

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FEDERAL TRADE COMMISSION	)	CASE NO. 518MC54
)	
Petitioner,	)	JUDGE SARA LIOI
	)	Magistrate Judge George J. Limbert
)	
v.)	
)	
FULLY ACCOUNTABLE, LLC)	
)	
Respondent.)	
)	

**FULLY ACCOUNTABLE, LLC’S PETITION TO ENFORCE
PETITION TO QUASH AND LIMIT**

Pursuant to 16 C.F.R. 2.7(d), Respondent, Fully Accountable, LLC (“FA”) petitioned the Federal Trade Commission (“FTC”) to limit or quash the Civil Investigative Demand (“CID”) issued to FA on September 11, 2018 and received by FA on September 13, 2018. FA objects and seeks to quash and limit the CID as being improper and unenforceable for at least two (2) separate reasons: (1) the CID seeks information outside the scope of the FTC’s original investigation; and (2) the CID is overly broad and unduly burdensome. The FTC denied this petition on November 23, 2018 and FA respectfully petitions this Court to issue an order to show cause thereby commence a proceeding to enforce the Petition to Quash and Limit.

The FTC has issued a second Civil Investigative Demand (“CID”) to FA after compliance with the first CID that FA was issued. The original CID that the FTC issued stated that it was *“investigating whether Fully Accountable, its clients, or related entities or individuals have made deceptive or unsubstantiated representations in connection with the marketing of health related products, or have unlawfully charged or participated in the charging of consumers for products without the consumers’ authorization.”* The FTC asked this Court to enforce the CID on or around June 6, 2018. FA has fully complied with the first CID that it was issued by responding to all interrogatories and producing all documentation that it is in possession of.

In response, the FTC has issued a second CID, which FA requests be quashed and limited. For the reasons stated in the attached Memorandum in Support. FA properly petitioned the FTC to Quash and Limit the second CID, but the petitioned was denied by the Commission. This Court should enforce the Petition to Quash and Limit because the FTC is seeking information outside the scope of the original CID and outside the purpose stated in the second CID; and, because the CID is overly broad and unduly burdensome. The attached Memorandum of Support details why this Petition should be enforced and how the denial of the Petition to the FTC was an abuse of authority.

Jurisdiction and Venue

1. This Court has jurisdiction pursuant to 28 U.S.C §§ 1331, 1337 (a), and 1345.
2. Venue is proper in this jurisdiction district under Section 20(e) of the FTC Act, 15 U.S.C § 57b-1(e), because Fully Accountable is found and transacts business here. Venue is also proper under 28 U.S.C § 1391.

The Parties

3. Petitioner, the Federal Trade Commission, is an administrative agency of the United States, organized and existing under the FTC Act, 15 U.S.C §§ 41 et seq.

4. The Commission has statutory authority to address unfair or deceptive acts or practices such as, Section 5(a) of the FTC Act, 15 U.S.C § 45(a), prohibits, and directs the Commission to combat, unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. Section 12 of the FTC Act, 15 U.S.C § 52 further prohibits false advertising for the purpose of inducing, directly or indirectly, the purchase of food, drugs, devices, services, or cosmetics.

5. The Commission has promulgated three ongoing resolutions pertinent to this case authorizing its staff to investigate various potential violations of the FTC Act and to use compulsory process to secure information related to the potential violations. The first resolution, File No. 0023191, authorizes the use of process to investigate whether entities are “directly or indirectly” “misrepresenting the safety of efficacy” of “dietary supplements, foods, drugs, devices, or any other product or services intended to provide a health benefit” on the grounds that such conduct could amount to “unfair or deceptive acts or practices or in making of false advertising... in violation of Section 5 and 12 of the Federal Trade Commission Act, 15 U.S.C §§5 and 52” Pet. Ex. 2 at 21.

6. The second resolution, File No. 9923259, authorizes the use of compulsory process to investigate whether entities are engaging in, among others, “deceptive or unfair practices involving Internet-related goods or services.” If such conduct is taking place. It could violate Section 5 or 12 of the Federal Trade Commission Act, 15 U.S.C §§ 45, 52. Pet. Ex. 2 at 22.

7. The third resolution, File No. 082-3247, authorizes the use of process to determine if entities “ have engaged in or are engaging in deceptive or unfair practices...in connection with making unauthorized charges or debits to consumers’ accounts.” Pet. Ex. 2 at 23 (emphasis added). If such conduct is occurring, it could violate Section 5 of the Federal Trade Commission Act, 15 U.S.C §§ 45, and/or the Electronic Fund Transfer Act, 15 U.S.C § 1693, et seq. Id.

8. Respondent Fully Accountable, LLC, is based in Fairlawn, Ohio. Fully Accountable markets itself as a “Back Office Solution” specializing in providing services to internet marketers. These services include compiling and reporting financial statistics, accounting and bookkeeping, business consulting, and human resources services.

9. Among Fully Accountable’s clients are a group of entities that have marketed online several dietary supplements, including, but not limited to, a supplements called Geniux (and other names) that purportedly reduces cognitive decline and related conditions. The FTC learned that some consumers claimed that the marketers charged them for such products without authorization. For purposes of the CID at issue, there entities are called “Group A.” *See* Pet. **Ex 1**

10. In addition, Fully Accountable itself is closely related to a second group of entities that centered around a company called Leading Health Supplements. These entities also marketed various supplements online, including skin creams, weight loss supplements, and a purported cognitive assistance supplement. As with the Group A Entities, the entities related to Fully Accountable have also been the subject of numerous consumer complaints regarding their marketing practices, including unauthorized charges to consumers’ credit cards. For purposes of the CID at issue, there entities are called “Group B.” *See* Pet. **Ex 1**

The FTC's Investigation and Civil Investigative Demands

1. The FTC issued its first Civil Investigative Demand to Fully Accountable, LLC on or around September 21, 2017. This first CID sought to investigate is "... to determine whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the CID, and related entities and individuals have made or participated in making in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization in violation of Section 5 of the FTC Act, ...".
See Pet. Ex 1
2. The FTC asked this Court to enforce the CID on or around June 6, 2018.
3. Fully Accountable consented to compliance with the CID that the FTC issued on or around August 18, 2018.
4. In a series of rounds of production, Fully Accountable responded to all Interrogatories in the CID and produced all documentation that it was in possession of in response to all Document Requests.
5. Specifically stated in the FTC's Petition to Enforce the CID, it sought the following information:
 - a. Respondent's ownership, leadership, and organization;
 - b. Respondent's relationship with the Group A and Group B Entities, including documents related to contracts, applications, or agreements with these entities;

- c. Accounting records and information for the Group A and Group B Entities, including records and information regarding Geniux product sales, and advertising and research expenses (and sales and advertising expenses for non-Geniux products);
 - d. Records relating to payment processing service provided to the Group A and Group B Entities, including records relating to the entities payment processing activities; and
 - e. Consumer complaints and related communications.
6. In compliance, Fully Accountable has responded and produced responses and documentation regarding each of those items. Specifically, Fully Accountable responded to each Interrogatory in the CID and each Document Specification in the CID and produced the relevant documentation for each of those Document Specifications.
7. On or around September 11, 2018, the FTC issued a second CID to Fully Accountable. *See Pet. Ex 2.*
8. This second CID seeks to investigate "...whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the CID, and related entities and individuals have made or participated in making in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization in violation of Section 5 of the FTC Act, ...".

9. On or around September 11, 2018, the FTC issued a CID to Sarah Scava, a CID in the Matter of Fully Accountable, LLC as a witness to the investigation. *See* Pet. **Ex 3**.
10. Fully Accountable filed a Petition to Limit or Quash the CID pursuant to 16 C.F.T 2.7(d) on or around October 3, 2018 in compliance with the statute. *See* Pet. **Ex 4**.
11. Sarah Scava filed a Petition to Limit or Quash the CID pursuant to 16 C.F.T 2.7(d) on or around October 3, 2018 in compliance with the statute. *See* Pet. **Ex 5**.
12. On or around November 23, 2018, the FTC issued an Order denying the Petition to Quash for both Fully Accountable, LLC and Sarah Scava. *See* Pet. **Ex 6**.
13. The CID issued to Fully Accountable, LLC seeks irrelevant information from FA that is outside the scope of the investigation and the CID is unduly burdensome, unreasonable, and in some instance duplicative of the previous CID, and to enforce it is an overreach of the Federal Trade Commission authority.
14. The CID issued to Sarah Scava seeks information that could be answered through interrogatories and not require oral testimony as Sarah Scava is a part of neither Elevated Health, LLC or Fully Accountable. To require compliance with oral testimony is unduly burdensome and not reasonably necessary.

Prayer for Relief

WHEREFORE, Fully Accountable, LLC respectfully petitions this Court and prays for:

- a. A prompt determination of this matter and entry of an order:
 - (i) Enforcing Fully Accountable, LLC's Petition to Quash and Limit;
 - (ii) Granting such other and further relief as this Court deems just and proper.

Respectfully Submitted,



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Dated: November 28, 2018.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

FEDERAL TRADE COMMISSION	)	CASE NO. 518MC54
)	
Petitioner,	)	JUDGE SARA LIOI
	)	Magistrate Judge George J. Limbert
)	
v.)	
)	
FULLY ACCOUNTABLE, LLC)	
)	
Respondent.)	
)	

**FULLY ACCOUNTABLE, LLC'S MEMORANDUM
OF POINTS AND AUTHORITIES IN SUPPORT OF PETITION TO ENFORCE
PETITION TO QUASH AND LIMIT**

Fully Accountable, LLC brought this proceeding to enforce a Petition to Quash and Limit a Civil Investigative Demand ("CID") that it filed with the Federal Trade Commission and was unfairly denied by the Federal Trade Commission by overreaching its authority. The CID that was issued was the second CID issued as part of an investigation "... to determine whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the CID, and related entities and individuals have made or participated in making in any respect, false, misleading, or

unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization in violation of Section 5 of the FTC Act, ...”.

Fully Accountable has already fully complied with a CID that was investigating this exact issue with regard to the same parties. As part of that compliance, Fully Accountable responded to all Interrogatories and Document Specifications and produced over 500 pages of documentation relating to those Document Specifications. The Federal Trade Commission issued a second CID to Fully Accountable investigating the same issue through Oral Testimony on broad topics that are either: (1) not reasonably relevant to the investigation and overreaching which broadens the scope of the investigation, (2) the oral testimony is burdensome, unreasonable, and in some instance duplicative.

The Federal Trade Commission has exploited its authority under 16 CFR 2.10 to enforce the CID and deny a petition to quash and limit. First, the denial contains significant falsities and misrepresentations that are factually inaccurate. Secondly, the CID at issue broadens the scope of the investigation and seeks information that is not relevant to the stated purpose. The Federal Trade Commission has attempted to overcome this by stating that the boundary of relevant information may be broadly defined by the agency if the information is “relevant to the investigation.” *See Ex 6* p4. Moreover, the Federal Trade Commission is causing an undue burden on a small business by requiring oral testimony and repeated responding to the same questions. Lastly, the denial of the Sarah Scava CID based on the theory that the Petition to Limit or Quash

is not available, is procedurally incorrect and they argument provides multiple inconsistencies and factual misrepresentations.

Legal Standard

The Federal Trade Commission has been granted the authority to investigate practices that is believes may constitute deceptive or unfair trade practices under 15U.S.C 45(a). While this statue has granted the FTC this authority, its subpoena power under the statue is not limitless.¹ Limiting the powers of the FTC is especially necessary where, as here, the FTC is pursuing an unlimited inquiry where there is no limit on the scope of the investigation and it continues to issue new CID's to expand its search.

Congress has provided the FTC with the authority to conduct reasonable investigations using investigatory tools such as subpoena's and CID's. This authority though, does not grant unlimited investigation authority and the federal courts are used as a safeguard against agency abuse.² The federal courts serve as an independent reviewing authority with "the power to condition enforcement upon observance to [a party's] valid interests."³ Congress has continually denied to confer upon administrative agencies their own subpoena enforcement power. The reason they have not conferred this authority to the administrative agencies and kept the enforcement power with the federal courts is to "ensure that targets of investigations are accorded due process" and because federal courts will not act as rubber stamps on FTC CID's.⁴

The United States Supreme Court established the recognized standard for whether an administrative agency's subpoena should be enforced in *U.S. v Morton Salt Co.*⁵ In *Morton Salt*,

¹ "A subpoena from the FTC is not self-enforcing." *Wearly v. FTC* 616 F.2d 662,665 (3d Cir. 1980).

² *See, e.g., Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

³ *Wearly*, 616 F.2d at 655

⁴ Sean Doherty, *Commodity Futures Tradition Common v Collins: Is the Rationale Sound for Establishing an Exception to Subpoena Law for Tax Returns?*, 7 DePaul Bus. L.J. 365, 376 (1995).

⁵ 338 US 632,652 (195).

the Supreme Court recognized that “a governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power.”⁶ The Supreme Court instructed that an agency’s subpoena, like the CID at issue here, should not be enforced if it demands information that is (1) not “within the authority of the agency”; (2) “too indefinite”; or (3) not “reasonably relevant to the inquiry.”⁷

Additionally, in *Morton Salt*, the Supreme Court recognized that if the corporation had objected and presented evidence concerning the excessive scope or breadth of the investigation, like FA is here, the corporation “could have obtained any reasonable modification necessary.”⁸

In the application of the *Morton Salt* standard, Courts have consistently held that an administrative subpoena and other investigative demands must be “reasonable.”⁹ We see this application in *FTC v Texaco*, where the court found that the “disclosure sought must always be reasonable.” When the federal court evaluates the disclosure, the court must consider whether an agency’s demand is unduly burdensome.¹⁰

We further see this consideration of unduly burdensome in *SEC v. Arthur Young & Co.*, where the Court recognized that “the gist of the protection is in the requirement... that the disclosures sought shall not be unreasonable. Correspondingly, the need for moderation in the subpoena’s call is a matter of reasonableness.”¹¹ A CID that is “unduly burdensome or unreasonably broad” fails this test.¹² As such, the time, expense, and whether compliance threatens to unduly disrupt or

⁶ *Morton*, 338 US at 652.

⁷ *Morton*, 338 US at 62.

⁸ *Morton*, 338 US at 654

⁹ See e.g., *United States v. Constr. Prods. Research, Inc.*, 73 F.3d 464, 471 (2d Cir. 1966) (“the disclosure sought must always be reasonable”); *Texaco*, 555 F.2d at 881 (“the disclosure sought shall not be unreasonable”).

¹⁰ *FTC v Texaco, Inc.*, 555 F.2d 862,882 (DC Cir. 1977)

¹¹ *Arthur Young & Co.*, 584 F.2d at 1030

¹² *Texaco*, 555 F.2d at 882

seriously hinder normal business operations may be raised by a party challenging a civil investigative demand.¹³

Argument

For the reasons stated in the following points, Fully Accountable is entitled to judicial enforcement of the Petition to Quash and Limit for Fully Accountable and Elevated Health/Sarah Scava.

A. The CID improperly seeks irrelevant information from FA that is outside the scope of the FTC's investigation and information that is overly broad with no limit.

The test for the relevancy of an administrative subpoena is “whether the information sought is ‘reasonably relevant’ to the agency’s inquiry, as we see in *Morton*.¹⁴ The CID at issue, must “not [be] so overbroad as to reach into areas that are irrelevant or immaterial... [and] the test is relevance to the specific purpose.”¹⁵ Accordingly, the CID should be limited or quashed because it demands Oral Testimony from FA that is not reasonably relevant to the FTC’s investigation.

The Commission denied the Petition to Quash and Limit based on the theory that a “CID request need not be limited to that information necessary to prove specific charges;” and that it may call for documentation and information that are “relevant to the investigation.” *See Ex 6*. P4. Using this standard, the information sought in the second CID issued to Fully Accountable should be quashed because this information sought is not relevant to the investigation.

First, the investigation is seeking to “... determine whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the CID, and related entities and individuals

¹³ *Texaco*, 555 F.2d at 882-83

¹⁴ *FTC v. Anderson*, 631 F.2d 741, 745-46 (D.C. Cir. 1979).

¹⁵ *Arthur Young and Co.*, 584 F.2d at 1028; 1030.

have made or participated in making in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization in violation of Section 5 of the FTC Act, ...". Elevated Health, LLC nor Sarah Scava are parties included in either the Group A Entities, the Group B Entities, or Fully Accountable. The suggestion that because Sarah Scava worked for Fully Accountable at some point in time and that because Elevated Health is connected to Sarah Scava means it is within the scope of the investigation to require oral testimony on these two (2) broad topics is a massive overreach of authority and misapplication of 15 U.S.C 45(a). This would mean that the FTC has the ability to issue a CID to Fully Accountable every time that it wishes to know Fully Accountable's relationship with various parties. This is not a permissible application of the statute.

Secondly, the investigation is not investigating the business practices of Fully Accountable with regard to the service that it provides to its clients. Fully Accountable has stated in the previous CID all the responses to the broad topics that are listed in Investigative Hearing Topics 3 – 5. To dive further in to the business practices on how we store client information, destruction policies, etc is not reasonably relevant to an investigation on clients that have not been clients of Fully Accountable for two (2) plus years, most of which are no longer in business. There are clear policies that have been defined and given to the Federal Trade Commission. Allowing the investigation of these topics expands the scope of the investigation and creates an overbroad reach into topics that are not reasonably relevant to the investigation.

