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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

COMPLAINT COUNSEL'S MOTION
TO COMPEL PRODUCTION OF DISCOVERY RESPONSES

By this motion, and pursuant to 16 C.F.R. § 3.38(a), Complaint Counsel respectfully moves the Court to compel Respondent to produce all documents identified in Complaint Counsel's Third Request for Production of Documents, Third Set of Interrogatories, and First Set of Requests for Admission. Respondent has advised Complaint Counsel that they will oppose this motion.

Respondent has sought to reopen the hearing to present evidence of events to which Complaint Counsel is not a party and to which Respondent has significant control. While the parties agree that the Hearing will take only half a day, Respondent now proposes that Complaint Counsel respond to this evidence without an adequate opportunity to seek discovery of Respondent's new evidence.

Pursuant to the Court's October 15, 2009 Order Granting Respondent's Second Motion to Reopen the Hearing Record and Setting Hearing Schedule ("Second Hearing Schedule Order"), the parties are to exchange exhibit lists on October 28, 2009. In order to obtain documents and information for trial exhibits, Complaint Counsel immediately began drafting discovery requests tailored to the four proffers outlined by the court. The document request (Attachment A) and interrogatories (Attachment B) were issued on October 16, 2009, the day after the order had been issued. The Request for Admissions (Attachment C) was issued on October 19, 2009. Since

depositions must be concluded by October 27, 2009 and because the requests are limited to documents only since the previous close of discovery, Complaint Counsel requested that the documents and responses be provided by Friday, October 23, 2009.

The discovery requests are necessary and relevant to evaluate and rebut the four proffers made by Respondent to the Court. For example, Daramic asserts that it has evidence that it can only retain Exide's business by { [REDACTED] }. Complaint Counsel needs documents and information about the ongoing negotiations between Respondent and Exide in order to rebut this assertion (Document Requests 14, 16, 18, 21, 22, and 25). Daramic also infers that Exide's purchasing behavior demonstrates that there is a new entrant or entry is imminent. Complaint Counsel needs documents and information from Daramic, including its internal assessments and plans to respond in order to rebut this assertion (Document Requests 15, 16, 20, 22, and 25). Finally, Daramic asserts that it will have to { [REDACTED] } because of Exide's purchases. Complaint Counsel needs documents and information related to Daramic's plant costs, financial statements, alternatives, board discussions, and plans/contingency plans in order to rebut this assertion (Document Requests 17, 19, 20, and 22 - 25). Without this information Respondent has an unfair advantage at the hearing.

On October 19, 2009, Respondent informed Complaint Counsel that it believed that it has no obligation under the Second Hearing Schedule Order to produce documents and that it was reviewing whether or not it would produce the requested documents. In a subsequent conversation, Complaint Counsel asked if Respondent was taking the same position with respect to the Interrogatories and Requests for Admission. Respondent asserted that it would inform Complaint Counsel by noon on October 20. On October 20, 2009, at 11:30 am Respondent

informed Complaint Counsel that it had no intention of responding to Complaint Counsel's Third Set of Document Requests, Third Set of Interrogatories and First Set of Requests for Admission. Because of the extremely limited time for Complaint Counsel to obtain discovery related to Respondent's new facts, Complaint Counsel cannot wait until Friday, October 23 to find out whether Respondent has changed its mind.

The Second Hearing Schedule Order clearly contemplates that Complaint Counsel will conduct discovery. The order explicitly provides for an exchange of exhibit lists, something that would be impossible if Complaint Counsel cannot obtain exhibits. *See* Second Hearing Schedule Order at 8. Moreover, the Order explicitly provides that it gives "Complaint Counsel with pre-hearing procedures to ensure that Complaint Counsel is capable of effective rebuttal." Naturally Respondent will have the opportunity to pick and choose the documents in its possession that it will present at the hearing. If Respondent is not compelled to respond to Complaint Counsel's discovery requests, Complaint Counsel will have no opportunity to review documents or obtain information that might contradict or clarify the evidence presented by Respondent. Most importantly, it will be extremely difficult, if not impossible, to effectively depose and later cross examine Respondent's witnesses without an opportunity to use their documents for impeachment.

