  
20 someone who has no interest whatsoever. Someone  
21 who says they want a budget estimate or somebody  
22 who says they want an inspection for termite  
23 services, those people are ready to buy.

24                   Remember, the way this system works,  
25 and it's fully disclosed and every service

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1 provider knows this and has to make affirmative  
2 statements that they agree, is that HomeAdvisor  
3 sends leads to several service providers at a  
4 time. So the service providers have to make  
5 their own efforts to reach out. A lead -- as Ms.  
6 Calderon acknowledged today a lead is not a job.  
7 A lead is a opportunity to convert a lead into a  
8 job. So service providers are competing with  
9 each other, as they all understand, to get this  
10 work and very often.

11 COMMISSIONER BEDOYA: One follow-up if  
12 I could. So another thing that's published is  
13 the interface, which is the customers who want  
14 service can specify ready to buy versus just  
15 planning and budgeting.

16 When you send these leads from both of  
17 those sources to the service providers, do you  
18 specify -- do you specify these folks said ready  
19 to buy, these folks said just planning, or do you  
20 not specify -- distinguish between those two?

21 MR. NEUWIRTH: That information is  
22 absolutely provided, and it shows up in the  
23 leads --

24 COMMISSIONER BEDOYA: You tier them  
25 somehow? You let the service provider know these

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1 folks are ready to hire? These folks are in the  
2 planning and budgeting process?

3 MR. NEUWIRTH: Right. But what I  
4 think is very critical, Commissioner, is that the  
5 testimony of the FTC's own witnesses made clear  
6 that when someone says they are planning and  
7 budgeting, for many types of jobs that is  
8 considered ready to hire because there are some  
9 jobs that are very straightforward. Somebody  
10 wants to have a cleaning job done. But for  
11 example, when somebody wants to repair the entire  
12 roof of their house, they're not normally going  
13 to be ready to make that decision without first  
14 talking to service providers about what would be  
15 involved in the job, what type of work would be  
16 done.

17 So for certain jobs when somebody says  
18 they want information about the budget and the  
19 plans, the service providers understand that  
20 someone is ready to hire, but they're not going  
21 to make the decision in 24 hours. It might take  
22 them several days or even weeks to select someone  
23 to do that work.

24 So again, all of this information is  
25 provided. And what could be a more telling issue

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1 about the need for more fact-finding than Ms.  
2 Calderon when she --

3 COMMISSIONER PHILLIPS: Counselor.

4 MR. NEUWIRTH: Yes.

5 COMMISSIONER PHILLIPS: On the survey  
6 that the customer fills out, information from  
7 which eventually allows leads to be sent to the  
8 number of SPs, what is the highest level on the  
9 drop-down menu of interest that the customer can  
10 convey? What's the phrasing that the company  
11 uses? Isn't it something like ready to hire?

12 MR. NEUWIRTH: I believe there is some  
13 version of ready to hire, which would be the  
14 highest.

15 COMMISSIONER PHILLIPS: So one  
16 question that jumps to mind is whatever our  
17 collective Commission judgment of the meaning of  
18 that phrase is, if only a subset of customers are  
19 indicating ready to hire and you're sending leads  
20 that you have said will be ready to hire, even if  
21 it's for purposes of this argument you're  
22 characterizing other things like budgeting is  
23 ready to hire, by your own definition in terms of  
24 what people are telling you when they're  
25 inputting your desire, only a subset are in fact

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1 ready to hire. Why isn't that deceptive?

2 MR. NEUWIRTH: Because there are --  
3 first of all, we are getting the exact language  
4 now that we can share with you.

5 COMMISSIONER PHILLIPS: I apologize.

6 MR. NEUWIRTH: That's a  
7 perfectly legitimate question. I think this is  
8 laid out in detail in our expert report, which is  
9 un rebutted right now in the record. What our  
10 expert report from Mr. Hadalgo, who is an expert  
11 with decades of experience in the lead industry  
12 and has actually written one of the leading books  
13 on lead generation, what he points out is that  
14 for different types of jobs, it is  
15 well-understood that being ready to hire has  
16 different meanings, and HomeAdvisor, as a  
17 company, is covering a wide array of services  
18 here.

19 We would respectfully submit what the  
20 evidence will show when a full record is  
21 presented to the Commission is that it was  
22 well-understood for many of the types of jobs  
23 that were covered by the HomeAdvisor services  
24 that someone who said they were interested in  
25 different types of steps in the process like

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1 budgeting or planning were ready to hire.

2           Again, I think part of the issue here  
3 is what type of job is it. I think we all  
4 understand there are certain major types of home  
5 improvement jobs that require several steps in  
6 the planning process, and we know that this is  
7 true because the very declarants that the  
8 complaint counsel put forward here said this was  
9 true in their testimony. And these are  
10 declarants.

11           One of the declarants made \$1.8  
12 million from his HomeAdvisor leads. Other  
13 declarants made 50,000 or more. Almost all of  
14 them had a positive return on their investment  
15 that was very substantial. And the reason for  
16 that was because they understood that in their  
17 respective areas of work, these leads were very,  
18 very valuable. And I think that's the critical  
19 thing here.

20           The complaint counsel asks you just to  
21 accept all of the assertions you made. One of  
22 them -- one of the big problems of what complaint  
23 counsel was doing was they said to you, look,  
24 we've got thousands of complaints of the Better  
25 Business Bureau. This proves there were

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1 misrepresentations. It doesn't prove that at  
2 all.

3 First of all, there's been no  
4 demonstration that the complaints to the Better  
5 Business Bureau actually concern the subject  
6 matter of the complaint here. In fact, we will  
7 be able to demonstrate only a small fraction of  
8 those complaints have to do with the subject of  
9 the complaint here. Many of them had to do with  
10 issues like billing that are not even an issue in  
11 this case.

12 Second, Ms. Calderon told you in her  
13 presentation that one of the reasons you should  
14 understand that these statements -- these  
15 supposed false statements were widespread is  
16 because of all of the recorded phone calls that  
17 are in the appendix to her -- to her briefing.  
18 The problem is we have now demonstrated through  
19 an expert report that there is nothing  
20 representative about the isolated sales calls  
21 that had been selected here.

22 Remember, there were hundreds of  
23 thousands of sales calls a year and over the  
24 relevant period here millions of sales calls.  
25 They have given a small sample of just a couple

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1 of thousand that economists admitted were  
2 selected without any sort of statistical steps  
3 that are normally taken in Federal Trade  
4 Commission cases. That is what he testified.  
5 And we put in a declaration from a statistics  
6 expert that in the absence of those steps, what  
7 we have here is a set of random exhibits of  
8 things that were said in phone calls that don't  
9 give you any basis to make a general conclusion  
10 about what representations we're making.

11 Let me tell you why this is so  
12 important. The Federal Trade Commission  
13 complaint counsel put in a declaration from a  
14 former sales representative, and the declaration  
15 that was drafted by the FTC investigator said  
16 that sales agents always made certain  
17 representations. When this former sales  
18 representative was deposed, he testified he had  
19 no basis to say anything about what other sales  
20 representatives did. He really didn't know.  
21 When we asked him why that was in his  
22 declaration, he said he didn't know.

23 So all of this is subject to further  
24 fact-finding. We have critical issues here were  
25 the statements even false. Complaint counsel has



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1 had all this time to show you the greatest hits  
2 of their false statements, and what we just  
3 looked at are three statements that they focused  
4 on that on their face are not false, and there  
5 are all sorts of questions, legitimate material  
6 questions, about whether these statements are  
7 even false, to the extent they are arguably false  
8 or to whom were made and when.

9 CHAIR KHAN: I'm so sorry to  
10 interrupt. I do want to note you have 11 minutes  
11 left. I wanted to see at what point you wanted  
12 to go in camera, and I did want to ask something  
13 that can be asked publicly.

14 You argue that complaint counsel  
15 failed to prove proximate causation. In my  
16 reading of the deception statement in cases like  
17 Figgie seems clear that once complaint counsel  
18 has proven that respondent has made a material  
19 representation and that it was wildly  
20 disseminated, such as on a website, that there is  
21 a presumption of injury to consumers.

22 Do you dispute that reading of the  
23 law? Your proximate cause defense suggests it's  
24 complaint counsel that carries this burden in the  
25 first instance, and I just wanted to get more

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1 clarity.

2 MR. NEUWIRTH: At this stage in the  
3 proceedings, the issue with proximate cause has  
4 to do with, among other things, whether this  
5 misrepresentation was understood in any way by  
6 the recipients of the information to cause them  
7 to take any action. And we believe that just the  
8 depositions of the FTC's own declarants  
9 demonstrate that they did not rely on any  
10 statements by HomeAdvisor in the way that  
11 complaint counsel is suggesting that they would  
12 have.

