

1 provided the name of witness Lynn J. Colbert on or before January 12, 2009, and the name of
2 Richard L. Cleland some time between January 12 and January 22, 2009. Both witnesses were
3 deposed on January 22, 2009. Counsel for Respondents did not speak to either witness prior to
4 the depositions.
5

6 The witnesses were deposed (1/22/09) after the deadline for Respondents to submit their
7 revised witness list (1/13/09), and Counsel for Respondents could not determine if the witnesses
8 knew relevant facts that would assist in the defense of the charges made against Respondents
9 until after the witnesses were deposed.
10

11 Showing of Good Cause

12 Additional provision 14 of the scheduling order for this case requires a showing of good
13 cause and an order of the Administrative Law Judge for additional witnesses to be included on
14 the final proposed witness list. Counsel for Respondents did not know, and could not have been
15 reasonable expected to know, if the two witnesses in question could provide relevant testimony
16 in support of Respondents' case until after the date Respondents' revised witness list was due.
17

18 It took some time after deposing the two witnesses in question to assemble and review
19 the evidence in the case, and determine the documentary evidence and witness testimony that
20 should be used to best present Respondents' case-in-chief. Respondents' desire to call the
21 witnesses was conveyed to Complaint Counsel as part of Respondents' next regularly scheduled
22 witness disclosure on March 3, 2009.
23

24 Complaint Counsel knew the names of the two individuals Respondents seek to call as
25 witnesses since some time prior to January 22, 2009, and Complaint Counsel have been aware of
26 the deposition testimony since January 22, 2009.
27
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4 **IN THE UNITED STATES OF AMERICA**
5 **BEFORE THE FEDERAL TRADE COMMISSION**
6 **OFFICE OF ADMINISTRATIVE LAW JUDGES**

7 **In the Matter of**) **Docket No.: 9329**
8 **DANIEL CHAPTER ONE,**)
9 **a corporation, and**)
10 **JAMES FEIJO,**) **PUBLIC DOCUMENT**
11 **individually, and as an officer of**)
12 **Daniel Chapter One**)
13 _____)

14 **DECLARATION OF JAMES S. TURNER IN SUPPORT OF**
15 **RESPONDENTS' MOTION TO ALLOW ADDITIONAL WITNESSES DURING**
16 **RESPONDENTS' CASE-IN-CHIEF**

17 I, James S. Turner, declare as follows:

- 18 1. I am an attorney licensed to practice law in the District of Columbia, DC Bar #82479,
19 and am one of the attorneys of record for Respondents in the above-captioned administrative
20 action.
- 21 2. Respondents submitted a preliminary witness list to Complaint Counsel on December
22 2, 2009.
- 23 3. Some time in early January 2009, during the course of discovery, Respondents'
24 Counsel requested that Complaint Counsel provide witnesses for deposition who could testify as
25 to the process of how the investigation of Respondents was developed and operated.
- 26 4. In response to the request described in paragraph 2 above, Complaint Counsel
27 provided the name of Lynn J. Colbert on or before January 12, 2009.
28

1 5. On January 12, 2009, Respondents' Counsel sent notices of Deposition to Complaint
2 Counsel for Ms. Colbert and a FTC designee. See Exhibit 1 attached to this declaration.

3 6. Complaint Counsel designated Mr. Richard L. Cleland as their witness in response to
4 the FTC designee notice some time between January 12 and January 22, 2009.
5

6 7. The deadline for providing Respondents revised witness list to Complaint Counsel was
7 January 13, 2009. As of that date, Respondents did not have any revisions to make to the
8 preliminary witness list provided to Complaint Counsel on December 2, 2009, and, therefore,
9 had no revised list to provide. The operative witness list for Respondents remained their
10 preliminary witness list.
11

12 8. Neither Mr. Cleland nor Ms. Colbert were included in Respondents' preliminary
13 witness list.

