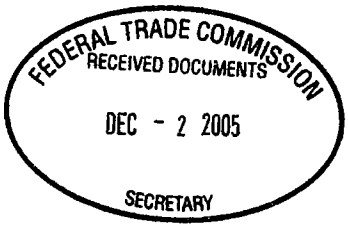
UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of	)	
	)	
BASIC RESEARCH, L.L.C.,	)	
A.G. WATERHOUSE, L.L.C.,	)	
KLEIN-BECKER USA, L.L.C.,	)	
NUTRASPORT, L.L.C.,	)	
SOVAGE DERMALOGIC	)	**Docket No. 9318**
LABORATORIES, L.L.C.,	)	
BAN, L.L.C.,	)	**PUBLIC**
DENNIS GAY,	)	
DANIEL B. MOWREY, and	)	
MITCHELL K. FRIEDLANDER,	)	
	)	
Respondents.	)	

RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S OBJECTIONS TO RESPONDENTS' LATE DISCLOSURE OF EIGHT WITNESSES AND ADDITIONAL PURPORTED SUBSTANTIATION AND MOTION TO STRIKE AND EXCLUDE SUCH TESTIMONY AND EVIDENCE

Respondents hereby oppose "Complaint Counsel's Objections to Respondents' Late Disclosure of Eight Witnesses and Additional Purported Substantiation and Motion to Strike and Exclude Such Testimony and Evidence."

No order from the Court set a deadline for Respondents' listing of rebuttal witnesses. Out of an abundance of caution, Respondents listed their rebuttal witnesses on the date specified in the Scheduling Order for identifying witnesses for the case-in-chief. The four-month period between the November 8, 2005 identification of witnesses and the March 7, 2006 trial affords Complaint Counsel a full and fair opportunity to depose the witnesses, thus eliminating prejudice. Furthermore, no requirement is set in any Court order for Respondents' Counsel to submit expert reports from Respondents' Counsel's rebuttal experts. In fact, there could be no

such requirement in this instance, where the purpose of the witnesses is to rebut live hearing testimony, not the reports of Complaint Counsel's experts.

Complaint Counsel present four arguments in support of their motion: (1) Respondents' actions violate the Scheduling Order, (2) Respondents cannot show good cause for adding the witnesses at this time, (3) precedent supports the exclusion on the witnesses, and (4) Respondents' actions prejudice Complaint Counsel because they have not had an opportunity to investigate the witnesses.

Complaint Counsel's arguments fail to take into account Respondents' inherent right to offer live testimony to rebut statements made at hearing by Complaint Counsel's witnesses. No advance notice is required for such testimony when it responds to statements made in open court and no such requirement exists in any order issued by the Presiding Officer. The opportunity for rebuttal testimony directed to a witness's live testimony is necessary for a party to defend its interests fully at hearing. Rebuttal testimony directed in response to witness hearing testimony is vital because it enhances the ability of the judge to reach a fully informed and just decision and minimizes the risk that variance in testimony will escape full and appropriate judicial scrutiny at trial. The witnesses identified by Respondents will not testify as a part of Respondents' case-in-chief. They are rebuttal witnesses. Their only function will be to respond to Complaint Counsel's witnesses' live testimony at the Hearing.

"The remedy of exclusion [of experts] is considered 'drastic' and should not be imposed where it could frustrate the overarching objective of the Rules, which is to provide substantial justice for litigants." Dunn v. Zimmer, Inc., 2005 U.S. Dist. LEXIS 3505 at *4 (Mar. 9, 2005) (citing Cartier, Inc. v. Four Star Jewelry Creations, Inc., 2003 U.S. Dist LEXIS 16887 at*1 (S.D.N.Y. Oct. 31, 2003)). Failure to grant a party the opportunity to present expert witness

testimony in rebuttal on elements of proof necessary to defend its case is prejudicial. See United States v. Cavin, 39 F.3d 1299, 1308 (5th Cir. 1994) (District Court abused its discretion in excluding expert evidence crucial to building the defense); United States v. Van Dyke, 14 F.3d 415, 422-23 (5th Cir. 1994) (District Court committed reversible error in excluding expert testimony that would clarify complex regulatory matters with closely intertwined legal and factual issues); United States v. Alexander, 816 F.2d 164, 169 (5th Cir. 1987) (reversing as clearly erroneous exclusion of expert testimony where entire case turned on subject of expert testimony.)