13 CHAIR KHAN: I understand, but your  
14 point is that your argument that discovery is  
15 needed to get at, for example, materiality rather  
16 in the first instance issues of injury because,  
17 as complaint counsel claimed, they have already,  
18 for example, shown that there was a  
19 representation that was material and that was  
20 widely disseminated, that they would have a  
21 presumption of injury there.

22 MR. NEUWIRTH: Well, we don't think  
23 we're anywhere near getting to a presumption of  
24 injury because we don't believe the complaint  
25 counsel has demonstrated any of the elements that

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1 would be necessary to get there, and I think this  
2 comes back in part to what several commissioners  
3 asked about earlier when Ms. Calderon was  
4 speaking about net impression. This is clearly  
5 a --

6 CHAIR KHAN: I understand. I guess  
7 I'm trying to understand what is that defense  
8 getting you at this stage given that your  
9 argument really seems to be about discovery being  
10 needed for material misrepresentation rather than  
11 getting at this issue of proximate cause.

12 MR. NEUWIRTH: Well, I think that -- I  
13 don't disagree with your point that proximate  
14 cause is not necessarily something that will come  
15 into play on these threshold questions that we're  
16 talking about right now in this stage of the  
17 proceeding. But it is an affirmative defense  
18 that we have to put forward on the question of  
19 whether any of these statements would have had  
20 any effect on any of the service providers that  
21 the Federal Trade Commission would be looking to  
22 address.

23 But I do -- if I could -- I don't --  
24 if I could, Commissioner Khan -- Chair Khan, I do  
25 have certain information that I think is

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1 important to respond to a question that was asked  
2 earlier by Commissioner Phillips. When someone  
3 specifies planning and budgeting when they're  
4 signing up as a homeowner, they then have to  
5 ask -- answer a question, which is when would you  
6 like the work to be completed, and they have to  
7 make a choice. They have to say flexible timing  
8 within one week, within one to two weeks or more  
9 than two weeks. All of that information is  
10 provided to a service provider.

11 So clearly ready to hire for different  
12 jobs can have timing, and when the information is  
13 provided, the timetable of someone who's even  
14 initially looking for planning and budgeting  
15 information, they have to specify when they  
16 expect to be ready to do the job. They can't  
17 just say planning and budgeting and nothing else.

18 COMMISSIONER SLAUGHTER: I appreciate  
19 your following up with Commissioner Phillips'  
20 question. I want to follow-up something that you  
21 have talked a couple times about, net impression.  
22 It seems to me that the core of your argument is  
23 even if we don't dispute the fact of these  
24 representations, we dispute whether they create a  
25 net impression in a certain way. And you have

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1 said that's a question of fact that needs to be  
2 determined.

3 And I'm wondering if you have any case  
4 law citations that you could point us to as to  
5 whether net impression, when there's no dispute  
6 as to the substance of the representation, is a  
7 question of fact rather than law.

8 MR. NEUWIRTH: Yes, absolutely. And  
9 if we could put up slide number 3. And one of  
10 the cases we cite here is the in Re: Horizon  
11 court case, which is a Federal Trade Commission  
12 case from 1981, which says "in evaluating whether  
13 advertising is deceptive, the total impression  
14 created by the pictures, words, and oral  
15 representations must be considered in the context  
16 in which they were used and in light of the  
17 sophistication and understanding of the persons  
18 to whom they were directed." And the Heinz V  
19 Kirchner case, that's also cited below, says, "A  
20 representation does not become false and  
21 deceptive merely because it will be unreasonably  
22 misunderstood by an insignificant and  
23 unrepresentative segment of the class of persons  
24 to whom the representation is addressed."

25 As we know here as well, the FTC has

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1 regularly recognized, as have the federal courts,  
2 that in cases of consumer deception, which are  
3 based largely here on nonuniform oral statements,  
4 they are necessarily fact intensive and  
5 ill-suited for summary decision. As the FTC  
6 itself has said, isolated instances of  
7 misrepresentation are not enough to establish a  
8 general pattern or practice.

9                   And I think if we look at slide number  
10 4 --

11                   CHAIR KHAN: Counselor, I'm really  
12 mindful of the time, and I know several of my  
13 colleagues have questions that are only  
14 appropriate for in camera. So unless you have  
15 strong objections, I'm going to recommend that we  
16 move to that portion. Is that okay with you?

17                   MR. NEUWIRTH: That's fine. If I can  
18 take about 15 seconds just to follow-up on  
19 Commissioner Slaughter's question. I think it's  
20 very important to note the Natural Organics case  
21 which says that the general rule is that when the  
22 meaning or effective words or acts is fairly  
23 disputed, the question is for the trier of facts  
24 to be decided after hearing on all material  
25 evidence.



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[REDACTED]



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[REDACTED]

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[REDACTED]





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[REDACTED]

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[REDACTED]



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[REDACTED]



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[REDACTED]

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[REDACTED]

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[REDACTED]



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█ [REDACTED] █  
█ [REDACTED]

3 (End of in camera session.)

4 CHAIR KHAN: Ms. Calderon, I will turn  
5 it over for the rebuttal presentation. I will  
6 remind if you have any confidential information,  
7 you can reserve for the end of the presentation  
8 and just let us know when to go back into the  
9 confidential session.

10 MS. CALDERON: Thank you, Chair Khan.  
11 HomeAdvisor in its opposition briefing and again  
12 in its argument attempts to distract the  
13 Commission from the simplicity of this case by  
14 alleging facts that aren't material, disputes  
15 that aren't genuine given the action evidence in  
16 the record, and procedural issues that have no  
17 bearing on the Commission's ability to grant the  
18 motion for summary decision.

19 I'll start with the things that I can  
20 discuss on the open record. With respect to the  
21 summary decision standard, HomeAdvisor argues  
22 that the motion for summary decision is too  
23 early, too late, and that resolving the case on  
24 summary decision should never be permitted at  
25 all. It's plainly permitted, pursuant to Rule

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1 3.24, 20 days after issuance of the complaint,  
2 and a summary decision motion is the equivalent  
3 of a motion for summary judgment, which of course  
4 is ubiquitous in federal district court  
5 proceedings.

6 As I stated earlier, what matters with  
7 respect to outstanding discovery is when the  
8 party opposing the motion articulates  
9 specifically what discovery is needed and how  
10 that discovery would help them defeat the motion  
11 for summary decision.

12 When respondent's counsel was asked  
13 that question of what discovery HomeAdvisor  
14 needs, respondent's counsel identified two  
15 things. Respondent's counsel said that they  
16 wanted to know what complaint -- how complaint  
17 counsel would respond to their expert testimony.  
18 So they didn't need additional affirmative  
19 discovery on their end. They just want to know  
20 how complaint counsel will respond to  
21 respondent's expert testimony. That was the  
22 first piece of outstanding discovery that  
23 respondent's counsel identified.

24 The second was vaguely discovery  
25 concerning the declarants. As I argued earlier,

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1 the declarants provide helpful, real-life  
2 contextual examples of HomeAdvisor's deceptive  
3 practices, but not a single one of them is  
4 necessary for the Commission to grant the motion  
5 for summary decision. They are consistent with  
6 all of the other evidence in the record, the vast  
7 majority of which is HomeAdvisor's own internal  
8 documents. The Commission need not look to the  
9 declarants to find that the motion for summary  
10 decision should be granted. I do --

11 COMMISSIONER PHILLIPS: I'm sorry.

12 MS. CALDERON: Excuse me.

13 COMMISSIONER PHILLIPS: If we credit  
14 your argument that none of that discovery is  
15 necessary for purposes of summary decision, if we  
16 still view there being a material dispute with  
17 respect to the underlying facts constituting the  
18 basis for reliability, would you agree that  
19 summary decision would be inappropriate?

20 MS. CALDERON: Yes.

21 COMMISSIONER PHILLIPS: Thank you.

22 MS. CALDERON: Yes. Thank you.

23 I do want to make one final point with  
24 respect to the declarants, and I'll do so very  
25 briefly, which is that although the declarants'



## Oral Argument

HomeAdvisor, Inc.

7/21/2022

1 testimony is not necessary to the motion for  
2 summary decision, I do want to flag, as complaint  
3 counsel flagged in our reply brief, that on  
4 several occasions respondent's counsel has  
5 miscast their testimony. So I would urge the  
6 Commission not to accept complaint -- respondent  
7 counsel's representations about that testimony at  
8 face value without actually looking at the  
9 testimony that was provided by these declarants.

10 Finally, still with respect to the  
11 summary decision standard, HomeAdvisor's argument  
12 that the parties are on the eve of trial and  
13 therefore should go forward, that, of course,  
14 contradicts with the argument that the summary  
15 decision motion is premature. It also negates  
16 the entire purpose of the summary decision  
17 mechanism, which is to avoid the expense and  
18 burden of trial on the parties, on the Commission  
19 when issues can fairly be decided without one.