The information sought by Complaint Counsel's Requests is critical to the pending hearing. In particular, Complaint Counsel needs the data to confirm or contradict the proffered facts claimed by Respondent, which lies at the core of this hearing. Without the prompt submission of the documents and information Complaint Counsel is irretrievably prejudiced by the inability to effectively cross-examine Respondent's witnesses, which must be done by next

Tuesday. Because of this fast-approaching deadline, it is evident that Complaint Counsel will not be able to take adequate depositions in preparation for the hearing. In addition, without documents and information about Respondent's new facts, Complaint Counsel will be unable to effectively cross-examine Respondent's witnesses. Any delay in receiving the requested documents and information will tilt the playing field heavily in favor of Respondent.

The discovery requests are not burdensome. There are only 12 document requests that are limited to documents produced since the previous close of discovery in March. There are only 14 interrogatories and only 19 Requests for Admission. These discovery requests are tailored to get documents and information responsive to the four proffers made by Respondent to the Court and to the legal arguments made by Respondent in its Second Motion to Reopen the Hearing and its subsequent Reply to Complaint Counsel's response.

CONCLUSION

Pursuant to 16 C.F.R. § 3.38 Complaint Counsel respectfully moves the Court for an order compelling Respondent to produce all documents identified in Complaint Counsel's Third Request for Production of Documents and compelling responses to Complaint Counsel's Third Set of Interrogatories and First Set of Requests for Admission by the close of business on Friday,

October 23, 2009.

Dated: OCTOBER 21, 2009

Respectfully submitted,



Steven A. Dahm
Bureau of Competition
Federal Trade Commission
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Telephone: (202) 326-2192
Facsimile: (202) 326-2071

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BEFORE THE FEDERAL TRADE COMMISSION**

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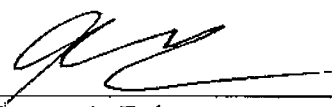
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) **Docket No. 9327**
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) **PUBLIC DOCUMENT**
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STATEMENT PURSUANT TO SCHEDULING ORDER

I, Steven A. Dahm, Esq., on behalf of Complaint Counsel, hereby represent that Complaint Counsel has conferred with Respondent in an effort in good faith to resolve by agreement the issues raised by the instant Motion and have been unable to reach such an agreement. Complaint Counsel and Respondent discussed these issues in three telephone conversations on October 19, 2009 and again over the telephone on October 20, 2009. As a result of these communications, Complaint Counsel and Respondent are at an impasse with respect to the issue raised in Complaint Counsel's Motion.

Dated: October 20, 2009

Respectfully submitted,



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ATTACHMENT A

TO

**COMPLAINT COUNSEL'S MOTION TO COMPEL
PRODUCTION OF DISCOVERY RESPONSES**

OCTOBER 20, 2009

POLYPORE, D. 9327

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

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

**COMPLAINT COUNSEL'S THIRD 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, on Friday, October 23, 2009. Objections to any request must be made at that time.

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. "Third Party" means any person; corporate entity; partnership; association; joint venture; state, federal or local governmental agency, authority or official; research or trade association; or any other entity including but not limited to Tracy Tang, Amer-Sil B.A., Battery Council International, Bulldog Battery, Inc., C&D Technologies, Inc., EnerSys, East Penn, ENTEK International LLC, Exide Technologies, Inc., Freudenberg Nonwovens, Hollingsworth & Vose Company, IGP Industries, LLC, James Kung, Johnson Controls, Inc., Nippon Sheet Glass Co, Ltd., PricewaterhouseCoopers, LLP.
- D. "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 and shall include, without limitation: writings, work papers, drawings, graphs, charts, photographs, photo records, and other data compilations from which information can be obtained, translated, if necessary, by you through detection devices into reasonably usable form; any information or material of any kind or nature existing on any media, including digital, analog, electronic, mechanical, optical, video or tape recording; it also means information or files contained or retained on any electronic device, including handheld, laptop, desktop and home computer systems, floppy disks, CD-ROMs, Zip disks/drives, USB and/or any other computerized storage devices, whether or not those files have previously been converted to hard-copy format or not, and the original and all drafts, outlines, proposals, and copies of any such matter (whether or not actually used) of all kinds and descriptions, however, produced or reproduced, whether sent or received or

