

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

In the Matter of

**HEALTH RESEARCH LABORATORIES, LLC,
a limited liability company,**

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

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

DOCKET NO. 9397

**COMPLAINT COUNSEL’S SECOND MOTION TO
COMPEL RESPONDENTS TO PRODUCE DOCUMENTS**

Although Respondents intend to amend their Answer to admit all material allegations in the Complaint and have thereby substantially narrowed disputed issues,¹ limited additional discovery related to scope of relief should proceed. As previously established, “there is nothing in Rule 3.12(b)(2) or the Scheduling Order issued in this case that prevents Complaint Counsel from pursuing discovery regarding issues that remain relevant after [the motions to amend the answer and complaint] are resolved.” No. 600817 (Mar. 1, 2021), at 5. Specifically, Respondents’ admissions do not resolve the issue of appropriate relief, and facts outside of the complaint may be considered in resolving that issue. *See In re Zale Corp.*, 77 FTC 1635, 1970 WL117293, *1 (1970) (“The selection of an appropriate remedy, and the admissibility of

¹ Because Judge Chappell rejected Complaint Counsel’s prior request that Respondents specify which allegations they were admitting, *see* No. 600937 (Mar. 10, 2021) at 4, on the ground that Respondents’ intent is irrelevant given the broad language of Rule 3.12(b)(2) admissions, Complaint Counsel assumes Respondents have admitted, in their entirety, all allegations material to any count in the Complaint, and the only remaining disputed issues concern the scope of relief and Respondents’ three remaining affirmative defenses. *See also In re Auslander Decorator Furniture, Inc.*, 83 FTC 1542, 1974 WL 175916 (recognizing Respondents expressly carved out specific factual issues related to individual liability from their general admissions under Rule 3.12(b)(2)).

evidence with regard thereto, are governed by the unlawful practices actually found to exist, and not by the allegations of the complaint.”) Rule 3.12(b)(2) states that the answer and complaint “will provide a record basis on which the Commission shall issue a final decision,” but does not state the pleadings provide the *only* basis for the final decision. This reading of the Rule is consistent with the Court’s interpretations of other parts of Rule 3.12(b)(2). *See* No. 600937, at 4 (concluding affirmative defenses permissible because Rule does not state the answer “shall consist *only* of the required statement of admission, and this limitation will not be implied”) (internal quotes omitted).

Accordingly, Complaint Counsel respectfully requests² Respondents be required to: (1) clearly identify any categories of documents responsive to Requests 1 and 2 in Complaint Counsel’s First Requests for Production (“RFPs”)³ withheld on grounds other than privilege or the work product doctrine; (2) promptly produce all non-privileged documents responsive to these Requests; and (3) produce a privilege log. As explained below, documents responsive to Requests 1 and 2 are highly relevant to evaluating the seriousness and deliberateness of Respondents’ conduct, both of which are factors weighed in determining whether fencing-in relief should be included in a final cease and desist order.

I. BACKGROUND

Complaint Counsel served the RFPs on December 22, 2020, and Respondents served their Objections and Responses on January 21, 2021 (“Responses”). Averill Decl., CCX-A5. Respondents sent their first and only production (including 492 documents) to Complaint Counsel on January 25, 2021. Averill Decl. at ¶ 7. Respondents’ counsel initially stated they would review and produce additional responsive documents within two weeks. Averill Decl., CCX-A6. However, during subsequent conferences on February 1 and 11, counsel stated that

² Complaint Counsel’s timely Motion to Compel was denied on March 1, 2021 without prejudice to re-filing it following resolution of then pending Motions to Amend the Answer and Complaint. *See* No. 600817 (Mar. 1, 2021).

³ *See* Averill Decl., CCX-A3.

Respondents did not intend to review potentially responsive documents, prepare a privilege log, or complete their production because it was too costly to do so. Further, on February 1, counsel asserted that additional discovery was irrelevant because Respondents instead preferred to pursue other options, including terminating the administrative case by settlement, withdrawing their Answer, amending their Answer to admit allegations in the Complaint, or declining to participate in discovery and incurring sanctions from the Court that would terminate the proceeding. Averill Decl. at ¶¶ 14, 15, CCX-A8. Respondents' new objections were not included in their Responses.⁴ Respondents' Motion to Amend their Answer to admit all material complaint allegations pursuant to Rule 3.12(b)(2) was granted on March 10, 2021. *See* No. 600937. Respondents have not yet filed their Amended Answer.

II. LAW

Rule 3.31(c)(1) provides “[p]arties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, *to the proposed relief*, or to the defenses of any respondent.” (emphasis added). The Notice of Contemplated Relief attached to the Complaint includes fencing-in provisions intended to prevent future violations.⁵ Even if Respondents admit all allegations in the Complaint, limited discovery and a hearing to introduce and consider evidence related to the proper scope of relief are necessary. *See* Rule 3.12(b)(2) (stating admissions operate as “a waiver of hearing as to the facts alleged in the complaint”). Facts relevant in determining the proper scope of fencing-in relief include those related to: (1) the seriousness and deliberateness of the violation; (2) the ease with which violative conduct may be transferred to other products; and (3) any history of prior

⁴ *See, e.g., In re Daniel Chapter One*, No. 9329, 2009 WL 569717, at *2 (Feb. 11, 2009); *Richmark Corp. v. Timber Falling Consultants*, 959 F.2d 1468, 1473 (9th Cir. 1992) (“It is well established that a failure to object to discovery requests within the time required constitutes a waiver of any objection.”).

