

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
Polypore International, Inc.,)
a corporation.)

Docket No. 9327

PUBLIC DOCUMENT

RESPONDENT'S MOTION FOR A PROTECTIVE ORDER REGARDING DISCOVERY

Pursuant to the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings ("FTC Rules"), 16 C.F.R. §§ 3.22 and 3.31(d), Respondent Polypore International, Inc. ("Polypore"), by its attorneys, Parker Poe Adams & Bernstein LLP, hereby moves for a protective order to (1) limit the scope of Complaint Counsel's First Set of Interrogatories to Respondent Polypore International, Inc. (the "Interrogatories") and Complaint Counsel's First Set of Document Requests to Respondent Polypore International, Inc. (the "Document Requests"); (2) deny improper discovery demanded beyond the limits set in the Scheduling Order entered on October 22, 2008; (3) limit the depositions currently sought to the extent Complaint Counsel intends to question witnesses based on third party discovery document; and (4) quash, or limit, the depositions of sought of Steve McDonald, Michael Gilchrist, Timothy Riney, S. Tucker Roe and Pierre Hauswald (the "Depositions") – individuals previously questioned at length by Complaint's Counsel as part of its pre-complaint investigation.¹

INTRODUCTION

After having engaged in what can only be described as unfettered and one-sided discovery of Polypore for over five months, the Federal Trade Commission ("FTC") issued its Complaint against Polypore on September 9, 2008. Polypore does not yet know the full extent of the FTC's prior discovery, as Complaint Counsel has not yet complied with its obligations and produced the

¹ Copies of Interrogatories, Document Requests and Deposition Notices are attached as Exhibits A, B and C, respectively.

information which it obtained from third parties during its investigation.² Polypore, of course, is aware of what it provided to the FTC, at considerable cost and expense, leading up to this case:

- Polypore produced over 1.1 million pages of documents to the FTC in response to its discovery requests.
- Polypore responded to 44 CID requests.
- After having produced these documents and having responded to the CID, Polypore made five witnesses available for examination by the FTC in investigational hearings. Two of those witnesses (Messrs. Tucker Roe and Timothy Riney) were deposed over the course of two days and one witness (Mr. Pierre Hauswald) was deposed for nearly 11 hours. The transcripts of the examinations of these witnesses exceed 1660 pages. Each witness was examined on the issues that came to serve as the basis for the allegations of the Complaint.

While Complaint Counsel has chosen to ignore much of what Polypore provided to the FTC in this discovery in crafting its Complaint, the fact remains that the FTC has already engaged in extensive, one-sided discovery of Polypore on the very issues identified in the Complaint.

Despite all of this discovery of Polypore, Complaint Counsel has decided to extend its fishing expedition, seeking vast quantities of documents and responses to oppressive interrogatories and demanding examinations of the same five witnesses that they spent over 46 hours examining only months before on the very same issues set forth in the Complaint. What is even more alarming is the fact that Complaint Counsel has violated the terms of the Administrative Law Judge's rules limiting the number of interrogatories to 50 including subparts. Apparently,

² See Letter of William L. Rikard, Jr., dated October 29, 2008, at p. 2 ("I am concerned with Steve's comment today that he has not yet contacted all third-parties with respect to the disclosure of their documents and information in this matter under the protective order and has no obligation to produce any of these materials to us absent a formal request. It was certainly our expectation, based on the representation made in the initial disclosures made to the Administrative Law Judge, that you would have promptly contacted these third parties once the Protective Order was entered, which was one week ago. In addition, we do take issue with your statement that you are not required to produce the third-party documents in the investigational hearings to us absent a document request. In fact, in the initial disclosures filed by Complaint Counsel with the Administrative Law Judge, Counsel stated "Complaint Counsel will provide copies of third-party's documents and materials 10 days after such time as the Administrative Law Judge has entered a protective order in this matter and the third-parties who submitted the documents have been apprised of their rights under the protective order." Complaint Counsel's Initial Disclosures to Respondent Polypore International, Inc., p. 3 (emphasis added).")

Complaint Counsel's strategy is to cause Polypore as much financial pain as possible in the discovery process in order to force capitulation. As noted by Commissioner Rosch, in addressing the proposed changes to the FTC Rules, a litigant is not to be subjected to oppressive proceedings that are unduly expensive and burdensome and outcome determinative due to such excesses:

First, in merger cases, protracted part 3 proceedings may result in the parties abandoning transactions before their antitrust merits can be adjudicated. . . . Second, in all antitrust cases, protracted Part 3 proceedings may result in substantially increased litigation costs for the Commission and for the clients whose transactions or practices are challenged. More specifically, protracted discovery schedules and pretrial proceedings may be good for the litigators, but they can result in nonessential discovery and motion practice that can be very costly to both the Commission and those clients.³

While Commissioner Rosch was addressing the costs and determinative nature of the proceedings in the context of the length of time for Part 3 cases, the principle applies equally to the abusive discovery tactics being employed here by Complaint Counsel. Indeed, in arriving at an agreed-to schedule for this case with Complaint Counsel, Respondent relied on statements made by Complaint Counsel that its discovery of Polypore would be targeted, narrow and specific, "rifle shots," rather than the shotgun approach used by Complaint Counsel here. If Respondent had known that Complaint Counsel intended to redo the extensive discovery already taken, it would have strenuously sought a different schedule than cutting discovery off at February 13, 2009, and holding the hearing in this matter on April 14, 2009.

Given the limited time for discovery under the expedited schedule and consistent with the intent of the proposed FTC rule changes to "improv[e] efficiency and timing of administrative litigation,"⁴ subjecting five people to questioning on the same topics with no limitation has no

³ Reflections on Procedure at the Federal Trade Commission. Remarks of J. Thomas Rosch, Commissioner, Federal Trade Commission. ABA Antitrust Masters Course IV. September 25, 2008.

⁴ Id.

place here. Respondent does not suggest that Complaint Counsel's pre-complaint investigation must have encompassed and gathered "all" the details for each and every transaction that might become an evidentiary item in this litigation, only that in an expedited action it is incumbent on all parties and counsel to be as efficient as possible. To the extent information may be needed to "round out, extend, or supply further details" about a transaction or topic such questions may promote efficiency, but a wholesale free-for-all of any and all topics that have previously been exhausted in the pre-complaint investigational hearings is burdensome and wasteful and should have no place in an expedited schedule or under the proposed new rules.⁵ Complaint Counsel's deposition of the five previously questioned witnesses should be either denied outright or limited to information that rounds out, extend or supplies further details of specific topics and not to an unlimited deposition of previously-ploughed ground.

Complaint Counsel's written discovery is overbroad, unduly burdensome, harassing, seeks information not reasonably expected to yield information relevant to this matter, and exposes individuals who have already submitted to hours and days of deposition to additional annoyance, oppression and burden. An order limiting the scope of Complaint Counsel's written discovery and depositions is appropriate.

Complaint Counsel has served sweeping document requests and interrogatories on Respondent which are – on their face – dramatically overbroad in violation of the ALJ's October 22, 2008 Scheduling Order, and, if read literally, might call for the production of hundreds of thousands of documents that could have no conceivable relevance to the claims asserted in this action. Literal compliance with the Complaint Counsel's written discovery would require Respondent to review millions of pages of files maintained by individuals employed by dozens of

⁵ All-State Indus., et al., 72 F.T.C. 1020, 1023-24 (Nov. 13, 1967).

companies all over the world that are associated or affiliated with or have some relation, however remote, to Polypore. In the context of this litigation, such a task would be Herculean – it is certainly well outside the spirit and intent of the expedited nature of this litigation and the aspiration to reduce “nonessential discovery and motion practice that can be very costly to both the Commission and [the challenged] clients.”⁶ Further, Complaint Counsel seeks duplicative and burdensome depositions of five individuals who were subject to investigational hearings in the Part II investigation.

DISCUSSION

A. Scope of Discovery

“Parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent.” FTC Rules 3.31(c)(1); see FTC v. Anderson, 631 F.2d 741, 745 (D.C. Cir. 1979). The Administrative Law Judge has the authority to limit discovery to the extent it is “unreasonably cumulative or duplicative,” “the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought;” or “the burden and expense of the proposed discovery outweigh its likely benefit.” FTC Rules 3.31(c)(1)(i-iii). Further, the ALJ may deny discovery or make any order to protect “any party . . . from annoyance, embarrassment, oppression, or undue burden and expense . . .” FTC Rules 3.31(d).

