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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Rebecca Kelly Slaughter, Acting Chair
Noah Joshua Phillips
Rohit Chopra
Christine S. Wilson

In the Matter of

HEALTH RESEARCH LABORATORIES, LLC,
a limited liability company,

WHOLE BODY SUPPLEMENTS, LLC,
a limited liability company, and

KRAMER DUHON,
individually and as an officer of HEALTH
RESEARCH LABORATORIES, LLC and
WHOLE BODY SUPPLEMENTS, LLC

DOCKET NO. 9397

RESPONDENTS' MOTION TO EXTEND TIME TO RESPOND TO
COMPLAINT COUNSEL'S MOTION TO
RESCHEDULE THE EVIDENTIARY HEARING DATE

Respondents respectfully request a brief extension of the deadline to response to Complaint Counsel's Motion to Reschedule the Evidentiary Hearing Date so that the Opposition that Respondents attempted to file on April 15, 2021 (*four* business days after the deadline) will be considered timely.

I. Summary

On April 15, 2021, Respondents filed a Response to Complaint Counsel's Motion to Reschedule the Evidentiary Hearing Date. *See* Ex. A. The FTC's filing system rejected

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and refused to accept the filing. *See* Ex. B. For the reasons set forth below, Respondents respectfully short extension of the original deadline.¹ Before the Commission extends and further delays this case by *three months*, Respondents respectfully request that they extend this one deadline to respond by *seven days* so Respondents' opposition to the motion can be filed.

II.

Complaint Counsel served its Expedited Motion to Reschedule Evidentiary Hearing ("Motion") at 8:47 PM on March 30, 2021. Because of the late hour in which the Motion was received, Counsel for Respondents did not notice that the filing was with the Commission, rather than with Office of Administrative Law Judges.² The next day Respondents filed an Expedited Motion to Enter New Scheduling Order or, in the alternative, Transfer Case to the Commission ("Respondents' Motion"). *See* Ex. C. The Respondents' Motion clearly opposes the request to extend the hearing date and requests the case be decided a more expeditious schedule rather than delayed until the original June 2021 hearing date. In other words, Respondents believed that they had responded to the original Motion by proposing a more expedited schedule. It was not until Respondents read Complaint Counsel's Opposition to Respondents' Expedited Motion to

¹ Respondents can file the Response immediately. If the Commission grants the request today, the extension would only be a short six or seven-day extension (depending on whether the Motion was considered "filed" on March 30, 2021 or March 31, 2021). Respondents did not receive the notice from the FTC's Efiling system until March 31, 2021. *See* Ex. C.

² *See* Ex. D (Reese Declaration).

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Enter New Scheduling Order on April 15, 2021 that Respondents' counsel realized that the original Motion had been filed with Commission, not the Office of the ALJ.³

CONCLUSION

Before further delaying this case by *three months*, the Commission should at least allow Respondents *four business days* beyond the deadline to respond the requested extension.

Dated: April 16, 2021

Respectfully submitted,

REESE MARKETOS LLP

By: /s/ Joel W. Reese

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ATTORNEYS FOR RESPONDENTS

³ Respondents counsel did not review the Opposition to Respondents' Expedited Motion to Enter New Scheduling Order until April 15, 2021 because, on April 6, 2021, the ALJ issued a discovery order that required immediate attention and numerous hours. *See* Ex. D (Reese Declaration).

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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2021, I filed the foregoing document electronically using the FTC's E-Filing system, which will send notification to:

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

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

Elizabeth Averill
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Jonathan Cohen
jcohen2@ftc.gov

/s/ Joel W. Reese
Joel W. Reese

Exhibit A

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COMMISSIONERS: Rebecca Kelly Slaughter, Acting Chair
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In the Matter of

HEALTH RESEARCH LABORATORIES, LLC,
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DOCKET NO. 9397

RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO
RESCHEDULE EVIDENTIARY HEARING DATE

Complaint Counsel's Motion to Reschedule the Evidentiary Hearing Date should be denied.

I. Summary

On March 10, 2021, the ALJ granted Respondents' Motion for Leave to Amend the Answer. Respondents filed their amended answer on March 30, 2021. On March 12, 2021, the ALJ issued its Order denying Complaint Counsel's Motion to Amend the Complaint. As noted in the March 12, 2021 Order, the filing of the answer constitutes "a waiver of the hearings as to the facts alleged in the complaint, and together with the

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complaint will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding.” Consequently, we now have a record on which the Commission can issue a final decision. It is not necessary for the parties to waste time and money further continuing this case to conduct further discovery or to create unnecessary expert reports. It is time for a final resolution of this case.

