UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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FEDERAL TRADE COMMISSION, Plaintiff, vs. AMG SERVICES, INC., *et al.*, Defendants.	2:12-cv -00536-GMN-VCF **ORDER** **(Motion For Protective Order #343 and Motion to Compel #345)**

Before the Court is the Federal Trade Commission's (hereinafter "FTC") Motion For Protective Order. (#343). Defendant AMG Services, Inc. (hereinafter "AMG") filed an Opposition (#347), and the FTC filed a Reply (#364).

Also before the court is AMG's Motion to Compel FTC's Production of a Privilege Log and Accompanying Affidavit. (#345). The FTC filed an Opposition (#366), and AMG filed a Reply (#376).

Motion for Protective Order

The FTC asks this court to issue a protective order "regarding 19 document subpoenas served by defendant AMG...to consumers who have previously provided declarations in this case." (#343). The FTC asserts that the "subpoenas are objectionable because they call for production of virtually all of the consumers' financial information for the past six years, without any restriction for documents pertaining only to transactions with the defendants." *Id.* AMG argues in its opposition that the motion (#343) should be denied, because "FTC has not met its burden to show that AMG's subpoenas seek irrelevant information or impose any undue burden on witnesses the FTC itself brought into the case." (#347).

The FTC argues in its reply that it "does not oppose the subpoenas to the extent they call for documents related to these consumers' declarations, and, accordingly, the FTC does not oppose approximately half of the specifications in those subpoenas." (#364). A hearing on the motion for protective order is scheduled for May 20, 2013, at 10:00 a.m.

Motion To Compel

AMG asks this court in its motion to compel to issue an "order compelling the FTC to produce a detailed privilege log and accompanying affidavit for documents and other information the FTC withholds pursuant to the deliberative privilege." (#345). AMG asserts that the FTC is withholding a number of responsive documents under the "deliberate process privilege," and that the FTC refuses to provide much detail about its basis for asserting this privilege. *Id.* AMG seeks an order requiring FTC to produce: "(1) a detailed document-by-document log for documents withheld pursuant to the deliberative process privilege; and (2) an affidavit from the head of the agency or another senior official that describes with particularity the bases for asserting the deliberative process privilege." *Id.*

The FTC asserts in its opposition that the court should deny the "motion to compel a privilege log and affidavit for the deliberative process privilege because the motion is premature and AMG misstates the requirements for those submissions." (#366). FTC states that it "is in the process of assembling its privilege log and accompanying declaration asserting the deliberative process privilege over a narrow sliver [of] pre-complaint internal documents generated by FTC attorneys while determining whether to recommend enforcement action," and that "AMG has nonetheless filed a [m]otion to [c]ompel, challenging the sufficiency of the privilege log and declaration, which do not yet exist." *Id.* The FTC argues that the "[c]ourt cannot assess the adequacy of the FTC's privilege log and declaration until they are submitted to AMG and the parties first have an opportunity to discuss and resolve any of AMG's specific concerns." *Id.*

The court finds that AMG's request for the court to deem the privilege log insufficient and to require the FTC to include specific information in the privilege log (#345) is premature, as the court cannot determine whether the privilege log and affidavit are sufficient until the FTC has provided AMG and the court with its privilege log. On or before April 29, 2013, the FTC must provide the court and AMG with the privilege log for responsive documents withheld as privileged. On or before May 6, 2013, AMG may file a supplement to its motion to compel (#345). Any reply is due on or before May 13, 2013. A hearing on the motion to compel (#345) is scheduled for May 20, 2013, at 10:00 a.m.

Accordingly and for good cause shown,

IT IS HEREBY ORDERED that a hearing on the FTC's Motion For Protective Order (#343) and AMG's Motion to Compel FTC's Production of a Privilege Log and Accompanying Affidavit (#345) is scheduled for May 20, 2013, at 10:00 a.m.

IT IS FURTHER ORDERED that, on or before April 29, 2013, the FTC must provide the court and AMG with the privilege log for responsive documents withheld as privileged. On or before May 6, 2013, AMG may file a supplement to its motion to compel (#345). Any reply is due on or before May 13, 2013.

DATED this 16th day in April, 2013.

CAM FERENBACH
UNITED STATES MAGISTRATE JUDGE