I. Complaint Counsel’s Written Discovery is Overbroad, Unduly Burdensome and Seeks Information Not Relevant to this Matter

The Scheduling Order in this matter entered on October 22, 2008, limits each party to 50 document requests and 50 interrogatories, including subparts. This limitation doubles the standard

⁶ See n. 3 supra.

number of interrogatories permissible under the FTC Rules. Rule 3.35. Notwithstanding this generous allowance and clear limitation, in addition to the admonition that “[a]dditional discovery may be permitted only for good cause shown upon application to and approval by the Administrative Law Judge,” Complaint Counsel served upon Respondent on the same day the Scheduling Order was entered Interrogatories well in excess of the 50 interrogatory limitation (by one count, the Interrogatories are well in excess of 116).

“The purpose of interrogatories is to narrow the issues and thus help determine what evidence will be needed at trial . . .” In re TK-7 Corp., 1990 F.T.C. Lexis 20, *1-2 (1990). A shotgun approach to discovery will not “narrow the issues.” Further, Complaint Counsel failed even to ensure that it did not seek duplicative information obtained previously during the investigatory phase. For instance, Interrogatory No. 5 which asks that Polypore, Daramic and Microporous identify all sales by relevant product, in each relevant area, from January 2003 to the present (and projecting forward as possible) with 16 sub-parts requiring further information, is substantially duplicative of the CID Request No. 2 which asks for sales for each relevant product, in each relevant area from January 2003 to the present. The only real differences in the two requests are that Complaint Counsel now wants Respondent to identify the “line” from which the sales came, the product code and the customer’s parent. This additional information is irrelevant and certainly does not justify the clearly duplicative discovery sought of Polypore.

Complaint Counsel’s excesses are demonstrated by looking at the interplay of their definitions with the interrogatories. Complaint Counsel defines “relevant product” to include 4 products (battery separators for deep cycle, uninterruptible power supply, automotive and motive applications). Complaint Counsel then requests detailed and voluminous information in the guise of a single request for each such “product”. See e.g. Interrogatories Nos. 2, 4 (for each product,

and for each of Polypore, Daramic and Microporous), 5 (same), 9, 10, 14, 15, 32. In addition, Complaint Counsel compounds this egregious discovery by asking for the same information for each of 4 “relevant areas,” defined as North America, Asia, Europe or the World. See e.g. Interrogatories Nos. 6, 16, 34. This additional burden takes the number of interrogatories well beyond even the outrageous number of 116.

A subpart is to be considered discrete only when it is “logically or factually subsumed within and necessarily related to the primary question.” Federal Trade Commission v. Think All Publishing, L.L.C., 2008 WL 687454 (E.D. Texas 2008). The Think All Court went on to explain that where “the first question can be answered fully and completely without answering the second question, then the second question is totally independent of the first and not factually subsumed within [it].” Id.; see also Kendall v. GES Exposition Servs., Inc., 174 F.R.D. 684 (D.Nev.1997)). Thus it must be considered a separate and distinct question. Complaint Counsel here has propounded dozens of interrogatories whose subparts can be answered fully and completely separate and apart from the “first” question propounded. This is in violation of the FTC Rules and the Scheduling Order and should not be tolerated.

Under the Scheduling Order Respondent has 20 days to respond to the written discovery propounded upon it. It should not be given the additional burden of having to sift through duplicative questions that are in blatant violation of the limits explicitly set by the Scheduling Order, nor should it be required to determine which 50 of the interrogatories should be answered.

Complaint Counsel should be required to abide by not only the Scheduling Order, but by the implicit limits set by the FTC Rules and Respondent requests that Complaint Counsel be ordered to propound a new set of interrogatories limited to a maximum of 50, including subparts.

II. Complaint Counsel’s Definition of “Polypore” and “Microporous” Substantially Increases the Burden of Responding to the Written Discovery

Complaint Counsel has defined "Polypore" in its written discovery as "Respondent, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing." The definition goes on to state that "'Subsidiary,' 'affiliate,' and 'joint venture' refer for this purpose to any person in which there is a partial (25 percent or more) or total ownership or control between the company and any other person."

Microporous is defined with equal breadth as "Microporous Products L.P., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all officers, directors, employees, agents and representatives of the foregoing."

As Complaint Counsel is aware Polypore International, Inc., is currently owned more than 25% by Warburg Pincus. Further, it is parent to four companies which, in turn are parent to, or are affiliated with, 25 companies throughout the world. This does not take into account its affiliation and relationship with its Liquicel and Membrana divisions. The vast majority of these companies have no connection to the issues in the Complaint. Making the definition increasingly absurd, should Polypore be required to respond to the discovery using Complaint Counsel's definition, it would also be responsible for ascertaining whether all of the directors, officers, employees, agents and representatives of these companies have documents or information potentially falling within Complaint Counsel's discovery requests and then, if so, gathering and producing the documents and information no matter how remote to the issues here. Not only would this include thousands of employees, it would include all outside directors, counsel and other "representatives" of each of those companies. Thus, read literally interrogatory number 8, which asks Respondent to "describe the circumstances, the timing of, and all reasons for, the departure of any company employee . . . from employment at Polypore since July 1, 2007," would require Respondent to provide to

Complaint Counsel with the circumstances, timing and reasons for the departure of any employee of Polypore, Daramic, Warburg Pincus, and any of myriad companies all over the world which fall within this expansive definition. Likewise, Respondent would be required to produce documents related to these departures pursuant to document request number 5,

By way of further example, with respect to Complaint Counsel's definition of "Microporous," Microporous was owned prior to the acquisition by Respondent by Industrial Growth Partners, a private equity company that currently owns five portfolio companies.⁷ Thus, accepting Complaint Counsel's definition to include IGP as a "predecessor" would, again read literally, require Respondents under interrogatory number 11 to provide the date, list of attendees and matters discussed for every board of directors meeting for IGP, and any of its portfolio companies, not to mention any prior owner (or predecessor) of Microporous, which would include another equity firm, Kelso & Company. Likewise, Respondent would be required under document request number 6 to produce all documents related to these meetings – including notes of each individual director. As with Warburg Pincus, Respondent has no control over IGP or Kelso & Company and cannot respond on their behalf.

Complaint Counsel should not be permitted to impose such onerous and burdensome requests on Respondent. Respondent requests that the Court limit the requests to the following companies: Polypore International, Inc., Daramic LLC and Microporous Products, L.P. Respondent should not have to answer discovery on behalf of its other "parents, subsidiaries, affiliates" or its "predecessors." Each of the relevant companies has been in existence during the

⁷ API Heat Transfer, Inc.; Atlas Material Testing Solutions; The Felters Group; Seaboard Wellhead, Inc.; and The TASI Group. See www.igpequity.com/portfolio.html. IGP's former portfolio companies, which includes Microporous, number 12 different companies in as many industries.

time frame at issue, thus there is no reason to go beyond those companies to their predecessors or other affiliated companies.

III. Complaint Counsel's Deposition Notices are Duplicative and Burdensome

As recognized by the Supreme Court of the United States “[i]t is clear from experience that pretrial discovery by depositions . . . has a significant potential for abuse.” Seattle Times Co. et al. v. Rhinehart et al., 467 U.S. 20, 28 (1984). Complaint Counsel’s desire to take duplicative testimony from 5 individuals who previously submitted to one or more days of testimony during the investigational hearings is cumulative, duplicative, and unduly burdensome. Five of the eight witnesses were deposed at length on the issues underlying the Complaint. Complaint Counsel has advised that they intend to use the transcripts in the hearing in this matter, just as they will use the 1.1 million documents previously produced. Complaint Counsel should not be permitted to engage in such oppressive tactics in proceedings which are intended to be handled in an expeditious manner without imposing undue burden on the litigant.