"Decisions concerning the admission of expert testimony lie within the broad discretion of the trial court ...." Anderson v. Raymond Corp., 340 F.3d 520, 523 (8th Cir. 2003). Equity favors denial of Complaint Counsel's motion because permitting the expert testimony will help guard against a miscarriage of justice by protecting the integrity of the truth-seeking process and by aiding the Court in discerning the limitation of the testimony of Complaint Counsel's witnesses. It will be a great injustice if the witnesses are not allowed to testify because the Court will not be able to reach a decision that provides substantial justice for the parties based upon a full understanding of all of the facts. Respondents therefore respectfully request that the Court use its broad discretion to allow the expert testimony of the witnesses at issue. Moreover, ample time exists between the November 8 identification of those witnesses and the March 7 trial to permit Complaint Counsel to depose those witnesses.

I. FACTS

On August 11, 2004, the Presiding Officer issued a Scheduling Order in this matter. According to that Scheduling Order, "Complaint Counsel [were] to identify rebuttal expert(s) and provide rebuttal expert report(s)" by December 13, 2004. There was no corresponding

provision in the Scheduling Order for Respondents to identify rebuttal witnesses to Complaint Counsel's witnesses and to provide rebuttal expert reports. The order also provided a deadline of February 8, 2005 for both Complaint Counsel and Respondents to file final proposed witness lists identifying witnesses who may be called in the party's **case-in-chief**. See Additional Provision 9.

On March 24, 2005, the Presiding Officer issued a Revised Scheduling Order. That order did not address the identification of rebuttal witnesses, leaving the substantive deadlines from the August 11, 2004 Scheduling Order unchanged. The order moved the deadline to file final proposed witness lists identifying witnesses who may be called a party's case-in-chief to May 23, 2005.

On April 6, 2005, the Presiding Officer stayed proceedings in this matter while motions were certified to the Commission. Following the lift of the stay, the Presiding Officer issued a Second Revised Scheduling Order on August 4, 2005. Again, that order did not specify a date for Respondents' Counsel to identify rebuttal witnesses, leaving the substantive deadlines from the August 11, 2004 Scheduling Order unchanged. The order moved the deadline to file final proposed witness lists identifying witnesses who may be called a party's case-in-chief to November 8, 2005. Respondents filed their final proposed witness list on November 8, 2005, in accordance with the Scheduling Order. There was no provision in any of the Scheduling Orders for Respondents to identify rebuttal witnesses to Complaint Counsel's witnesses and to provide rebuttal expert reports. There is no provision aimed specifically at rebuttal experts who would testify in response to live hearing testimony.

II. PERTINENT RULES

FTC Rule of Practice Section 3.31(b)(3) (16 C.F.R. § 3.31) (emphasis added) states, in

pertinent part,

> Parties shall disclose to each other the identity of any person who may be used at trial to present evidence as an expert. Except as otherwise stipulated or directed by the Administrative Law Judge, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness....These disclosures shall be made at the times and in the sequence directed by stipulation by the Administrative Law Judge. In the absence of other directions from the Administrative Law Judge or stipulation by the parties, the disclosures shall be made at least 90 days before the trial date or the date the case is to be ready for trial or, if the evidence is intended solely to contradict or rebut proposed expert testimony on the same subject matter identified by another party under this paragraph, within 30 days after the disclosure made by the other party.