14 9. Mr. Cleland and Ms. Colbert were deposed in January 22, 2009. Leonard Gordon,
15 Esq., one of the attorneys of record for Complaint Counsel represented Richard L. Cleland at Mr.
16 Cleland's deposition, and Theodore Zang, Jr. Esq., another attorney of record for Complaint
17 Counsel, represented Lynn J. Colbert at her deposition. I did not speak to either deponent before
18 that date.
19

20 10. Based on the testimony of Mr. Cleland and Ms. Colbert, I believe they are both
21 employees of the Federal Trade Commission.
22

23 11. As counsel for Respondents, I was not able to determine if Mr. Cleland or Ms.
24 Colbert could provide relevant facts in support of Respondents case-in-chief until after they had
25 been deposed on January 22, 2009.
26
27
28

Exhibit

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

_____)	
In the Matter of)	
DANIEL CHAPTER ONE,)	DOCKET NO. 9329
a corporation, and)	
)	
JAMES FEIJO,)	PUBLIC DOCUMENT
individually, and as an officer of)	
Daniel Chapter One.)	
_____)	

NOTICE OF DEPOSITION

Pursuant to the rules applicable to depositions in this matter, please take notice that the Respondents intend to take the deposition of FTC Investigator Lynne J. Colbert before a qualified court reporter at 11:30 a.m. on Wednesday, January 21, 2009 at the FTC office in New York, NY or such other place as to be agreed upon by counsel.

Respectfully submitted,

 /s/
Michael McCormack
26828 Maple Valley Hwy, Suite 242
Maple Valley, WA 98038
Phone: 425-785-9446
Email: m.mccormack@mac.com

 /s/
James S. Turner
Swankin & Turner
1400 16th Street NW, Suite 101
Washington, DC 20036
Phone: 202-462-8800
Fax: 202-265-6564
Email: jim@swankin-turner.com

Attorneys for Respondents

Of Counsel:

Herbert W. Titus

William J. Olson

John S. Miles

Jeremiah L. Morgan

William J. Olson, P.C.

8180 Greensboro Drive, Suite 1070

McLean, VA 22102-3860

Phone: 703-356-5070

Fax: 703-356-5085

Email: wjo@mindspring.com

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

_____)	
In the Matter of)	
DANIEL CHAPTER ONE,)	DOCKET NO. 9329
a corporation, and)	
)	
JAMES FEIJO,)	PUBLIC DOCUMENT
individually, and as an officer of)	
Daniel Chapter One.)	
_____)	

NOTICE OF DEPOSITION PURSUANT TO 16 CFR 3.33(c)

Pursuant to the rules applicable to depositions in this matter, including but not limited to 16 CFR 3.33(c), please take notice that the Respondents intend to take the deposition(s) of such person(s) as the FTC may designate, based on the criteria described below. Such deposition(s) will take place before a qualified court reporter beginning at 2:00 p.m. on Wednesday, January 21, 2009 at the FTC office in New York, NY or such other place as to be agreed upon by counsel.

The FTC is directed to designate witnesses for purposes of this notice who are prepared to give credible, competent and binding testimony on the following matters:

1. The administrative policies and procedures used by the FTC to craft the proposed sanctions against Respondent in this case, including but not limited to the proposed letter identified at Attachment A to the FTC Complaint against Respondents.

2. The FTC policies, procedures, protocols and standards, and/or other means, by which the FTC determines the “overall net impression” created by the challenged advertising, as the FTC uses the quoted phrase in its answers to Respondents’ Interrogatories to the FTC.

3. The FTC’s own data base of studies and information about the challenged products that substantiate your answers to Respondents’ Interrogatory #17.

4. The FTC’s answer to Respondents’ Interrogatory #11, specifically the FTC’s contention that:

- a. Injuries have been caused to consumers;
- b. Injuries are likely to be caused to consumers;
- c. Consumer injury is inherent as a result of the FTC’s allegations in this case;
- d. The quantification of economic harm alleged to have occurred to consumers.

5. The FTC’s findings in this case that meet the standard of proof required under 15 USC 45(n).

Respectfully submitted,

/s/

Michael McCormack
26828 Maple Valley Hwy, Suite 242
Maple Valley, WA 98038
Phone: 425-785-9446
Email: m.mccormack@mac.com

/s/

James S. Turner
Swankin & Turner
1400 16th Street NW, Suite 101
Washington, DC 20036
Phone: 202-462-8800
Fax: 202-265-6564
Email: jim@swankin-turner.com

Attorneys for Respondents

Of Counsel:

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William J. Olson

John S. Miles

Jeremiah L. Morgan

William J. Olson, P.C.