While discovery is designed to elicit new information, some of which may be cumulative, discovery is not a license to “engage in repetitious, redundant, and tautological inquiries.” Pulsecard, Inc. v. Discovery Card Servs., et al., 168 F.R.D. 295 (D. Kan. 1996). The Federal Rules of Civil Procedure,⁸ and federal courts, disfavor repeat depositions. See, e.g., Graebner v. James River Corp., 130 F.R.D. 440, 441 (N.D. Cal. 1989)(preventing second deposition despite claim that first deposition was “settlement” deposition and second was “trial” deposition). Re-deposing

⁸ Although the Federal Rules may not govern here, the FTC Rule’s essentially mirror the Federal Rules and cases under the F.T.C. have noted that “judicial precedents under the Federal Rules provide helpful guidance in resolving discovery disputes in commission proceedings.” See, e.g., Dura Lupe Corp., 2000 F.T.C. Lexis 1, at *31 (Jan. 14, 2000); L.G. Balfour Corp., et al., 61 F.T.C. 1491, 1492 (Oct. 5, 1962).

these individuals once more will simply generate hundreds of additional pages of testimony that is repetitive of the testimony previously elicited. This is not only burdensome on the individual defendants, but is an unnecessary waste of the Respondent's and the government's time and money, a result to be avoided. See supra at 3.

To the extent Complaint Counsel seeks to ask the same questions to the same witnesses it can obtain that information from a less burdensome and costly source – the prior testimony. “In making a decisions regarding burdensomeness, a court should balance the burden of the interrogated party against the benefit of the discovery party of having that information.” Hoffman v. United Telecommunications, Inc., 117 F.R.D. 436, 438 (D. Kan. 1987). To allow full access to the same individuals does nothing more than increases costs and burden for all parties. Whether discovery is unduly burdensome depends on “the needs of the case, the amount in controversy, limitations on the party's resources, and the importance of the issues at stake in the litigation.” Hammerman v. Peacock, et al., 108 F.R.D. 66, 67 (D.D.C. 1985). In this case, requiring these individuals to be deposed a second time on any and all subjects outweighs any putative benefit Complaint Counsel can expect to obtain and strains the resources of all parties.

To the extent such depositions are permitted, they should be limited to topics not previously covered and “new” information or questions related to topics that have previously been covered. It would be inappropriate to require individuals who spent up to two full days being questions in the Part II proceeding to have to submit to the same questions yet again. See, e.g., Johnston Dev. Group v. Carpenters' Local Union No. 1578, 130 F.R.D. 348, 353 (D.N.J. 1990)(“recollection of an event witnessed by five other persons” is duplicative).

IV. Deposition's Should be Delayed or Limited until Complaint Counsel Provides the Third Party Documents Previously Produced to Respondent

In its Initial Disclosures Complaint Counsel reveals that it has received documents from twenty (20) third-party entities and individuals during the pre-complaint investigation. Furthermore, Complaint Counsel stated in the initial disclosures that it would "provide copies of the third party's documents and materials ten days after . . . the Administrative Law Judge has entered a protective order in this matter and the third parties have been apprised of their rights under the protective order." Had Complaint Counsel acted expeditiously the ten-day period would have passed by November 3, 2008. However, Complaint Counsel admitted that as of October 30, 2008, not all third parties had been apprised of their rights under the Protective Order. In its response letter of October 31, 2008 to Respondent, Complaint Counsel states all third-parties have now received the notice and their documents will be submitted ten days after each third-party received Complaint Counsel's notice. Assuming some third-parties did not receive notice until at least October 31, 2008, no third-party documents will be produced to Respondent until at least November 10, 2008. Despite this, Complaint Counsel has scheduled several depositions prior to that date, and states that Respondent is not entitled to any of these third-party documents prior to the taking of the seven currently noticed depositions.

The refusal of Complaint Counsel to produce those documents prior to the scheduled depositions is patently unfair to Respondent and the witnesses scheduled to be deposed. Complaint Counsel states that it is "committed to ensuring the fairness of these proceedings," yet it is difficult to imagine how this commitment is advanced by the refusal to allow Respondent's counsel time to review documents from 20 different entities and individuals on which the deponents may be questioned. Even if the documents and information are designated as confidential under the October 23, 2008 Protective Order, Respondent's counsel should still be entitled to see these documents before Complaint Counsel is permitted to engage further in what

has been noticeably one-sided discovery. To permit Complaint Counsel to proceed with examination, especially since it has chosen to delay providing notification to these third parties, provides an unfair advantage to Complaint Counsel that is prejudicial to Respondent and the witnesses. This potential for prejudice, oppression and harassment entitles Respondent to a protective order postponing the depositions until at least seven (7) business days after the third-party documents have been produced, or in the alternative preventing Complaint Counsel from using such documents in any deposition until at least seven (7) business days after the documents to be used have been produced.

CONCLUSION

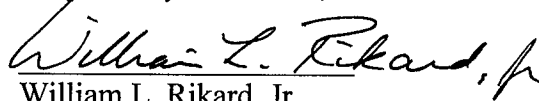
Complaint Counsel's discovery tactics are unreasonable and inconsistent with the FTC Rules and the Scheduling Order in this case. This overreaching, harassing and overly burdensome discovery seeks documents and information that is not likely to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of Respondent. For the reasons set forth above, and the interest of judicial efficiency and economy, this Court should limit and deny Complaint Counsel's invalid and improper discovery.

Respondent hereby certifies that it has conferred with Complaint Counsel in a good faith attempt to resolve the issues relating to the issues set out in this motion. See letter of William L.

Rikard, Jr., dated October 29, 2008, and Complaint Counsel's response, dated October 31, 2008, attached hereto as Tab 1. While the parties were able to reach agreement on several issues, the issues identified in this motion remain unresolved.

Dated: November 3, 2008

Respectfully Submitted,



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Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that on November 3, 2008, I caused to be filed via hand delivery and electronic mail delivery an original and one copy of the foregoing ***Motion for Protective Order Regarding Discovery*** and that the electronic copy is a true and correct copy of the paper original and that a paper copy with an original signature is being filed with:

Donald S. Clark, Secretary
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Rm. H-135
Washington, DC 20580
secretary@ftc.gov

I hereby certify that on November 3, 2008, I served via hand delivery and first-class mail delivery a copy of the foregoing ***Motion for Protective Order Regarding Discovery*** with:

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

I hereby certify that on November 3, 2008, I served via first-class mail delivery and electronic mail delivery a copy of the foregoing ***Motion for Protective Order Regarding Discovery*** with:

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

In the Matter of)
Polypore International, Inc.,)
a corporation.)

Docket No. 9327

PUBLIC DOCUMENT

PROPOSED ORDER

Upon consideration of Respondent's Motion for a Protective Order, and the Court being fully informed, it is this _____ day of _____, 2008, hereby

ORDERED, that the Motion is GRANTED; and it is further ORDERED, that:

1. Complaint Counsel re-serve its First Set of Interrogatories to Respondent Polypore International, Inc., limiting the number per the Scheduling Order in this matter to 50 interrogatories, including subparts;

2. Complaint Counsel limit its definitions in the interrogatories to those parties and related companies that are relevant to the matters at issue in the Complaint, relief sought and Respondent's defenses, and define terms such that they do not expand the information sought or exceed the number of permitted interrogatories beyond the limits set out in the Scheduling Order;

3. The depositions of Steve McDonald, Michael Gilchrist, Timothy Riney, S. Tucker Roe and Pierre Hauswald be [quashed], [or limited to questions regarding issues and topics that were not previously covered in the pre-complaint investigational hearings of those individuals, or are simply intended to supplement or round out previously asked questions or topics of inquiry];
and

4. To the extent Complaint Counsel intends to use any third-party documents in any noticed deposition, for preparation of questions, or to question a deponent, the depositions shall be postponed until seven days after the delivery of those documents to counsel for Respondent.

The Honorable D. Michael Chappell
Chief Administrative Law Judge (Acting)
Federal Trade Commission

EXHIBIT A

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

In the Matter of

**Polypore International, Inc.,
a corporation.**

Docket No. 9327

**COMPLAINT COUNSEL'S FIRST SET OF INTERROGATORIES TO
RESPONDENT POLYPORE INTERNATIONAL, INC.**

Pursuant to the Federal Trade Commission Rules 3.31 and 3.35, Respondent Polypore International, Inc. is hereby requested to answer the following interrogatories. The requested answers must be submitted to 601 New Jersey Avenue NW, Washington, DC 20580, within twenty (20) days. Objections, if any, must be made within ten (10) days after service of these interrogatories.

DEFINITIONS

A. "Polypore," "the company," "you," or "yours" means Polypore International, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between the company and any other person.

B. "Daramic," means Polypore International, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing prior to the purchase of Microporous Holdings Corporation on February 29, 2008. The terms "subsidiary," "affiliate,"

and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between the company and any other person.

C. "Microporous" means Microporous Products L.P., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between the company and any other person.

D. "The transaction" means Polypore's purchase of 100% of the stock of Microporous Holdings Corporation on February 29, 2008.