III. ANALYSIS

The rebuttal witnesses identified by Respondents shall rebut live testimony from Complaint Counsel's experts at trial. They are not designated as case-in-chief witnesses; nor are they designated to rebut the expert reports of Complaint Counsel's experts. In such a situation, Rule 3.31(b) requires disclosure of the witnesses at times directed by the Administrative Law Judge. Here, no such times are specified in his Honor's orders. In the absence of an order on point, the disclosure is to be made "at least 90 days before the trial date." The trial date is March 7, 2006. The disclosure occurred on November 8, 2005. That is 119 days before the trial. When the evidence "is intended solely to contradict or rebut proposed expert testimony...," the disclosure is to take place "30 days after" Complaint Counsel discloses its expert. The 90-day pre-trial date, not the 30-day post-Complaint Counsel witness disclosure date, applies. The rebuttal witnesses are not "intended solely to contradict or rebut proposed expert testimony." They are designated for the specific purpose of rebutting live expert testimony at trial. They are not designated to rebut Complaint Counsel's expert reports in this case.

Complaint Counsel's argument that the witnesses proposed by Respondents should be excluded is a draconian measure never to be imposed except under the most compelling circumstances. See, e.g., DiPirro v. United States, 43 F. Supp. 2d 327 (W.D.N.Y. 1999), judgment amended on other grounds, 189 F.R.D. 60 (W.D.N.Y. 1999). Witnesses who will rebut live testimony are necessary for the Presiding Officer to engage in a full inquiry and critical assessment of Complaint Counsel's witnesses.

"Rebuttal evidence" is defined as "evidence given to explain, repel, counteract, or disprove facts given in evidence by the opposing party." Black's Law Dictionary, Henry Campbell Black, 6 ed. (West Group 1990); see also United States v. Stitt, 250 F.3d 878, 897 (4th Cir. 2001); United States v. Chrzanowski, 502 F.2d 573, 576 (3d Cir. 1974).

The witnesses listed by Respondents in their Final Proposed Witness List are identified as rebuttal witnesses who will challenge live hearing testimony. The witnesses will not be called on to testify in Respondents' case-in-chief. If called at trial, they will testify only on the testimony there given by Complaint Counsel's witnesses. They will explain, counteract, or disprove facts communicated in open court.

Complaint Counsel, in an attempt to circumvent Respondents' right to present live rebuttal, characterize the proposed testimony as being proffered as "sur-rebuttal." It is not. It will not rebut the rebuttal testimony of Complaint Counsel's witnesses.

Courts have reiterated that rebuttal witnesses must be allowed to present testimony "which is precisely directed to rebutting new matter or new theories presented by the [opposing party's] case-in-chief." Step-Saver Data Sys., Inc. v. Wyse Tech., 752 F. Supp. 181, 193 (E.D. Pa. 1990), aff'd in relevant part and rev'd in part on other grounds, 939 F.2d 91 (3d Cir. 1991); Bowman v. Gen. Motors Co., 427 F. Supp. 234, 240 (E.D. Pa. 1977). Thus, the Court should

allow Respondents to present expert rebuttal testimony in open court to refute any new matter or new theories presented by Complaint Counsel's witnesses that deviate from the expert reports.

A. Respondents' Actions Do Not Violate the Scheduling Order

Respondents' actions do not violate the presiding officer's August 11, 2004 Scheduling Order because the Scheduling Order set no deadline for Respondents' rebuttal experts. Respondents do not believe that they are under an obligation to disclose potential rebuttal witnesses; they did so on the November 8 general witness disclosure date to provide in excess of the 90-day pre-trial disclosure required by FTC Rule 3.31(b)(3).