20 With respect to the sample of calls  
21 and respondent's counsel's reference to expert  
22 testimony regarding whether it was representative  
23 of all of HomeAdvisor's sales calls. Complaint  
24 counsel did not introduce the sample of calls,  
25 the 100 calls as a representative sample. It may

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Oral Argument

HomeAdvisor, Inc.

7/21/2022

1 be representative. It may not be representative.  
2 It was not introduced by complaint counsel as --  
3 under the understanding it was representative.  
4 And it does not need to be here.

5 In this forum, the Commission is not  
6 identifying quantitative analysis of how many  
7 times injury occurred. The analysis here is  
8 whether there was a pattern or practice of  
9 misrepresentations, the representations made in  
10 those recorded sales calls, and again, I would  
11 direct the Commission to the appendix of the  
12 statement of material fact.

13 Those representations, in combination  
14 with HomeAdvisor's national advertising, in  
15 combination with HomeAdvisor's internal training  
16 materials, HomeAdvisor's scripts, HomeAdvisor's  
17 approved -- HomeAdvisor's internal guidance from  
18 insurance company, all of that together  
19 establishes substantial evidence of a pattern of  
20 practice.

21 With respect to Mr. Hadalgo,  
22 HomeAdvisor's --

23 COMMISSIONER PHILLIPS: Counselor,  
24 sorry for the interruption. I just want to  
25 follow-up. Did you just say that the sample of

Oral Argument

HomeAdvisor, Inc.

7/21/2022

1 calls, whether it's -- the question -- or the  
2 answer to the question whether it is  
3 representative isn't relevant because there are  
4 also other kinds of statements, so it doesn't  
5 matter if it's a representative sample for  
6 purposes of our decision?

7 MS. CALDERON: That's correct,  
8 Commissioner Phillips. What matters is that that  
9 sample indicates that the claims were actually  
10 made to service providers.

11 COMMISSIONER PHILLIPS: Thank you.

12 MS. CALDERON: With respect to Mr.  
13 Hadalgo's report, Mr. Hadalgo being HomeAdvisor's  
14 industry expert, again, I want to emphasize that  
15 what Mr. Hadalgo concludes is that service  
16 providers know and understand that leads are not  
17 guaranteed jobs.

18 Again, complaint counsel does not  
19 allege that HomeAdvisor stated that the claim  
20 that leads are guaranteed jobs, and nothing about  
21 Mr. Hadalgo's report changes how a service  
22 provider would interpret the very clear plain  
23 meaning of the claims that were made here, ready  
24 to hire.

25 Briefly I wanted to touch on the CDA.

## Oral Argument

HomeAdvisor, Inc.

7/21/2022

1 The case that HomeAdvisor relies upon in its  
2 briefing is the match case. Even the broad  
3 immunity set forth in match concerned very  
4 specifically representations made by third  
5 parties. This here -- this case is about  
6 HomeAdvisor's representations. In every single  
7 instance, it's about HomeAdvisor's  
8 representations, about HomeAdvisor's own  
9 products. And even under the broad immunity set  
10 forth in match, that is not applicable to the  
11 facts here where the representations are made by  
12 HomeAdvisor.

13 I'd like to turn -- unless the  
14 Commission has any questions that can be  
15 discussed on the open record, I would like to  
16 turn now to the remaining time that I have in  
17 camera. I did want to clarify whether complaint  
18 counsel has any additional time other than the  
19 almost 3 minutes that I originally had.

20 MS. TABOR: Yes. Ms. Calderon, yes,  
21 you have an additional 14 minutes and 3 seconds  
22 on your confidential time.

23 MS. CALDERON: Thank you. Can the  
24 video conference operator please confirm when  
25 public access has been blocked.

Oral Argument

HomeAdvisor, Inc.

7/21/2022

1 (Whereupon, the proceedings were held in in  
2 camera session.)

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

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40 [REDACTED]

41 [REDACTED]

42 [REDACTED]

43 [REDACTED]

44 [REDACTED]

45 [REDACTED]

46 [REDACTED]

47 [REDACTED]

48 [REDACTED]

49 [REDACTED]

50 [REDACTED]

Oral Argument

HomeAdvisor, Inc.

7/21/2022

[REDACTED]

Oral Argument

HomeAdvisor, Inc.

7/21/2022

[REDACTED]

Oral Argument

HomeAdvisor, Inc.

7/21/2022

[REDACTED]





Oral Argument

HomeAdvisor, Inc.

7/21/2022

[REDACTED]

Oral Argument

HomeAdvisor, Inc.

7/21/2022

[REDACTED]

Oral Argument

HomeAdvisor, Inc.

7/21/2022

[REDACTED]

Oral Argument

HomeAdvisor, Inc.

7/21/2022

[REDACTED]



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7/21/2022

Oral Argument

HomeAdvisor, Inc.

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

I, Tammy S. Newton, the officer before

3 whom the foregoing proceedings was taken, do

4 hereby certify that the foregoing transcript is a

5 true and correct record of the proceedings; that

6 said proceedings were taken by me

7 stenographically and thereafter reduced to

8 typewriting under my supervision; and that I am

9 neither counsel for, related to, nor employed by

10 any of the parties to this case and have no

11 interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set

13 my hand and affixed my notarial seal this 28th

14 day of July, 2022.

15 My commission expires:

16 3/05/2026



18

17

Notary Public in and for the

State of Maryland

21

22

23

24

25

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# EXHIBIT E





UNITED STATES OF AMERICA  
Federal Trade Commission  
Seattle, Washington 98174

Breana M. Roos  
Attorney  
Northwest Region  
(206) 220-4472

July 22, 2022

**VIA EMAIL**

HomeAdvisor, Inc.

c/o Quinn Emanuel Urquhart & Sullivan, LLP

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Kathryn D. Bonacorsi (kathrynbacorsi@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,

We write to request a conference, pursuant to Rules 3.22(g) and 3.38(a), **on Friday, July 29, 2022**, regarding 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. We are available anytime that day. Further information regarding our request is below.

**Second Set of Requests for Production.** Respondent served its Responses and Objections to Complaint Counsel’s Second Set of Requests for Production on July 8, 2022. In those responses and objections, Respondent lodged a number of objections to Request for Production Nos. 14, 15, and 16, but nonetheless indicated that “HomeAdvisor will make reasonable, good-faith efforts to locate and produce” responsive documents for each Request.

We held two conferences to discuss Respondent’s responses and objections, on July 13 and July 20, 2022. During those conferences, you indicated that Respondent is in the process of determining the existence, location, and ability to retrieve documents and/or data responsive to Request for Production Nos. 14, 15, and 16. Though you were aware of the existence of at least

some sales calls, you were unable to provide an expected timeframe for any production of responsive documents and/or data. Further, you were even unable to tell us whether Respondent will continue to assert objections to these requests on the grounds that they are unduly burdensome.

During our conversation on July 20, you inquired regarding the scope of sales calls recordings in Request for Production No. 14, which seeks the production of recordings of sales calls “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.” As I noted on that call, we limited our request in this way in order to reduce the overall number of sales calls responsive to the Request. If it is difficult to determine which sales calls include a completed Voice Log Process and therefore less onerous to simply produce all recordings of sales calls during the time period referenced in the Request, that is acceptable to Complaint Counsel.

It has now been two weeks since Respondent served its written objections and responses to the Second Set of Requests. We are troubled that Respondent is still unable to provide a timeframe for production—or even whether it is refusing to produce any category of documents based on its objections. We therefore ask that you be prepared at the July 29 conference to confirm the following:

- (a) That Respondent has identified documents and/or data responsive to Request for Production Nos. 14, 15, and 16;
- (b) That those documents and data will be produced no later than August 5, 2022; and
- (c) That Respondent has not limited its search for responsive documents and/or data pursuant to any of the objections set forth in HomeAdvisor, Inc.’s Responses and Objections to Complaint Counsel’s Second Set of Requests for Production, served on July 8, 2022, or for any other reason.

If you cannot confirm (a) through (c) above, we ask that you be prepared at the July 29 conference to describe, in detail, why Respondent cannot so confirm, including:

- (i) The efforts that Respondent has undertaken to search for documents and/or data responsive to Request for Production Nos. 14, 15, and 16;
- (ii) If any portion of Respondent’s search for documents and/or data responsive to Request for Production Nos. 14, 15, and 16 is ongoing, what efforts are ongoing and why Respondent has not completed its efforts; and
- (iii) If Respondent continues to maintain any of the objections set forth in HomeAdvisor, Inc.’s Responses and Objections to Complaint Counsel’s Second Set of Requests for Production, served on July 8, 2022, which objection(s) and why.

**1<sup>st</sup> Set of Interrogatories.** Respondent served its Responses and Objections to Complaint Counsel’s First Set of Interrogatories on May 18, 2022, lodging objections but promising that “HomeAdvisor is in the process of investigating each category of data sought in this request, and pursuant to 16 C.F.R. § 3.35(c) will produce non-burdensome, reasonably accessible and available data from July 31, 2014 through April 30, 2022.”