Remarkably, now that the case has substantially narrowed and no material facts are in dispute, Complaint Counsel argues that it needs *more time* to prepare. Complaint Counsel has not proven “good cause” for extending the trial date by an additional 10 weeks. All of the discovery cited by Complaint Counsel was directed at issues that were previously in dispute, but are now admitted. Complaint Counsel never explains why they delayed in seeking discovery or why they delayed seeking to compel discovery that Complaint Counsel thought was relevant, but they did not receive. There is not “good cause” to further delay this case.

I. FACTS

Within two months of losing its motion for contempt in *FTC and State of Maine v. Health Research Laboratories, LLC, et al.*, 2:17-cv-00467-JDL (“Maine Action”), the FTC filed this action and has undertaken a course of action to destroy Respondents’ business.

Under the FTC Act, this action is supposed to be for a cease-and-desist order to prevent Respondents from “disseminat[ing] or caus[ing] to be disseminated advertising

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and promotional materials”¹ for four supplements that the Commission contends were “not substantiated at the time the representations were made.”² However, instead of actually seeking a cease-and-desist order, Complaint Counsel has used this action to punish Respondents because they exercised their First Amendment rights to contest the FTC’s request for contempt in the Maine Action.

In an effort to drive Respondents from business, the FTC served 14 subpoenas on every vendor and business partner connected to Respondents for the last decade, including a subpoena to the law firm that represented Respondents in the very claims that are the subject to this action. FTC also served requests for production and interrogatories that would take hundreds of hours to answer.

Respondents’ business is a small operation with no employees. It is easier for vendors and business partners to elect not to do business with Respondents than face harassment from the government. It is against this backdrop that Respondents decided that they could not continue to fight the FTC.

Rather than continue a fight that has been ongoing for more than six years, Respondents elected to admit all material facts in the Part III Administrative Complaint – an action expressly permitted by 16 C.F.R. § 3.12. Respondents filed an Amended Answer that admits all material facts in Plaintiff’s Original Complaint so there are *no material facts in the Complaint that are disputed*. Despite this fact, Complaint Counsel

¹ See Complaint, ¶¶ 7, 9, 11 and 13.

² See Complaint, ¶¶ 15, 17, 19, and 21.

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wants to continue to harass Respondents with discovery. Complaint Counsel contends the requested discovery is necessary and relevant to “determining the appropriate relief in this case.”

II. ARGUMENT AND AUTHORITIES

A. Relief is dictated by statute and the need for additional discovery—after all material facts have been admitted—does not justify the extension of the hearing date.

The appropriate relief in this case is dictated by statute. The Commission filed this Administrative Complaint alleging that Respondents have “disseminated or [have] caused to be disseminated advertising and promotional materials”³ for four supplements that the Commission contends were “not substantiated at the time the representations were made.”⁴ The *only* relief permitted by Section 5 of the FTC is an order requiring Respondents to cease and desist from the allegedly deceptive act or practice—which is the dissemination of advertising and promotional materials regarding the four supplements.

Complaint Counsel vaguely alleges that the discovery requests justify an extension, but does not explain what relief, if any, Complaint Counsel seeks that will be influenced by the discovery. For example, Complaint Counsel does not argue that further discovery would reveal wrongful conduct related to other supplements or products. All discovery requests are directly solely at the four “Identified Products.” Because Complaint Counsel has not demonstrated the relevancy or need for the discovery—and the need to further

³ See Complaint, ¶¶ 7, 9, 11 and 13.

⁴ See Complaint, ¶¶ 15, 17, 19, and 21.

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continue this case—the requested rescheduling of the evidentiary hearing is unnecessary and without good cause.

As noted by ALJ in its March 12, 2021 Order, Respondents' Answer under Rule 3.12(b)(2) “has the effect of dispensing with a hearing and removing proceedings to the Commission for determination of an appropriate final order.” March 12, 2021 Order (citing 16 C.F.R. § 3.12(b)(2)). Rule 3.12(b)(2) provides that “[s]uch an answer shall constitute a waiver of hearings as to the facts alleged in the complaint, and together with the complaint **will provide a record basis** on which the Commission **shall issue** a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding.” 16 C.F.R. § 3.12(b)(2) (emphasis added). If the hearing is waived—as stated by Rule 3.12(b)(2)—when does Complaint Counsel plan on adding the anticipated new discovery to the record? How would the anticipated new discovery be added to the record? As stated by Rule 3.12(b)(2), the *record in this case is the Complaint and the Amended Answer*. Rule 3.12(b)(2) does not state that the record is the Answer and the Complaint *and any other information and documents that Complaint Counsel wants to add*.

B. Respondents have now agreed to the “fencing in” relief that is the purported reason for the extension of the hearing date.