The fact that the presiding officer's August 11, 2004 Scheduling Order set no deadline for Respondents' rebuttal experts is not unusual, as rebuttal experts even in criminal cases may first be called at trial. United States v. Frazier, 387 F.3d 1244, 1269 (11th Cir. 2004) ("the government's presentation of rebuttal testimony without prior notice does not violate [the Rules], since the Rule's notice requirements apply only to the government's **case-in-chief**") (emphasis added); United States v. DiCarlantonio, 870 F.2d 1058, 1063 (6th Cir. 1989) (Disclosure of rebuttal witnesses not required for expert rebuttal testimony not offered during government's case-in-chief); United States v. Barrett, 766 F.2d 609, 617 (1st Cir. 1985); United States v. Angelini, 607 F.2d 1305, 1308-09 (9th Cir. 1979). "Rebuttal witnesses are a recognized exception to all witness disclosure requirements" in criminal cases. United States v. Windham, 489 F.2d 1389, 1392 (5th Cir. 1974).

Complaint Counsel argue that Respondents cannot show good cause for adding the witnesses at this time. However, according to the terms of the Scheduling Order, Respondents were under no obligation to disclose potential rebuttal witnesses. Thus, Respondents' actions do not violate the Presiding Officer's August 11, 2004 Scheduling Order.

B. Exclusion of Rebuttal Expert Witnesses Who Are Not Presenting Cumulative Evidence Is an Abuse of Discretion

The exclusion by trial courts of rebuttal expert witnesses who are not presenting cumulative evidence has been ruled an abuse of discretion. E.g., Secretary of Labor v. DeSisto, 929 F.2d 789, 796 (1st Cir. 1991) (the court's witness limitation constituted an abuse of discretion in that it prevented parties from presenting sufficient evidence on which to base a reliable judgment) (citing Martin v. Weaver, 666 F.2d 1013, 1020 (6th Cir. 1981) (abuse of discretion to exclude rebuttal witness), cert. denied, 456 U.S. 962 (1982) (citations omitted)). Exclusion of rebuttal witness testimony that is essential to the evidence involved and will not prejudice the opposing party is an abuse of discretion. Murphy v. Magnolia Electric Power Association, 639 F.2d 232, 235 (5th Cir. 1981) (citing DeMarines v. KLM Royal Dutch Airlines, 580 F.2d 1192, 1201-02 (3d Cir. 1978) (error to exclude critical expert testimony when no prejudice to opposing party evident) (citations omitted)). Here, four months for deposing the witnesses vitiates any reasonable basis for an argument of prejudice.

"The remedy of exclusion is considered 'drastic' and should not be imposed where it could frustrate the overarching objective of the Rules, which is to provide substantial justice for litigants." Dunn v. Zimmer, Inc., 2005 U.S. Dist. LEXIS 3505 at *4 (Mar. 9, 2005) (citing Cartier, Inc. v. Four Star Jewelry Creations, Inc., 2003 U.S. Dist LEXIS 16887 at *1 (S.D.N.Y. Oct. 31, 2003)); see also DiPirro v. United States, 43 F. Supp. 2d 327 (W.D.N.Y. 1999), judgment amended on other grounds, 189 F.R.D. 60 (W.D.N.Y. 1999). The live rebuttal testimony Respondents seek is critical to providing substantial justice because it highlights the limitations of the opposing party's testimony. Rebuttal testimony is necessary for a party to fully respond to the arguments made by opposing counsel's witnesses and to fully defend its interests.

Rebuttal testimony is vital because it enhances the ability of the judge to reach a fully informed and just decision.

As the courts have recognized, experts should not be excluded where doing so could frustrate the overarching objective of the Rules, which is to provide substantial justice for litigants. Dunn, 2005 U.S. Dist. LEXIS 3505 at *4; DiPirro, 43 F. Supp. 2d 327. That overarching objective cannot be adequately achieved in this matter if Respondents are not permitted to use rebuttal experts. Criticism and rebuttal of the testimony of Complaint Counsel's witnesses is crucial to Respondents' defense. Respondents should be allowed the opportunity to present rebuttal evidence to assist the Presiding Officer in engaging in a full inquiry that results in a reliable judgment as to the Complaint Counsel's evidence and provides substantial justice for all litigants.