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On June 7, 2022, Respondent produced a large volume of data, in the form of 83 tables (produced as 567 excel files). During a telephone conference on June 10, 2022, you indicated this production contains some, but not all, data responsive to Interrogatory Nos. 1 and 2. You also indicated that, with respect to some categories of data (such as lead source, Interrogatory No. 1.f), Respondent was still investigating what data are available and whether producing the data is feasible. In a letter dated June 16, 2022, we confirmed that conversation and requested that you let us know when Respondent expected to produce the remaining categories of data.

We have undertaken a review of the data produced on June 7 and are unable to determine which fields of data are responsive to which categories of information requested in Interrogatory No. 1 and 2. As you know, Rule 3.35(c) allows an interrogatory response to “specify the records from which the answer [to an interrogatory] may be derived,” but the “specification shall include sufficient detail to permit the interrogating party to identify readily the individual documents from which the answer may be ascertained.” We therefore request that, no later than July 28, 2022, Respondent:

- (a) Produce a key that describes, with specificity, each column identifier in the 83 tables of data. If the description of the column identifier ever differs by table, please describe with specificity how so. For your convenience, we have attached a list that identifies the columns by table name; or
- (b) Otherwise identify, with specificity, how the answer to Interrogatory Nos. 1 and 2 can be ascertained from the data in the 83 tables.

If Respondent cannot provide the above by July 28, we ask that you be prepared at the July 29 conference to discuss why it cannot do so. Further, we ask that you be prepared at the July 29 conference to identify any portion of Interrogatory Nos. 1 and 2 for which a response remains outstanding.

We look forward to further discussions regarding the above on July 29, 2022.

Sincerely,

/s/ Breena M. Roos  
Breena M. Roos

Cc: Sophie Calderón (by email)  
Colin D. A. MacDonald (by email)  
M. Elizabeth Howe (by email)

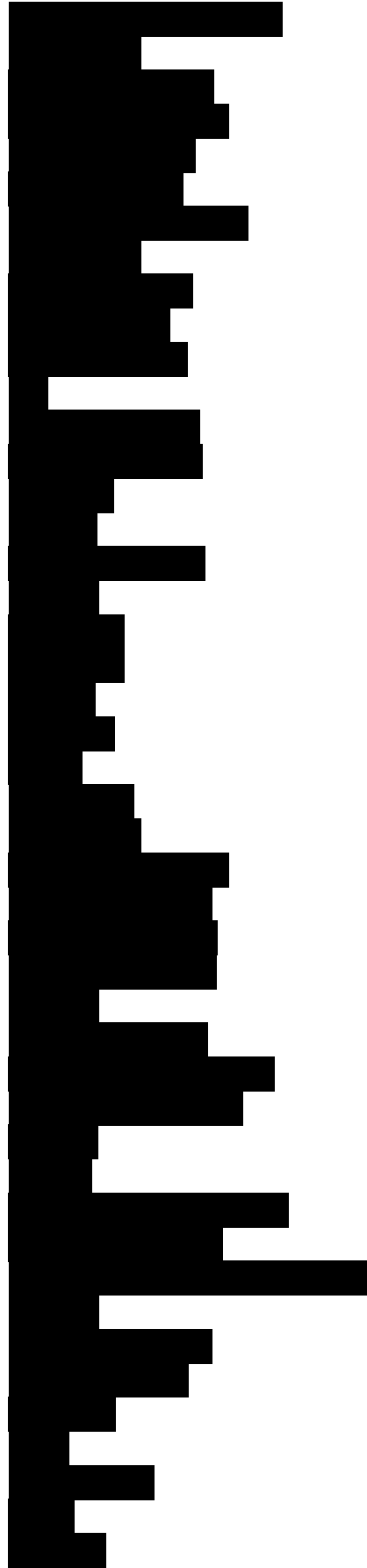
In the Matter of HomeAdvisor, Inc.  
June 7, 2022 Data Production

**PUBLIC**

**Table**



**Column Identifier**



In the Matter of HomeAdvisor, Inc.  
June 7, 2022 Data Production

**PUBLIC**

**Table**



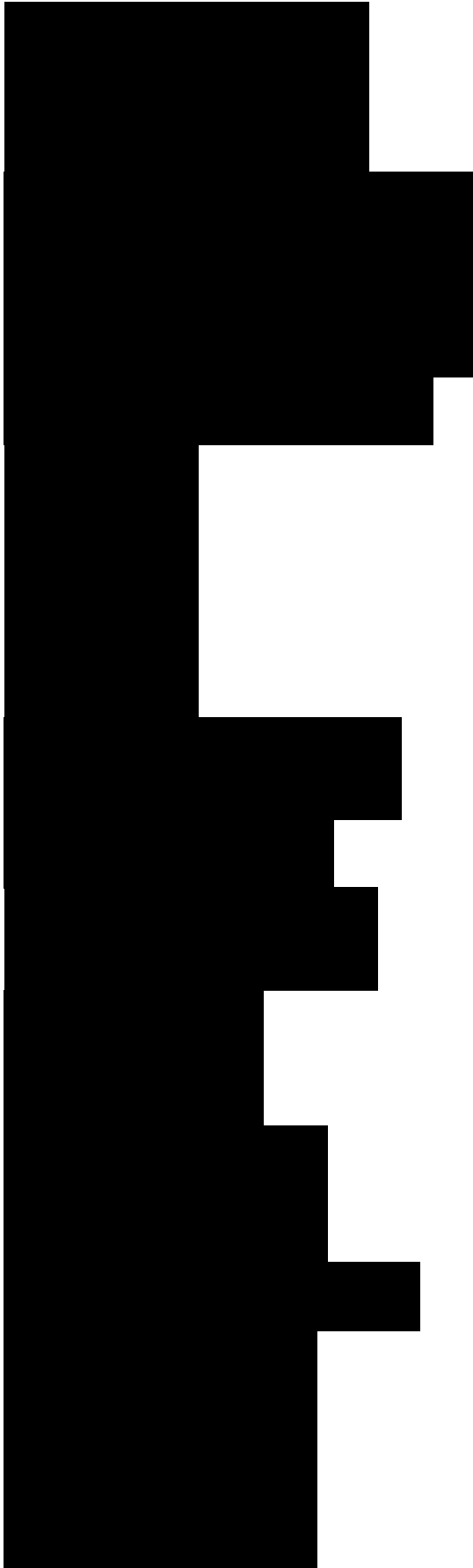
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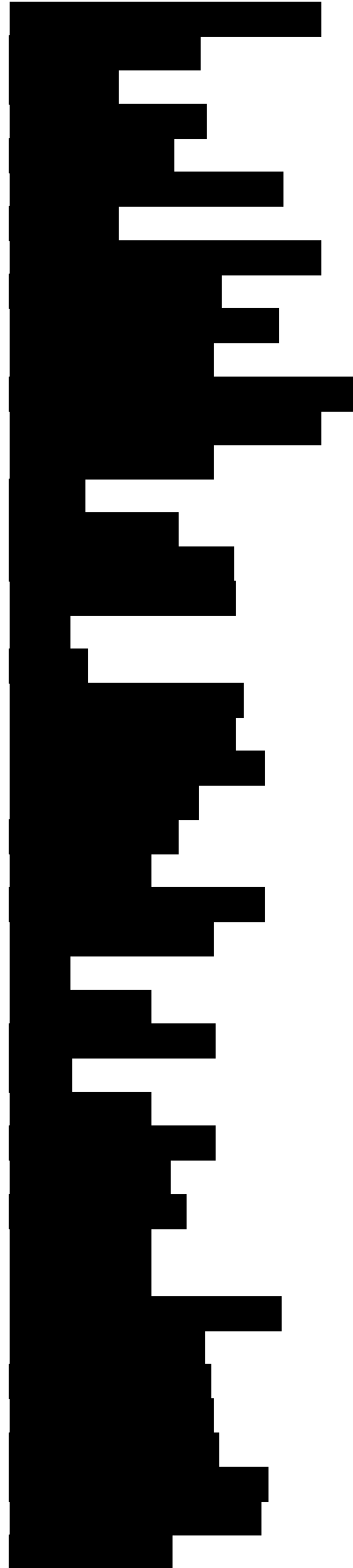
In the Matter of HomeAdvisor, Inc.  
June 7, 2022 Data Production