The Commission denied this point stating that “FTC staff must be allowed latitude in taking steps to explore relevant topics by issuing supplemental process and taking testimony..” *See Ex 6* p4. This is in direct contradiction of *Arthur*, where the court found the CID at issue, must “not [be] so overbroad as to reach into areas that are irrelevant or immaterial... [and] the test is relevance to the specific purpose.”¹⁶ The topics listed are both overbroad and indefinite allowing the FTC to question on topics and not specifics as well as reached in to areas that are immaterial and irrelevant. The FTC is wanting to take “latitude” and state that the investigation does not have to be for a specific charge, but, the FTC is investigating if Fully Accountable violated specific provisions of the FTC Act. These broad topic inquiries do not assist in or provide any relevant testimony in determining if Fully Accountable and Group A/B Entities violated those Sections of the FTC Acts. Accordingly, these inquiries are not reasonably relevant to the investigation and as they are written are overbroad and indefinite in nature.

Lastly, at no point in time from the time of the last production to receiving the second CID issued, did Fully Accountable receive notice from the FTC on what they are claiming are “deficiencies” in the CID responses. To date, Fully Accountable is not aware of any deficiencies, but rather is now being questioned on more topics with no explanation on how this relates to the investigation. Fully Accountable responded to each interrogatory and document specification and produced over 500 pages in response to the first CID. The majority of the clients in the Group A and Group B entities have not been clients for 2 or more years. Several of the companies in the Group A and Group B Entities were never clients of Fully Accountable. If there were deficiencies in the production, the Federal Trade Commission should have raised those to Fully Accountable in an effort to resolve the matter, not issue a second CID creating a sweeping investigation. Fully

¹⁶ *Arthur Young and Co.*, 584 F.2d at 1028; 1030.

Accountable cannot produce documentation on services that it never provided. Being dissatisfied with the production does not permit a sweeping investigation that is overly broad and that investigates areas that are irrelevant or immaterial.

This Court must intervene here and find that the Federal Trade Commission's second CID to Fully Accountable calls for irrelevant testimony and is calling for testimony that is overly broad. By applying the Morton Salt standard, this Court must find that an investigative demand must be "reasonable"¹⁷ and that the CID here is not reasonably relevant. Further, by applying *FTC v Texaco*, where the court found that the "disclosure sought must always be reasonable" this second CID fails this standard.

B. The Investigational Hearing Testimony is unduly burdensome, unreasonable, and duplicative.

While Congress has provided the FTC with the authority to conduct reasonable investigations through the use of subpoena's and CID's, as the Court found in *FTC v Texaco*, the "disclosure sought must always be reasonable."¹⁸ Further, the Court in *SEC v Arthur Young*, "the gist of the protection is the requirement...that the disclosures sought shall not be unreasonable."¹⁹ Correspondingly, the need for moderation in the subpoena's call is a matter of reasonableness."²⁰ A CID that is "unduly burdensome or unreasonably broad fails this test."²¹

It is unduly burdensome and completely unreasonable to request FA to provide Oral Testimony on Interrogatories and Document Specifications that it has already answered in full. To

¹⁷ See e.g., *United States v. Constr. Prods. Research, Inc.*, 73 F.3d 464, 471 (2d Cir. 1966) ("the disclosure sought must always be reasonable"); *Texaco*, 555 F.2d at 881 ("the disclosure sought shall not be unreasonable").

¹⁸ *Texaco*, 555 F.2d at 881

¹⁹ *Arthur Young & Co.*, 584 F.2d at 1030

²⁰ *Arthur Young & Co.*, 584 F.2d at 1030

²¹ *Texaco*, 555 F.2d at 882

continually require FA to respond to the same inquiries, repeatedly, in different formats such as written and then oral, is unduly burdensome for a company. FA is a small business that requires its principals to participate in the day to day activities of the business and the repeated request of the FTC to respond to the same inquiries, which have been responded to in full, forces FA to pull its principals off their day to day work and substantially burdens the business.

It is absolutely unreasonable to ask duplicative questions, that have been responded to in full, in various methods to somehow achieve a different response. Further, the way that the questions have been written above are overly broad and it is unreasonable to ask FA to prepare for questioning that has no limit. It is an abuse of power to have open ended questions in an investigation that has a specific purpose; especially when the inquiries have already been responded to. The authority of the FTC to continually issue CID's to FA with open ended questions on responses already provided in full is an abuse of the agency's power to investigate. Congress has repeatedly limited this power to "ensure that targets of investigations are accorded accorded due process."²² Accordingly, the CID should be limited or quashed because it demands Oral Testimony from FA that is unduly burdensome and unreasonably broad.

The Federal Trade Commission denied the Petition to Quash and Limit stating that "production may leave questions unanswered." *See Ex 6* p5. If this is true, then the FTC should have produced those questions to Fully Accountable for Fully Accountable to provide answers to. To require Oral Testimony on topics that have been shown to be irrelevant is unreasonable. It is unduly burdensome to require Fully Accountable, a small business built upon producers who each generate revenue through client engagements to engage in Oral Testimony when such information

²² Sean Doherty, *Commodity Futures Tradition Common v Collins: Is the Rationale Sound for Establishing an Exception to Subpoena Law for Tax Returns?*, 7 DePaul Bus. L.J. 365, 376 (1995).

was already obtained during the compliance of the previous CID. Further, it is just as burdensome to require Fully Accountable to respond to the same questions in various formats repeatedly. Lastly, the Commission states that the Oral Testimony is creating a burden on the Company *See. Ex 6* p5. Yet, in the denial it finds that “testimony provides a crucial opportunity for Commission staff to obtain information and test a Company’s responses in real time... the value to the FTC outweighs the burden it is imposing.” Justice cannot be served if an agency adjudicates its own decisions and is able to find that while they are imposing the burden, because it is in their best interests, the burden is overlooked. This is where the Court must step in to prevent an unlimited investigational authority to the agency. The authority that has been conferred to the Federal Trade Commission is not unlimited and federal courts are used as a safeguard against agency abuse.²³ The federal courts serve as an independent reviewing authority with “the power to condition enforcement upon observance to [a party’s] valid interests.”²⁴ Congress has continually denied to confer upon administrative agencies their own subpoena enforcement power. The reason they have not conferred this authority to the administrative agencies and kept the enforcement power with the federal courts is to “ensure that targets of investigations are accorded due process” and because federal courts will not act as rubber stamps on FTC CID’s.²⁵ Finding in their best interests and not based on the facts is agency abuse of its power and because of that, the Petition to Quash and Limit should be enforced.

C. As a Third Party, Sarah Scava is entitled to File a petition to Quash and Limit a CID.

²³ *See, e.g., Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

²⁴ *Wearly*, 616 F.2d at 655

²⁵ Sean Doherty, *Commodity Futures Tradition Common v Collins: Is the Rationale Sound for Establishing an Exception to Subpoena Law for Tax Returns?*, 7 DePaul Bus. L.J. 365, 376 (1995).

Sarah Scava does in fact have the right to file a Petition to Quash and Limit. The instructions for filing the Petition to Quash and Limit were included in the CID that was produced and served upon her. *See Ex. 3.*

The opinion denying the Petition contains several inconsistencies and factual misrepresentations. First, Attorney Rachel Scava did identify herself as the Attorney for Sarah Scava. There were three (3) meet and confers between Harris Senturia and Adrienne Jenkins as the FTC representatives. Please see the attached **Ex 7** which is a series of email chains that detail the various calls, days, and times. Next, the Commission attempts to claim that there was misconduct of some nature and that the proper procedural methods were not taken, but this is factually inaccurate, and in fact they are the ones who have misrepresented the “procedural requirements seriously” *See Ex 6* p6. The Petition to Quash does include Sarah Scava and Elevated Health because Elevated Health was Sarah Scava’s company up and through December 2017 and because service was received at Elevated’s last known address, not Sarah Scava’s address. Each point in the Petition to Quash is detailed for both Sarah Scava individually and for Elevated Health showing how the CID is unreasonable for both parties and unduly burdensome on Sarah Scava.

Lastly, the Petition that was filed seeks to have Sarah Scava’s responses limited to written responses as she is 1.) employed by another company full time and it is unduly burdensome to require her to take time off her job for this investigation that has already been shown is too sweeping and Sarah Scava nor Elevated Health included in the investigation; 2.) she has not been involved with Fully Accountable since January 2018; and 3.) she has not been involved with Elevated Health since December 2017. More importantly, the topics that the Commission is requiring Oral Testimony on are able to be given through written responses. As they have stated, this party is only a witness to the matter and thus written responses would be proper as to unduly

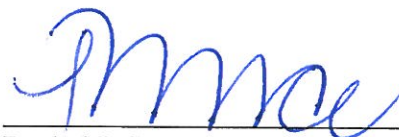
burden a non-party (one of which is not reasonably relevant and outside the scope of the investigation) is an overreach of authority by the agency. In *Morton Salt*, the Supreme Court recognized that if the corporation had objected and presented evidence concerning the excessive scope or breadth of the investigation, like Elevated Health/Sarah Scava have, the corporation “could have obtained any reasonable modification necessary.”²⁶ A reasonable modification here would have been written responses to the questions asked in the CID.

For these reasons, the Elevated Health/Sarah Scava CID should be Quashed entirely because it is outside the scope. Should it be found that it is within the scope of the investigation, the written responses are more appropriate.

Conclusion

For the reasons stated, the Court should grant the Fully Accountable and Sarah Scava/Elevated Health Petitions to Quash and Limit and enter an Order enforcing the both Petitions.

Respectfully Submitted,



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Attorney for Respondent Fully Accountable, LLC

Dated: November 28, 2018.

²⁶ *Morton*, 338 US at 654

EX 1



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

SEP 22 2017

Via Federal Express

Christopher Giorgio
President
Fully Accountable LLC
2680 West Market Street
Fairlawn, OH 44333

FTC Matter No. 1723195

Dear Mr. Giorgio:

The Federal Trade Commission ("FTC") has issued the attached Civil Investigative Demand ("CID") asking for information as part of a non-public investigation. Our purpose is to determine whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the attached CID, and related entities and individuals, have made or participated in making, in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization, in violation of Section 5 of the FTC Act, and whether Commission action to obtain monetary relief would be in the public interest. Please read the attached documents carefully. Here are a few important points we would like to highlight:

1. **Contact FTC counsel, Harris Senturia (216-263-3420; hsenturia@ftc.gov) as soon as possible to schedule an initial meeting to be held within 14 days.** You can meet in person or by phone to discuss any questions you have, including whether there are changes to how you comply with the CID that would reduce your cost or burden while still giving the FTC the information it needs. Please read the attached documents for more information about that meeting.
2. **You must immediately stop any routine procedures for electronic or paper document destruction, and you must preserve all paper or electronic documents** that are in any way relevant to this investigation, even if you believe the documents are protected from discovery by privilege or some other reason.
3. **The FTC will use information you provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces.** We will not disclose the information under the Freedom of Information Act, 5 U.S.C. § 552. We

may disclose the information in response to a valid request from Congress, or other civil or criminal federal, state, local, or foreign law enforcement agencies for their official law enforcement purposes. The FTC or other agencies may use and disclose your response in any federal, state, or foreign civil or criminal proceeding, or if required to do so by law. However, we will not publicly disclose your information without giving you prior notice.

4. **Please read the attached documents closely.** They contain important information about how you should provide your response.

Please contact FTC counsel as soon as possible to set up an initial meeting. We appreciate your cooperation.

Very truly yours,

A handwritten signature in black ink that reads "Donald S. Clark". The signature is written in a cursive style with a long horizontal line extending to the right.

Donald S. Clark
Secretary of the Commission



United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

Fully Accountable, LLC
2680 West Market Street
Fairlawn, OH 44333

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

LOCATION OF HEARING

YOUR APPEARANCE WILL BE BEFORE

DATE AND TIME OF HEARING OR DEPOSITION

- You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.
- You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.
- You are required to produce the tangible things described on the attached schedule. Produce such things to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS, ANSWERS TO INTERROGATORIES, REPORTS, AND/OR TANGIBLE THINGS MUST BE AVAILABLE

OCT 23 2017

3. SUBJECT OF INVESTIGATION

See attached Schedule and attached resolutions.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN

Custodian: Samuel Baker, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114

Deputy Custodian: Jon Miller Steiger, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114

5. COMMISSION COUNSEL

Harris A. Senturia
Federal Trade Commission, 1111 Superior Avenue, Suite 200,
Cleveland, OH 44114
(216) 263-3420

DATE ISSUED

9/21/17

COMMISSIONER'S SIGNATURE

Harris A. Senturia

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCRulesofPractice>. Paper copies are available upon request.

**FEDERAL TRADE COMMISSION (“FTC”)
CIVIL INVESTIGATIVE DEMAND (“CID”) SCHEDULE
FTC File No. 1723195**

Meet and Confer: You must contact **FTC counsel, Harris Senturia (216-263-3420; hsenturia@ftc.gov)**, as soon as possible to schedule a meeting (telephonic or in person) to be held within fourteen (14) days after you receive this CID. At the meeting, you must discuss with FTC counsel any questions you have regarding this CID or any possible CID modifications that could reduce your cost, burden, or response time yet still provide the FTC with the information it needs to pursue its investigation. **FTC counsel will request that you give priority to responses to interrogatories and document requests pertaining to the Geniux Products, as defined herein.** The meeting also will address how to assert any claims of protected status (e.g., privilege, work-product, etc.) and the production of electronically stored information. You must make available at the meeting personnel knowledgeable about your information or records management systems, your systems for electronically stored information, custodians likely to have information responsive to this CID, and any other issues relevant to compliance with this CID.

Document Retention: You must retain all documentary materials used in preparing responses to this CID. The FTC may require the submission of additional documents later during this investigation. **Accordingly, you must suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents** that are in any way relevant to this investigation, even if you believe those documents are protected from discovery. *See* 15 U.S.C. § 50; *see also* 18 U.S.C. §§ 1505, 1519.

Sharing of Information: The FTC will use information you provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces. We will not disclose such information under the Freedom of Information Act, 5 U.S.C. § 552. We also will not disclose such information, except as allowed under the FTC Act (15 U.S.C. § 57b-2), the Commission’s Rules of Practice (16 C.F.R. §§ 4.10 & 4.11), or if required by a legal obligation. Under the FTC Act, we may provide your information in response to a request from Congress or a proper request from another law enforcement agency. However, we will not publicly disclose such information without giving you prior notice.

Manner of Production: You may produce documentary material or tangible things by making them available for inspection and copying at your principal place of business. Alternatively, you may send all responsive documents and tangible things to **Mr. Samuel Baker, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114**. If you are sending the materials, use a courier service such as Federal Express or UPS because heightened security measures delay postal delivery to the FTC. You must inform FTC counsel by email or telephone of how you intend to produce materials responsive to this CID at least five days before the return date.

Certification of Compliance: You or any person with knowledge of the facts and circumstances relating to the responses to this CID must certify that such responses are complete

by completing the "Form of Certificate of Compliance" set forth on the back of the CID form or by signing a declaration under penalty of perjury pursuant to 28 U.S.C. § 1746.

Certification of Records of Regularly Conducted Activity: Attached is a Certification of Records of Regularly Conducted Activity. Please execute and return this Certification with your response. Completing this certification may reduce the need to subpoena you to testify at future proceedings to establish the admissibility of documents produced in response to this CID.

Definitions and Instructions: Please review carefully the Definitions and Instructions that appear after the Specifications and provide important information regarding compliance with this CID.

SUBJECT OF INVESTIGATION

Whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined herein, and related entities and individuals, have made or participated in making, in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization, in violation of Section 5 of the FTC Act, and whether Commission action to obtain monetary relief would be in the public interest. See also attached resolutions.

SPECIFICATIONS

Applicable Time Period: Unless otherwise directed, the applicable time period for the requests set forth below is from **July 1, 2014, until the date of full and complete compliance with this CID.**

INTERROGATORIES

- S-1. State the Company's full legal name, principal address, telephone number, the date and state of incorporation or licensing, and all other names under which the Company has done business.
- S-2. Identify all officers, directors, members, principals, and owners of the Company and all shareholders with five percent or more ownership of the Company, stating each shareholder's percentage of ownership, since the Company was formed.
- S-3. Provide the names, addresses, officers, directors, owners, and states of incorporation of all of the Company's wholly or partially owned subsidiaries, parent companies, unincorporated divisions, joint ventures, partnerships, operations under assumed names, affiliates, and predecessor companies, and describe the relationship of each to the Company.
- S-4. Describe in detail each of the services the Company provided to the Group A Entities in connection with the Geniux Products. For each category of services identified (e.g., accounting, payment processing, business advising, advertising, etc.), provide:

- a. The dates during which such services were provided;
- b. The Group A Entity(ies) to which such services were provided; and
- c. The names, telephone numbers, and e-mail addresses of all current or former employees of the Company who performed such services.

S-5. With respect to each Geniux Product sold separately, state:

- a. The total amount of gross annual sales and net annual sales in terms of units and dollars, during 2014, 2015, 2016, and 2017 to date;
- b. The total dollar amount spent on advertising, marketing, or other promotion, including commissions or any other payments to ad servers, affiliate advertisers, and affiliate networks, during 2014, 2015, 2016, and 2017 to date; and
- c. The total dollar amount spent on research and development during 2014, 2015, 2016, and 2017 to date.

If you maintain financial data on a fiscal schedule that differs from the calendar year schedule, provide this data according to those fiscal years and identify the dates of the fiscal year.