E. "Relevant product" or "relevant end use" as used herein means battery separators used for deep-cycle, uninterruptible power supply ("UPS"), automotive, or motive applications.

F. "Relevant area" means and information shall be provided separately for: (a) North America, (b) Asia, (c) Europe (d) the world.

G. "Person" includes the company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

H. "Minimum viable scale" means the smallest amount of production at which average costs equal the price currently charged for the relevant product. It should be noted that minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.

I. "Sunk costs" means the acquisition costs of tangible and intangible assets necessary to manufacture and sell the relevant product that cannot be recovered through the redeployment of these assets for other uses.

J. "Sales" means net sales, i.e., total sales after deducting discounts, returns, allowances and

excise taxes. "Sales" includes sales of the relevant product whether manufactured by the company itself or purchased from sources outside the company and resold by the company in the same manufactured form as purchased.

K. "And" and "or" have both conjunctive and disjunctive meanings.

L. "Describe," "state," and "identify" mean to indicate fully and unambiguously each relevant fact of which you have knowledge.

M. "Documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody or control of the company. The term "documents" includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that person's files; and copies of documents the originals of which are not in the possession, custody or control of the company.

N. "Computer files" includes information stored in, or accessible through, computer or other information retrieval systems, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises.

O. "Plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

P. "Relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

Q. "Data" means numeric information or information expressed numerically.

R. "PE" means polyethylene.

- S. "CID" means the April 4, 2008 Civil Investigative Demand issued by the Commission to Polypore.
- T. "AGM" means absorptive glass mat.
- U. "UPS" means uninterruptible power supply.
- V. "FTC," and "Commission" mean the Federal Trade Commission.
- W. "SKU" means stock keeping unit.
- X. "RFP" means request for proposal or request for quotes.

INSTRUCTIONS

- A. These Interrogatories call for all information (including any information contained in or on any document or writing) that is known or available to you, including all information in the possession of, or available to, your attorneys, agents, or representatives, or any other person acting on your behalf or under your direction or control.
- B. Each Interrogatory, including subparts, is to be answered by you separately, completely and fully, under oath. If you object to any part of an Interrogatory, set forth the basis for your objection and respond to all parts of the Interrogatory to which you do not object. Any ground not stated in an objection within the time provided by the Federal Trade Commission's Rules of Practice, or any extensions thereof, shall be waived. All objections must be made with particularity and must set forth all the information upon which you intend to rely in response to any motion to compel.
- C. All objections must state with particularity whether, and in what manner, the objection is being relied upon as a basis for limiting the response. If you are withholding responsive information pursuant to any general objection, you should so expressly indicate. If, in responding to any Interrogatory, you claim any ambiguity in interpreting either the Interrogatory

or a definition or instruction applicable thereto, you shall set forth as part of your response the language deemed to be ambiguous and the interpretation used in responding to the Interrogatory, and shall respond to the Interrogatory as you interpret it.

D. If you cannot answer all or part of any Interrogatory after exercising due diligence to secure the full information to do so, so state and answer to the fullest extent possible, specifying your inability to answer the remainder; stating whatever information or knowledge you have concerning the unanswered portion; and detailing what you did in attempting to secure the unknown information.

E. If any privilege is claimed as a ground for not responding to an Interrogatory, provide a privilege log describing the basis for the claim of privilege and all information necessary for the Court to assess the claim of privilege, in accordance with Rule 3.31(c)(2) of the FTC Rules of Practice. The privilege log shall include the following: (i) specific grounds for the claim of privilege; (ii) the date of the privileged communication; (iii) the persons involved in the privileged communication; (iv) a description of the subject matter of the privileged communication in sufficient detail to assess the claim of privilege; and (v) the Interrogatory to which the privileged information is responsive.

F. Whenever necessary to bring within the scope of an Interrogatory a response that might otherwise be construed to be outside its scope, the following constructions should be applied:

1. Construing the terms "and" and "or" in the disjunctive or conjunctive, as necessary, to make the Interrogatory more inclusive;
2. Construing the singular form of any word to include the plural and the plural form to include the singular;
3. Construing the past tense of the verb to include the present tense and the present tense to

include the past tense;

4. Construing the masculine form to include the feminine form;
 5. Construing the term "Date" to mean the exact day, month, and year if ascertainable; if not, the closest approximation that can be made by means of relationship to other events, locations, or matters; and
 6. Construing negative terms to include the positive and vice versa.
- G. Unless otherwise instructed, provide information where requested from the year 2005 to the present.
- H. Provide data, where requested, in electronic spreadsheet format, formatted in Excel (.xls).
- I. All sales data should be provided in monthly increments.
- J. For all responses provide file layouts and data dictionaries, including, but not limited to, definitions of all fields as well as explanations for any codes or abbreviations within data sets, and definitions for all product specification codes.
- K. For all responses to interrogatories 4, 5, 15, and 16, provide data in Flat File format.
- L. If you have any questions, please contact Christian H. Woolley at 202-326-2018.

INTERROGATORIES

1. Complete and update all responses to the CID issued to Polypore on April 7, 2008.
2. Identify each and every change in prices by Polypore to customers in North America in any relevant product since the transaction. For each such request to increase price state:
 - a. the relevant product;
 - b. the customer;
 - c. the current price;
 - d. the proposed change in price;

- e. the reason for the price change; and
- f. the amount of change in price achieved if any.

3. If the reason for the request for any change in price in interrogatory 2, above, is related to increase in Polypore's costs for manufacturing or selling the relevant product, state, in detail, each cost increase for each relevant product and the facility in which such relevant product is produced or from where the relevant product is sold.

4. For Polypore, Daramic, and Microporous, provide data on the costs associated with the relevant product from 2005 to the present (and projecting forward for all available years). These data should cover the total costs associated with producing the relevant product. These data should be reported in both dollars and in dollars per square meter monthly, by company, country, plant, line, and relevant product. Cost data should cover all sunk, fixed, and variable costs and should be categorized as such. The cost data should be broken out as follows, including, but not limited to, these categories:

- a. raw materials;
- b. labor;
- c. overhead;
- d. plant administration;
- e. any rebate, including, but not limited to, "COS Rebate";
- f. SG&A;
 - i. selling;
 - ii. G&A;
 - iii. R&D; and
 - iv. other start-up expenses

- g. depreciation;
- h. amortization;
- i. taxes; and
- j. all other costs.

5. State all sales for Polypore, Daramic, and Microporous by each relevant product in each relevant area from January 2003 to the present (and projecting forward for all available years) organized as follows:

- a. company (i.e. Polypore, Daramic, or Microporous);
- b. plant;
- c. line;
- d. product code (which Polypore terms "Item");
- e. product name (which Polypore terms "Description");
- f. product categories (product groupings, including, but not limited to, broadly defined categories such as "PE-rubber hybrid" and narrowly defined categories such as "CellForce");
- g. customer name;
- h. customer country;
- i. customer's relevant area;
- j. customer parent;
- k. relevant product;
- l. year sale took place;
- m. month sale took place;

n. sales dollars sold (indicating separately actual sales and sales projections for all years for which projections exist);

o. square meters sold (indicating separately actual sales and sales projections).

p. sales type (i.e. regular sale or sample).

6. State the name, address, estimated sales, and estimated market share of the company and each of the company's competitors in each relevant area in the manufacture or sale of each relevant product.

7. Identify each and every occasion when Daramic declared a *force majeure*, and state the reasons for each such declaration.

8. Describe the circumstances, the timing of, and all reasons for, the departure of any company employee, including, but not limited to, Michael Gilchrist and George Brilmeyer from employment at Polypore since July 1, 2007.

9. Identify costs and time necessary to fully complete all required testing for commercial qualification for each relevant product.

10. Identify the factors affecting the profitability analysis of switching production from relevant product to relevant product, including, but not limited to, the minimum increase in price(s) that would make such a switch profitable.

11. Provide the date, lists of attendees, and identify matters discussed for every Daramic, Polypore or Microporous board of directors meeting, including a list of matters requiring vote, and the outcome of each vote, since January 1, 2001.

12. Identify each and every instance since January 1, 2006 in which Daramic competed against Entek for the sale of non-automotive battery separators. In responding to this interrogatory, identify the type of separator by SKU for each instance of competition as well as

the volume of separators in each potential or actual sale, the intended end use application, and the separator material (e.g. PE, rubber, PE-rubber hybrid).