8180 Greensboro Drive, Suite 1070

McLean, VA 22102-3860

Phone: 703-356-5070

Fax: 703-356-5085

Email: wjo@mindspring.com

Exhibit

2

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

COPY

In the Matter of)
)
DANIEL CHAPTER ONE,)
a corporation, and)
) Docket No. 9329
JAMES FEIJO,)
individually, and as an officer of) Public Document
Daniel Chapter One)
_____)

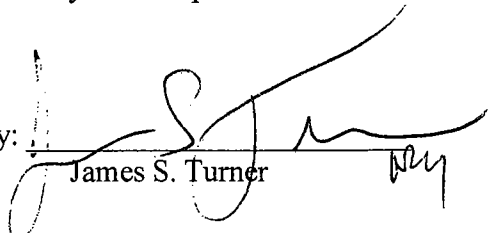
RESPONDENTS' FINAL PROPOSED WITNESS LIST

Pursuant to the Court's Scheduling Order, dated October 28, 2008, Respondents submit their *Final Proposed Witness List*, identifying the individuals likely to testify as part of Respondents' direct case and a description of each witnesses' anticipated testimony.

The information disclosed herein is based upon the information reasonably available to Respondents' Counsel at the current time. Without prejudicing the ability of Respondents' Counsel to supplement this *Final Proposed Witness List* on motion to the Court for good cause shown, Respondents' Counsel offer their *Final Proposed Witness List*.

The order of witnesses on the attached list is not necessarily the order in which the witnesses will be called.

Swankin & Turner
Attorneys for Respondents

By: 
James S. Turner

Dated: March 3, 2009

Respondents' Final Proposed Witness List
In the Matter of Daniel Chapter One
(Docket #9329)

Respondents expect to call the following witnesses:

A. With regard to the operation of the Daniel Chapter One Ministry including the collection and dissemination of information and the management of ministry programs:

1. James Feijo
P.O. Box 223
Portsmouth, R.I. 02871

We anticipate that Mr. Feijo, Overseer of Daniel Chapter One Ministry ("DCO"), will testify about the organization and management of the ministry, the health message the Ministry delivers, the relationship between the health message and supplement products DCO provides its followers and the background of DCO and its activities.

2. Patricia Feijo
P.O. Box 223
Portsmouth, R.I. 02871

We anticipate that Mrs. Feijo, trained in homeopathy, will testify about the nature of the DCO ministry, its basis on religious faith and on the efforts she went through to ensure that statements made about health and the supplements DCO provides its followers complied with legal rules as she understood them.

3. Jedidiah Harrison
14171 176th St.
McAlpin, FL 32062

We anticipate that Mr. Harrison, who manages some activities of DCO, will testify about aspects of the Daniel Chapter One Ministry, how it is organized, how it operates and how it affects him and his family

4. Jill Feijo
33 North Drive
Portsmouth, R.I. 02871

We anticipate that Ms. Feijo, who manages certain DCO tasks, will testify about the operation of DCO with which she is familiar.

5. Dean Mink, D.C.
Mink Chiropractic Center
409 Northside Dr.
Valdosta, GA. 31602-1895

We anticipate that Dr. Mink will testify to the quality, safety, and efficacy of DCO supplements. He will also testify on his role in making these supplements available to clients. He has made DCO supplements available in his Chiropractic Center for many years and has found it to be the best group of supplements he has experienced. He will also testify on his experience of the nature of James Feijo's activities as the Overseer of Daniel Chapter One.

6. Pastor Wayne Robertson
Morningside Baptist Church
Northside Drive at Bemiss Rd.
Valdosta, GA. 31604

We anticipate that Pastor Robertson will testify about the charitable program he has worked out with DCO and the positive impact that DCO has had on hundreds of lives of which he is aware, and that which DCO gives to the Ministry of Morningside Baptist Church. He will also testify on the role of James Feijo as Overseer of Daniel Chapter One.

7. David Bertrand
36 Mary Lane
Tiverton, R.I. 02878

We anticipate that Mr. Bertrand will testify that he has been part of the house church for many years, how the house church approach works and how he worked in the DCO ministry including recounting how DCO programs including its information and products have enhanced his life and health, and the life and health of others.