**PUBLIC**

**Table**



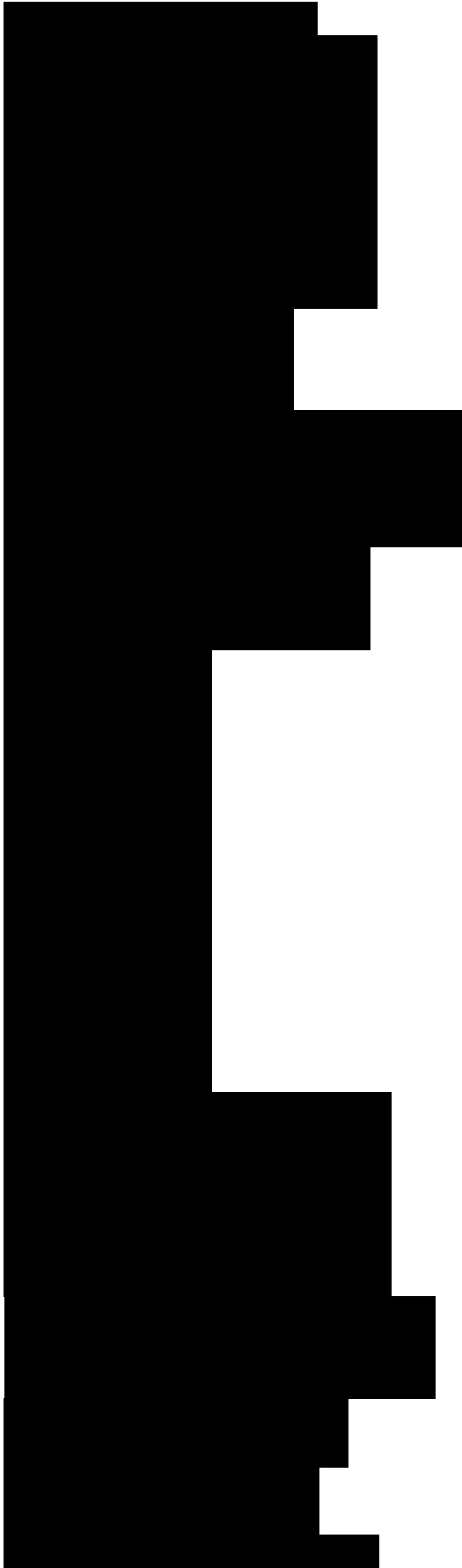
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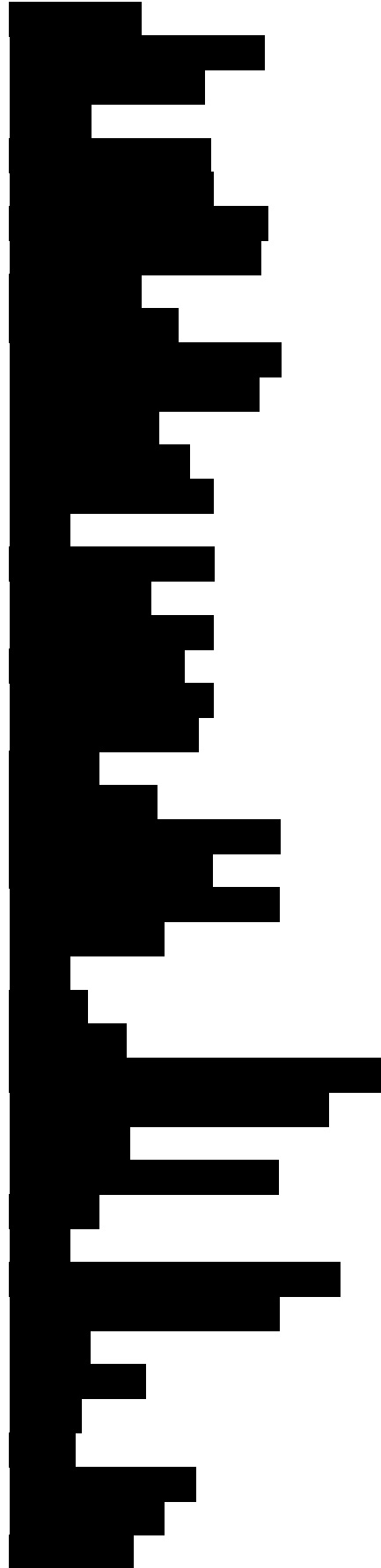
In the Matter of HomeAdvisor, Inc.  
June 7, 2022 Data Production

**PUBLIC**

**Table**



**Column Identifier**




In the Matter of HomeAdvisor, Inc.  
June 7, 2022 Data Production

**PUBLIC**

**Table**



**Column Identifier**

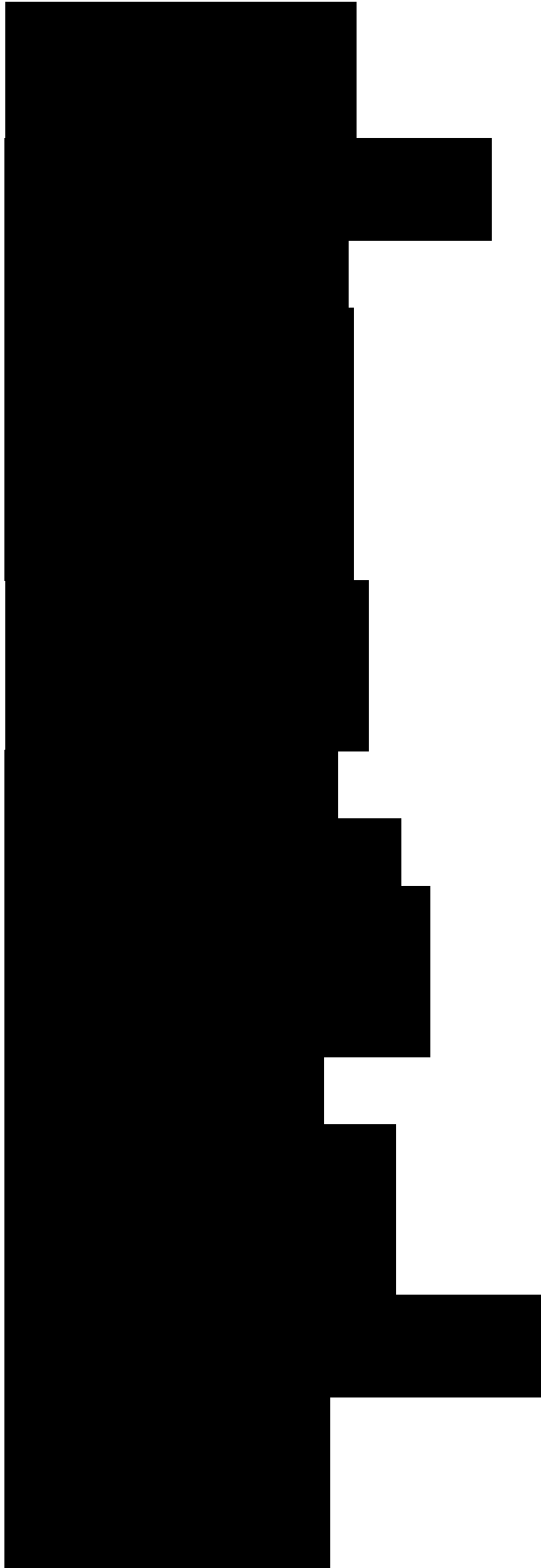




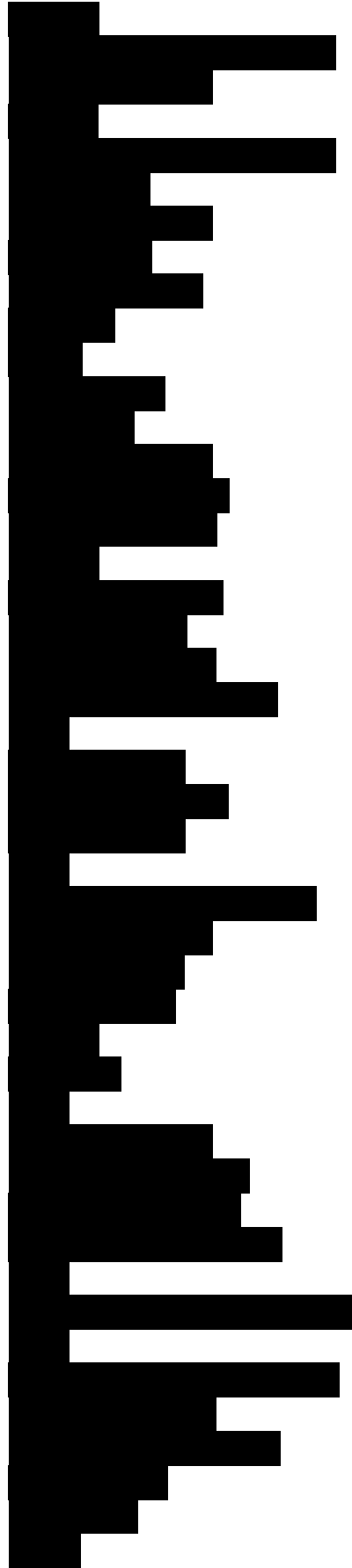
In the Matter of HomeAdvisor, Inc.  
June 7, 2022 Data Production