Complaint Counsel claim that they need to continue the hearing date to obtain discovery relevant to “fencing-in” relief. This action is to prohibit Respondents from

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“disseminat[ing] or caus[ing] to be disseminated advertising and promotional materials”⁵ for four supplements that the Commission contends were “not substantiated at the time the representations were made.”⁶ Respondents have agreed to a blanket prohibition on disseminating or causing to be disseminated any advertising or promotional materials for *any* supplements that makes *any* representations regarding health or disease.⁷ In other words, rather spending hundreds of additional hours on this case in the coming months, let’s cut to the chase and give the FTC whatever permissible “fencing in” relief has been requested in the Complaint.

C. Extension is contrary to the Commission’s strong interest in resolving proceeding expeditiously.

The Commission has a “strong interest in resolving proceedings expeditiously.” *See In the Matter of Louisiana Real Estate Appraisers Board*, Docket No. 9374, 2018 WL 218323, at *3 (Apr. 26, 2018); *See also* Rule 3.1 (“[T]he Commission's policy is to conduct [adjudicative] proceedings expeditiously.”); Rule 3.41(b) (“Hearings shall proceed with all reasonable expedition ...”); Rules of Practice Amendments, 61 Fed. Reg. 50,640 (FTC Sept. 26, 1996) (“[A]djudicative proceedings shall be conducted expeditiously and ... litigants shall make every effort to avoid delay at each stage of a

⁵ *See* Complaint, ¶¶ 7, 9, 11, and 13.

⁶ *See* Complaint, ¶¶ 15, 17, 19, and 21.

⁷ To confirm this agreement, Respondents have filed a stipulation agreeing to whatever fencing in relief is permitted by law and requested in the Complaint. *See* Ex. A (Respondents’ Stipulation as to “Fencing-In” Relief).

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proceeding.”). To abide by this policy, this case should be decided now and not further extended.

III. CONCLUSION

The FTC subpoenaed all of Respondents’ vendors, issued massive discovery requests that would take months to answer, and repeatedly tried to prevent any end to this case. The FTC took these actions knowing at all times that the acts or practices that are the subject of this proceeding *ceased more than a year prior to the filing of the Complaint* and that the entire administrative action for a “cease-and-desist” order was a farce. The manner in which the FTC has acted in this case is not what Congress intended when it granted the FTC the right to issue administrative cease-and-desist orders.

For the reasons set forth herein, the Commission should deny the Motion to Reschedule the Evidentiary Hearing Date and decide this case under the “record” created by the Complaint and the answer.

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Dated: April 15, 2021

Respectfully submitted,

REESE MARKETOS LLP

By: */s/ Joel W. Reese* _____

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ATTORNEYS FOR RESPONDENTS

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CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2021, I filed the foregoing document electronically using the FTC's E-Filing system, which will send notification to:

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

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580
email: oa1j@ftc.com

COMPLAINT COUNSEL

Elizabeth Averill
eaverill@ftc.gov

Jonathan Cohen
jcohen2@ftc.gov

/s/ Joel W. Reese

Joel W. Reese

Exhibit A

PUBLIC

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

In the Matter of

HEALTH RESEARCH LABORATORIES, LLC,
a limited liability company,

WHOLE BODY SUPPLEMENTS, LLC,
a limited liability company, and

KRAMER DUHON,
individually and as an officer of HEALTH
RESEARCH LABORATORIES, LLC and
WHOLE BODY SUPPLEMENTS, LLC

DOCKET NO. 9397

RESPONDENTS' STIPULATION AS TO "FENCING-IN" RELIEF

In the Court's April 6, 2021 Order Granting Complaint Counsel's Motions to Compel, the Administrative Law Judge ("ALJ") noted that the discovery may be relevant to "fencing-in" relief and that "a common form of 'fencing-in' relief is a 'multiproduct' prohibition that bars the respondent from using its deceptive trade practice to sell not only the product that was the subject of the enforcement action, but all products sold by the respondent."¹ Respondents hereby stipulate and agree that the Initial Decision of the ALJ can include whatever "fencing in" relief is permitted by statute and requested in the

¹ Order, p. 3, fn 2 (quoting *In re ECM BioFilms, Inc.*, 2015 FTC LEXIS 22, at *629-30 (Jan. 28, 2015)).

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Complaint.²

Dated: April 13, 2021

Respectfully submitted,

REESE MARKETOS LLP

By: /s/ Joel W. Reese

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ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF CONFERENCE

I hereby certify that on April 12, 2021, I spoke with Compliant Counsel regarding an agreement on fencing in relief and agreed to provide whatever fencing in relief was permissible by law based on the Complaint. Complaint Counsel advised me that they did not agree to fencing in relief.