S-6. Describe in detail each of the services the Company provided to the Group A Entities in connection with the Group A Other Consumer Products. For each category of services identified (e.g., accounting, payment processing, business advising, advertising, etc.), provide:

- a. The dates during which such services were provided;
- b. The Group A Entity(ies) to which such services were provided; and
- c. The names, telephone numbers, and e-mail addresses of all current or former employees of the Company who performed such services.

S-7. With respect to each Group A Other Consumer Product sold separately, state:

- a. The total amount of gross annual sales and net annual sales in terms of units and dollars, during 2014, 2015, 2016, and 2017 to date; and
- b. The total dollar amount spent on advertising, marketing, or other promotion, including commissions or any other payments to ad servers, affiliate advertisers, and affiliate networks, during 2014, 2015, 2016, and 2017 to date.

If you maintain financial data on a fiscal schedule that differs from the calendar year schedule, provide this data according to those fiscal years and identify the dates of the fiscal year.

S-8. Describe in detail each of the services the Company provided to the Group B Entities in connection with the Group B Consumer Products. For each category of services

D-3. “**Identify**” or “**the identity of**” requires identification of (a) natural persons by name, title, present business affiliation, present business address, telephone number, and email address or, if a present business affiliation or present business address is not known, the last known business and home addresses; and (b) businesses or other organizations by name, address, and the identities of your contact persons at the business or organization.

D-4. “**Advertisement**” or “**Advertising**” or “**Ad**” means any written or verbal statement, illustration, or depiction that promotes the sale of a good or service or is designed to increase consumer interest in a brand, good, or service. Advertising media includes, but is not limited to: packaging and labeling; promotional materials; print; television; radio; and Internet, social media, and other digital content.

D-5. “**Ad server**” shall mean any person or entity that formerly or currently stores, maintains, and serves online advertisements (i.e., places advertisements on websites or other digital platforms) on behalf of another. The ad server may use an automated bidding system and may provide additional services, such as reporting regarding the dissemination and performance of particular advertisements.

D-6. “**Affiliate advertiser**” or “**publisher**” shall mean any entity or person that formerly or currently advertises, promotes, or otherwise markets the products, services, or programs of any of the Geniux Entities, for consideration, either by direct arrangement with any Geniux Entity or through an affiliate network, and in consideration for which any Geniux Entity or affiliate network pays or promises to pay pursuant to agreed-upon means, which include: (1) a share of any Geniux Entity’s revenues that derive from sales to consumers who viewed or clicked on an affiliate advertiser’s advertisements for any Geniux Entity’s products, services, or programs; and (2) fees for specific consumer actions, such as visiting any Geniux Entity’s website, purchasing a product from any Geniux Entity, or signing up for a trial offer promoted by any Geniux Entity.

D-7. “**Affiliate network**” shall mean any entity or person that provides or provided services connecting any advertiser or merchant (i.e., sellers of products, services or programs), including any of the Geniux Entities, and affiliate advertisers and that compensates or arranges for the compensation of affiliate advertisers based on agreed-upon means, which include: (1) a share of any Geniux Entity’s revenues that derive from sales to consumers who viewed or clicked on an affiliate advertiser’s advertisements for any Geniux Entity’s products, services, or programs; and (2) fees for specific consumer actions, such as visiting any Geniux Entity’s website, purchasing a product from any Geniux Entity, or signing up for a trial offer promoted by any Geniux Entity.

D-8. “**Chargeback**” means a transaction that a card issuer returns as a financial liability to an acquiring or merchant bank, usually because of a disputed transaction. The acquirer may then return or “charge back” the transaction to the merchant.

D-9. “**Group A Entity(ies)**” shall mean any or all of the following: **Innovated Health LLC, Global Community Innovations LLC, Premium Health Supplies, LLC, Buddha My Bread LLC, Innovated Fulfillment LLC, Vista Media LLC, Emerging Nutrition Inc., ShipSmart LLC, Guerra Company LLC, ASH Abbas LLC, and Your Healthy Lifestyle LLC**, their wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, successors, and affiliates, and all directors, officers, members, employees,

agents, consultants, and other persons working for or on behalf of the foregoing, including, but not limited to, Fred Guerra, Lanty Gray, Rafat Abbas, Ashraf Abbas, Robby Salaheddine, and Rachel Scava.

D-10. “**Group B Entity(ies)**” shall mean any or all of the following: **Leading Health Supplements, LLC (also dba Health Supplements), AMLK Holdings, LLC, General Health Supplies, LLC, Natural Health Supplies, LLC, BHCO Holdings, LLC, and Consumer’s Choice Health, LLC**, their wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, successors, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

D-11. “**Geniux Product(s)**” shall mean any products marketed or offered for sale by any of the Group A Entities that purport to prevent or mitigate cognitive decline and related diseases or conditions, including, but not limited to, Geniux, EVO, Xcel, and Ion-Z.

D-12. “**Group A Other Consumer Product(s)**” shall mean any products marketed or offered for sale to consumers by any of the Group A Entities, other than the Geniux Products. Group A Other Consumer Product(s) includes, but is not limited to, products marketed as containing Forskolin or Garcinia Cambogia.

D-13. “**Group B Consumer Product(s)**” shall mean any products marketed or offered for sale to consumers by any of the Group B Entities. Group B Consumer Product(s) includes, but is not limited to, products marketed as Pura Bella, Allure Beauty, Hydra Eyes Cream, Phyto-Renew, or Cognimaxx, and products marketed as containing Forskolin or Garcinia Cambogia.

D-14. “**Independent Sales Organization**” or “**ISO**” means any person or entity that markets payment processing services, refers merchants for payment processing services, or otherwise assists merchants in obtaining payment processing services.

D-15. “**Marketing technology provider**” shall mean any entity or person that provides or provided products or services to track or analyze digital marketing results or return on investment (ROI) relating to any Geniux Product, Group A Other Consumer Product, or Group B Consumer Product, including, but not limited to: (1) collecting and analyzing data about customer traffic, affiliate advertiser or network attribution, purchases, or payments; (2) measuring cross-channel cost and performance; or (3) generating reports regarding digital marketing tracking or results.

D-16. “**Payment Processing**” means the performance of any function of collecting, formatting, charging, transmitting, or processing, whether directly or indirectly, a cardholder’s payment for goods or services. Payment processing includes: providing a merchant, financial institution, person, or entity, directly or indirectly, with the access or means to charge or debit a cardholder’s account; monitoring, tracking, and reconciling payments, returns, refunds, and chargebacks; providing refund services to a merchant; and disbursing funds and receipts to merchants.

D-17. “**Publisher website**” shall mean any entity or person that publishes affiliate advertisers’ advertisements on its website or other digital platform, in exchange for compensation.

INSTRUCTIONS

I-1. **Petitions to Limit or Quash:** You must file any petition to limit or quash this CID with the Secretary of the FTC no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition must set forth all assertions of protected status or other factual and legal objections to the CID and comply with the requirements set forth in 16 C.F.R. § 2.10(a)(1) – (2). **The FTC will not consider petitions to quash or limit if you have not previously met and conferred with FTC staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process.** 16 C.F.R. § 2.7(k); *see also* § 2.11(b). **If you file a petition to limit or quash, you must still timely respond to all requests that you do not seek to modify or set aside in your petition.** 15 U.S.C. § 57b-1(f); 16 C.F.R. § 2.10(b).

I-2. **Withholding Requested Material / Privilege Claims:** If you withhold from production any material responsive to this CID based on a claim of privilege, work product protection, statutory exemption, or any similar claim, you must assert the claim no later than the return date of this CID, and you must submit a detailed log, in a searchable electronic format, of the items withheld that identifies the basis for withholding the material and meets all the requirements set forth in 16 C.F.R. § 2.11(a) – (c). The information in the log must be of sufficient detail to enable FTC staff to assess the validity of the claim for each document, including attachments, without disclosing the protected information. If only some portion of any responsive material is privileged, you must submit all non-privileged portions of the material. Otherwise, produce all responsive information and material without redaction. 16 C.F.R. § 2.11(c). The failure to provide information sufficient to support a claim of protected status may result in denial of the claim. 16 C.F.R. § 2.11(a)(1).

I-3. **Modification of Specifications:** The Bureau Director, a Deputy Bureau Director, Associate Director, Regional Director, or Assistant Regional Director must agree in writing to any modifications of this CID. 16 C.F.R. § 2.7(l).

I-4. **Scope of Search:** This CID covers documents and information in your possession or under your actual or constructive custody or control, including documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, service providers, and other agents and consultants, whether or not such documents or information were received from or disseminated to any person or entity.

I-5. **Identification of Responsive Documents:** For specifications requesting production of documents, you must identify in writing the documents that are responsive to the specification. Documents that may be responsive to more than one specification of this CID need not be produced more than once. If any documents responsive to this CID have been previously supplied to the FTC, you may identify the documents previously provided and the date of submission.

I-6. **Maintain Document Order:** You must produce documents in the order in which they appear in your files or as electronically stored. If documents are removed from their original

folders, binders, covers, containers, or electronic source, you must specify the folder, binder, cover, container, or electronic media or file paths from which such documents came.

I-7. Numbering of Documents: You must number all documents in your submission with a unique identifier such as a bates number or a document ID.

I-8. Production of Copies: Unless otherwise stated, you may submit copies in lieu of original documents if they are true, correct, and complete copies of the originals and you preserve and retain the originals in their same state as of the time you received this CID. Submission of copies constitutes a waiver of any claim as to the authenticity of the copies should the FTC introduce such copies as evidence in any legal proceeding.

I-9. Production in Color: You must produce copies of advertisements in color, and you must produce copies of other materials in color if necessary to interpret them or render them intelligible.

I-10. Electronically Stored Information: See the attached FTC Bureau of Consumer Protection Production Requirements (“Production Requirements”), which detail all requirements for the production of electronically stored information to the FTC. You must discuss issues relating to the production of electronically stored information with FTC staff **prior to** production.

I-11. Sensitive Personally Identifiable Information (“Sensitive PII”) or Sensitive Health Information (“SHI”): If any materials responsive to this CID contain Sensitive PII or SHI, please contact FTC counsel before producing those materials to discuss whether there are steps you can take to minimize the amount of Sensitive PII or SHI you produce, and how to securely transmit such information to the FTC.

Sensitive PII includes an individual’s Social Security number; an individual’s biometric data (such as fingerprints or retina scans, but not photographs); and an individual’s name, address, or phone number in combination with one or more of the following: date of birth, Social Security number, driver’s license or state identification number (or foreign country equivalent), passport number, financial account number, credit card number, or debit card number. SHI includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

I-12. Interrogatory Responses: For specifications requesting answers to written interrogatories, answer each interrogatory and each interrogatory subpart separately and fully, in writing, and under oath.

I-13. Submission of Documents in Lieu of Interrogatory Answers: You may answer any written interrogatory by submitting previously existing documents that contain the information requested in the interrogatory so long as you clearly indicate in each written interrogatory response which documents contain the responsive information. For any interrogatory that asks you to identify documents, you may, at your option, produce the documents responsive to the

interrogatory so long as you clearly indicate the specific interrogatory to which such documents are responsive.

Federal Trade Commission Bureau of Consumer Protection
Production Requirements
 Revised July 2017

In producing information in response to this CID, you must comply with the following production requirements, unless the FTC agrees otherwise. If you have any questions about these requirements, please contact FTC Counsel before production.

Production Format

1. **General Format:** Provide load-ready electronic productions with: (a) an Opticon image load file (.OPT) containing a line for every image file; and (b) a delimited data load file (.DAT) containing a line for every document, with bates references, metadata fields, and native file links, where applicable.
2. **Electronically Stored Information (“ESI”):** Documents stored in electronic format in the ordinary course of business must be produced in the following format:
 - a. For ESI other than the categories described below, submit in native electronic format with extracted text or Optical Character Recognition (OCR), all metadata, and corresponding image renderings converted to Group IV, 300 DPI, single-page Tagged Image File Format (TIFF) or color JPEG images (if color is necessary to interpret the contents or render them intelligible).
 - b. For Microsoft Excel, Access, or PowerPoint files, submit in native format with extracted text and metadata. Data compilations in Excel spreadsheets or in delimited text formats must contain all underlying data, formulas, and algorithms without redaction.
 - c. For other spreadsheet, database, presentation, or multimedia formats; instant messages; or proprietary applications, discuss production format during the meet and confer.
3. **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business must be scanned and submitted as 300 DPI individual single page TIFFs (or color JPGs when necessary to interpret documents or render them intelligible), with corresponding document-level OCR text and logical document determination in an accompanying load file.
4. **Extracted Text/OCR:** Submit text as document-level text files, named for the beginning bates number, and organized into a folder separate from images. We cannot accept Unicode text files.
5. **Document Identification:** Provide a unique DocId or bates number for each hard copy or electronic document, consisting of a prefix and a consistent number of numerals using leading zeros. Do not use a space to separate the prefix from numbers.
6. **Attachments:** Preserve the parent/child relationship by producing attachments as separate documents, numbering them consecutively to the parent email, and including a reference to all attachments.
7. **Metadata Production:** For each document submitted electronically, include standard metadata fields in a standard ASCII delimited data load file. The first line of the data load file shall include the field names. Submit date and time data in separate fields. Use these delimiters in delimited data load files:

Description	Symbol	ASCII Character
Field Separator	<	20
Quote Character	”	254

Multi Entry delimiter	®	174
<Return> Value in data	~	126

8. **De-duplication:** Do not use de-duplication or email threading software without FTC counsel approval.
9. **Password-Protected Files:** Remove passwords prior to production. If password removal is not possible, provide the original and production filenames and the password under separate cover.
10. **Sensitive PII or SHI:** Use data encryption to protect any Sensitive PII or SHI (as defined in the CID Schedule). Provide encryption passwords in advance of delivery, under separate cover.

Producing and Submitting Media to the FTC

1. Prior to production, scan all media and data for viruses and confirm the media and data are virus-free.
2. For productions smaller than 50 GB, the FTC can accept electronic file transfer via FTC-hosted secure file transfer protocol (Accellion or SecureZip). Contact FTC counsel to request this option. The FTC cannot accept files via Dropbox, Google Drive, OneDrive, or other third-party file transfer sites.
3. Use the least amount of media necessary for productions. Acceptable media formats are CDs, DVDs, flash drives, and hard drives. Format all media for use with Windows 7.
4. Use a courier service (e.g., Federal Express, UPS) because heightened security measures delay postal delivery. Mark the exterior of all packages containing electronic media with the following:

MAGNETIC MEDIA – DO NOT X-RAY
MAY BE OPENED FOR INSPECTION

5. Provide a production transmittal letter with each production that includes:
 - a. Production volume name (e.g., Volume 1), date of production, and numeric DocID number range of all documents included in the production;
 - b. List of custodians and the DocID number range for each custodian;
 - c. Total number of records and all underlying images, emails, and associated attachments, native files, and databases in the production
 - d. List of load file fields in the order in which they are organized in the data file.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman
Pamela Jones Harbour
William E. Kovacic
J. Thomas Rosch

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION OF UNNAMED PERSONS ENGAGED DIRECTLY OR INDIRECTLY IN THE ADVERTISING OR MARKETING OF DIETARY SUPPLEMENTS, FOODS, DRUGS, DEVICES, OR ANY OTHER PRODUCT OR SERVICE INTENDED TO PROVIDE A HEALTH BENEFIT OR TO AFFECT THE STRUCTURE OR FUNCTION OF THE BODY

File No. 0023191

Nature and Scope of Investigation:

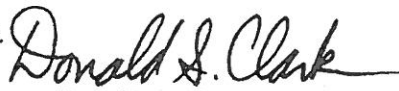
To investigate whether unnamed persons, partnerships, or corporations, or others engaged directly or indirectly in the advertising or marketing of dietary supplements, foods, drugs, devices, or any other product or service intended to provide a health benefit or to affect the structure or function of the body have misrepresented or are misrepresenting the safety or efficacy of such products or services, and therefore have engaged or are engaging in unfair or deceptive acts or practices or in the making of false advertisements, in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed ten (10) years from the date of issuance of this resolution. The expiration of this ten (10) year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the ten (10) year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after expiration of the ten year period.

Authority to conduct investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 et seq. and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Issued: August 13, 2009

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
 Maureen K. Ohlhausen
 Terrell McSweeney

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN NON-PUBLIC
INVESTIGATION OF UNNAMED PERSONS, PARTNERSHIPS OR CORPORATIONS
ENGAGED IN THE DECEPTIVE OR UNFAIR USE OF E-MAIL, METATAGS,
COMPUTER CODE OR PROGRAMS, OR DECEPTIVE OR UNFAIR PRACTICES
INVOLVING INTERNET-RELATED GOODS OR SERVICES

File No. 9923259

Nature and Scope of Investigation:

To determine whether unnamed persons, partnerships or corporations have been or are engaged in the deceptive or unfair use of e-mail, metatags, computer code or programs, or deceptive or unfair practices involving Internet-related goods or services, in violation of Sections 5 or 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45, 52, as amended. The investigation is also to determine whether Commission action to obtain equitable monetary relief for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. Part 1.1 et seq. and supplements thereto.

By direction of the Commission.