**PUBLIC**

**Table**




**Column Identifier**




In the Matter of HomeAdvisor, Inc.  
June 7, 2022 Data Production

**PUBLIC**

**Table**



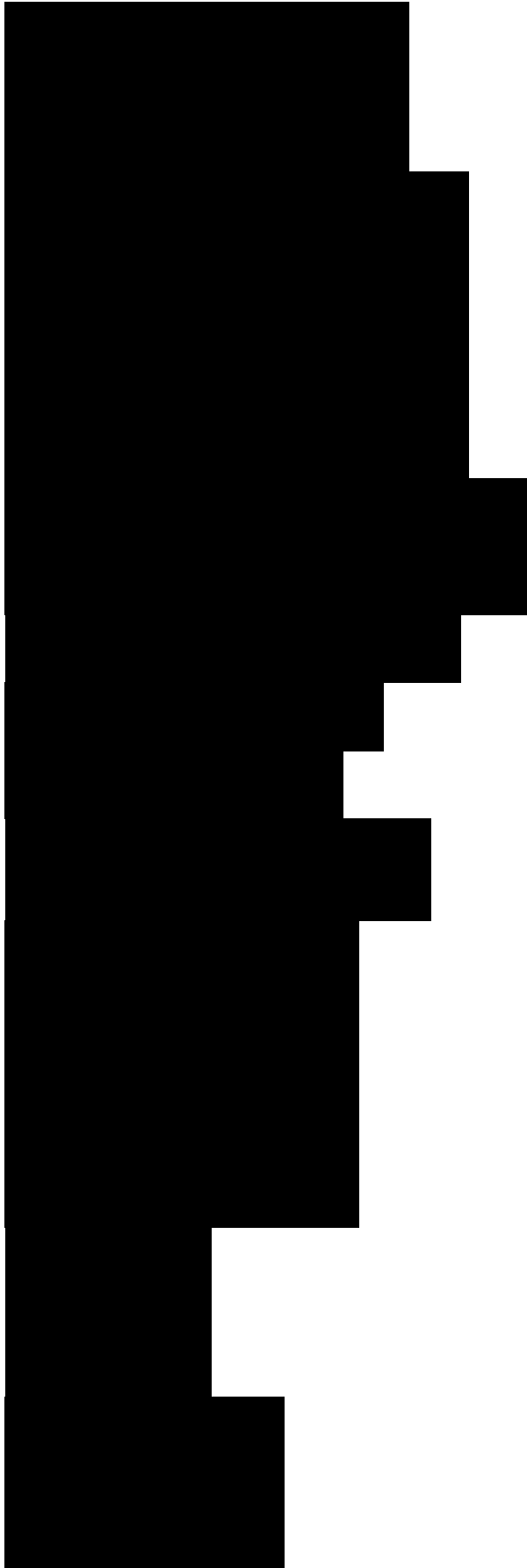
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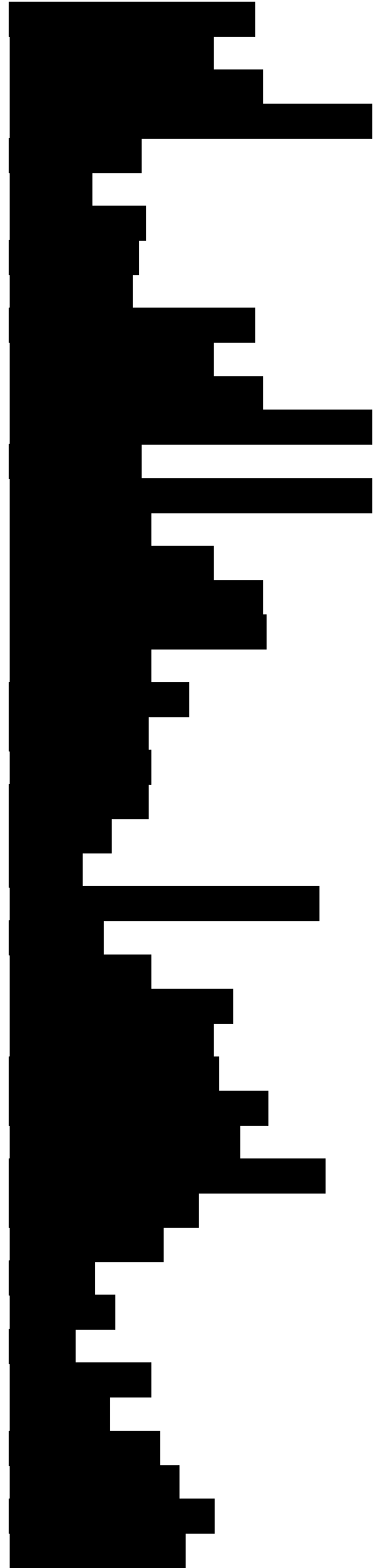
In the Matter of HomeAdvisor, Inc.  
June 7, 2022 Data Production

**PUBLIC**

**Table**



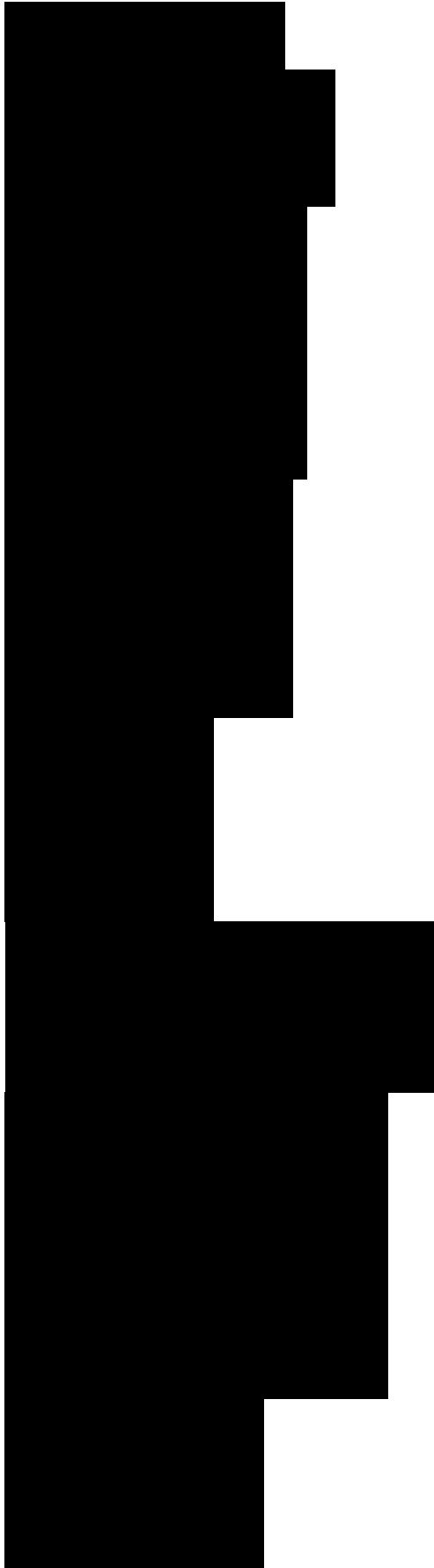
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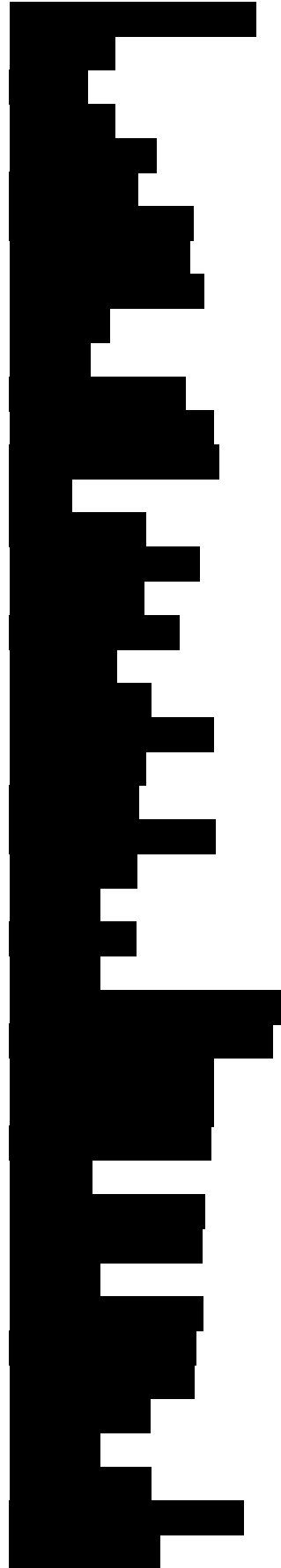
In the Matter of HomeAdvisor, Inc.  
June 7, 2022 Data Production