C. Precedent Does Not Support the Exclusion of the Witnesses

FTC tribunals have allowed the admission of rebuttal witnesses where "respondent has not been prejudiced in discovery as [the opposing party] has produced all documents in their possession on these witnesses and the movant has the opportunity to depose these witnesses beyond the close of discovery deadline." In the Matter of Intel, 1999 FTC Lexis 220 at *2 (Feb. 5, 1999). Here, while no order is on point to require production of reports from these rebuttal experts, Respondents have identified them in advance of 90 days to trial, are willing to make them available to depose, and will supply Complaint Counsel with such background information as is reasonable and appropriate upon request (e.g., Curriculum Vitae, publications, and cases in which they have testified previously)[1].

Federal case law also provides precedence for denying requests to exclude expert

[1] Respondents are presently compiling that information and will produce it to Complaint Counsel by Friday, December 9, 2005.

witnesses under similar circumstances. In Freeman v. Package Machinery Co., 865 F.2d 1331 (1st Cir. 1988), the court upheld the trial court's denial of the defendant's motion to exclude a statistical expert's testimony where the plaintiff had listed the expert as a witness after a court-imposed deadline but more than two months before trial. The court found that the defendant had not shown any prejudice because it was able to depose the expert prior to trial. Id. The facts here are nearly identical. Respondents here listed the rebuttal experts four months before trial[2], giving Complaint Counsel even more time than was given in Freeman. Like Freeman, Respondents have no objection to Complaint Counsel deposing each of the witnesses prior to trial. Thus, Complaint Counsel here, like the defendant in Freeman, will not be prejudiced if Respondents' rebuttal expert witnesses are permitted.

Similarly, in Kremsner v. Fortuna-Sas, 1989 U.S. Dist. LEXIS 7072 (E.D. Pa. 1989), the court refused to preclude plaintiff's experts from testifying as a sanction for plaintiff's failure to exchange expert witness names, credentials, and reports by the court's discovery deadline. The court held that the defendants suffered no prejudice when the defendants received the expert information two weeks before the court's pretrial conference. Id. In this case, Respondents provided the expert information to Complaint Counsel nearly four months before the prehearing conference[3], even earlier than the plaintiffs in Kremsner. Like the defendants in Kremsner, Complaint Counsel here will suffer no prejudice because Respondents have no objection to Complaint Counsel deposing each of the witnesses prior to trial.

Complaint Counsel rely on Perkasie Industries Corp. v. Advance Transformer, 143 F.R.D. 73 (E.D. Pa. 1992), and Praxair, Inc. v. ATMI, Inc., 2003 U.S. Dist. LEXIS 26794 at *16-

[2] Respondents provided Complaint Counsel with the rebuttal expert information on November 8, 2005. Hearing is scheduled for March 7, 2006.
[3] Respondents provided Complaint Counsel with the rebuttal expert information on November 8, 2005. The prehearing conference is scheduled for March 2, 2006.

17 (D. Del. Nov. 8, 2003), as precedent in support of excluding Respondents' experts. However, in Perkasie, the plaintiff violated a direct court order to submit its expert damages report by a certain date. 143 F.R.D. at 76. Even then, the court recognized that "[t]he exclusion of otherwise admissible expert witness testimony for failure to meet the timing requirements of a court order is an extreme measure." Id. at 75. As discussed above, Respondents in this case did not violate the presiding officer's August 11, 2004 Scheduling Order because the Scheduling Order set no deadline for Respondents' rebuttal experts. Moreover, the court in Perkasie found that the prejudice to defendants could not be cured. Id. at 77. In contrast, as discussed in detail below, Complaint Counsel will not be prejudiced by permitting Respondents' experts to testify. Thus, the case is not controlling.

In Praxair, the court's scheduling order did not allow for supplemental reports. 2003 U.S. Dist. LEXIS 26794 at *18. Thus, the court excluded a supplemental expert report. Id. at *18-19. Moreover, the court found that plaintiffs were prejudiced because the report was filed ten days before the summary judgment motions were due. Id. In this case, however, Complaint Counsel will not be prejudiced by permitting Respondents' experts to testify because Complaint Counsel have over three months to depose these witnesses before trial.