Donald S. Clark
Secretary

Issued: August 1, 2016

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Edith Ramirez, Chairwoman**
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

**RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NON-PUBLIC
INVESTIGATION OF UNAUTHORIZED CHARGES TO CONSUMERS' ACCOUNTS**

File No. 082-3247

Nature and Scope of Investigation:

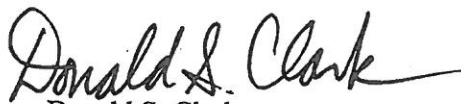
To determine whether unnamed persons, partnerships, corporations, or others have engaged in or are engaging in deceptive or unfair acts or practices in or affecting commerce, in connection with making unauthorized charges or debits to consumers' accounts, including unauthorized charges or debits to credit card accounts, bank accounts, investment accounts, or any other accounts used by consumers to pay for goods and services, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and/or the Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.* The investigation is also to determine whether Commission action to obtain monetary relief, including consumer redress, disgorgement, or civil penalties, would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five (5) years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.*, and supplements thereto, Section 917(c) of the Electronic Fund Transfer Act, 15 U.S.C. § 1693o(c), and Regulation E, 12 C.F.R. § 205.1 *et seq.*, and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Issued: September 20, 2013

EX 2



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

SEP 11 2018

Via Federal Express

Rachel Scava
Chief Operating Officer and General Counsel
Fully Accountable, LLC
2680 West Market Street
Fairlawn, OH 44333

FTC Matter No. 1723195

Dear Ms. Scava:

The Federal Trade Commission ("FTC") has issued the attached Civil Investigative Demand ("CID") asking for testimony as part of a non-public investigation. Our purpose is to determine whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the attached CID, and related entities and individuals, have made or participated in making, in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization, in violation of Section 5 of the FTC Act, and whether Commission action to obtain monetary relief would be in the public interest. Please read the attached documents carefully. Here are a few important points we would like to highlight:


1. **Contact FTC counsel, Harris Senturia (216-263-3420; hsenturia@ftc.gov) as soon as possible to schedule an initial meeting to be held within 14 days.** You can meet in person or by phone to discuss any questions you have, including whether there are changes to how you comply with the CID that would reduce your cost or burden while still giving the FTC the information it needs. Please read the attached documents for more information about that meeting.
2. **You must continue to suspend any routine procedures for electronic or paper document destruction, and you must preserve all paper or electronic documents** that are in any way relevant to this investigation, even if you believe the documents are protected from discovery by privilege or some other reason.
3. **The FTC will use information you provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces.** We will not disclose the information under the Freedom of Information Act, 5 U.S.C. § 552. We may disclose the information in response to a valid request from Congress, or other civil or criminal federal, state, local, or foreign law enforcement agencies for their official law enforcement purposes. The FTC or other agencies may use and disclose

your response in any federal, state, or foreign civil or criminal proceeding, or if required to do so by law. However, we will not publicly disclose your information without giving you prior notice.

4. **Please read the attached documents closely.** They contain important information about where and when the company's designee must appear to give testimony.

Please contact FTC counsel as soon as possible to set up an initial meeting. We appreciate your cooperation.

Very truly yours,


Donald S. Clark
Secretary of the Commission



CIVIL INVESTIGATIVE DEMAND
Oral Testimony

<p>1. TO</p> <p>FULLY ACCOUNTABLE LLC 2680 WEST MARKET STREET FAIRLAWN, OH 44333</p>	<p>2. FROM</p> <p align="center">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p> <hr/> <p>2a. MATTER NUMBER 1723195</p>
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This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 6.

<p>3. LOCATION OF HEARING</p> <p>1111 Superior Avenue, Suite 200, Cleveland, OH 44114</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Harris A. Senturia, or other duly designated person</p> <hr/> <p>5. DATE AND TIME OF HEARING</p> <p align="center">October 12, 2018 at 9:30AM</p>
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6. SUBJECT OF INVESTIGATION

See attached Subject of Investigation and Schedule and attached resolutions.

<p>7. RECORDS CUSTODIAN/DEPUTY CUSTODIAN</p> <p>Samuel Baker/Jon Steiger, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114 (216) 263-3414/(216) 263-3442</p>	<p>8. COMMISSION COUNSEL</p> <p>Harris A. Senturia, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114 (216) 263-3420</p>
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<p>DATE ISSUED</p> <p align="center">9/10/18</p>	<p>COMMISSIONER'S SIGNATURE</p> <p align="center"><i>Robert Chopra</i></p>
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INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 8.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCsRulesofPractice>. Paper copies are available upon request.

Form of Certificate of Compliance*

I/We do certify that all of the information required by the attached Civil Investigative Demand which is in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted to a custodian named herein.

If an interrogatory or a portion of the request has not been fully answered or portion of the report has not been completed the objection to such interrogatory or uncompleted portion and the reasons for the objection have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for answering the interrogatories or preparing the report, the certificate shall identify the interrogatories or portion of the report for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

**FEDERAL TRADE COMMISSION (“FTC”)
CIVIL INVESTIGATIVE DEMAND (“CID”) SCHEDULE
FTC File No. 1723195**

Meet and Confer: You must contact **FTC counsel, Harris Senturia (216-263-3420; hsenturia@ftc.gov)**, as soon as possible to schedule a meeting (telephonic or in person) to be held within fourteen (14) days after you receive this CID. At the meeting, you must discuss with FTC counsel any questions you have regarding this CID or any possible CID modifications that could reduce your cost, burden, or response time yet still provide the FTC with the information it needs to pursue its investigation. The meeting also will address how to assert any claims of protected status (e.g., privilege, work-product, etc.) and the production of electronically stored information.

Document Retention: You must continue to retain all documentary materials used in preparing responses to this CID. The FTC may require the submission of additional documents later during this investigation. **Accordingly, you must continue to suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents** that are in any way relevant to this investigation, even if you believe those documents are protected from discovery. *See* 15 U.S.C. § 50; *see also* 18 U.S.C. §§ 1505, 1519.

Sharing of Information: The FTC will use information you provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces. We will not disclose such information under the Freedom of Information Act, 5 U.S.C. § 552. We also will not disclose such information, except as allowed under the FTC Act (15 U.S.C. § 57b-2), the Commission’s Rules of Practice (16 C.F.R. §§ 4.10 & 4.11), or if required by a legal obligation. Under the FTC Act, we may provide your information in response to a request from Congress or a proper request from another law enforcement agency. However, we will not publicly disclose such information without giving you prior notice.

Certification of Compliance: You or any person with knowledge of the facts and circumstances relating to the responses to this CID must certify that such responses are complete by completing the “Form of Certificate of Compliance” set forth on the back of the CID form or by signing a declaration under penalty of perjury pursuant to 28 U.S.C. § 1746.

Definitions and Instructions: Please review carefully the Definitions and Instructions that appear after the Specifications and provide important information regarding compliance with this CID.

SUBJECT OF INVESTIGATION

Whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined herein, and related entities and individuals, have made or participated in making, in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without

consumers' authorization, in violation of Section 5 of the FTC Act, and whether Commission action to obtain monetary relief would be in the public interest. See also attached resolutions.

SPECIFICATIONS

Applicable Time Period: Unless otherwise directed, the applicable time period for the requests set forth below is from **July 1, 2014, until the date of full and complete compliance with this CID.**

A. **Investigational Hearing Testimony:** The Company must designate and make available one or more officers, directors, or managing agents, or others who consent, to testify on its behalf. Unless a single individual is designated, the Company must designate in advance and in writing the matters on which each designee will testify. The person(s) designated must testify about information known or reasonably available to the Company, and their testimony shall be binding upon it. 16 C.F.R. § 2.7(h). The person(s) designated must be prepared to provide testimony relating to the following topics:

1. All of the Company's responses to the Interrogatories set forth in the CID issued September 21, 2017.
2. All documents produced by the Company in response to the CID issued September 21, 2017.
3. All efforts made by the Company to locate information responsive to the CID issued September 21, 2017, including the identities of all individuals involved in those efforts.
4. All efforts made by the Company to prevent the destruction of documents that are in any way relevant to the investigation, as instructed in the CID issued September 21, 2017.
5. The Company's information or records management systems, systems for electronically stored information, and any other issues relevant to compliance with the CID issued September 21, 2017.
6. All relationships between the Company and Elevated Health, LLC.
7. All relationships between the Company and Sarah Scava.

DEFINITIONS

The following definitions apply to this CID:

D-1. "Company," "You," "Your," or "Fully Accountable" means **Fully Accountable, LLC**, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, members, employees, agents,

consultants, and other persons working for or on behalf of the foregoing, including, but not limited to, Christopher Giorgio and Rachel Scava.

D-2. “**Document**” means the complete original, all drafts, and any non-identical copy, whether different from the original because of notations on the copy, different metadata, or otherwise, of any item covered by 15 U.S.C. § 57b-1(a)(5), 16 C.F.R. § 2.7(a)(2), and Federal Rule of Civil Procedure 34(a)(1)(A).

D-3. “**Group A Entity(ies)**” shall mean any or all of the following: **Innovated Health LLC, Global Community Innovations LLC, Premium Health Supplies, LLC, Buddha My Bread LLC, Innovated Fulfillment LLC, Vista Media LLC, Emerging Nutrition Inc., ShipSmart LLC, Guerra Company LLC, ASH Abbas LLC, and Your Healthy Lifestyle LLC**, their wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, successors, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing, including, but not limited to, Fred Guerra, Lanty Gray, Rafat Abbas, Ashraf Abbas, Robby Salaheddine, and Rachel Scava.

D-4. “**Group B Entity(ies)**” shall mean any or all of the following: **Leading Health Supplements, LLC (also dba Health Supplements), AMLK Holdings, LLC, General Health Supplies, LLC, Natural Health Supplies, LLC, BICO Holdings, LLC, and Consumer’s Choice Health, LLC**, their wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, successors, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

INSTRUCTIONS

I-1. **Petitions to Limit or Quash:** You must file any petition to limit or quash this CID with the Secretary of the FTC no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition must set forth all assertions of protected status or other factual and legal objections to the CID and comply with the requirements set forth in 16 C.F.R. § 2.10(a)(1) – (2). **The FTC will not consider petitions to quash or limit if you have not previously met and conferred with FTC staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process.** 16 C.F.R. § 2.7(k); *see also* § 2.11(b). **If you file a petition to limit or quash, you must still timely respond to all requests that you do not seek to modify or set aside in your petition.** 15 U.S.C. § 57b-1(f); 16 C.F.R. § 2.10(b).

I-2. **Withholding Requested Material / Privilege Claims:** If you withhold from production any material responsive to this CID based on a claim of privilege, work product protection, statutory exemption, or any similar claim, you must assert the claim no later than the return date of this CID, and you must submit a detailed log, in a searchable electronic format, of the items withheld that identifies the basis for withholding the material and meets all the requirements set forth in 16 C.F.R. § 2.11(a) – (c). The information in the log must be of sufficient detail to enable FTC staff to assess the validity of the claim for each document, including attachments, without disclosing the protected information. If only some portion of any responsive material is

privileged, you must submit all non-privileged portions of the material. Otherwise, produce all responsive information and material without redaction. 16 C.F.R. § 2.11(c). The failure to provide information sufficient to support a claim of protected status may result in denial of the claim. 16 C.F.R. § 2.11(a)(1).

I-3. Modification of Specifications: The Bureau Director, a Deputy Bureau Director, Associate Director, Regional Director, or Assistant Regional Director must agree in writing to any modifications of this CID. 16 C.F.R. § 2.7(l).

I-4. Scope of Search: This CID covers documents and information in your possession or under your actual or constructive custody or control, including documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees, service providers, and other agents and consultants, whether or not such documents or information were received from or disseminated to any person or entity.

I-5. Sensitive Personally Identifiable Information (“Sensitive PII”) or Sensitive Health Information (“SHI”): If any materials responsive to this CID contain Sensitive PII or SHI, please contact FTC counsel before producing those materials to discuss whether there are steps you can take to minimize the amount of Sensitive PII or SHI you produce, and how to securely transmit such information to the FTC.

Sensitive PII includes an individual’s Social Security number; an individual’s biometric data (such as fingerprints or retina scans, but not photographs); and an individual’s name, address, or phone number in combination with one or more of the following: date of birth, Social Security number, driver’s license or state identification number (or foreign country equivalent), passport number, financial account number, credit card number, or debit card number. SHI includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

I-6. Oral Testimony Procedures: The taking of oral testimony pursuant to this CID will be conducted in conformity with Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, and with Part 2A of the FTC’s Rules, 16 C.F.R. §§ 2.7(f), 2.7(h), and 2.9.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
 Pamela Jones Harbour
 William E. Kovacic
 J. Thomas Rosch

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION OF UNNAMED PERSONS ENGAGED DIRECTLY OR INDIRECTLY IN THE ADVERTISING OR MARKETING OF DIETARY SUPPLEMENTS, FOODS, DRUGS, DEVICES, OR ANY OTHER PRODUCT OR SERVICE INTENDED TO PROVIDE A HEALTH BENEFIT OR TO AFFECT THE STRUCTURE OR FUNCTION OF THE BODY

File No. 0023191

Nature and Scope of Investigation:


To investigate whether unnamed persons, partnerships, or corporations, or others engaged directly or indirectly in the advertising or marketing of dietary supplements, foods, drugs, devices, or any other product or service intended to provide a health benefit or to affect the structure or function of the body have misrepresented or are misrepresenting the safety or efficacy of such products or services, and therefore have engaged or are engaging in unfair or deceptive acts or practices or in the making of false advertisements, in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed ten (10) years from the date of issuance of this resolution. The expiration of this ten (10) year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the ten (10) year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after expiration of the ten year period.

Authority to conduct investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.* and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Issued: August 13, 2009

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
 Maureen K. Ohlhausen
 Terrell McSweeney

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN NON-PUBLIC
INVESTIGATION OF UNNAMED PERSONS, PARTNERSHIPS OR CORPORATIONS
ENGAGED IN THE DECEPTIVE OR UNFAIR USE OF E-MAIL, METATAGS,
COMPUTER CODE OR PROGRAMS, OR DECEPTIVE OR UNFAIR PRACTICES
INVOLVING INTERNET-RELATED GOODS OR SERVICES

File No. 9923259

Nature and Scope of Investigation:

To determine whether unnamed persons, partnerships or corporations have been or are engaged in the deceptive or unfair use of e-mail, metatags, computer code or programs, or deceptive or unfair practices involving Internet-related goods or services, in violation of Sections 5 or 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45, 52, as amended. The investigation is also to determine whether Commission action to obtain equitable monetary relief for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. Part 1.1 et seq. and supplements thereto.

By direction of the Commission,



Donald S. Clark
Secretary

Issued: August 1, 2016

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Julie Brill
Maureen K. Ohlhausen
Joshua D. Wright

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NON-PUBLIC
INVESTIGATION OF UNAUTHORIZED CHARGES TO CONSUMERS' ACCOUNTS

File No. 082-3247

Nature and Scope of Investigation:

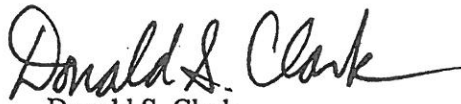
To determine whether unnamed persons, partnerships, corporations, or others have engaged in or are engaging in deceptive or unfair acts or practices in or affecting commerce, in connection with making unauthorized charges or debits to consumers' accounts, including unauthorized charges or debits to credit card accounts, bank accounts, investment accounts, or any other accounts used by consumers to pay for goods and services, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and/or the Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.* The investigation is also to determine whether Commission action to obtain monetary relief, including consumer redress, disgorgement, or civil penalties, would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five (5) years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.*, and supplements thereto, Section 917(c) of the Electronic Fund Transfer Act, 15 U.S.C. § 1693o(c), and Regulation E, 12 C.F.R. § 205.1 *et seq.*, and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Issued: September 20, 2013

EX 3



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Office of the Secretary

SEP 11 2018

Via Federal Express

Sarah Scava
369 Tulip Trail
Wadsworth, OH 44281

FTC Matter No. 1723195

Dear Sarah Scava:

The Federal Trade Commission ("FTC") has issued the attached Civil Investigative Demand ("CID") asking for information as part of a non-public investigation. Our purpose is to determine whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the attached CID, and related entities and individuals, have made or participated in making, in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization, in violation of Section 5 of the FTC Act, and whether Commission action to obtain monetary relief would be in the public interest. Please read the attached documents carefully. Here are a few important points we would like to highlight:

1. **Contact FTC counsel, Harris Senturia (216-263-3420; hsenturia@ftc.gov) as soon as possible to schedule an initial meeting to be held within 14 days.** You can meet in person or by phone to discuss any questions you have, including whether there are changes to how you comply with the CID that would reduce your cost or burden while still giving the FTC the information it needs. Please read the attached documents for more information about that meeting.
2. **You must immediately stop any routine procedures for electronic or paper document destruction, and you must preserve all paper or electronic documents** that are in any way relevant to this investigation, even if you believe the documents are protected from discovery by privilege or some other reason.
3. **The FTC will use information you provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces.** We will not disclose the information under the Freedom of Information Act, 5 U.S.C. § 552. We may disclose the information in response to a valid request from Congress, or other civil or criminal federal, state, local, or foreign law enforcement agencies for their official law enforcement purposes. The FTC or other agencies may use and disclose

your response in any federal, state, or foreign civil or criminal proceeding, or if required to do so by law. However, we will not publicly disclose your information without giving you prior notice.

4. **Please read the attached documents closely.** They contain important information about where and when you must appear to give testimony.