/s/ Joel W. Reese
Joel W. Reese

² This stipulation relates to the “remedy” provided by the FTC Act, not any findings of fact. Of course, the remedy must be “reasonably related” to the unlawful acts which form the basis of the order. *See In the Matter of Mutual Construction Co., Inc.*, 87 F.T.C. 621, 1976 WL 180691 (March 30, 1976). Respondents do not interpret “fencing in” relief to refer to any findings of fact.

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CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2021, I filed the foregoing document electronically using the FTC's E-Filing system, which will send notification to:

April J. Tabor
Acting Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
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The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
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COMPLAINT COUNSEL


Elizabeth Averill
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Jonathan Cohen
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/s/ Joel W. Reese
Joel W. Reese

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Exhibit B

From: **FTC Apps** no-reply@apps.ftc.gov 
Subject: Re: D09397 Health Research Laboratories - A filing submission has been returned
Date: April 16, 2021 at 9:16 AM
To: joel.reese@rm-firm.com

AF



The Respondent Counsel under Docket Number: D09397 and Health Research Laboratories, E filing has been uploaded to the system by Joel Reese on 2021-04-15 19:59:17 EDT and is Returned. File(s) included in this submission: RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S MOTION TO RESCHEDULE EVIDENTIARY HEARING DATE.

2021-04-16 10:16:16 EDT - Sherri Harris (Comments) returned for failure to comply with Commission Rules 3.22(d), 4.3(c), 16 CFR §§ 3.22(d), 4.3(c)

Please do not reply to this message as this email address is not monitored.

For Procedural Matters contact: DocumentProcessing@ftc.gov

For Technical Matters contact: support.adminefiling@ftc.gov

Exhibit C

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AE

From: Averill, Elizabeth eaverill@ftc.gov 
Subject: Dkt. 9397: Health Research Laboratories - Complaint Counsel's Expedited Motion to Reschedule Evidentiary Hearing
Date: March 30, 2021 at 8:47 PM
To: OALJ OALJ@ftc.gov, Electronic Filings ElectronicFilings@ftc.gov
Cc: Joel Reese (joel.reese@rm-firm.com) joel.reese@rm-firm.com, Josh Russ (josh.russ@rm-firm.com) josh.russ@rm-firm.com, Cohen, Jonathan jcohen2@ftc.gov, Harris, Sherri CTR sharris@ftc.gov, Welby, Grant gwelby@ftc.gov, Garrett, Celia cgarrett1@ftc.gov

Attached please find courtesy copies of Complaint Counsel's Expedited Motion to Reschedule Evidentiary Hearing for submission to the Commission along with a supporting Declaration, Exhibits, and a Proposed Order.

Thank you.

Elizabeth J. Averill
Federal Trade Commission
Bureau of Consumer Protection
202-326-2993



CC Expedited
Motion...ng .pdf



Averill Decl and
Exs_Final.pdf



Proposed
Order.pdf

Exhibit D

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

In the Matter of

HEALTH RESEARCH LABORATORIES, LLC,
a limited liability company,

WHOLE BODY SUPPLEMENTS, LLC,
a limited liability company, and

KRAMER DUHON,
individually and as an officer of HEALTH
RESEARCH LABORATORIES, LLC and
WHOLE BODY SUPPLEMENTS, LLC

DOCKET NO. 9397

DECLARATION OF JOEL W. REESE

I, Joel W. Reese, hereby declare:

1. My name is Joel W. Reese. I am counsel for the Respondents, Health Research Laboratories, LLC, Whole Body Supplements, LLC and Kramer Duhon. I make this declaration based on personal knowledge of the facts set forth herein.

2. Complaint Counsel served its Expedited Motion to Reschedule Evidentiary Hearing (“Motion”) at 8:47 PM on March 30, 2021. Because of the late hour in which the Motion was received, I did not notice that the filing was with the Commission, rather than with Office of Administrative Law Judges. All other filings had been with the Office of Administrative Law Judges. The next day Respondents filed an Expedited Motion to Enter New Scheduling Order or, in the alternative, Transfer Case to the Commission (“Respondents’ Motion”). The Respondents’ Motion clearly opposes the request to extend the hearing date and requests the case be decided a more expeditious schedule

rather than delayed until the original June 2021 hearing date. In other words, Respondents believed that they had responded to the original Motion by proposing a more expedited schedule in the Respondents' Motion. On April 6, 2021, the ALJ issued its Order Granting Complaint Counsel's Motions to Compel. Considering that replies are generally not permitted and the obligations under this Order, I did not review Complaint Counsel's Opposition to Respondents' Expedited Motion to Enter New Scheduling Order (filed on April 9, 2021) until April 15, 2021. It was not until I read this Opposition on April 15, 2021 that I realized that Complaint Counsel's Motion had been filed with Commission, not the Office of the ALJ.

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

_____/s/ Joel W. Reese_____
JOEL W. REESE