Complaint Counsel also rely on In re Automotive Breakthrough Sciences, 1996 FTC Lexis 461, as precedent in support of excluding Respondents' experts. However, in that case respondents filed a witness list that included seventy-eight witnesses, seventy-six of which were not previously identified to complaint counsel. It is therefore easy to see that the opposing party might be prejudiced by having to depose seventy-six witnesses. In this case, however, as discussed in detail below, Complaint Counsel has ample time to depose Respondents' proposed witnesses. Complaint Counsel will therefore not be prejudiced by permitting Respondents'

experts to testify. Thus, each of the cases relied on by Complaint Counsel is distinguishable from this case and are therefore not controlling. Freeman and Kremsner, cases with very similar facts to this case, provide precedence for denying Complaint Counsel's request to exclude Respondents' expert witnesses.

D. Permitting Respondents' Rebuttal Expert Witnesses Will Not Prejudice Complaint Counsel

A party moving to strike a rebuttal witness must demonstrate prejudice with specificity. The Presiding Officer in In re Schering-Plough Corp., 2001 FTC Lexis 194 at *7 (Dec. 26, 2001), held that "where the movant failed to show that 'the expected testimonies of [the] witnesses are cumulative, nor [has movant] shown that they will be unduly burdened by having to take the depositions of these experts and cross-examine them at trial," then the denial of a motion to strike a rebuttal witness is warranted. (Quoting In re R.J. Reynolds Tobacco Co., 1998 FTC Lexis 182 at *1 (Oct. 16, 1998)). FTC tribunals have allowed the admission of rebuttal witnesses where prejudice is lacking, as explained supra.

In Freeman v. Package Machinery Co., 865 F.2d 1331 (1st Cir. 1988), the court found that the defendant did not shown any prejudice when plaintiff listed the expert as a witness approximately two months before trial because the defendant was able to depose the expert prior to trial. In Kremsner v. Fortuna-Sas, 1989 U.S. Dist. LEXIS 7072 (E.D. Pa. 1989), the court held that the defendants suffered no prejudice when they received the expert information two weeks before the court's pretrial conference.

Hearing in this case is scheduled for March 7, 2006. Respondents have no objection to Complaint Counsel deposing each of the proposed witnesses. That allows Complaint Counsel over three months to depose those experts. Similar to In the Matter of Intel, 1999 FTC Lexis

220, Complaint Counsel has the opportunity to depose these witnesses beyond the close of discovery deadline. There is thus no prejudice to Complaint Counsel, as they will have ample opportunity to depose the witnesses.

E. Respondents' Exhibit RX 807 Should Not Be Precluded Because There Is No Harm or Prejudice to Complaint Counsel

This Court should not exclude Respondents' exhibit RX 807 because there was no harm or prejudice to Complaint Counsel and because Respondents seasonably provided the study to Complaint Counsel.

Complaint Counsel argue that Respondents' exhibit RX 807 should be excluded because Respondents did not include the study on their February 2005 Exhibit List and did not provide the document during discovery. The document in question, by Complaint Counsel's own admission, was dated March 15, 2005. Thus, the study was not even in existence at the time of Respondents' February 2005 Exhibit List. It was therefore impossible for Respondents to include the document on their exhibit list. In addition, discovery for this case closed on January 10, 2005. Again, the study was not even in existence at that time. Thus, it was impossible for Respondents to provide the document to Complaint Counsel during discovery.

Moreover, Complaint Counsel's argument ignores the fact that this case was stayed from April 6, 2005 to June 17, 2005. Close in time to the date of the document, on April 6, 2005, the Presiding Officer certified motions to the Commission and stayed proceedings. During the time of the stay, April 6, 2005 to June 17, 2005, there was no activity in the case. Thus, a duty to supplement discovery did not even arise until the stay was lifted.