Please contact FTC counsel as soon as possible to set up an initial meeting. We appreciate your cooperation.

Very truly yours,

A handwritten signature in black ink that reads "Donald S. Clark by JRF". The signature is written in a cursive, somewhat stylized font.

Donald S. Clark
Secretary of the Commission



CIVIL INVESTIGATIVE DEMAND
Oral Testimony

<p>1. TO</p> <p>SARAH SCAVA 369 TULIP TRAIL WADSWORTH, OH 44281</p>	<p>2. FROM</p> <p align="center">UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
	<p>2a. MATTER NUMBER 1723195</p>

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 6.

<p>3. LOCATION OF HEARING</p> <p>1111 Superior Avenue, Suite 200, Cleveland, OH 44114</p>	<p>4. YOUR APPEARANCE WILL BE BEFORE</p> <p>Harris A. Senturia, or other duly designated person</p>
	<p>5. DATE AND TIME OF HEARING</p> <p align="center">October 11, 2018 at 9:30AM</p>

6. SUBJECT OF INVESTIGATION

See attached Subject of Investigation and Schedule and attached resolutions.

<p>7. RECORDS CUSTODIAN/DEPUTY CUSTODIAN</p> <p>Samuel Baker/Jon Steiger, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114 (216) 263-3414/(216) 263-3442</p>	<p>8. COMMISSION COUNSEL</p> <p>Harris A. Senturia, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, OH 44114 (216) 263-3420</p>
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<p>DATE ISSUED</p> <p align="center">9/10/18</p>	<p>COMMISSIONER'S SIGNATURE</p> <p align="center"><i>Robert Chop</i></p>
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INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 8.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCsRulesofPractice>. Paper copies are available upon request.

Form of Certificate of Compliance*

I/We do certify that all of the information required by the attached Civil Investigative Demand which is in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted to a custodian named herein.

If an interrogatory or a portion of the request has not been fully answered or portion of the report has not been completed the objection to such interrogatory or uncompleted portion and the reasons for the objection have been stated.

Signature _____

Title _____

Sworn to before me this day

Notary Public

*In the event that more than one person is responsible for answering the interrogatories or preparing the report, the certificate shall identify the interrogatories or portion of the report for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

**FEDERAL TRADE COMMISSION (“FTC”)
CIVIL INVESTIGATIVE DEMAND (“CID”) SCHEDULE
FTC File No. 1723195**

Meet and Confer: You must contact **FTC counsel, Harris Senturia (216-263-3420; hsenturia@ftc.gov)**, as soon as possible to schedule a meeting (telephonic or in person) to be held within fourteen (14) days after you receive this CID. At the meeting, you must discuss with FTC counsel any questions you have regarding this CID or any possible CID modifications that could reduce your cost, burden, or response time yet still provide the FTC with the information it needs to pursue its investigation. The meeting also will address how to assert any claims of protected status (e.g., privilege, work-product, etc.) and the production of electronically stored information.

Document Retention: You must retain all documentary materials used in preparing responses to this CID. The FTC may require the submission of additional documents later during this investigation. **Accordingly, you must suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents** that are in any way relevant to this investigation, even if you believe those documents are protected from discovery. *See* 15 U.S.C. § 50; *see also* 18 U.S.C. §§ 1505, 1519.

Sharing of Information: The FTC will use information you provide in response to the CID for the purpose of investigating violations of the laws the FTC enforces. We will not disclose such information under the Freedom of Information Act, 5 U.S.C. § 552. We also will not disclose such information, except as allowed under the FTC Act (15 U.S.C. § 57b-2), the Commission’s Rules of Practice (16 C.F.R. §§ 4.10 & 4.11), or if required by a legal obligation. Under the FTC Act, we may provide your information in response to a request from Congress or a proper request from another law enforcement agency. However, we will not publicly disclose such information without giving you prior notice.

Certification of Compliance: You or any person with knowledge of the facts and circumstances relating to the responses to this CID must certify that such responses are complete by completing the “Form of Certificate of Compliance” set forth on the back of the CID form or by signing a declaration under penalty of perjury pursuant to 28 U.S.C. § 1746.

Definitions and Instructions: Please review carefully the Definitions and Instructions that appear after the Specifications and provide important information regarding compliance with this CID.

SUBJECT OF INVESTIGATION

Whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined herein, and related entities and individuals, have made or participated in making, in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without

consumers' authorization, in violation of Section 5 of the FTC Act, and whether Commission action to obtain monetary relief would be in the public interest. See also attached resolutions.

SPECIFICATIONS

Applicable Time Period: Unless otherwise directed, the applicable time period for the requests set forth below is from **July 1, 2014, until the date of full and complete compliance with this CID.**

- A. **Investigational Hearing Testimony:** Subjects for testimony will include the following:
1. Your employment (or other relationship) with Fully Accountable, including all titles Fully Accountable gave you or that you used, and your compensation.
 2. Work that you performed for Fully Accountable and its clients, including any work you performed for any of the Group A Entities or Group B Entities.
 3. The formation of Elevated Health.
 4. The business of Elevated Health, including, but not limited to, Elevated Health's business model and business practices, all sources of revenue and investment, and the disposition of funds.
 5. Your role or roles with Elevated Health, and all income you received from Elevated Health.
 6. Any other person's role or roles in connection with Elevated Health, including but not limited to Rachel Scava's role or roles in connection with Elevated Health.
 7. All relationships between Elevated Health and Fully Accountable.
 8. All relationships between Elevated Health and any of the Group A Entities or Group B Entities.
 9. All relationships between Elevated Health and any of the following entities:
 - a. Scava Holdings, LLC
 - b. CMG Tax & Consulting, LLC
 - c. VEF International, Inc.
 - d. TCWT Holdings, LLC
 10. All relationships between Elevated Health and any entity you know or understand to be connected, directly or indirectly, with you, Rachel Scava, Christopher M. Giorgio, or Vincent Fisher.

11. Work that you performed for any of the Group A Entities or Group B Entities outside of the scope of your employment (or other relationship) with Fully Accountable, and all income you received from any of those entities.
12. Work that you performed for any of the following entities, and all income you received from any of them:
 - a. Scava Holdings, LLC
 - b. CMG Tax & Consulting, LLC
 - c. VEF International, Inc.
 - d. TCWT Holdings, LLC
13. Work that you performed, directly or indirectly, for any entity you understand to be connected, directly or indirectly, with Rachel Scava, Christopher M. Giorgio, or Vincent Fisher, outside of the scope of your employment (or other relationship) with Fully Accountable, and all income you received from any such entities.

DEFINITIONS

The following definitions apply to this CID:

D-1. “**You**” or “**Your**” means Sarah Scava.

D-2. “**Fully Accountable**” means **Fully Accountable, LLC**, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing, including, but not limited to, Christopher Giorgio and Rachel Scava.

D-3. “**Elevated Health**” means **Elevated Health LLC**, its wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

D-4. “**Document**” means the complete original, all drafts, and any non-identical copy, whether different from the original because of notations on the copy, different metadata, or otherwise, of any item covered by 15 U.S.C. § 57b-1(a)(5), 16 C.F.R. § 2.7(a)(2), and Federal Rule of Civil Procedure 34(a)(1)(A).

D-5. “**Group A Entity(ies)**” shall mean any or all of the following: **Innovated Health LLC, Global Community Innovations LLC, Premium Health Supplies, LLC, Buddha My Bread LLC, Innovated Fulfillment LLC, Vista Media LLC, Emerging Nutrition Inc., ShipSmart LLC, Guerra Company LLC, ASH Abbas LLC, and Your Healthy Lifestyle LLC**, their wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under

assumed names, successors, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing, including, but not limited to, Fred Guerra, Lanty Gray, Rafat Abbas, Ashraf Abbas, Robby Salaheddine, and Rachel Scava.

D-6. “**Group B Entity(ies)**” shall mean any or all of the following: **Leading Health Supplements, LLC (also dba Health Supplements), AMLK Holdings, LLC, General Health Supplies, LLC, Natural Health Supplies, LLC, BHCO Holdings, LLC, and Consumer’s Choice Health, LLC**, their wholly or partially owned subsidiaries, unincorporated divisions, joint ventures, operations under assumed names, successors, and affiliates, and all directors, officers, members, employees, agents, consultants, and other persons working for or on behalf of the foregoing.

INSTRUCTIONS

I-1. **Petitions to Limit or Quash:** You must file any petition to limit or quash this CID with the Secretary of the FTC no later than twenty (20) days after service of the CID, or, if the return date is less than twenty (20) days after service, prior to the return date. Such petition must set forth all assertions of protected status or other factual and legal objections to the CID and comply with the requirements set forth in 16 C.F.R. § 2.10(a)(1) – (2). **The FTC will not consider petitions to quash or limit if you have not previously met and conferred with FTC staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process.** 16 C.F.R. § 2.7(k); *see also* § 2.11(b). **If you file a petition to limit or quash, you must still timely respond to all requests that you do not seek to modify or set aside in your petition.** 15 U.S.C. § 57b-1(f); 16 C.F.R. § 2.10(b).

I-2. **Withholding Requested Material / Privilege Claims:** If you withhold from production any material responsive to this CID based on a claim of privilege, work product protection, statutory exemption, or any similar claim, you must assert the claim no later than the return date of this CID, and you must submit a detailed log, in a searchable electronic format, of the items withheld that identifies the basis for withholding the material and meets all the requirements set forth in 16 C.F.R. § 2.11(a) – (c). The information in the log must be of sufficient detail to enable FTC staff to assess the validity of the claim for each document, including attachments, without disclosing the protected information. If only some portion of any responsive material is privileged, you must submit all non-privileged portions of the material. Otherwise, produce all responsive information and material without redaction. 16 C.F.R. § 2.11(c). The failure to provide information sufficient to support a claim of protected status may result in denial of the claim. 16 C.F.R. § 2.11(a)(1).

I-3. **Modification of Specifications:** The Bureau Director, a Deputy Bureau Director, Associate Director, Regional Director, or Assistant Regional Director must agree in writing to any modifications of this CID. 16 C.F.R. § 2.7(l).

I-4. **Scope of Search:** This CID covers documents and information in your possession or under your actual or constructive custody or control, including documents and information in the possession, custody, or control of your attorneys, accountants, directors, officers, employees,

service providers, and other agents and consultants, whether or not such documents or information were received from or disseminated to any person or entity.

I-5. Sensitive Personally Identifiable Information (“Sensitive PII”) or Sensitive Health Information (“SHI”): If any materials responsive to this CID contain Sensitive PII or SHI, please contact FTC counsel before producing those materials to discuss whether there are steps you can take to minimize the amount of Sensitive PII or SHI you produce, and how to securely transmit such information to the FTC.

Sensitive PII includes an individual’s Social Security number; an individual’s biometric data (such as fingerprints or retina scans, but not photographs); and an individual’s name, address, or phone number in combination with one or more of the following: date of birth, Social Security number, driver’s license or state identification number (or foreign country equivalent), passport number, financial account number, credit card number, or debit card number. SHI includes medical records and other individually identifiable health information relating to the past, present, or future physical or mental health or conditions of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

I-6. Oral Testimony Procedures: The taking of oral testimony pursuant to this CID will be conducted in conformity with Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, and with Part 2A of the FTC’s Rules, 16 C.F.R. §§ 2.7(f), 2.7(h), and 2.9.

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
 Pamela Jones Harbour
 William E. Kovacic
 J. Thomas Rosch

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION OF UNNAMED PERSONS ENGAGED DIRECTLY OR INDIRECTLY IN THE ADVERTISING OR MARKETING OF DIETARY SUPPLEMENTS, FOODS, DRUGS, DEVICES, OR ANY OTHER PRODUCT OR SERVICE INTENDED TO PROVIDE A HEALTH BENEFIT OR TO AFFECT THE STRUCTURE OR FUNCTION OF THE BODY

File No. 0023191

Nature and Scope of Investigation:


To investigate whether unnamed persons, partnerships, or corporations, or others engaged directly or indirectly in the advertising or marketing of dietary supplements, foods, drugs, devices, or any other product or service intended to provide a health benefit or to affect the structure or function of the body have misrepresented or are misrepresenting the safety or efficacy of such products or services, and therefore have engaged or are engaging in unfair or deceptive acts or practices or in the making of false advertisements, in or affecting commerce, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45 and 52. The investigation is also to determine whether Commission action to obtain redress for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed ten (10) years from the date of issuance of this resolution. The expiration of this ten (10) year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the ten (10) year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after expiration of the ten year period.

Authority to conduct investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 et seq. and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Issued: August 13, 2009

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
Maureen K. Ohlhausen
Terrell McSweeney

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN NON-PUBLIC
INVESTIGATION OF UNNAMED PERSONS, PARTNERSHIPS OR CORPORATIONS
ENGAGED IN THE DECEPTIVE OR UNFAIR USE OF E-MAIL, METATAGS,
COMPUTER CODE OR PROGRAMS, OR DECEPTIVE OR UNFAIR PRACTICES
INVOLVING INTERNET-RELATED GOODS OR SERVICES

File No. 9923259

Nature and Scope of Investigation:

To determine whether unnamed persons, partnerships or corporations have been or are engaged in the deceptive or unfair use of e-mail, metatags, computer code or programs, or deceptive or unfair practices involving Internet-related goods or services, in violation of Sections 5 or 12 of the Federal Trade Commission Act, 15 U.S.C. §§ 45, 52, as amended. The investigation is also to determine whether Commission action to obtain equitable monetary relief for injury to consumers or others would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. Part 1.1 et seq. and supplements thereto.

By direction of the Commission,



Donald S. Clark
Secretary

Issued: August 1, 2016

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

RESOLUTION DIRECTING USE OF COMPULSORY PROCESS IN A NON-PUBLIC
INVESTIGATION OF UNAUTHORIZED CHARGES TO CONSUMERS' ACCOUNTS

File No. 082-3247

Nature and Scope of Investigation:

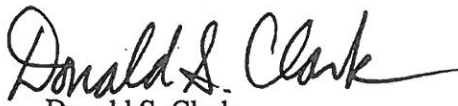
To determine whether unnamed persons, partnerships, corporations, or others have engaged in or are engaging in deceptive or unfair acts or practices in or affecting commerce, in connection with making unauthorized charges or debits to consumers' accounts, including unauthorized charges or debits to credit card accounts, bank accounts, investment accounts, or any other accounts used by consumers to pay for goods and services, in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and/or the Electronic Fund Transfer Act, 15 U.S.C. § 1693, *et seq.* The investigation is also to determine whether Commission action to obtain monetary relief, including consumer redress, disgorgement, or civil penalties, would be in the public interest.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation for a period not to exceed five (5) years from the date of issuance of this resolution. The expiration of this five-year period shall not limit or terminate the investigation or the legal effect of any compulsory process issued during the five-year period. The Federal Trade Commission specifically authorizes the filing or continuation of actions to enforce any such compulsory process after the expiration of the five-year period.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.*, and supplements thereto, Section 917(c) of the Electronic Fund Transfer Act, 15 U.S.C. § 1693o(c), and Regulation E, 12 C.F.R. § 205.1 *et seq.*, and supplements thereto.

By direction of the Commission.


Donald S. Clark
Secretary

Issued: September 20, 2013

EX 4

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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IN THE MATTER OF)	
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FULLY ACCOUNTABLE, LLC)	FILE NO. 1723195
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**FULLY ACCOUNTABLE, LLC'S PETITION TO
LIMIT OR QUASH CIVIL INVESTITGATIVE DEMAND**

RACHEL L. SCAVA
Ohio Bar No. 92694
Rachel.scava@fullyaccountable.com

*Counsel for Petitioner, Fully Accountable,
LLC*

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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IN THE MATTER OF)	
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FULLY ACCOUNTABLE, LLC)	FILE NO. 1723195
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COMMISSIONERS
COMMISSIONERS
Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

**FULLY ACCOUNTABLE, LLC’S PETITION TO
LIMIT OR QUASH CIVIL INVESTITGATIVE DEMAND**

Pursuant to 16 C.F.R. 2.7(d), Petitioner, Fully Accountable, LLC (“FA”) petitions the Federal Trade Commission (“FTC”) to limit or quash the Civil Investigative Demand (“CID”) issued to FA on September 11, 2018 and received by FA on September 13, 2018. FA objects and seeks to quash and limit the CID as being improper and unenforceable for at least two (2) separate reasons: (1) the CID seeks information outside the scope of the FTC’s original investigation; and (2) the CID is overly broad and unduly burdensome. Accordingly, FA respectfully petitions the FTC Commissioners to reasonably quash and limit the CID as requested below.

I. LEGAL STANDARD

By this Petition, FA does not challenge the FTC's statutory authority to investigate practices that it believes may constitute deceptive or unfair trade practices when used in the course of trade under 15 U.S.C 45(a). While this statute has granted the FTC this authority, its subpoena power under the statute is not limitless.¹ Limiting the powers of the FTC is especially necessary where, as here, the FTC is pursuing an unlimited inquiry where there is no limit on the scope of the investigation and it continues to issue new CID's to expand its search. The CID here is requesting testimony on broad topics from the previous CID which have been answered in full detail. In addition, to broadening the interrogatories and document specifications already responded to in full, the CID includes new Companies and persons that it is requesting information on that are not a part of any of the parties being investigated in the CID (FA, Group A and Group B entities).