neither, regardless of whether designated "confidential," "privileged," or otherwise to which you have access or knowledge including, without limitation, all of the following: hard-copy documents, voice mail messages, back-up voice mails, e-mail messages and files, back-up e-mail files, deleted e-mails, data files, program files, computer data bases, back-up and archival tapes, system history files, cache files, cookies, legacy data sets from previous computer environments, correspondence, papers, books, computer discs, electronically stored data in any form, accounts, photographs, agreements, contracts, memoranda, advertising materials, letters, telegrams, objects, reports, records, transcripts, studies, notes, notations, working papers, intra-office communications, charts, minutes, index sheets, computer software and printouts, checks, check stubs, delivery tickets, bills of lading, invoices, recordings of telephone or other conversations, communications, occurrences, interviews and conferences, sound or video recording, and any other material upon which 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. information can be stored and retrieved, including all written, recorded, electronically stored, transcribed, punched, taped, filmed and graphic matter.

- E. "And" and "or" have both conjunctive and disjunctive meanings.
- F. "Complaint" means the Complaint issued by the Federal Trade Commission to Polypore International, Inc. in Docket No. 9327.
- G. "Investigation" means any FTC investigation, whether formal or informal, public or nonpublic involving Polypore or Microporous.

- (H. "Polypore matter" means the investigation conducted by the FTC under Rule No. 0810131 and this Administrative Proceeding, Docket No. 9327.
- I. "Separators" means lead acid battery separators made with polyethylene or polyethylene and rubber.

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. Each page of a document shall be accompanied by a single-page TIFF image with a corresponding file containing the extracted text from the document, accompanied by a Opticon load file. Metadata (including the entire root directory for each document) and custodian information shall be provided in a delimited ASCII format. If hardcopy documents are provided electronically as TIFF images, they should be accompanied by OCR
- 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 March 13, 2009 to the present.

- D. If any documents requested herein have been lost, discarded, or destroyed, the documents so lost, discarded, or destroyed, shall be identified as completely as possible, including, without limitation, the following information: date of disposal, manner of disposal, reason for disposal, person authorizing the disposal, and the person disposing of the document.
- E. The use of the singular form of any word includes the plural and vice versa; and the use of any tense of any verb should be considered to include also within its meaning all other terms of the verb so used.
- F. If you have any questions, please contact Steven A. Dahm at (202) 326-2192.

DOCUMENT REQUESTS

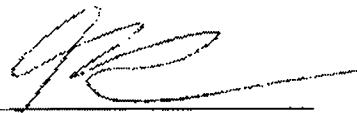
Produce the following:

- 14. All documents related to negotiations with Exide for supply of separators;
- 15. All documents related to purchase orders for, or the purchase of, an excess supply of separators by Exide;
- 16. All documents related to Exide's intent to buy separators from Daramic or any other supplier in the future;
- 17. All documents related to Daramic's proposals, plans, or consideration to [REDACTED]
[REDACTED]
- 18. All documents related to any proposed, planned, or considered change in pricing to Exide;
- 19. All documents related to Daramic's costs, including, but not limited to, raw material costs to produce separators;

20. All documents related to additional costs incurred or that will be incurred to supply [REDACTED] to Exide;
21. All documents related to Exide's alleged purchasing power or lack thereof;
22. All documents related to, identified in, or relied upon in preparation of responses to Complaint Counsel's third set of interrogatories in this matter, including all subparts;
23. All board minutes, presentations, memoranda, agendas, and personal notes of each participating director for all meetings of the Polypore board of directors;
24. All financial statements of Daramic, including, but not limited to, profit and loss statements, by manufacturing facility, customer, or product;
25. The latest version of the AFS database, including all data contained therein.

Dated: October 16, 2009

Respectfully submitted,



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