What is required is a timely duty to supplement. Counsel did not identify the document as responsive to discovery until recently, during its search of documents to update discovery

responses. Upon identification, Respondents provided the document to Complaint Counsel and included the document on their Final Proposed Exhibit List. Those steps reveal appropriate diligence in production of the document to Complaint Counsel.

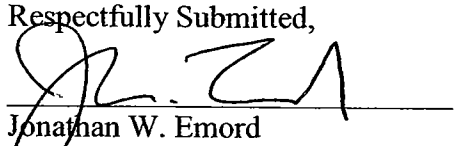
Moreover, Complaint Counsel are in no way prejudiced by the production of the document a full four months prior to Hearing.[4] Respondents have no objection to Complaint Counsel deposing any of the authors of the study, who are the very same authors on a similar study produced before the close of discovery (Complaint Counsel chose not to depose them before the close of discovery). Complaint Counsel have plenty of time to review the document in time for Hearing. Thus, Complaint Counsel are not prejudiced.

Furthermore, any burden on Complaint Counsel is outweighed by the necessity that Respondents be given the opportunity to fully defend themselves from charges made by Complaint Counsel. The exhibit is an important piece of scientific substantiation in support of the efficacy of the product formulas at issue. The exhibit is critical for Respondents to fully respond to the arguments made by Complaint Counsel, and exclusion of the exhibit would effectively preclude Respondents from fully defending their interests.

IV. CONCLUSION

The sum total of the foregoing justifications counterbalance and outweigh any inconvenience Complaint Counsel may present as grounds for disallowing rebuttal expert witnesses and the admission of Respondents' exhibit RX 807. Thus, the Respondents respectfully request that Complaint Counsel's Motion be denied.

Respectfully Submitted,



Jonathan W. Emord

[4] The document was produced on November 8, 2005. Hearing is scheduled for March 7, 2006.

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Date submitted: December 2, 2005

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
WASHINGTON, D.C.

In the Matter of

BASIC RESEARCH, LLC **A.G. WATERHOUSE, LLC** **KLEIN-BECKER USA, LLC** **NUTRASPORT, LLC** **SOVAGE DERMALOGIC LABORATORIES, LLC** **BAN LLC d/b/a BASIC RESEARCH LLC** **OLD BASIC RESEARCH, LLC** **BASIC RESEARCH, A.G. WATERHOUSE,** **KLEIN-BECKER USA, NUTRA SPORT, and** **SOVAGE DERMALOGIC LABORATORIES** **DENNIS GAY** **DANIEL B. MOWREY d/b/a AMERICAN** **PHYTOTHERAPY RESEARCH** **LABORATORY, and** **MITCHELL K. FRIEDLANDER,** **Respondents**	**Docket No. 9318**

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2005, I caused Respondents' Opposition to Complaint Counsel's Objections to Respondents' Late Disclosure of Eight Witnesses and Additional Purported Substantiation and Motion to Strike and Exclude Such Testimony and Evidence to be filed and served as follows:

1) an original and one paper copy filed by hand delivery and one electronic copy in PDF format filed by electronic mail to:

Donald S. Clark
Secretary
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600 Pennsylvania Avenue, N.W.
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Email: secretary@ftc.gov

2) two paper copies delivered by hand delivery to:

The Hon. Stephen J. McGuire
Chief Administrative Law Judge
U.S. Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room H-112
Washington, D.C. 20580

3) one paper copy by first class U.S. Mail to:

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4) one paper copy by first class U.S. mail and one electronic copy in PDF format by electronic mail to:

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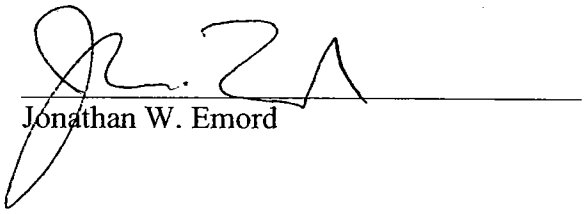

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