13. State the name and address of each person who has entered or attempted to enter into, or exited from, the development, production, sale, or provision of each relevant product from January 1, 1999 to the present. For each such person, identify the relevant product(s) it develops, produces, sells, or provides or has developed, produced, sold, or provided and the date of the person's entry into or exit from the market. For each entrant, state whether the entrant developed (or is developing) a new product, licensed a product developed by another person, acquired a product from another person or converted assets previously used for another purpose (identifying that purpose).

14. For each relevant product, identify or describe (including the bases for your response):

- a. requirements for entry into the production or sale of the product in each relevant area including, but not limited to, research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, sales and marketing activities, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;
- b. the discount rate to use to assess the attractiveness of entry; the investments by type required for entry (including the dollar value of each investment); the amount of such costs, the total costs required for entry into the production or sale of the product; the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the manufacture or sale of the product; the methods and amount of time necessary to recover such costs; and the total sunk

costs entailed in satisfying the requirements for entry;

- c. possible new entrants into the manufacture or sale of the product in each relevant area;
- d. the minimum viable scale, the minimum and optimum plant size, production line size, capacity utilization rate, production volume, requirements for multi-plant, multi-product, or vertically integrated operations, or other factors required to attain any available cost savings or other efficiencies necessary to compete profitably in the manufacture or sale of the product.; and
- e. To the extent that a new entrant located in Asia would incur any additional costs or requirements to enter the North American market for any relevant product, identify those additional costs or requirements.

15. For both Daramic and Microporous, identify the costs associated with shipping the relevant product worldwide from 2005 to the present (and projecting forward for all available years). This information should be reported in dollars, monthly by company, country of origin, plant, and relevant product, as shipped to North America (specify destination country and port). Cost information should cover the total costs associated with shipping the relevant product. Cost information should cover all fixed, variable, and sunk (if applicable) costs (and should be categorized as such). Information should be broken out into the following subcategories (but not limited to these subcategories):

- a. freight on board;
- b. customs;
- c. insurance; and
- d. all other costs including surcharges, taxes and tariffs, including, but not limited

to, VAT and import/export.

16. Provide information on assessments and estimates of the costs of shipping the relevant product to North America (specify destination country and port, if possible) by OTHER battery separator manufacturers. This information should be reported in dollars, monthly by company, origin country, plant, and relevant product market. Cost estimates should cover the total costs associated with shipping the relevant product, covering all fixed, variable, and sunk (if applicable) costs (and should be categorized as such). Estimates should be broken out into the following subcategories, including, but not limited to, these subcategories:

- a. Freight on Board;
- b. customs;
- c. insurance; and
- d. all other costs including surcharges, taxes and tariffs, including, but not limited to, VAT and import/export.

17. Identify each and every producer of a relevant product in each relevant area, and state whether that person has ever sold a relevant product into North America; and, if so, state the type of separator by material and relevant end use.

18. Describe the role reputation plays in gaining and maintaining customers for each relevant product, including, but not limited to, how the factor of reputation impacts Asian producers of relevant products.

19. Describe your strategy for establishing customer relationships for the sales of the relevant products, including, but not limited to, the responding to, or solicitation of, RFPs.

20. Describe Microporous' plans to enter the automotive market in any relevant area between January 2005 and the date of the transaction.

21. Identify all communications between Hollingsworth & Vose and Daramic from January 1, 1997 to December 31, 2001, related to any agreement, or attempt to enter into an agreement, including, but not limited to, the 2001 Cross Agency Agreement and the purchase of Exide's Corydon, Indiana facility. If any meetings were held with regard to any of the topics which fall within the description above identify:

- a. who was present;
- b. each topic of discussion; and
- c. all exchanges of information (identifying those that were considered confidential).

22. Identify all communications between Hollingsworth & Vose and Daramic from July 1, 2005 to the present, related to any agreement, or attempt to enter into an agreement, including, but not limited to, the renewal of the 2001 Cross Agency Agreement. If any meetings were held with regard to any of the topics which fall within the description above identify:

- a. who was present;
- b. each topic of discussion; and
- c. all exchanges of information (identifying those that were considered confidential).

23. Identify each and every instance when Polypore has marketed, sold, attempted to market, or attempted to sell AGM separators. In answering this interrogatory identify:

- a. target customers;
- b. associated volume; and
- c. geographic locations of each customer or potential.

24. Identify each and every agreement or attempted agreement discussed or negotiated

between Daramic, or Polypore, and any battery separator manufacturer relating to non-compete agreements, acquisitions, joint ventures, or marketing agreements from January 1, 2004 to the present.

25. With regard to each negotiation or discussion identified in response to interrogatory 24, identify:

- a. who participated; and
- b. the substance of each negotiation or discussion, including but not limited to, products at issue, geographies at issue, timing and duration of agreement(s) discussed, and the outcome of each negotiation or discussion.

26. State all efficiencies achieved, or are expected to be achieved, by Polypore as a result of the acquisition of Microporous. In answering this interrogatory, provide a detailed explanation of how each efficiency has benefitted, or will soon benefit, your customers.

27. List, and describe, each and every developmental project for any relevant product in which Microporous had been engaged prior to the transaction. Provide a detailed update on the status of each such project to date, including, but not limited to, projects LENO, CoolWhip, and Einstein.

28. For each project mentioned in response to interrogatory number 27, describe the:

- a. intended commercial use;
- b. targeted customer(s);
- c. length of time in development;
- d. remaining action items;
- e. dollar amount of invested capital;
- f. the expected benefit of the new, or altered, technology; and

g. expected time when commercial sales are expected to begin.

29. State all efforts by Daramic to develop a deep-cycle separator for flooded lead-acid batteries since January 1, 1997, including, but not limited to:

- a. money spent in development;
- b. time (in man years) in development;
- c. personnel and contractors involved;
- d. testing partners;
- e. testing results;
- f. associated contract negotiations;
- g. attempted sales of separators for deep-cycle applications; and
- h. sales of separators for deep-cycle end use application.

30. State all efforts to improve the HD separator, including but not limited to, cost reduction, runnability, and performance improvement efforts.

31. Identify the equipment that has been ordered or purchased for the second phase of the Microporous expansion, including, but not limited to, the equipment intended for the Enersys contract, referenced by Michael Gilchrist on pages 58 and 59 of his Investigational Hearing transcript. Provide the status of this equipment, including, but not limited to, the location, cost, and original purpose of each piece of equipment. To the extent the original purpose differs from the current use or planned use provide detailed explanation of the reason(s) for the change and the timing of the change.

32. For each product produced by Polypore, Daramic, or Microporous since January 1, 2003 state the:

- a. product code;

- b. name;
- c. different SKUs;
- d. material used (e.g. PE, rubber, PE/rubber hybrid);
- e. end use;
- f. purchasing customer; and
- g. explain in detail systems for the coding of products whether as part of the SKU or product code or any other product designation scheme.

33. Identify all supply agreements of greater than two (2) years in duration between Daramic, or Polypore and any customer or facility in North America for any relevant product.

For each supply agreement identified, state:

- a. the customer or facility that is or was a party to the agreement with Daramic or Polypore;
- b. when it was entered into and when it expired or, if the agreement is still in effect, when it is due to expire; and
- c. which relevant product or products are covered by the agreement, with the associated annual volumes stated separately in square meters and dollars. For such volumes supplied in 2008, state actual volumes on a year-to-date basis. For such volumes to be supplied in the remainder of 2008, and any future years under agreements still in effect, provide reasonable estimates and describe the method by which those estimates were calculated.

34. For each relevant product, for each SKU, and for each relevant area, from 1997 to the present identify:

- a. the quarter and year in which the company first began to develop or test the

product (including but not limited to internal testing according to industrial standards or tests required by prospective customers);

- b. the quarter and year in which the product was first sold in commercial quantities;
- c. the first customer to purchase the product in commercial quantities;
- d. any independent laboratories involved in testing and/or developing the product;
- e. any industry-wide tests (e.g. BCI standards) to which the product was subjected;
and
- f. the total cost of product development and testing borne by the company (Daramic or Microporous), between the dates identified in "a." and "b." above).

35. State the full name and definition for the abbreviations used in document "07B06A05A.xls," which begins with Bates number "PP_SEI_E000023482."