**PUBLIC**

**Table**

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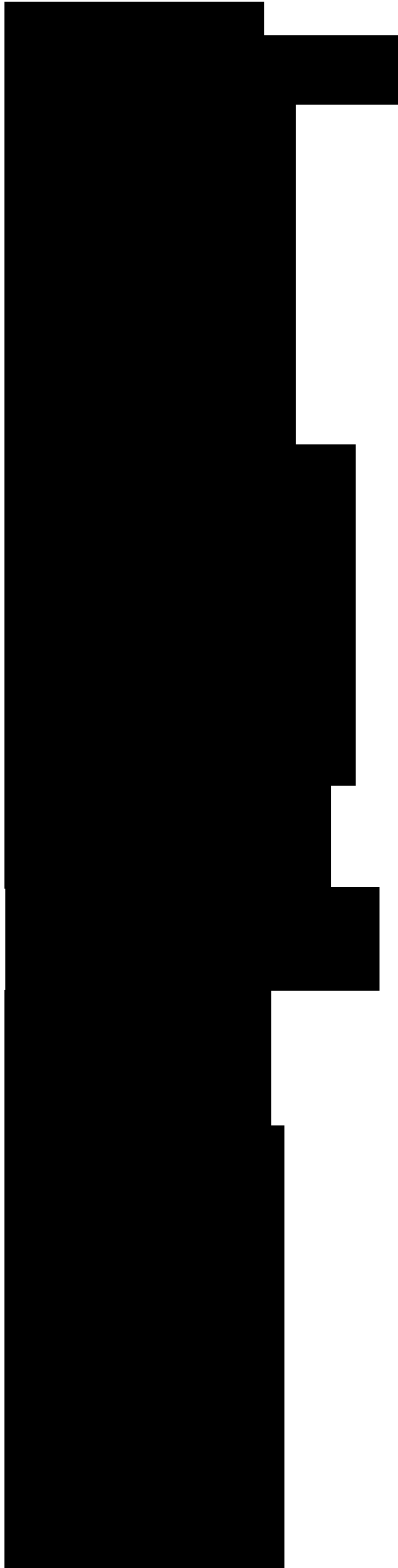
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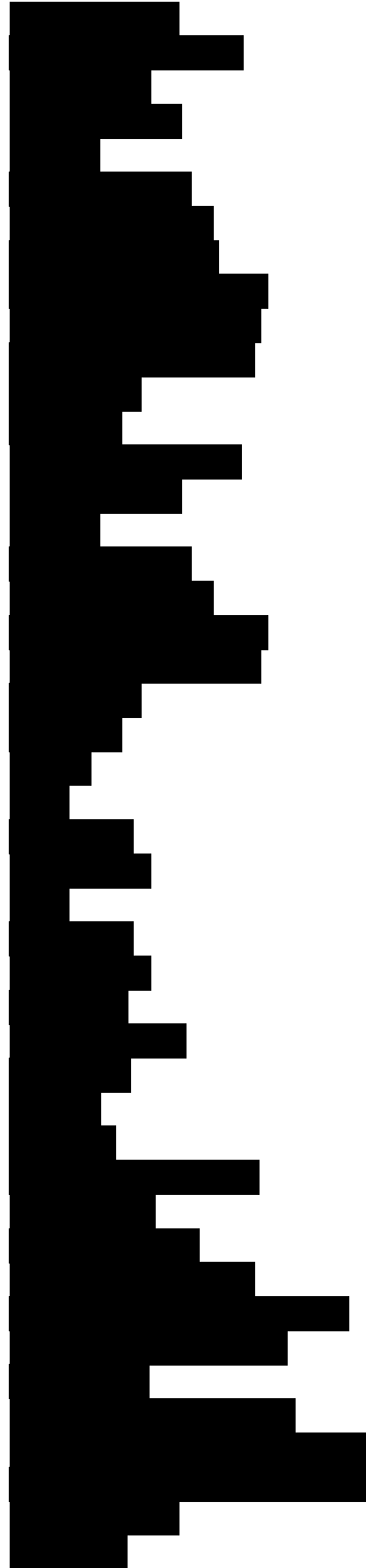
In the Matter of HomeAdvisor, Inc.  
June 7, 2022 Data Production

**PUBLIC**

**Table**

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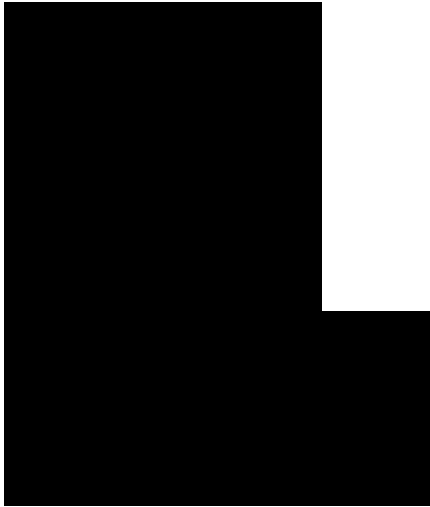
**Column Identifier**

A large, solid black rectangular redaction covers the entire content of the column identifier section, obscuring all text.

In the Matter of HomeAdvisor, Inc.  
June 7, 2022 Data Production

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**Table**

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**Column Identifier**

A black rectangular redaction box covering the content of the column identifier table.

# EXHIBIT F

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WRITER'S DIRECT DIAL NO.  
**(212) 849-7651**WRITER'S EMAIL ADDRESS  
**neilphillips@quinnemanuel.com**

July 28, 2022

**VIA E-MAIL**Breena M. Roos, Esq.  
Federal Trade Commission, Northwest Region  
915 Second Ave., Suite 2896  
Seattle, WA 98174  
Broos@ftc.govRe: In the Matter of HomeAdvisor, Inc. FTC Docket No. 9407

Dear Breena:

We write on behalf of HomeAdvisor, Inc. in response to your July 22, 2022 letter regarding HomeAdvisor's responses and objections to Complaint Counsel's Second Set of Requests for Production and First Set of Interrogatories. We look forward to a productive conferral this Friday, July 29, 2022.

**I. Complaint Counsel's Second Set Of Requests For Production**

As you note in your letter, HomeAdvisor lodged well-founded objections to Complaint Counsel's Second Set of Requests for Production, but nevertheless stated it would make reasonable, good-faith efforts to locate and produce responsive materials. 7/22/22 Ltr. from B. Roos at 1. And HomeAdvisor has done just that, as we have represented to you during our last two conferrals.

Since then, HomeAdvisor personnel have continued to investigate Complaint Counsel's discovery demands in an effort to satisfy your requests as expeditiously as possible. While we will be prepared, as always, to have a candid conferral with you on Friday to update you on these efforts, the questions posed in your letter are inappropriate, including because they invade our attorney-client privileged and work product discussions with our client. *Id.* at 2; *see, e.g., Pajak v. Under Armour, Inc.*, 2021 WL 4225767, at \*5 (N.D.W. Va. Sept. 15, 2021) ("The communications concern, for example, whether discoverable information is available and if it is, how it could be obtained, as well as the status of efforts to answer discovery requests. And they concern opinions about what may be discoverable in the first place. In other words, the documents are not simply mechanistic back-and-forth communications about efforts to retain or locate

**quinn emanuel urquhart & sullivan, llp**

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information, but rather are imbued with legal counsel’s thoughts, reflections, advice, directives, and updates.”).

## II. Complaint Counsel’s First Set Of Interrogatories

Your sudden demand that we produce—“no later than July 28, 2022,” four business days after your letter was sent at 8:44 PM ET on a Friday—a “key” or other information purportedly necessary to understand the data HomeAdvisor produced is improper. 7/22/22 Ltr. from B. Roos at 3. So is any implication in your letter that we, as opposed to Complaint Counsel, have been dilatory in some manner with respect to this data production.

As you reference, on June 7, 2022, almost two months ago, HomeAdvisor produced “a large volume of data,” *id.*, roughly 300GB, in response to Complaint Counsel’s First Set of Interrogatories, containing granular information regarding HomeAdvisor’s leads, service providers, and homeowner users. You then wrote us a letter on June 16, 2022 that stated, in relevant part: “We will let you know if we have any questions once we have completed our review of the June 7 production.” 6/16/22 Ltr. from B. Roos at 1. For weeks, Complaint Counsel remained silent regarding HomeAdvisor’s data production until suddenly demanding in their July 22, 2022 letter that HomeAdvisor create—in less than a week with no prior notice—a new “key that describes, with specificity, each column identifier in the 83 tables of data” including a description of how each column identifier may differ by table. 7/22/22 Ltr. from B. Roos at 3.