8. Richard Duffy
P.O. Box 1366
Jerusalem, Israel

We anticipate that Mr. Duffy will testify that the DCO 7 Herb Formula website was the idea and creation of him and his late wife Ruth, to be a source of information. Ruth designed the website as a ministerial offering, and did not receive payment from DCO for it.

We anticipate that Mr. Duffy will also testify that DCO helped support the home church in Israel, and that it paid for the Israeli Jr. Men's Fastpitch Softball Team to travel to Australia to compete in the World Championship the year they qualified and could not otherwise afford to go.

9. Tracy Kulikowski (website contribution quoted in the FTC Complaint).

200 E. Burgess Rd., #8 B
Pensicola, FL 32503

We anticipate that Ms. Kulikowski will testify that she created her DCO web entry because she wanted to share with other DCO followers her belief that DCO 7 Herb Formula, Bio*Mixx, GDU, and BioShark helped save her life from leukemia and tumors on the brain, liver, and behind her heart. We anticipate that she will also testify that she has remained cancer free for over ten years.

B. With regard to their belief about their experience with DCO products:

1. Ernie Jensen
5329 Mum Ct.
Las Vegas, NV 89031

We anticipate that Mr. Jensen will testify that he was diagnosed with incurable non-Hodgkin's lymphoma, and that after a bone marrow transplant failed, DCO products including 7 Herb Formula helped him. His doctor is amazed he survived.

2. Sherman C. "Red" Smith
P.O. Box 770
Cooper Landing, AK 99572

We anticipate that Mr. Smith will testify that DCO 7 Herb Formula has helped him combat prostate cancer. He has taken the product for many years, and has referred to it as "7 Herb Savior."

3. Robert Hicks
P.O. Box 1013
Jackson, AL 36545

We anticipate that Mr. Hicks will testify that his son Cole (age 3) drowned at age 2. After Cole miraculously survived, the prognosis was poor for rehabilitation. Mr. Hicks credits the many DCO products he gives his son to saving Cole's life and helping him to recover.

4. Glenda Shaw
1610 Reynolds Rd. Lot 261
Lakeland, FL 33801

We anticipate that Mrs. Shaw will testify to having had breast cysts. Now, after she used DCO 7 Herb Formula and GDU, the cysts are gone.

5. Laura Phair-Rudin
38 Ridgefield Rd.
Center Port, NY 11721

We anticipate that Mrs. Phair-Rudin will testify that her dog had glioblastoma and the

dog survived well beyond the prognosis from the vet after being given DCO 7 Herb Formula, BioShark, and GDU, that she attributes the extended survival of her dog to use of BioShark and GDU by her dog, and that she desires to share her belief that these products contributed to the significant shrinkage of the dog's brain tumor that is shown in the dog's veterinary medical records.

C. With regard to the FTC activities that identified Daniel Chapter One as the focus of FTC actions, Respondents seek to call the following FTC witnesses who do not appear on Complaint Counsel's witness list (A motion with regard to these witnesses will be submitted separately):

1. Richard Cleland
600 New Jersey Avenue, NW
Washington, DC 20580

We anticipate that Mr. Cleland to testify to the details of the process by which the FTC organized its case against Respondents.

2. Lynn J. Colbert
600 New Jersey Avenue, NW
Washington, DC 20580

We anticipate that Ms.Colbert will testify about the organization, conduct and review of the FTC cancer cure internet "surf" that provided the basis for the allegations made against Daniel Chapter One.

D. Daniel Chapter One Expert Witnesses:

1. James Duke, Ph. D.
8210 Murphy Road
Fulton, MD 20759

We anticipate that Dr. Duke will provide substantiation for health claims about natural products generally and the use of herbs as medicine in the Bible.

2. Sally LaMont, N.D.
Marin Natural Medicine Clinic
131 Camino Alto, Suite F
Mill Valley, CA 94941

We anticipate that Ms. LaMont will provide pre-claim substantiation for Respondents' challenged claims; substantiation for health claims about natural products generally; contradict FTC claims of the safety and effectiveness of conventional cancer treatments, including the inadequacy of the "scientific method" in evaluating the usefulness of nutritional supplements and natural healing.