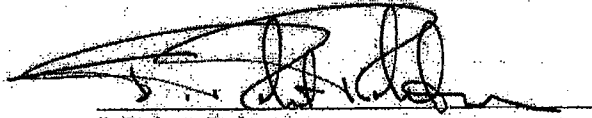
36. Identify each and every instance when Hollingsworth & Vose marketed, sold, attempted to market, or attempted to sell PE separators. In answering this interrogatory identify:

- a. target customers;
- b. associated volume; and
- c. geographic locations of each customer or potential.

37. To the extent you have already provided documents responsive to any of the foregoing interrogatories, identify each individually by Bates range.

Dated: October 22, 2008

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. Robert Robertson", written over a horizontal line.

J. Robert Robertson
Complaint Counsel
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave, NW (H-374)
Washington, DC 20580
Telephone: (202) 326-2008
Facsimile: (202) 326-2884

EXHIBIT B

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

In the Matter of)

Polypore International, Inc.,)
a corporation.)

Docket No. 9327

**COMPLAINT COUNSEL'S FIRST SET OF DOCUMENT REQUESTS TO
RESPONDENT POLYPORE INTERNATIONAL, INC.**

Pursuant to Rules 3.31 and 3.37 of the Rules of Procedure of the Federal Trade Commission ("FTC Rules of Practice"), Respondent, Polypore International, Inc., is hereby requested to produce the following documents for inspection and copying at 601 New Jersey Avenue NW, Washington, DC 20580, within twenty (20) days. Objections to any request must be made within ten (10) days from the date of service.

DEFINITIONS

- A. "Polypore," "the company," "you," "your," and like terms mean Respondent, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. "Subsidiary," "affiliate," and "joint venture" refer for this purpose to any person in which there is partial (25 percent or more) or total ownership or control between the company and any other person. Unless otherwise specified, "Daramic" means Daramic, LLC and shall be synonymous with "Polypore."
- B. "Microporous" means Microporous Products L.P., its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents and representatives of the foregoing. "Subsidiary," "affiliate," and "joint venture" refer for this purpose to any person in which there is

- partial (25 percent or more) or total ownership or control between the company and any other person.
- C. "Document," subject to definition C below, shall have the broadest meaning that would be applicable under the Federal Rules of Civil Procedure, and includes without limitation computer files; electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that person's files; and copies of documents the originals of which are not in Respondent's possession, custody or control.
- D. Unless otherwise specified, "document" excludes (1) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature, (2) architectural plans and engineering blueprints; and (3) documents solely relating to tax, human resources, workplace safety, or pension plan issues.
- E. "Relevant product" or "relevant end use" means battery separators used for deep-cycle, uninterruptible power supply ("UPS"), automotive, or motive applications.
- F. "And" and "or" have both conjunctive and disjunctive meanings.
- G. "The transaction" means Polypore's purchase of 100% of the stock of Microporous Holdings Corporation on February 29, 2008.
- H. "Relevant area" means, and information shall be provided separately for, (1) North America, (2) Asia, (3) Europe, and (4) the world.

INSTRUCTIONS

- A. Produce all documents requested in native format, including all metadata and all data supporting Excel worksheets, in which the file exists within the company.
- B. If any privilege is claimed as a ground for withholding any document responsive to these requests, provide a log of information necessary for the Commission and the Administrative Law Judge to assess the claim of privilege, in accordance with Rule 3.31(c)(2) of the FTC Rules of Practice, including without limitation (1) all specific grounds for the claim of privilege; (2) the date, nature, subject, creator(s), and all recipient(s) of the withheld document; and (3) each document request to which the withheld document is responsive.
- C. Unless otherwise specified, provide documents generated from January 1, 2003 to the present.
- D. If you have any questions, please contact Christian H. Woolley at (202) 326-2018.

DOCUMENT REQUESTS

Produce the following:

1. Any documents not previously produced that are responsive to the Commission's April 7, 2008 subpoena *duces tecum* issued to Polypore, including without limitation any responsive documents generated since that date.
2. Any documents (in any electronic format) not previously produced that are linked with any document(s) responsive to the April 7, 2008 subpoena *duces tecum*.
3. All documents related to, identified in, or relied upon to prepare your responses to any of the Commission's first set of interrogatories in this matter, including all subparts.
4. All documents relating to each and every declaration of *force majeure* by you under any contract since January 2003.
5. All documents relating to the departure of any Microporous employee, or any individual formerly employed by Microporous who, subsequent to the transaction, became a Polypore employee, between July 1, 2007 and the present.
6. Unless produced in response to request number 3 above, all board meeting minutes, power points, agendas and personal notes of each participating director concerning every board meeting identified in your response to interrogatory number 12.
7. All documents related to or reflecting shipping costs for relevant products (as defined above) between Polypore facilities in China and North America.
8. Unless produced in response to request number 3 above, all documents related to the requests for proposals (and responses thereto) identified in your response to interrogatory number 20.

9. Unless produced in response to request number 3 above, all documents related to, constituting, or reflecting any communications with Hollingsworth & Vose identified in your responses to interrogatories number 22 and 23.

10. All documents related to efficiencies achieved or foreseen by Polypore as a result of the purchase of Microporous.

11. All documents concerning each and every developmental project of Microporous, relating to any relevant product, including, but not limited to, projects LENO, CoolWhip, and Einstein.

12. Unless produced in response to request number 3 above, all documents related to each and every effort by Polypore to develop or market a flooded lead-acid deep-cycle battery separator between January 1, 1997 and the present, or otherwise related to your response to interrogatory number 30.

13. All documents related to or tending to support Polypore's statement in its July 3, 2008 letter to then Bureau Director Schmidt that the battery separator industry is dominated by large sophisticated buyers who have substantial buying power and, as consequence, control prices within the industry.

14. All documents, including without limitation data compilations, generated by or for Polypore or Daramic relating to the price sensitivity, price elasticity, price points, or product substitution of any relevant product(s).

15. All documents, including without limitation data compilations, generated by or for Microporous relating to the price sensitivity, price elasticity, price points, or product substitution of any relevant product(s).

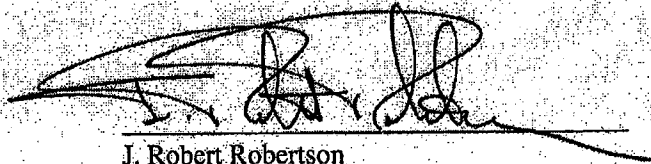
16. All documents relating to Daramic's, Microporous's, or any other person's prices for relevant products, including without limitation price lists, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, market price indices or periodic market prices, and pricing decisions.

17. All tax returns (for both Daramic and Microporous) for each of the last five (5) calendar years.

18. All profit and loss statements (for both Daramic and Microporous) for the last five (5) calendar years in the most detailed level maintained.

Dated: October 22, 2008

Respectfully submitted,



J. Robert Robertson
Complaint Counsel
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Ave, NW (H-374)
Washington, DC 20580
Telephone: (202) 326-2008
Facsimile: (202) 326-2884

EXHIBIT C

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
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Polypore International, Inc.)
a corporation.)
)

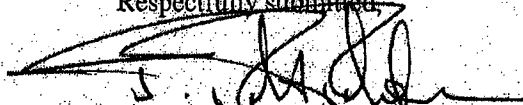
Docket No. 9327

NOTICE OF DEPOSITION OF MICHAEL GILCHRIST

PLEASE TAKE NOTICE, that pursuant to Rule 3.33(a) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings (16 C.F.R. §§ 3.33(a)), Complaint Counsel will take the deposition of Michael Gilchrist. This deposition will be conducted before a person authorized by law to administer oaths. The testimony will be recorded by stenographic and video means. The testimony will be taken at the offices of the Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580 in Room 4201 on November 17, 2008.