Congress has provided the FTC with the authority to conduct reasonable investigations using investigatory tools such as subpoena's and CID's. This authority though, does not grant unlimited investigation authority and the federal courts are used as a safeguard against agency abuse.² The federal courts serve as an independent reviewing authority with "the power to condition enforcement upon observance to [a party's] valid interests."³ Congress has continually denied to confer upon administrative agencies their own subpoena enforcement power. The reason they have not conferred this authority to the administrative agencies and kept the enforcement power with the federal courts is to "ensure that targets of investigations are accorded due process" and because federal courts will not act as rubber stamps on FTC CID's.⁴

¹ "A subpoena from the FTC is not self-enforcing." *Wearly v. FTC* 616 F.2d 662,665 (3d Cir. 1980)

² *See, e.g., Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

³ *Wearly*, 616 F.2d at 655

⁴ Sean Doherty, *Commodity Futures Tradition Common v Collins: Is the Rationale Sound for Establishing an Exception to Subpoena Law for Tax Returns?*, 7 DePaul Bus. L.J. 365, 376 (1995).

The United States Supreme Court established the recognized standard for whether an administrative agency's subpoena should be enforced in *U.S. v Morton Salt Co.*⁵ In *Morton Salt*, the Supreme Court recognized that "a governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power."⁶ The Supreme Court instructed that an agency's subpoena, like the CID at issue here, should not be enforced if it demands information that is (1) not "within the authority of the agency"; (2) "too indefinite"; or (3) not "reasonably relevant to the inquiry."⁷

Additionally, in *Morton Salt*, the Supreme Court recognized that if the corporation had objected and presented evidence concerning the excessive scope or breadth of the investigation, like FA is here, the corporation "could have obtained any reasonable modification necessary."⁸

In the application of the *Morton Salt* standard, Courts have consistently held that an administrative subpoena and other investigative demands must be "reasonable."⁹ We see this application in *FTC v Texaco*, where the court found that the "disclosure sought must always be reasonable." When the federal court evaluates the disclosure, the court must consider whether an agency's demand is unduly burdensome.¹⁰

We further see this consideration of unduly burdensome in *SEC v. Arthur Young & Co.*, where the Court recognized that "the gist of the protection is in the requirement... that the disclosures sought shall not be unreasonable. Correspondingly, the need for moderation in the subpoena's call is a matter of reasonableness."¹¹ A CID that is "unduly burdensome or unreasonably broad" fails

⁵ 338 US 632,652 (195).

⁶ *Morton*, 338 US at 652.

⁷ *Morton*, 338 US at 62.

⁸ *Morton*, 338 US at 654.

⁹ See e.g., *United States v. Constr. Prods. Research, Inc.*, 13 F.3d 464, 471 (2d Cir. 1966) ("the disclosure sought must always be reasonable"); *Texaco*, 555 F.2d at 881 ("the disclosure sought shall not be unreasonable").

¹⁰ *FTC v Texaco, Inc.*, 555 F.2d 862,882 (DC Cir. 1977)

¹¹ *Arthur Young & Co.*, 584 F.2d at 1030

this test.¹² As such, the time, expense, and whether compliance threatens to unduly disrupt or seriously hinder normal business operations may be raised by a party challenging a civil investigative demand.¹³

Here, the CID's request for live testimony is unreasonable and it is unduly burdensome as FA has already answered the previous CID in full relating to the matter of the investigation. In addition to the testimony that is has already answered in interrogatories and document specifications, the Investigational Hearing Testimony is overly broad as includes new information not previously listed on the original CID and which is not relevant to the matter of the investigation. Lastly, the Investigational Hearing Testimony appears to be duplicative of requests already made and fully responded to by FA. FA has been more than cooperative with the FTC, producing 571 pages responsive to the Document Specifications, and otherwise been forthcoming with information sought by the FTC as seen from the thorough Interrogatory responses. Accordingly, FA respectfully requests that the Commission limit or quash the challenged Investigational Hearing Testimony as set forth below.

II. OBJECTIONS

A. **The CID improperly seeks irrelevant information from FA that is outside the scope of the FTC's investigation and information that is overly broad with no limit.**

The test for the relevancy of an administrative subpoena is "whether the information sought is 'reasonably relevant' to the agency's inquiry, as we see in *Morton*.¹⁴ The CID as issue, must "not [be] so overbroad as to reach into areas that are irrelevant or immaterial... [and] the test is relevance to the specific purpose."¹⁵ Accordingly, the CID should be limited or quashed because

¹² *Texaco*, 555 F.2d at 882

¹³ *Texaco*, 555 F.2d at 882-83

¹⁴ *FTC v. Anderson*, 631 F.2d 741, 745-46 (D.C. Cir. 1979).

¹⁵ *Arthur Young and Co.*, 584 F.2d at 1028; 1030.

it demands Oral Testimony from FA that is not reasonably relevant to the FTC's investigation. For example, the Investigative Hearing Testimony topics include the following items:

6. All relationships between the Company and Elevated Health, LLC.
7. All relationships between the Company and Sarah Scava.

The FTC failed to limit the above two (2) requests to information and documents that relate to the purpose of the FTC's investigation. The investigation as stated in the CID is "... to determine whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the CID, and related entities and individuals have made or participated in making in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization in violation of Section 5 of the FTC Act, ...". The above were not included as either FA, Group A or Group B Entities or Persons and are not related entities that are included in Group A and Group B Entities definitions, which are the subject of the investigation. Requiring oral testimony on companies and individuals that are not the subject of the investigation would require FA to answer questions on companies and individuals that are outside the scope of the investigation and have nothing to do with the investigation. It would be unreasonable to begin to include any client of FA as they are not the subject of the investigation. The FTC cannot require testimony that is not reasonably relevant and outside the scope of the FTC's investigation.¹⁶ Accordingly, Item 6 and Item 7 should both be quashed by the Court for not being reasonably relevant to the investigation.

¹⁶ *Morton*, 338 US at 652

Further, items 3 – 5 should be quashed as they ask FA to provide Oral Testimony on overly broad topics with no limits and which are not relevant to the investigation. Items 3 -5 are as follows:

3. All efforts made by the Company to locate information responsive to the CID issued on September 21, 2017, including the identities of all individuals involved in those efforts.

4. All efforts made by the Company to prevent the destruction of documents that are in any way relevant to the investigation, as instructed in the CID issued on September 21, 2017.

5. The Company's record management systems, systems for electronically stored information, and any other issues relevant compliance with the CID issued September 21, 2017.

The FTC failed to limit these requests to the matter of the investigation as stated above as they are overly broad with no limit on the inquiry. In addition, regarding Item 3. FA has already stated the identities of all the individuals involved in the preparation of the interrogatories and document specifications (Interrogatory S-10 in the CID issued September 21, 2017). With regard to Item 4. FA has stated its document retention policy (Interrogatory S-11 and Document Specification's S-16, S- 40) and even included in its responses on several occasions why information may/may not have been available, why, and the efforts that were made.

Lastly, with regard to item 5, to require FA to provide oral testimony on the subject stated would be overly broad and outside the scope of the investigation. FA business practices as a whole are not the subject of the inquiry and it's business practices are not reasonably relevant to the investigation.

Items 3 – 5 are overly broad and are not reasonably relevant to the investigation of the FTC. Therefore, the Court must quash or limit Items 3 – 5, where they request overbroad and/or any and all irrelevant information.

B. The Investigational Hearing Testimony is unduly burdensome, unreasonable, and duplicative.

While Congress has provided the FTC with the authority to conduct reasonable investigations through the use of subpoena's and CID's, as the Court found in *FTC v Texaco*, the "disclosure sought must always be reasonable."¹⁷ Further, the Court in *SEC v Arthur Young*, "the gist of the protection is the requirement...that the disclosures sought shall not be unreasonable.

¹⁸Correspondingly, the need for moderation in the subpoena's call is a matter of reasonableness."¹⁹ A CID that is "unduly burdensome or unreasonably broad fails this test."²⁰

Accordingly, the CID should be limited or quashed because it demands Oral Testimony from FA that is unduly burdensome and unreasonably broad. For example, the Investigative Hearing Testimony topics include the following items:

1. All of the Company's responses to the Interrogatories set forth in the CID issued September 21, 2017.
2. All documents produced by the Company in response to the CID issued September 21, 2017.

It is unduly burdensome and completely unreasonable to request FA to provide Oral Testimony on Interrogatories and Document Specifications that it has already answered in full. To continually require FA to respond to the same inquiries, repeatedly, in different formats such as written and then oral, is unduly burdensome for a company. FA is a small business that requires its principals to participate in the day to day activities of the business and the repeated request of

¹⁷ *Texaco*, 555 F.2d at 881

¹⁸ *Arthur Young & Co.*, 584 F.2d at 1030

¹⁹ *Arthur Young & Co.*, 584 F.2d at 1030

²⁰ *Texaco*, 555 F.2d at 882

the FTC to respond to the same inquiries, which have been responded to in full, forces FA to pull its principals off their day to day work and substantially burdens the business.

It is absolutely unreasonable to ask duplicative questions, that have been responded to in full, in various methods to somehow achieve a different response. Further, the way that the questions have been written above are overly broad and it is unreasonable to ask FA to prepare for questioning that has no limit. It is an abuse of power to have open ended questions in an investigation that has a specific purpose; especially when the inquiries have already been responded to. The authority of the FTC to continually issue CID's to FA with open ended questions on responses already provided in full is an abuse of the agency's power to investigate. Congress has repeatedly limited this power to "ensure that targets of investigations are accorded due process."²¹

Therefore, the Court must quash or limit Items 1 and 2 as they are unduly burdensome and unreasonably broad and fail the test as defined in *SEC v Arthur Young*.²²

CONCLUSION

For the foregoing reasons, FA respectfully requests that the Commission limit or quash the challenged Investigative Hearing Testimony as set forth above.

²¹ Sean Doherty, *Commodity Futures Tradition Common v Collins: Is the Rationale Sound for Establishing an Exception to Subpoena Law for Tax Returns?*, 7 DePaul Bus. L.J. 365, 376 (1995).

²² *Arthur Young & Co.*, 584 F.2d at 1030

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to 16 C.F.R 2.7(d)(2), counsel for Petitioner conferred with Counsel, Harris Senturia, Esq on September 24, 2018 at 2 pm EST in a good faith effort to resolve. Counsel on file, Harris Senturia, Esq, states that oral testimony was the only option, and thus there has not been an agreement by the deadline to file this petition between the Counsel for the Petitioner and counsel on this file.

Respectfully Submitted,



Rachel L Scava (0092694)
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Attorney for Respondent Fully Accountable, LLC

11/28/2018 10:10 AM

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the following via overnight Federal Express and electronic mail on this 3rd day of October, 2018.

Harris A Senturia
1111 Superior Ave, Suite 200
Cleveland, Ohio 44114
hsenturia@ftc.gov

Donald Clark, Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-113
Washington, DC 20580



RACHEL L. SCAVA

EX 5

PUBLIC DOCUMENT

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



IN THE MATTER OF)
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FULLY ACCOUNTABLE, LLC)
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FILE NO. 1723195

**NON-PARTY ELEVATED HEALTH, LLC'S PETITION TO
LIMIT OR QUASH CIVIL INVESTITGATIVE DEMAND**

RACHEL L. SCAVA
Ohio Bar No. 92694
Rachel.scava@fullyaccountable.com

*Counsel for Petitioner, Elevated Health,
LLC*

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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IN THE MATTER OF)	
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FULLY ACCOUNTABLE, LLC)	FILE NO. 1723195
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)	

COMMISSIONERS
Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

**NON-PARTY ELEVATED HEALTH, LLC’S PETITION TO
LIMIT OR QUASH CIVIL INVESTIGATIVE DEMAND**

Pursuant to 16 C.F.R. 2.7(d), Petitioner, Elevated Health, LLC (“Elevated”), a non-party to this matter, petitions the Federal Trade Commission (“FTC”) to limit or quash the Civil Investigative Demand (“CID”) issued to Elevated on September 11, 2018 and received by Elevated on September 14, 2018. Elevated objects and seeks to quash and limit the CID as being improper and unenforceable for at least two (2) separate reasons: (1) the CID is unreasonable and unduly burdensome because it requires an individual who is not involved in Elevated, or, any of the entities defined in the matter as the subject of the investigation, to participate in Investigative Hearing Testimony; and (2) the CID is not reasonably relevant and the subjects are outside the scope of the investigation as it requests oral testimony by a Company that is a non-party to the investigation, by an individual who is not involved with any of the party’s who are the subject of the

investigation, and, the hearing subjects are outside the scope of the investigative purpose of CID (as defined by the CID). Accordingly, Elevated respectfully petitions the FTC Commissioners to quash the CID in its entirety or dramatically limit its scope and breadth.

I. INTRODUCTION

On September 21, 2017, the FTC issued a Civil Investigative Demand to Fully Accountable, LLC, to investigate if Fully Accountable, LLC, and specific entities and persons that the CID specifically defines as either Group A Entities or Group B Entities. The investigation as stated in the CID is "... to determine whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the CID, and related entities and individuals have made or participated in making in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization in violation of Section 5 of the FTC Act, ...".

On September 11, 2018, the FTC issued Elevated a CID designating Sarah Scava ("Scava") as the representative by whom the FTC was requiring to provide oral testimony on the Investigational Hearing Topics listed in the CID. The subject of the investigation stated in the Elevated CID is the same investigation that was stated in the Fully Accountable, LLC (see above).

Elevated is not a Fully Accountable, a Group A Entity or a Group B Entity, as defined by the CID issued to Fully Accountable, LLC or Elevated. Further, Sarah Scava, the individual identified in the CID as the party who is to provide testimony on behalf of Elevated (a non-party to the matter), has not been involved with Elevated in any capacity since December 2017 and has not worked for Fully Accountable, LLC since January 2018.

The CID issued to Elevated requests oral testimony by Scava on inconsistent topics. The CID requests information specifically about Scava and her involvement with various entities, requests information on Elevated, and then requests information on various other Companies and Individuals. On its face, the CID appears to be requiring testimony on both Scava and Elevated although the CID has only been issued to Elevated. Further, the CID has expanded the parties and relationships that are the matter of the investigation by asking Scava and Elevated's relationship to the various parties (also not the subject of the investigation) broadening the scope of the investigation through the CID of a non-party. It is important to note, that Elevated and Scava are both non-parties to the investigation.

II. LEGAL STANDARD

By this Petition, Elevated does not challenge the FTC's statutory authority to investigate practices that it believes may constitute deceptive or unfair trade practices when used in the course of trade under 15 U.S.C 45(a). While this statute has granted the FTC this authority, its subpoena power under the statute is not limitless.¹ Limiting the powers of the FTC is especially necessary where, as here, the FTC is pursuing an unlimited inquiry where there is no limit on the scope of the investigation and it continues to issue new CID's to expand its search. The CID here is requesting testimony on broad topics from two (2) non-parties.

Congress has provided the FTC with the authority to conduct reasonable investigations using investigatory tools such as subpoena's and CID's. This authority though, does not grant unlimited investigation authority and the federal courts are used as a safeguard against agency abuse.² The federal courts serve as an independent reviewing authority with "the power to condition

¹ "A subpoena from the FTC is not self-enforcing." *Wearly v. FTC* 616 F.2d 662,665 (3d Cir. 1980).

² See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

enforcement upon observance to [a party's] valid interests.³ Congress has continually denied to confer upon administrative agencies their own subpoena enforcement power. The reason they have not conferred this authority to the administrative agencies and kept the enforcement power with the federal courts is to “ensure that targets of investigations are accorded due process” and because federal courts will not act as rubber stamps on FTC CID's.⁴

The United States Supreme Court established the recognized standard for whether an administrative agency's subpoena should be enforced in *U.S. v Morton Salt Co.*⁵ In *Morton Salt*, the Supreme Court recognized that “a governmental investigation into corporate matters may be of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power.”⁶ The Supreme Court instructed that an agency's subpoena, like the CID at issue here, should not be enforced if it demands information that is (1) not “within the authority of the agency”; (2) “too indefinite”; or (3) not “reasonably relevant to the inquiry.”⁷

Additionally, in *Morton Salt*, the Supreme Court recognized that if the corporation had objected and presented evidence concerning the excessive scope or breadth of the investigation, like FA is here, the corporation “could have obtained any reasonable modification necessary.”⁸

In the application of the *Morton Salt* standard, Courts have consistently held that an administrative subpoena and other investigative demands must be “reasonable.”⁹ We see this application in *FTC v Texaco*, where the court found that the “disclosure sought must always be

³ *Wearly*, 616 F.2d at 655

⁴ Sean Doherty, *Commodity Futures Tradition Common v Collins: Is the Rationale Sound for Establishing an Exception to Subpoena Law for Tax Returns?*, 7 DePaul Bus. L.J. 365, 376 (1995).

⁵ 338 US 632, 652 (195).

⁶ *Morton*, 338 US at 652.

⁷ *Morton*, 338 US at 62.