3. Rustum Roy, Ph. D.
Evan Pugh Professor of the Solid State Emeritus
Professor of Science Technology and Society Emeritus
The Pennsylvania State University
102 MRL
University Park, PA. 16802

Visiting Professor of Medicine
University of Arizona
Distinguished Professor of Materials
Arizona State University

We anticipate that Dr. Rustum Roy will testify on the inappropriateness of relying on and the lack of scientific validity of randomly-controlled trials to evaluate whole person healing; the science of homeopathy; and the scientific validity of traditional testing of herbal medicines.

4. James Dews
Dews Research , LLC
P.O. Box 637
Mineral Wells, TX 76068

We anticipate that Mr. Dews will provide pre-claim substantiation of Respondents' challenged claims.

5. Jay Lehr Dr
6011 Houseman Rd.
Ostrander, OH 43061

We anticipate that Dr. Lehr will provide pre-claim substantiation of Respondents' challenged claims.

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

In the Matter of) Docket No.: 9329
))
DANIEL CHAPTER ONE,))
a corporation, and) **PUBLIC DOCUMENT**
))
JAMES FEIJO,))
individually, and as an officer of))
Daniel Chapter One))

CERTIFICATE OF SERVICE

I certify that on March 3, 2009, I served or caused to be served the following documents on the individuals listed below by electronic mail, followed by Federal Express delivery:

- Respondents' Final Proposed Witness List
- Respondents' List of Exhibits
- Respondents' Deposition Designations

Service to:
Leonard L. Gordon, Esq. (lgordon@ftc.gov)
Theodore Zang, Jr., Esq. (tzang@ftc.gov)
Carole A. Paynter, Esq. (cpaynter@ftc.gov)
David W. Dulabon, Esq. (ddulabon@ftc.gov)
Federal Trade Commission – Northeast Region
One Bowling Green, Suite 318
New York, NY 10004

With courtesy copies to:
Hon. D. Michael Chappell
Federal Trade Commission
Administrative Law Judge

1 600 Pennsylvania Ave, NW, Room H-106
2 Washington, DC 20580
3 Email: oalj@ftc.gov
4



5
6 Martin R. Yerick
7 Swankin & Turner
8 1400 16th Street, NW, Suite 101
9 Washington, DC 20036
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4 **IN THE UNITED STATES OF AMERICA**
5 **BEFORE THE FEDERAL TRADE COMMISSION**
6 **OFFICE OF ADMINISTRATIVE LAW JUDGES**

7 **In the Matter of**) **Docket No.: 9329**
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11 **individually, and as an officer of**)
12 **Daniel Chapter One**)
13 _____)

14 **DECLARATION OF MARTIN R. YERICK IN SUPPORT OF**
15 **RESPONDENTS' MOTION TO ALLOW WITNESSES DURING**
16 **RESPONDENTS' CASE-IN-CHIEF**

17 1. I am an attorney licensed to practice law in the District of Columbia, DC bar #494498.

18 I am an employee of Turner-Lehrfeld, PC, which is a partner of the law firm of Swankin &
19 Turner. Respondents in the above-captioned action have retained Swankin & Turner to represent
20 them in the above-captioned administrative action.

21 2. On March 3, 2009, James S. Turner directed me to contact Theodore Zang, Jr., Esq.,
22 and inquire if Complaint Counsel would oppose Respondents calling Richard J. Cleland and
23 Lynne J. Colbert as witnesses at the hearing of this administrative action. On that same date, Mr.
24 Zang informed me that Complaint Counsel would oppose the calling of those witnesses.

25 I declare under penalty of perjury that the above statement is true.

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28 Dated this 10th day of March, 2009.