Dated: October 22, 2008

Respectfully submitted,



J. Robert Robertson
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580



SUBPOENA AD TESTIFICANDUM

Issued Pursuant to Rule 3.34(a)(1), 16 C.F.R. § 3.34(a)(1) (1997)

1. TO
 Michael Gilchrist
 c/o William L. Rikard, Jr., Esq.
 Parker, Poe, Adams & Bernstein, LLP
 401 South Tryon Street, Suite 3000
 Charlotte, North Carolina 28202

2. FROM

 UNITED STATES OF AMERICA
 FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony, at the date and time specified in Item 5, at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF HEARING
 Federal Trade Commission
 601 New Jersey Avenue Bldg.
 600 Pennsylvania Avenue, N.W.
 Washington, DC 20580

4. YOUR APPEARANCE WILL BE BEFORE
 Benjamin Gris, Esq.
 (202) 326-3468

5. DATE AND TIME OF HEARING OR DEPOSITION
 November 17, 2008 @ 9:00 a.m.

6. SUBJECT OF PROCEEDING

 In the Matter of Polypore, International, Inc., Docket No. 9327

7. ADMINISTRATIVE LAW JUDGE

 D. Michael Chapell

 Federal Trade Commission
 Washington, D.C. 20580

8. COUNSEL REQUESTING SUBPOENA
 J. Robert Robertson, Esq.
 Complaint Counsel
 Federal Trade Commission
 600 Pennsylvania Avenue, NW
 Washington, DC 20580
 (202) 326-2008

DATE ISSUED
 October 16, 2008

SECRETARY'S SIGNATURE

GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena 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.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 8, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to Counsel listed in Item 8 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Counsel listed in Item 8.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.*
- by registered mail.*
- by leaving copy at principal office or place of business, to wit:*

on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
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Polypore International, Inc.)
a corporation.)
_____)

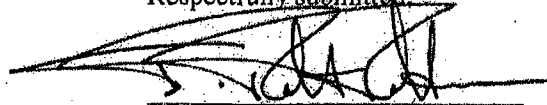
) Docket No. 9327
)
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NOTICE OF DEPOSITION OF ROBERT TOTH

PLEASE TAKE NOTICE, that pursuant to Rule 3.33(a) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings (16 C.F.R. §§ 3.33(a)), Complaint Counsel will take the deposition of Robert Toth. This deposition will be conducted before a person authorized by law to administer oaths. The testimony will be recorded by stenographic and video means. The testimony will be taken at the offices of the Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580 in Room 6201 on October 30, 2008.

Dated: October 22, 2008

Respectfully submitted



J. Robert Robertson
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
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Polypore International, Inc.)
a corporation.)
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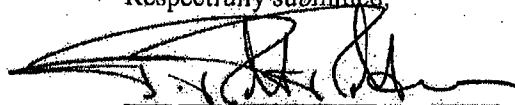
Docket No. 9327

NOTICE OF DEPOSITION OF STEVE MCDONALD

PLEASE TAKE NOTICE, that pursuant to Rule 3.33(a) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings (16 C.F.R. §§ 3.33(a)), Complaint Counsel will take the deposition of Steve McDonald. This deposition will be conducted before a person authorized by law to administer oaths. The testimony will be recorded by stenographic and video means. The testimony will be taken at the offices of the Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580 in Room 8201 on October 30, 2008.

Dated: October 22, 2008

Respectfully submitted,



J. Robert Robertson
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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

In the Matter of)
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Polypore International, Inc.)
a corporation.)
)

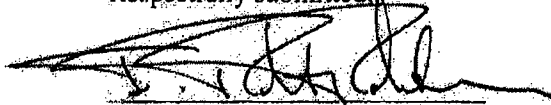
Docket No. 9327

NOTICE OF DEPOSITION OF S. TUCKER ROE

PLEASE TAKE NOTICE, that pursuant to Rule 3.33(a) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings (16 C.F.R. §§ 3.33(a)), Complaint Counsel will take the deposition of S. Tucker-Roe. This deposition will be conducted before a person authorized by law to administer oaths. The testimony will be recorded by stenographic and video means. The testimony will be taken at the offices of the Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580 in Room 6201 on November 3, 2008.

Dated: October 22, 2008

Respectfully submitted,



J. Robert Robertson
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
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Polypore International, Inc.)
a corporation.)
)

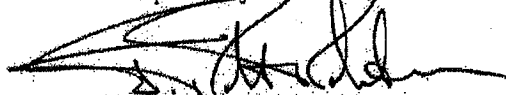
Docket No. 9327

NOTICE OF DEPOSITION OF TIMOTHY RINEY

PLEASE TAKE NOTICE, that pursuant to Rule 3.33(a) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings (16 C.F.R. §§ 3.33(a)), Complaint Counsel will take the deposition of Timothy Riney. This deposition will be conducted before a person authorized by law to administer oaths. The testimony will be recorded by stenographic and video means. The testimony will be taken at the offices of the Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580 in Room 6201 on November 4, 2008.

Dated: October 22, 2008

Respectfully submitted,



J. Robert Robertson
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)

Polypore International, Inc.)
a corporation.)
_____)

) Docket No. 9327
)
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NOTICE OF DEPOSITION OF PIERRE HAUSWALD

PLEASE TAKE NOTICE, that pursuant to Rule 3.33(a) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings (16 C.F.R. §§ 3.33(a)), Complaint Counsel will take the deposition of Pierre Hauswald. This deposition will be conducted before a person authorized by law to administer oaths. The testimony will be recorded by stenographic and video means. The testimony will be taken at the offices of the Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580 in Room 6201 on November 10, 2008.

Dated: October 22, 2008

Respectfully submitted



J. Robert Robertson
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
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Polypore International, Inc.)
a corporation.)
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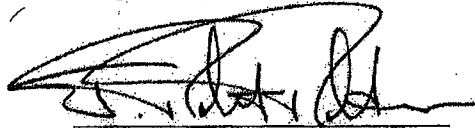
Docket No. 9327

NOTICE OF DEPOSITION OF HARRY SEIBERT

PLEASE TAKE NOTICE, that pursuant to Rule 3.33(a) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings (16 C.F.R. §§ 3.33(a)), Complaint Counsel will take the deposition of Harry Seibert. This deposition will be conducted before a person authorized by law to administer oaths. The testimony will be recorded by stenographic and video means. The testimony will be taken at the offices of the Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580 in Room 6201 on November 14, 2008.

Dated: October 22, 2008

Respectfully submitted,



J. Robert Robertson
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)
)
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Polypore International, Inc.)
a corporation.)
)

Docket No. 9327

NOTICE OF DEPOSITION OF LARRY TREVATHAN

PLEASE TAKE NOTICE, that pursuant to Rule 3.33(a) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings (16 C.F.R. §§ 3.33(a)), Complaint Counsel will take the deposition of Larry Trevathan. This deposition will be conducted before a person authorized by law to administer oaths. The testimony will be recorded by stenographic and video means. The testimony will be taken at the offices of the Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580 in Room 6201 on November 17, 2008.

Dated: October 22, 2008

Respectfully submitted,



J. Robert Robertson
Bureau of Competition
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

TAB 1



William L. Rikard, Jr.

Partner

Telephone: 704.335.9011

Direct Fax: 704.335.9689

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401 South Tryon Street
Suite 3000
Charlotte, NC 28202-1942
Telephone 704.372.9000
Fax 704.334.4706
www.parkerpoe.com

October 29, 2008

VIA ELECTRONIC MAIL AND FIRST CLASS MAIL

J. Robert Robertson, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
rrobertson@ftc.gov

Steven Dahm, Esq.
Federal Trade Commission, Room 6133
601 New Jersey Ave., NW
Washington, DC 20001
sdahm@ftc.gov

Re: In the Matter of Polypore International, Inc., Docket No. 9327

Dear Robby and Steve:

As we discussed over the telephone this afternoon, we have a number of objections to the discovery propounded by the FTC in this matter. In a subsequent call in which Robby participated, it appears that some of the issues are resolved. Unfortunately, others persist. Here is a list of the issues that we discussed.

First, the FTC has served on us eight deposition notices. Of these notices, five of these witnesses were previously examined by the FTC during the investigational phase of this case. Certain of those individuals were deposed for multiple days (Messrs. Tucker and Riney) and one was deposed for a prolonged period of approximately 11 hours (Mr. Hauswald). These examinations were exhaustive of the issues set forth in the Complaint and any further examination of the witnesses on these areas would be duplicative. Since Steve advised us that he intends to use the investigational hearings in any manner permitted by the Administrative Law Judge in this matter, we simply do not see any reason to have further duplicative and burdensome examinations of these witnesses. If you are aware of any precedent that requires these witnesses be deposed for a second time, please bring it to our attention immediately and we will consider it.

CHARLESTON, SC
COLUMBIA, SC
MYRTLE BEACH, SC
RALEIGH, NC
SPARTANBURG, SC

J. Robert Robertson, Esq.
Steven Dahm, Esq.
October 29, 2008
Page 2

Second, you have noticed the depositions for Washington, DC. In the same conversation in which Robby participated, he agreed to have the depositions of any Polypore employees proceed in Charlotte. We would be more than happy to make conference room space available for you and your colleagues here in our offices for those depositions at no charge to the government. Once we have either agreed upon who will be deposed, or it has been determined, we will work with you to determine a mutually satisfactory schedule.