⁸ *Morton*, 338 US at 654

⁹ See e.g., *United States v. Constr. Prods. Research, Inc.*, 73 F.3d 464, 471 (2d Cir. 1996) (“the disclosure sought must always be reasonable”); *Texaco*, 555 F.2d at 881 (“the disclosure sought shall not be unreasonable”).

reasonable.” When the federal court evaluates the disclosure, the court must consider whether an agency’s demand is unduly burdensome.¹⁰

We further see this consideration of unduly burdensome in *SEC v. Arthur Young & Co.*, where the Court recognized that “the gist of the protection is in the requirement... that the disclosures sought shall not be unreasonable. Correspondingly, the need for moderation in the subpoena’s call is a matter of reasonableness.”¹¹ A CID that is “unduly burdensome or unreasonably broad” fails this test.¹² As such, the time, expense, and whether compliance threatens to unduly disrupt or seriously hinder normal business operations may be raised by a party challenging a civil investigative demand.¹³

Here, the CID’s request for live testimony by Scava is unreasonable and it is unduly burdensome as Scava has not been involved with Elevated since December of 2017 and has not been employed by Fully Accountable, LLC since January 2018. It is burdensome to take an individual who is not the subject of the investigation from their full – time employment and require live testimony on subjects that could be responded to in writing. In addition to the unreasonableness of requiring live testimony on subjects that could better and more efficiently be answered in interrogatories and document specifications, the Investigational Hearing Testimony is overly broad as includes the request for testimony on individuals and companies which are not the subject of the investigation and are thus no reasonably relevant to the investigation of the FTC. Accordingly, Elevated respectfully requests that the Commission limit or quash the challenged Investigational Hearing Testimony as set forth below.

¹⁰ *FTC v Texaco, Inc.*, 555 F.2d 862,882 (DC Cir. 1977)

¹¹ *Arthur Young & Co.*, 584 F.2d at 1030

¹² *Texaco*, 555 F.2d at 882

¹³ *Texaco*, 555 F.2d at 882-83

III. GENERAL OBJECTIONS TO THE CID

A. The Investigational Hearing Testimony is unduly burdensome for Scava and unreasonable for Elevated.

While Congress has provided the FTC with the authority to conduct reasonable investigations through the use of subpoena's and CID's, as the Court found in *FTC v Texaco*, the "disclosure sought must always be reasonable."¹⁴ Further, the Court in *SEC v Arthur Young* found, "the gist of the protection is the requirement...that the disclosures sought shall not be unreasonable."¹⁵ Correspondingly, the need for moderation in the subpoena's call is a matter of reasonableness."¹⁶ A CID that is "unduly burdensome or unreasonably broad fails this test."¹⁷ Because of these standards, the CID should be quashed or significantly limited as it does not pass these tests.

It is unduly burdensome to require an individual who is not involved in the entity that has been issued the CID nor the Company that is being investigated to provide oral testimony. Scava has not been involved with Elevated in any capacity since December of 2017 and has not been involved in any capacity with Fully Accountable, LLC since January of 2018. The Investigative Hearing Testimony while cut and dry questions, are listed as "subjects" that will be discussed. There is no moderation of "reasonableness" in these "subjects" making them unreasonably broad. As stated, this type of unduly burdensome and unreasonably broad fails the test for reasonableness of a CID.¹⁸

¹⁴ *Texaco*, 555 F.2d at 881

¹⁵ *Arthur Young & Co.*, 584 F.2d at 1030

¹⁶ *Arthur Young & Co.*, 584 F.2d at 1030

¹⁷ *Texaco*, 555 F.2d at 882

¹⁸ *Arthur Young & Co.*, 584 F.2d at 1030 and *Texaco*, 555 F.2d at 882.

It is an abuse of power to have open ended questions in an investigation that has a specific purpose; especially when the inquiries fall outside the scope of the investigation. The authority of the FTC to issue a CID to a non-party with open ended questions is the abuse of power that Congress has continually limited and reserved for the federal courts.

Therefore, the Court must quash or limit the Investigative Hearing topics as they are unduly burdensome and unreasonably broad and fail the test as defined in *SEC v Arthur Young*.¹⁹

B. The CID improperly seeks irrelevant information from Elevated/Scava that is outside the scope of the FTC's investigation and information that is overly broad with no limit.

The test for the relevancy of an administrative subpoena is "whether the information sought is 'reasonably relevant' to the agency's inquiry, as we see in *Morton*.²⁰ The CID at issue, must "not [be] so overbroad as to reach into areas that are irrelevant or immaterial... [and] the test is relevance to the specific purpose."²¹ Accordingly, the CID should be limited or quashed because it demands Oral Testimony from Elevated/Scava that is not reasonably relevant to the FTC's investigation.

The FTC failed to limit the requests to information and documents that relate to the purpose of the FTC's investigation. The investigation as stated in the CID is "... to determine whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the CID, and related entities and individuals have made or participated in making in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or

¹⁹ *Arthur Young & Co.*, 584 F.2d at 1030

²⁰ *FTC v. Anderson*, 631 F.2d 741, 745-46 (D.C. Cir. 1979).

²¹ *Arthur Young and Co.*, 584 F.2d at 1028; 1030.

participating in the charging, in any respect, for consumer products without consumers' authorization in violation of Section 5 of the FTC Act, ...".

As you will see in the Specific Objections below, the oral testimony subjects exceed Fully Accountable, LLC, the Group A or Group B Entities or Persons and are not related entities that are included in Group A and Group B Entities definitions, which are the subject of the investigation. Requiring oral testimony on companies and individuals that are not the subject of the investigation would require Elevated/Scava to answer questions on companies and individuals that are outside the scope of the investigation. It would be unreasonable to question and produce testimony from a non-party on subjects that are not the subject of the investigation. The FTC cannot require testimony that is not reasonably relevant and outside the scope of the FTC's investigation.²²

Accordingly, the Investigative Hearing Testimony should be quashed by the Court for not being reasonably relevant to the investigation and for being outside the scope of the investigation.

IV. SPECIFIC OBJECTIONS TO THE CID

With the above as a backdrop, Elevated asserts the following specific objections to the CID by Investigative Hearing Topic listed:

TOPIC 1: Your employment (or other relationship) with Fully Accountable, including all titles Fully Accountable gave you or that you used, and your compensation.

The CID that was issued, was issued to Elevated Health, LLC and not to Sarah Scava. This request is specific to Sarah Scava's employment with Fully Accountable, LLC. It is unreasonable to issue a CID to an entity and then ask questions that are not relevant to that entity in the investigation that is being conducted.

²² *Morton*, 338 US at 652

Further, this Investigative Hearing Topic subject is straightforward and can be answered simply. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is cut and dry. The FTC should not be able to construe this as an open-ended question with no limit, as that would be abuse of their power to investigate.²³

Thus, this Topic should be quashed in its entirety for asking an irrelevant question to Elevated. Should it be found that this topic is relevant, it should at minimum be limited to a written response by Scava, as, to construe this broadly would be inappropriate and abuse of the FTC's investigative authority. A written response would be appropriate as it is not unduly burdensome and is more efficient for both Scava and the FTC.

TOPIC 2: Work that you performed for Fully Accountable and its clients, including any work you performed for any of the Group A Entities or Group B Entities.

The CID that was issued was issued to Elevated Health, LLC and not to Sarah Scava. This request is specific to the work that Sarah Scava performed when she was employed with Fully Accountable, LLC. It is unreasonable to issue a CID to an entity and then ask questions that are not relevant to that entity and its role in the investigation being conducted.

Further, this Investigative Hearing Topic subject is straightforward and can be answered simply. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is cut and dry. The FTC should not be able to construe this as an open-ended question with no limit, as that would be abuse of their power to investigate.²⁴

Thus, this Topic should be quashed in its entirety for asking an irrelevant question to Elevated. Should it be found that this topic is relevant, it should at minimum be limited to a written response by Scava, as, to construe this broadly would be inappropriate and abuse of the FTC's

²³ See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

²⁴ See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

investigative authority. A written response would be appropriate as it is not unduly burdensome and is more efficient for both Scava and the FTC.

TOPIC 3: The formation of Elevated Health.

The CID that was issued stated that the subject of the investigation is "... to determine whether Fully Accountable, the Group A Entities, or the Group B Entities, each as defined in the CID, and related entities and individuals have made or participated in making in any respect, false, misleading, or unsubstantiated representations in connection with the marketing of consumer products, in violation of Sections 5 and 12 of the Federal Trade Commission Act, 15 U.S.C 45 and 52, or have engaged in deceptive or unfair acts or practices by charging or participating in the charging, in any respect, for consumer products without consumers' authorization in violation of Section 5 of the FTC Act, ..."

Elevated Health is not defined as either Fully Accountable, a Group A Entity, or a Group B Entity. The formation of Elevated Health is not reasonably relevant to the investigation as its formation does not help in determination of if the parties being investigated participated or engaged in any of the activities stated.

Thus, because this information is outside the scope of the investigation and it is not reasonably relevant to the investigation, this topic should be quashed in its entirety.

TOPIC 4: The business of Elevated Health, including but not limited to, Elevated Health's business model and business practices, all sources of revenue and investment, and the disposition of funds.

As stated for Topic 3, Elevated Health is not defined as either Fully Accountable, a Group A Entity, or a Group B Entity. The business of Elevated Health, including but not limited to, Elevated Health's business model and business practices, all sources of revenue and investment,

and the disposition of funds of Elevated Health is not reasonably relevant to the investigation as this information does not help in the determination of if the parties being investigated participated or engaged in any of the activities stated. Further, the business practices of Elevated are not in question and the information that would be provided in this topic is outside the scope of the investigation and is unreasonably irrelevant.

Thus, because this information is outside the scope of the investigation and it is not reasonably relevant to the investigation, this topic should be quashed in its entirety.

TOPIC 5: Your role or roles with Elevated Health, and all income you received from Elevated Health.

This Investigative Hearing Topic subject is straightforward and can be answered simply. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is cut and dry. The FTC should not be able to construe this as an open ended question with no limit, as that would be abuse of their power to investigate.²⁵

Thus, this Topic should at minimum be limited to a written response by Scava, as, to construe this broadly would be inappropriate and abuse of the FTC's investigative authority. A written response would be appropriate as it is not unduly burdensome and is more efficient for both Scava and the FTC.

TOPIC 6: Any other person's role or roles in connection with Elevated Health, including but not limited to Rachel Scava's role or roles in connection with Elevated Health.

This Investigative Hearing Topic subject is straightforward and can be answered simply. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is cut and

²⁵ See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

dry. The FTC should not be able to construe this as an open ended question with no limit, as that would be abuse of their power to investigate.²⁶

Thus, this Topic should at minimum be limited to a written response by Scava, as, to construe this broadly would be inappropriate and abuse of the FTC's investigative authority. A written response would be appropriate as it is not unduly burdensome and is more efficient for both Scava and the FTC.

TOPIC 7: All relationships between Elevated Health and Fully Accountable.

This Investigative Hearing Topic subject is straightforward and can be answered simply. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is cut and dry. The FTC should not be able to construe this as an open ended question with no limit, as that would be abuse of their power to investigate.²⁷

Thus, this Topic should at minimum be limited to a written response by Scava, as, to construe this broadly would be inappropriate and abuse of the FTC's investigative authority. A written response would be appropriate as it is not unduly burdensome and is more efficient for both Scava and the FTC.

TOPIC 8: All relationships between Elevated Health and Group A or Group B Entities.

This Investigative Hearing Topic subject is straightforward and can be answered simply. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is cut and dry. The FTC should not be able to construe this as an open ended question with no limit, as that would be abuse of their power to investigate.²⁸

²⁶ See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

²⁷ See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

²⁸ See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

Thus, this Topic should at minimum be limited to a written response by Scava, as, to construe this broadly would be inappropriate and abuse of the FTC's investigative authority. A written response would be appropriate as it is not unduly burdensome and is more efficient for both Scava and the FTC.

TOPIC 9: All relationships between Elevated Health and any of the following entities: Scava Holdings, LLC; CMG Tax and Consulting, LLC; VEF International, Inc; and TCWT Holdings, LLC.

As stated for Topic 3, Elevated Health is not defined as either Fully Accountable, a Group A Entity, or a Group B Entity. The relationships of Elevated Health, and Scava Holdings, LLC; CMG ax and Consulting, LLC; VEF International, Inc; and TCWT Holdings, LLC is outside the scope of the investigation. It is not reasonably relevant to require the disclosure of this information because it does not help in the determination of if the parties being investigated participated or engaged in any of the activities stated. Further, asking this information is a fishing tactic that is an abuse of power by the FTC.

Thus, because this information is outside the scope of the investigation and it is not reasonably relevant to the investigation, this topic should be quashed in its entirety.

TOPIC 10: All relationships between Elevated Health and any entity you know or understand to be connected, directly or indirectly, with you, Rachel Scava, Christopher M Giorgio, or Vincent Fisher.

As stated for Topic 3, Elevated Health is not defined as either Fully Accountable, a Group A Entity, or a Group B Entity. The relationships of Elevated Health, and any entity you know or understand to be connected, directly or indirectly, with you, Rachel Scava, Christopher M Giorgio, or Vincent Fisher is outside the scope of the investigation. It is not reasonably relevant to require

the disclosure of this information because it does not help in the determination of if the parties being investigated participated or engaged in any of the activities stated. Further, asking this information is a fishing tactic that is an abuse of power by the FTC.

Thus, because this information is outside the scope of the investigation and it is not reasonably relevant to the investigation, this topic should be quashed in its entirety.

TOPIC 11: Work that you performed for any of the Group A Entities or Group B Entities outside of the scope of your employment (or other relationship) with Fully Accountable, and all income you received from any of those entities.

The CID that was issued was issued to Elevated Health, LLC and not to Sarah Scava. This request is specific to Sarah Scava and the work that she performed for the Group A and Group B Entities. It is unreasonable to issue a CID to an entity and then ask questions that are not relevant to that entity and its role in the investigation being conducted.

Further, this Investigative Hearing Topic subject is straightforward and can be answered simply. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is cut and dry. The FTC should not be able to construe this as an open ended question with no limit, as that would be abuse of their power to investigate.²⁹

Thus, this Topic should be quashed in its entirety for asking an irrelevant question to Elevated and the investigation. Should it be found that this topic is relevant, it should at minimum be limited to a written response by Scava, as, to construe this broadly would be inappropriate and abuse of the FTC's investigative authority. A written response would be appropriate as it is not unduly burdensome and is more efficient for both Scava and the FTC.

²⁹ See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

TOPIC 12: Work that you performed for any of the following entities, and all income you received from them: Scava Holdings, LLC; CMG Tax and Consulting, LLC; VEF International, Inc; and TCWT Holdings, LLC.

The CID that was issued was issued to Elevated Health, LLC and not to Sarah Scava. This request is specific to Sarah Scava and the work that she performed for the Scava Holdings, LLC, CMG Tax & Consulting, LLC, VEF International, LLC and TCWT Holdings, LLC. It is unreasonable to issue a CID to an entity and then ask questions that are not relevant to that entity and its role in the investigation being conducted.

Further, this Investigative Hearing Topic is outside the scope of the investigation as the business and practices of these entities are not the subject of the investigation. The work that may or may not have been performed by Scava for these entities will not contribute in any capacity to the determination of the subject of the investigation. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is outside the scope of the investigation and not reasonably relevant to the

Thus, this Topic should be quashed in its entirety for asking an irrelevant question to Elevated and the investigation. It should further be quashed in its entirety as the subject of the topic is outside the investigation and does not provide any facts that assist in the determination of the matter of the subject.

TOPIC 13: Work that you performed, directly or indirectly for any entity you understand to be connected, directly or indirectly, with Rachel Scava, Christopher M. Girogio, or Vincent Fisher outside the scope of your employment (or relationship) with Fully Accountable, and all income you received from any such entities.

The CID that was issued was issued to Elevated Health, LLC and not to Sarah Scava. This request is specific to Sarah Scava and the work that she performed for Rachel Scava, Christopher M. Giorgio, and Vincent Fisher. It is unreasonable to issue a CID to an entity and then ask questions that are not relevant to that entity and its role in the investigation being conducted.

Further, this Investigative Hearing Topic subject is straightforward and can be answered simply. It is unduly burdensome to require Scava to provide oral testimony on this subject as it is cut and dry. The FTC should not be able to construe this as an open ended question with no limit, as that would be abuse of their power to investigate.³⁰

Thus, this Topic should be quashed in its entirety for asking an irrelevant question to Elevated and the investigation. Should it be found that this topic is relevant, it should at minimum be limited to a written response by Scava, as, to construe this broadly would be inappropriate and abuse of the FTC's investigative authority. A written response would be appropriate as it is not unduly burdensome and is more efficient for both Scava and the FTC.

CONCLUSION

For the foregoing reasons, FA respectfully requests that the Commission limit or quash the challenged Investigative Hearing Testimony as set forth above.

³⁰ See, e.g., *Oklahoma Press Publishing Co. v. Walling*, 327 US 186, 208 (1946).

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to 16 C.F.R 2.7(d)(2), counsel for Petitioner conferred with Counsel, Harris Senturia, Esq on September 29, 2018 at 12:00 pm EST October 1, 2018, and October 3, 2018 in a good faith effort to resolve. Counsel on file, Harris Senturia, Esq and counsel for Elevated Health, LLC have not been able to reach an agreement by the deadline to file this petition.

Respectfully Submitted,



Rachel L Scava (0092694)
Fully Accountable, LLC
2680 West Market St
Akron, Ohio 44333
Telephone: (216) 810 – 4705
Facsimile: (234) 542 – 1029
Email: rachel.scava@fullyaccountable.com
Attorney for Petitioner Elevated Health, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the following via overnight Federal Express and electronic mail on this 3^{4th} day of October, 2018.