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Martin R. Yerick
Swankin & Turner
1400 16th Street, NW, Suite 101
Washington, DC 20036
Phone: 202-462-8800
Fax: 202-265-6564
Email: martin@swankin-turner.com

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4 **IN THE UNITED STATES OF AMERICA**
5 **BEFORE THE FEDERAL TRADE COMMISSION**
6 **OFFICE OF ADMINISTRATIVE LAW JUDGES**

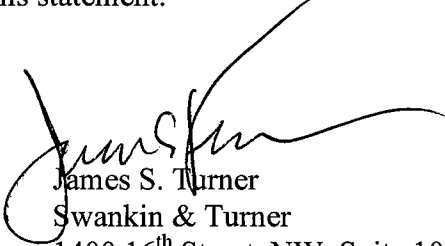
7 **In the Matter of**) **Docket No.: 9329**
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9 **a corporation, and**)
10 **JAMES FEIJO,**) **PUBLIC DOCUMENT**
11 **individually, and as an officer of**)
12 **Daniel Chapter One**)
13 _____)

14 **STATEMENT OF COUNSEL**

15 I certify that at my direction, an attorney working with me as Counsel for Respondents
16 contacted Complaint Counsel in a good faith effort to resolve the issues raised by the attached
17 Motion to Allow Additional Witnesses During Respondents' Case-in-Chief, and that the parties
18 in this action have been unable to reach an agreement on those issues.

19
20 A declaration of Martin R. Yerick documenting his contact with one of the attorneys of
21 record for Complaint Counsel is attached to this statement.

22 Dated this 10th day of March, 2009.

23
24 
25 James S. Turner
26 Swankin & Turner
27 1400 16th Street, NW, Suite 101
28 Washington, DC 20036
Phone: 202-462-8800
Fax: 202-265-6564
Email: martin@swankin-turner.com

1
2 **IN THE UNITED STATES OF AMERICA**
3 **BEFORE THE FEDERAL TRADE COMMISSION**
4 **OFFICE OF ADMINISTRATIVE LAW JUDGES**
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6 **In the Matter of**) **Docket No.: 9329**
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13 **[PROPOSED] ORDER**
14 **GRANTING RESPONDENTS' MOTION TO ALLOW ADDITIONAL**
15 **WITNESSES DURING RESPONDENTS' CASE-IN-CHIEF**

16 On March 10, 2009, counsel for Respondents filed a motion to allow additional witnesses
17 during Respondents' case-in-chief *In the Matter of Daniel Chapter One*, Docket No. 9329. The
18 Court being fully advised, and good cause having been shown,

19 IT IS ORDERED that Respondents' motion be, and is hereby, granted, and that
20 Respondents may call Lynn J. Colbert and Richard L. Cleland as witnesses during Respondents'
21 case-in-chief.
22

23
24 Dated this ___ day of _____, 2009.
25

26 _____
27 D. Michael Chappell
28 Administrative Law Judge

1
2 **IN THE UNITED STATES OF AMERICA**
3 **BEFORE THE FEDERAL TRADE COMMISSION**
4 **OFFICE OF ADMINISTRATIVE LAW JUDGES**

5 **In the Matter of**

6 **DANIEL CHAPTER ONE,**
7 **a corporation, and**

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9 **individually, and as an officer of**
10 **Daniel Chapter One**

) **Docket No.: 9329**
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)

) **PUBLIC DOCUMENT**
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11
12 **CERTIFICATE OF SERVICE**

13
14 I certify that on March 10, 2009, I served or caused to be served the following document
15 on the individuals listed below by electronic mail, followed by Federal Express delivery:

16 Memorandum in Opposition to Complaint Counsel's Motion for Summary Decision
17 Respondents' Motion to Allow Additional Witnesses During Respondents' Case-in-Chief and
18 Argument in Support

19 **Service to:**


20 Donald S. Clark
21 Office of the Secretary
22 Federal Trade Commission
23 600 Pennsylvania Avenue, NW, Room H-135
24 Washington, DC 20580
25 Email: secretary@ftc.gov

26 Leonard L. Gordon, Esq. (lgordon@ftc.gov)
27 Theodore Zang, Jr., Esq. (tzang@ftc.gov)
28 Carole A. Paynter, Esq. (cpaynter@ftc.gov)
David W. Dulabon, Esq. (ddulabon@ftc.gov)
Federal Trade Commission – Northeast Region
One Bowling Green, Suite 318
New York, NY 10004

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Courtesy Copies:

Hon. D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Avenue, NW, Room H-106
Washington, DC 20580
Email: oalj@ftc.gov



Martin R. Yerick
Swankin & Turner
1400 16th Street, NW, Suite 101
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