The substance of your request likewise is improper. As we have now stated multiple times in connection with other discovery requests, HomeAdvisor has no obligation to create documents for Complaint Counsel. *See, e.g., Gerrie v. Cty. of San Bernardino*, 2020 WL 3978061, at \*3 (C.D. Cal. June 3, 2020) (“Ultimately, plaintiff is asking the court to order defendant to create new documents to produce in response to a request for production. That is beyond what is required in discovery.”); *Thompson v. Lantz*, 2009 WL 3157561, at \*1 (D. Conn. Sept. 25, 2009) (“[A] party cannot be compelled to create, or cause to be prepared, new documents solely for their production.”); *Georgacarakos v. Wiley*, 2009 WL 924434, at \*2 (D. Colo. Apr. 3, 2009) (“[I]f a requested document is not in the possession of a party or non-party, such person need not create the non-existent document.”).

Nevertheless, while HomeAdvisor disputes Complaint Counsel’s expansive characterization of 16 CFR § 3.35(c), HomeAdvisor will supplement its response by next week to provide Complaint Counsel with a chart that lists each of the tables produced, along with an identification of each interrogatory and subpart to which it responds. HomeAdvisor also will be making a supplemental data production next week responsive to Complaint Counsel’s Interrogatory 1(h)–(i).

We look forward to speaking with you tomorrow.

Sincerely,

/s/ Neil T. Phillips  
Neil T. Phillips

# EXHIBIT G



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.

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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 H

**PUBLIC****quinn emanuel trial lawyers | new york**

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WRITER'S DIRECT DIAL NO.  
**(212) 849-7651**WRITER'S EMAIL ADDRESS  
**neilphillips@quinnemanuel.com**

August 2, 2022

**VIA E-MAIL**Colin D. A. MacDonald, Esq.  
Federal Trade Commission, Northwest Region  
915 Second Ave., Suite 2896  
Seattle, WA 98174  
cmacdonald@ftc.govRe: In the Matter of HomeAdvisor, Inc. FTC Docket No. 9407

Dear Colin:

We write on behalf of HomeAdvisor, Inc. in response to your July 29, 2022 letter regarding HomeAdvisor's responses and objections to Complaint Counsel's Second Set of Requests for Production and First Set of Interrogatories. We are available to meet and confer as needed at your convenience.

**I. Complaint Counsel's Second Set Of Requests For Production**

As referenced in your letter, HomeAdvisor is in the process of collecting several thousand quality assurance audio recordings, which we intend to produce by the end of this week. These recordings are in addition to the approximately 2,000 recorded sales calls produced during the CID process, along with any additional audio files that may be produced in connection with Complaint Counsel's extraordinary demand, if appropriately narrowed, for "All data, including call transcripts, from the CallMiner software, regarding telephone calls between Your sales agents" in their most recent set of document requests. *See* Complaint Counsel's Third Set of Document Requests, No. 23.

Notwithstanding this reasonable and proportionate production, Complaint Counsel persist in their unreasonable demand for "recordings of *all* telephone calls" with service providers that took place from May 1, 2019 through October 31, 2019, "*all* records and/or data pertaining to the telephone call[s]," and "*any* quality assurance assessments, evaluations, or grading of Your sales agent's performance during the specific telephone call." *See* Complaint Counsel's Second Set of Document Requests, Nos. 14–16. Whether or not the "plain reading" of Complaint Counsel's requests "requires production of recordings from the relevant period regardless of whether

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associated quality assurance forms exist (or ever existed)” is not the focus: proportionality and burden guide the inquiry here. *See, e.g.*, 16 C.F.R. § 3.31(c)(2) (discovery “shall be limited” where, *inter alia*, material sought is “unreasonably cumulative or duplicative”; is available from another more convenient, less burdensome, or less expensive source; or imposes undue burden); *Prasad v. George Washington Univ.*, 323 F.R.D. 88, 91 (D.D.C. 2017) (discussing amendment to Fed. R. Civ. 26 to “emphasize the need for proportionality in discovery and to ‘encourage judges to be more aggressive in identifying and discouraging discovery overuse’”); The Sedona Conference, *Commentary on Proportionality in Electronic Discovery*, 18 Sedona Conf. J. 141, 147 (2017) (“Achieving proportionality in civil discovery is critically important”).<sup>1</sup>

Courts thus routinely reject sweeping “all documents” demands like Complaint Counsel’s here. *See, e.g.*, *J White, L.C. v. Wiseman*, 2020 WL 3507408, at \*2 (D. Utah June 29, 2020) (“Courts within the Tenth Circuit have noted that discovery requests may be facially overbroad when they use terms such as ‘any and all,’ ‘referencing,’ or ‘pertaining to’ with respect to a broad category of documents.”); *C.D.S. Inc. v. Zetler*, 2016 WL 11651898, at \*2 (S.D.N.Y. Dec. 14, 2016) (holding “all documents” requests were “plainly overbroad and impermissible”); *Henry v. Morgan’s Hotel Grp., Inc.*, 2016 WL 303114, at \*2 (S.D.N.Y. Jan. 25, 2016) (“Blanket requests of this kind are plainly overbroad and impermissible.”); *Rice v. Reliastar Life Ins. Co.*, 2011 WL 5513181, at \*2 (M.D. La. Nov. 10, 2011) (“Furthermore, it has been held that a request for ‘any and all documents’ relating to a particular subject is overbroad and amounts to little more than a fishing expedition.”). HomeAdvisor’s purported “litigation position” regarding the sales call recordings produced in discovery does not “make[] this production vital to the litigation,” and Complaint Counsel’s own one-sided litigation position does not make their requests any less disproportionate, burdensome, or overbroad. 7/29/22 Ltr. at 2.

Complaint Counsel’s position is unreasonable for other reasons as well, and mischaracterizes our July 29 meet and confer. During our July 29 conferral, we described the enhanced burden in attempting to retrieve additional sales call recordings from several years ago, and offered to discuss producing the same volume of audio files from a later period in time, which would be easier to retrieve. After you claimed HomeAdvisor was attempting to “unilaterally limit the scope of discovery to a recent period,” 7/29/22 Ltr. at 2, we advised that Complaint Counsel could themselves select a more recent timeframe for production that we would consider in good faith. We noted that Complaint Counsel had not indicated there was any identifiable distinction between sales calls that occurred in 2019 and those taking place today, and thus no material difference would exist in the production. Particularly so because, as we also stated during our conferral, this is a proceeding for prospective, injunctive relief, and Complaint Counsel’s case theory is that the harm that it asserts began in 2014 is continuing unabated to this day. Complaint Counsel’s response, however, revealed the true motivating force behind these requests: their unfounded belief that calls from 2019 will be better for their case and transparent desire to precipitate a discovery dispute to extract baseless concessions by leveraging the burden of

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<sup>1</sup> “Where the Federal Rules of Civil Procedure are similar to the Commission’s Rules of Practice, those rules and case law interpreting them may be useful, though not controlling, in adjudicating a dispute.” *In the Matter of Impax Lab ’ys, Inc.*, F.T.C. Docket No. 9373, 2017 WL 2570856, at \*3 (June 12, 2017) (Chappell, Chief Administrative Law Judge).



retrieving older recordings. HomeAdvisor therefore does not agree to Complaint Counsel's inappropriate "conditions." 7/29/22 Ltr. at 2.

At the same time, however, Complaint Counsel cannot unilaterally declare an impasse with respect to its second set of document requests. *See* 7/29/22 Ltr. at 2 ("Please provide us with your final position by August 2, 2022, so that we can determine whether a motion to compel is necessary."). As we repeatedly stated during our July 29 conferral, HomeAdvisor continues to investigate these requests and the burden associated with providing additional sales call audio recordings for the requested time period. We are optimistic that we will conclude our investigation by August 5, 2022, and intend to provide Complaint Counsel with further information at that time.

## **II. Complaint Counsel's First Set Of Interrogatories**

Notwithstanding your sudden demand that we produce—"no later than July 28, 2022," four business days after your July 22 letter was sent at 8:44 PM ET on a Friday—a "key" purportedly necessary to understand HomeAdvisor's data production, we agreed to create and provide a chart that lists each of the tables produced, along with an identification of each interrogatory and subpart to which it responds. *See* 7/22/22 Ltr. from B. Roos at 3; 7/28/22 Ltr. from N. Phillips at 2. During our July 29 conferral, you agreed to receive this chart, but sought additional information regarding the columns within each table. While we continue to dispute your expansive characterization of 16 CFR § 3.35(c), we will supplement the chart to include an identification of tables along with the column in each table serving as a primary key between the tables, which will provide Complaint Counsel with sufficient information regarding the data produced.

Sincerely,

*/s/ Neil T. Phillips*  
Neil T. Phillips

**CERTIFICATE OF SERVICE**

I hereby certify that on August 4, 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 August 4, 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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*Counsel for Respondent HomeAdvisor, Inc.*

Dated: August 4, 2022

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

*Counsel Supporting the Complaint*