Harris A Senturia
1111 Superior Ave, Suite 200
Cleveland, Ohio 44114
hsenturia@ftc.gov

Donald Clark, Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-113
Washington, DC 20580



RACHEL L. SCAVA

EX 6

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Joseph J. Simons, Chairman
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine Wilson

In the Matters of	)	File No. 1723195
	)	November 19, 2018
CIVIL INVESTIGATIVE DEMAND TO)	
FULLY ACCOUNTABLE, LLC DATED)	
SEPTEMBER 10, 2018)	
and)	
CIVIL INVESTIGATIVE DEMAND TO)	
SARAH SCAVA DATED SEPTEMBER 10, 2018)	
)	
)	

ORDER DENYING PETITIONS TO LIMIT AND QUASH
CIVIL INVESTIGATIVE DEMANDS

By WILSON, Commissioner:

Fully Accountable, LLC (“Fully Accountable”) and Elevated Health, LLC (“Elevated Health”) petition to quash or limit civil investigative demands (“CID”) for testimony issued by the Commission as part of the Commission’s investigation of Fully Accountable and its relationships with various internet marketers of dietary supplements and other products. Fully Accountable seeks to quash or limit a CID seeking testimony by a company representative pursuant to FTC Rule 2.7(h), 16 C.F.R. § 2.7(h). Elevated Health, an affiliate of Fully Accountable, did not receive a CID. Nonetheless, it seeks to quash or limit a CID for testimony issued to Sarah Scava, a former employee of Fully Accountable with ties to Elevated Health.¹ For the reasons stated below, we deny the petitions.

¹ Petitioners have not attached the challenged CIDs to their petitions. To assist the reader, we have therefore appended the CIDs hereto as Orders Exhibit 1 (CID issued to Fully Accountable) and Exhibit 2 (CID issued to Sarah Scava). Because of its relevance to resolution of the pending petitions, the CID for documents issued to Fully Accountable on September 21, 2017 is attached as Order Exhibit 3. Citations to text in these exhibits refer to Bates numbers appearing in the bottom margins.

At Fully Accountable's request, FTC staff modified the CID to allow the company to produce its documents and interrogatory responses on rolling deadlines spanning a four-week period in October and November 2017. Despite these modifications and extensions, Fully Accountable failed to produce *any* documents and its interrogatory responses omitted required details about its ownership, leadership, and organizational structure. Additionally, it provided only evasive answers to several interrogatory requests.

When Fully Accountable refused to address these deficiencies, the Commission instituted CID enforcement proceedings in the Northern District of Ohio. *See Federal Trade Commission v. Fully Accountable, LLC*, No. 5:18-mc-00054-SL (N.D. Ohio June 8, 2018). On August 13, 2018, the district court issued an order directing Fully Accountable to comply fully with the CID within 10 days. Fully Accountable made supplemental productions and submitted to the Commission a certificate of compliance. After FTC staff examined the supplemental productions, they determined that deficiencies remained. Accordingly, on September 21, 2018, the Commission filed a status report with the district court stating that the Commission does not "agree at this time that Fully Accountable has complied in full[.]" and further informed the court that it had "undertaken additional investigational steps to assess the completeness of the production and to move the matter forward generally." *Id.*, Doc. 15.

The two CIDs at issue constitute part of the "additional investigational steps" referenced in the Commission's status report. The CID issued to Fully Accountable requires the company to designate a witness to appear and testify at an FTC investigational hearing on seven topics. The designated topics include a description of the steps Fully Accountable took to comply with the earlier CID. Other topics include a description of Fully Accountable's relationship with a former employee, Sarah Scava, and with petitioner, Elevated Health, a firm that may be affiliated with or related to Fully Accountable.³ *See* Order Ex. 1 at 6. A separate CID asks Sarah Scava to testify on 13 topics. Among other topics, the CID requires Ms. Scava to describe her relationship to Fully Accountable and Elevated Health as well as Elevated Health's relationships to Fully Accountable and other entities. *See* Order Ex. 2 at 6-7.

As required by FTC Rule 2.7(k), 16 C.F.R. 2.7(k), FTC staff and counsel for Fully Accountable – Rachel Scava – conferred by telephone on September 24, 2018. A few days later, counsel Rachel Scava called FTC staff, and stated that she also represented Sarah Scava. In a series of telephone calls between September 28 and October 3, 2018, she conferred with staff regarding possible modifications to the CID issued to Sarah Scava. During these telephone calls, FTC staff also offered to conduct the

employees, agents, consultants, and other persons" working on behalf of several specified individuals. Order Ex. 3 at 13-14.

³ A search of public records shows that Sarah Scava registered Elevated Health LLC with the Ohio Secretary of State on December 20, 2016.

staff to obtain information and test a company's responses in real time, we find that the value to the Commission of investigational hearings outweighs any reasonable burdens they may impose.

III. As a Third Party, Elevated Health Is Not Entitled to File a Petition to Quash an FTC CID

Elevated Health, LLC seeks to quash or limit the CID issued to Sarah Scava on September 10, 2018. As an initial matter, we note that Elevated Health is mistaken in asserting that the CID in question was issued to Elevated Health, with Sarah Scava designated as the individual to provide testimony on behalf of the entity. *See* Elevated Health Pet. 3-4. In fact, the Commission did not issue a CID to Elevated Health. It issued the CID to Sarah Scava personally to testify on the basis of her own knowledge of the designated topics. *See* Order Ex. 2 at 1, 3, 6 (specifying Sarah Scava as CID recipient).

Given these circumstances, Elevated Health may not seek to limit or quash Ms. Scava's CID. Section 20(c) of the FTC Act, 15 U.S.C 57b-1(c), authorizes the Commission to issue a CID to "any person" the Commission has reason to believe has documents, tangible things, or information relevant to unfair or deceptive acts in or affecting commerce. In turn, Section 20(f)(1) states that after being served with a CID, "such person" may file a "petition for an order by the Commission modifying or setting aside the demand." 15 U.S.C. § 57b-1(f)(1). Section 20(f) makes no provision, however, for such a petition to be filed by any person other than the person served with the CID. *Id.* Because Elevated Health's petition is not properly before the Commission, we decline to consider any of the arguments it advances in support of its petition to quash or limit.

Even if Elevated Health could file such a petition, Elevated Health's failure to comply with the requirement that it meet and confer with FTC staff prior to filing means that its arguments are not properly before the Commission. The Commission takes this procedural requirement seriously, as shown by two separate provisions in the Commission's Rules. Rule 2.7(k) cautions that "[t]he Commission will not consider petitions to quash or limit absent a pre-filing meet and confer session with Commission staff and, absent extraordinary circumstances, will consider only issues raised during the meet and confer process." 16 C.F.R. § 2.7(k). Rule 2.10 then directs CID recipients to include with any petition to limit or quash a statement describing the circumstances and attendees at the conference with staff and further provides that "[f]ailure to include the required statement may result in a denial of the petition." 16 C.F.R. § 2.10(a)(2). While Rachel Scava met and conferred with FTC staff regarding the CID issued to Sarah Scava, we are informed that she stated that she was doing so on behalf of Ms. Scava, not Elevated Health. We thus understand that FTC staff was not even aware Rachel Scava represented Elevated Health until she filed the instant petition on behalf of the company. Nor has Elevated Health presented any "extraordinary circumstances" justifying a departure from these rules. Accordingly, the Commission declines to consider Elevated Health's arguments in support of its petition to quash or limit.

In any event, the arguments advanced by Elevated Health would not call for any limitations on the scope of inquiry for testimony set forth in the CID. Elevated Health's petition presents a number of repetitive arguments that, taken together, amount to the following objections: (1) the CID is unreasonable because Ms. Scava is no longer involved with the subject company, *see, e.g.*, Elevated Health Pet. 7; (2) the CID is unreasonable because it seeks information about entities and individuals outside of the scope of the investigation, *see id.* at 8-9, 11, 14, 16, 17; and (3) the CID's requests for testimony are unduly burdensome and Sarah Scava should be permitted to respond in writing. *See id.* at 10-15, 17.

These objections provide no basis for limiting or quashing the CID. It is entirely permissible for Commission staff to seek testimony from individuals formerly involved with subject companies, including former employees. Moreover, for the reasons discussed above, neither Sarah Scava nor Elevated Health falls outside of the scope of the investigation, which extends to entities and individuals "related" to Fully Accountable. *See, e.g.*, Order Ex. 2 at 1, 5-6, 10-12 (resolutions); *see also Invention Submission Corp.*, 965 F.2d at 1090. Furthermore, the Commission is well within its rights in this instance to elect to require live testimony as an investigatory tool pursuant to the FTC Act and its implementing regulations. *See* 15 U.S.C. § 57b-1(c)(1); 16 C.F.R. §2.7(f).

IV. CONCLUSION

For the foregoing reasons, **IT IS HEREBY ORDERED THAT** Fully Accountable, LLC's Petition to Limit or Quash Civil Investigative Demand be, and hereby is, **DENIED**.

IT IS FURTHER ORDERED THAT Elevated Health, LLC's Petition to Limit or Quash Civil Investigative Demand is not properly before the Commission, and accordingly is **DENIED**.

IT IS FURTHER ORDERED THAT Sarah Scava shall comply in full with the Commission's Civil Investigative Demand and shall appear ready to testify on the specified topics at the designated location on **November 29, 2018 at 9:00 a.m.**, or at other such date, time, and location as FTC staff may determine.

IT IS FURTHER ORDERED THAT Fully Accountable, LLC shall comply in full with the Commission's Civil Investigative Demand and shall appear ready to testify on the specified topics at the designated location on **November 30, 2018 at 9:00 a.m.**, or at other such date, time, and location as FTC staff may determine.

By the Commission, Chairman Simons recused.

Donald S. Clark
Secretary

SEAL:
ISSUED: November 19, 2018

EX 7

Rachel Scava <rachel.scava@fullyaccountable.com>

Elevated Health

10 messages

Rachel Scava <rachel.scava@fullyaccountable.com>
To: "Senturia, Harris" <hsenturia@ftc.gov>

Thu, Sep 27, 2018 at 10:41 AM

Good Morning Harris,

I have received the Elevated Health CID from Sarah Scava. Please let me know some days and times for a call.

Thanks,

Rachel

--

Rachel Scava
CHIEF OPERATING OFFICER

T. 216-810-4705 x2203 [S] rscava



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Senturia, Harris <HSENTURIA@ftc.gov>
To: Rachel Scava <rachel.scava@fullyaccountable.com>
Cc: "Jenkins, Adrienne M." <ajenkins@ftc.gov>

Thu, Sep 27, 2018 at 11:12 AM

Good morning Rachel,

I take your email to indicate that you will be representing Sarah Scava for purposes of the CID issued to her. Thank you for reaching out.

We are available this afternoon for a call at 2PM, 2:30PM, or 3PM.

We are available tomorrow any time between 11AM and 3PM.

Please let us know what would work for you. Thank you.

Regards,

Harris

Harris A. Senturia
East Central Region
Federal Trade Commission
1111 Superior Avenue, Suite 200
Cleveland, Ohio 44114-2507
Tel: (216) 263-3420
Cell: (202) 256-0261
hsenturia@ftc.gov

From: Rachel Scava <rachel.scava@fullyaccountable.com>
Sent: Thursday, September 27, 2018 10:41 AM
To: Senturia, Harris <HSENTURIA@ftc.gov>
Subject: Elevated Health

[Quoted text hidden]

Rachel Scava <rachel.scava@fullyaccountable.com>
To: "Senturia, Harris" <HSENTURIA@ftc.gov>
Cc: "Jenkins, Adrienne M." <ajenkins@ftc.gov>

Thu, Sep 27, 2018 at 11:15 AM

Yes, I will be representing Sarah Scava.

I am in a CLE all day tomorrow. What works on Monday?

[Quoted text hidden]

Senturia, Harris <HSENTURIA@ftc.gov>
To: Rachel Scava <rachel.scava@fullyaccountable.com>
Cc: "Jenkins, Adrienne M." <ajenkins@ftc.gov>

Thu, Sep 27, 2018 at 2:20 PM

It would be better if we could speak this afternoon or tomorrow, as tomorrow is the end of the 14-day period for the initial meeting. Do you have any breaks during the CLE that you could use for the call?

As for Monday (10/1), we are free any time between 10AM and 1PM.

-Harris

From: Rachel Scava <rachel.scava@fullyaccountable.com>
Sent: Thursday, September 27, 2018 11:16 AM
To: Senturia, Harris <HSENTURIA@ftc.gov>
Cc: Jenkins, Adrienne M. <ajenkins@ftc.gov>
Subject: Re: Elevated Health

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

Rachel

--

Rachel Scava

CHIEF OPERATING OFFICER

[] T. 216-810-4705 x2203 []

rscava

[] [] []

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--

Rachel Scava

CHIEF OPERATING OFFICER

[] T. 216-810-4705 x2203 []

rscava

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Trusted Advisor
Logo

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Rachel Scava <rachel.scava@fullyaccountable.com>
To: "Senturia, Harris" <HSENTURIA@ftc.gov>
Cc: "Jenkins, Adrienne M." <ajenkins@ftc.gov>

Thu, Sep 27, 2018 at 2:21 PM

I can do 4 pm EST today or 4 pm EST tomorrow.
[Quoted text hidden]

Rachel Scava
CHIEF OPERATING OFFICER

T. 216-810-4705 x2203 | rscava



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Senturia, Harris <HSENTURIA@ftc.gov>
To: Rachel Scava <rachel.scava@fullyaccountable.com>
Cc: "Jenkins, Adrienne M." <ajenkins@ftc.gov>

Thu, Sep 27, 2018 at 2:35 PM

Neither of those times will work for us.

-Harris

From: Rachel Scava <rachel.scava@fullyaccountable.com>
Sent: Thursday, September 27, 2018 2:21 PM

[Quoted text hidden]

[Quoted text hidden]

Rachel Scava <rachel.scava@fullyaccountable.com>
To: "Senturia, Harris" <HSENTURIA@ftc.gov>
Cc: "Jenkins, Adrienne M." <ajenkins@ftc.gov>

Thu, Sep 27, 2018 at 2:57 PM

I will step out at 12noon tomorrow for a lunch to take a quick call.

You will have to call my cell phone: 330.819.3952

[Quoted text hidden]

Rachel Scava
CHIEF OPERATING OFFICER

T. 216-810-4705 x2203 [S] rscava



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Senturia, Harris <HSENTURIA@ftc.gov>
To: Rachel Scava <rachel.scava@fullyaccountable.com>
Cc: "Jenkins, Adrienne M." <ajenkins@ftc.gov>

Thu, Sep 27, 2018 at 3:00 PM

Thank you, we will do that.

-Harris

From: Rachel Scava <rachel.scava@fullyaccountable.com>

Sent: Thursday, September 27, 2018 2:57 PM

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[Quoted text hidden]

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Rachel

--

Rachel Scava

CHIEF OPERATING OFFICER

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rscava

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Rachel Scava

CHIEF OPERATING OFFICER

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rscava

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[Error! Filename not specified.] [Error! Filename not specified.]

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[Error! Filename not specified.]

[Error! Filename not specified.]

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[Quoted text hidden]

[Quoted text hidden]

Rachel Scava <rachel.scava@fullyaccountable.com>
To: "Senturia, Harris" <HSENTURIA@ftc.gov>
Cc: "Jenkins, Adrienne M." <ajenkins@ftc.gov>

Fri, Sep 28, 2018 at 11:52 AM

Hi Harris,

Can you please call around 12:10? We are running a few minutes behind here.

[Quoted text hidden]

Rachel Scava

CHIEF OPERATING OFFICER

T. 216-810-4705 x2203 rscava



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Senturia, Harris <HSENTURIA@ftc.gov>
To: Rachel Scava <rachel.scava@fullyaccountable.com>
Cc: "Jenkins, Adrienne M." <ajenkins@ftc.gov>

Fri, Sep 28, 2018 at 11:55 AM

Yes, will call at 12:10. Thank you.

From: Rachel Scava <rachel.scava@fullyaccountable.com>
Sent: Friday, September 28, 2018 11:52 AM

[Quoted text hidden]

[Quoted text hidden]

Rachel Scava <rachel.scava@fullyaccountable.com>

Wednesday at 4PM works for us

1 message

Senturia, Harris <HSENTURIA@ftc.gov>
To: Rachel Scava <rachel.scava@fullyaccountable.com>
Cc: "Jenkins, Adrienne M." <ajenkins@ftc.gov>

Mon, Oct 1, 2018 at 4:42 PM

Good afternoon Rachel,

Following up on our call this morning, I wanted to let you know that a call on Wednesday, October 3, at 4PM will work for us. Thank you.

Regards,

Harris

Harris A. Senturia
East Central Region
Federal Trade Commission
1111 Superior Avenue, Suite 200
Cleveland, Ohio 44114-2507
Tel: (216) 263-3420
Cell: (202) 256-0261
hsenturia@ftc.gov

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FEDERAL TRADE COMMISSION	)	CASE NO. 518MC54
)	
Petitioner,	)	JUDGE SARA LIOI
	)	Magistrate Judge George J. Limbert
)	
v.)	
)	
FULLY ACCOUNTABLE, LLC)	
)	
Respondent.)	
)	

PROPOSED ORDER

Upon consideration of Respondent's Petition to Enforce the Petition to Quash and Limit for Fully Accountable and Sarah Scava and all Memorandum in Support and Exhibits included, it is

HEREBY ORDERED that the Petitions to Quash and Limit both be enforced.

IT IS SO ORDERED, this __ day of _____, 2018

HONORABLE SARA LIOI
UNITED STATES DISTRICT JUDGE