Third, as we discussed, we believe it is appropriate that the FTC produce its documentation that it has received from third-parties, including affidavits, and its investigational hearing transcripts for those third-parties before we proceed with the depositions of the Polypore witnesses. We believe that it is only fair given the fact that you have had months to review those materials and shape your case. While we may not be able to show the documents or the testimony to our clients under the Protective Order, we are entitled to receive that information so that we can defend depositions in a manner appropriate for this case. Polypore is entitled to a level playing field in discovery in this case. If you still disagree, please let us know immediately.

On a related matter, however, I am concerned with Steve's comment today that he has not yet contacted all third-parties with respect to the disclosure of their documents and information in this matter under the protective order and has no obligation to produce any of these materials to us absent a formal request. It was certainly our expectation, based on the representation made in the initial disclosures made to the Administrative Law Judge, that you would have promptly contacted these third-parties once the Protective Order was entered, which was one week ago. In addition, we do take issue with your statement that you are not required to produce the third-party documents in the investigational hearings to us absent a document request. In fact, in the initial disclosures filed by Complaint Counsel with the Administrative Law Judge, Counsel stated "**Complaint Counsel will provide copies of third-party's documents and materials** 10 days after such time as the Administrative Law Judge has entered a protective order in this matter and the third-parties who submitted the documents have been apprised of their rights under the protective order." Complaint Counsel's Initial Disclosures to Respondent Polypore International, Inc., p. 3 (emphasis added). We reiterate our position that the FTC should have already advised third parties of the protective order and should disclose to us the investigational hearings and documents within 10 days of the issuance of the ALJ's protective order. In order that there be no confusion on the point, and although we do not believe this is necessary, we will be forwarding to you later today our discovery requests which specifically request the production of these documents to us.

Finally, we believe it is appropriate to limit the length of the depositions to seven hours each pursuant to the Federal Rules of Civil Procedure. Robby has agreed to this limitation for fact witnesses. We agree that we will discuss expert witnesses when everyone knows more about them.

With respect to the interrogatories served by the FTC, we are greatly troubled by the number of interrogatories tendered to Polypore. As you know, the FTC rules limit the number of

J. Robert Robertson, Esq.
Steven Dahm, Esq.
October 29, 2008
Page 3

interrogatories to 25. The Administrative Law Judge in his scheduling order doubled that number for this matter to 50, including subparts. The interrogatories served by the FTC on Polypore are well in excess of the 50-interrogatory limitations. By our count, the interrogatories are at least 116. In addition, interrogatory number 1 asks for further information with respect to the CID's previously propounded to Polypore. If we add the CID's to the interrogatories, the number is actually in excess of 160. On this basis alone, we believe the interrogatories to be objectionable and we ask that the FTC withdraw these interrogatories and propound a new set that will comply with the limitations set by the Administrative Law Judge.

We hope that the FTC will reconsider its position and agree to these final points set forth in this letter. We ask that you please advise us of the FTC's position by no later than 12:00 noon on Friday, October 31, 2008. We hope that we will not have to trouble the Administrative Law Judge with these issues but are prepared to do so if you are unwilling to meet us on these issues. We believe that discovery should be obtained in a manner to avoid unnecessary cost and expense to my client and should not be duplicative or cumulative of prior discovery obtained by the FTC.

Sincerely yours,



William L. Rikard, Jr.

WLR/mnb

cc: Eric D. Welsh, Esq.



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

J. Robert Robertson
Chief Trial Counsel

600 Pennsylvania Ave., NW
Washington, DC 20580

Direct Line: (202) 326-2018
E-Mail: robertson@ftc.gov

October 31, 2008

VIA ELECTRONIC MAIL AND FACSIMILE

William L. Rikard, Jr.
Parker, Poe, Adams & Bernstein, LLP
401 South Tryon Street, Suite 3000
Charlotte, North Carolina 28202
williamrikard@parkerpoe.com

Re: In the Matter of Polypore International, Inc., Docket No. 9327

Dear Mr. Rikard:

This letter is in response to the list of issues and objections regarding the discovery process in this matter, detailed in your letter of October 29, 2008. Complaint Counsel is committed to ensuring the fairness of these proceedings and we believe our requests and associated procedures are consistent with this guiding principle.

Respondent has objected to Complaint Counsel's request to depose Polypore employees who have previously been the subject of an investigational hearing. Pursuant to Section 3.33(a) Federal Trade Commission Rules of Practice ("FTC Rules") Complaint Counsel is entitled to depose any individual who can reasonably be expected to provide information within the scope of discovery under section 3.31(c)(1). The fact that a proposed deponent has been the subject of an investigational hearing during the investigational phase of an agency matter is no obstacle to his being examined during the following adjudicative phase of the same matter. The purpose of a deposition is fundamentally different from that of an investigation hearing. Where an investigational hearing is used to gather information and facts that help the agency decide whether a complaint should be issued, a deposition is used to establish testimony which can be used to prove allegations at trial.¹ Furthermore, Respondent has made admissions, submitted

¹Judge Chappell has previously acknowledged this important distinction. See *In re Hoechst Marion Roussel, Inc.*, Dkt. 9293, Order Denying Respondents Motions for Protective Orders (Oct. 12, 2000) Attached.

documents and white papers, and continued to integrate its business operations with the former Microporous since those investigational hearings were held. Complaint Counsel, with a decidedly different purpose in mind, has a right to reexamine those individuals in light of this new information and changed circumstances.

Complaint Counsel acknowledges that we and Respondent have agreed to hold all depositions of Polypore employees in Charlotte, North Carolina, for the deponents' convenience.

Respondent has objected to Complaint Counsel conducting any deposition prior to its receipt of the third party documents from Complaint Counsel. Under FTC Rules section 3.32(b) Respondent has the right to complaint counsel's initial disclosures five (5) days after Respondent's answer to the complaint. There is no other submission to which Respondent is entitled prior to the initiation of discovery and the associated taking of depositions. Respondent is, of course, at liberty to seek information directly from each third party; however, Complaint Counsel is under no obligation to submit its third party documents prior to the scheduling or taking of a party deposition. Note, however, we are in receipt of your formal request for third party information as of October 30, 2008, and, as all third parties have been notified of the impending disclosures, we will be submitting their documents ten (10) days from the date each third party received our notice.

Complaint Counsel agrees that we and Respondent have decided to limit the duration of all depositions of Polypore employees to seven (7) hours each.

The Interrogatories submitted to Respondent number thirty-seven (37). While the FTC Rules section 3.35(a) provides for twenty-five (25) interrogatories, under Judge Chappell's scheduling order Complaint Counsel is permitted fifty (50) interrogatories. We are confident that our currently submitted interrogatories fall well short of this limit. Rather than being separate and distinct², all subparts included within each interrogatory are logically subsumed within, and related to, their primary question, and therefore do not, in themselves, constitute additional questions.³

After consideration, however, Complaint Counsel will withdraw interrogatory number 1, which requests an update, and completion, of the previously issued Civil Investigative Demand, and instead will serve additional discrete interrogatories as necessary.

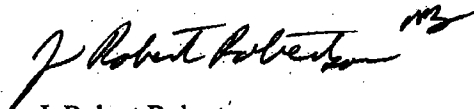
Complaint Counsel trusts Respondent will reconsider its objections in light of these responses. We too wish to avoid any unnecessary costs or expenses in pursuing this litigation and believe that the concessions we have made with regard to location and duration of depositions is evidence of our desire to reasonably accommodate each side's interests. We share

² *Willingham v. Ashcroft*, 226 F.R.D. 57 (D.D.C. 2005) (“[O]nce a subpart of an interrogatory introduces a line of inquiry that is *separate and distinct* from the inquiry made by the portion of the interrogatory that precedes it, the subpart must be considered a separate interrogatory. . . .”) (emphasis added).

³ *Ginn v. Gemini Inc.*, 137 F.R.D. 320, 322 (D. Nev. 1991).

your hope that you "will not have to trouble the Administrative Law Judge with these issues," but should you find this unavoidable we are prepared to respond as necessary.

Sincerely,

A handwritten signature in cursive script that reads "J. Robert Robertson". To the right of the signature, there is a small, stylized mark that appears to be the number "113".

J. Robert Robertson
Chief Trial Counsel