⁵ The Commission’s authority to include fencing-in relief in cease and desist orders to prevent future illegal conduct is well-established. *See, e.g., FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 395 (1967); *FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952).

violations. *See Telebrands Corp. v. FTC*, 457 F.3d 354, 358 (4th Cir. 2006) (quoting *Stouffer Foods Corp.*, 118 FTC 746, 811 (1994)).

When a party fails to comply with its discovery obligations, a motion to compel under Rule 3.38(a) is appropriate. *See also* Rule 3.37(b). Discovery will be limited only “if the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive, or if the burden and expense of the proposed discovery outweigh its likely benefit.” *In re Daniel Chapter One*, No. 9329, 2009 WL 569694, at *2 (Jan. 9, 2009). Importantly, “[p]arties resisting discovery of relevant information carry a heavy burden of showing why discovery should be denied.”⁶ As explained below, Respondents cannot carry this burden and the discovery sought is highly relevant to relief.

III. ARGUMENT

A. Respondents are withholding highly relevant documents.

The RFPs include a targeted list of eleven document requests, and Respondents have produced little in response. *See* Averill Decl. at ¶¶ 7, 9, 11, CCX-A3. In light of Respondents’ recent decision to admit all material allegations in the Complaint, Complaint Counsel now seeks an order requiring them to produce documents responsive to Request 1 and 2. These requests are not overly burdensome. Request 1 asks for copies of each unique ad for the challenged products, dissemination information for each ad, as well as “all Documents Related To the content, development, analysis, review or approval of such Advertisements.” CCX-A3. In response, Respondents produced ads, but no business records containing dissemination information. They also refused to produce any documents related to “the content, development, analysis, review or approval” of the ads on several grounds including the erroneous contentions that Request 1 is overly broad and “fails to describe the documents sought with reasonable particularity.” CCX-

⁶ *See In re Matter of LabMD, Inc.*, No. 9357, 2014 WL33621, at *1 (quoting *In re Daniel Chapter One*, No. 9329, 2009 WL 569694, at *2 (Jan. 9, 2009)).

A5. Request 2 asks for communications with certain identified third parties (including consultants, a copywriter, and a product endorser, but no attorneys) related to the challenged products. Respondents objected to producing any “privileged documents” and stated non-privileged documents “will be produced.” *Id.* However, they never produced any responsive documents. Documents responsive to Requests 1 and 2 are crucial in evaluating the seriousness and deliberateness of Respondents’ unlawful conduct, as they will show the numbers of each ad disseminated (seriousness), as well as the advice and information Respondents were aware of when they made decisions about the content and dissemination of challenged ads (deliberateness).

Respondents’ limited document production mainly consists of multiple copies of documents related to individual ingredients in the challenged products that were previously produced to the FTC⁷ as part of an investigation that preceded the contempt case in *FTC and State of Maine v. Health Research Laboratories, et al.*, No. 2:17-cv-00467-JDL (D. Me.). *Id.* Significantly, Respondents have not produced any documents or communications clearly related to work performed by consultants or advisors whom Respondents previously identified as being involved in developing and reviewing the advertisements in question or in evaluating substantiation for relevant claims (*i.e.*, Richard Cohen, Inna Yegorova, Stephen Kimball, Curtis Walcker/Dietary Supplement Experts). *See* Averill Decl. at ¶ 11. Such documents would clearly be responsive to Requests 1 and 2. Moreover, conversations with counsel suggest Respondents are improperly asserting that attorney-client privilege or the work product doctrine somehow protect all of these documents, and they have produced no privilege log. Averill Decl. at ¶¶ 12, 17.

Respondents also have not produced any documents showing how ad content was developed, reviewed, or approved, other than a few statements of approval apparently signed by

⁷ Instructions in the RFPs advised Respondents they were not required to re-produce documents previously submitted to the FTC. *See* Averill Decl., CCX-A3 (Instruction C).

Richard Cohen. *Id.* at ¶ 11. Respondents have produced no emails, notes, or correspondence from the relevant period to Complaint Counsel. *Id.* They also have not produced any business records related to either Respondents' advertising and marketing strategy for the four products at issue or product development. *Id.* Additionally, Respondents have not produced a single document that is clearly authored by, or addressed to, either Respondent Kramer Duhon or his nephew, Kyle Duhon, who assisted him in operating Health Research Laboratories and Whole Body Supplements. *Id.* These categories of missing documents are likely to include documents responsive to Request 1 and 2.

B. Respondents' refusal to produce documents is prejudicial.

Respondents' ongoing failures to collect, review, and produce documents is highly prejudicial to Complaint Counsel and to fact-finding in this matter related to the scope of relief. The deadline for Complaint Counsel to issue document requests, interrogatories, and subpoenas *duces tecum* is imminent (March 25, 2021), and it is difficult to proceed with depositions or determine what additional discovery is necessary when Respondents' document production is so deficient.

C. Complaint Counsel's efforts to meet and confer have been unsuccessful.

Respondents' counsel has largely refused to engage in the meet and confer process to resolve questions about their document collection, production, and Responses. Averill Decl. at ¶¶ 5, 15. Respondents' Initial Disclosures failed to provide information about all categories of relevant documents and ESI in their custody and control, but instead essentially copied Complaint Counsel's Initial Disclosures produced one day earlier. Averill Decl., CCX-A1 & A2. After receiving the Initial Disclosures, Complaint Counsel followed up by telephone and letter to request information about the types of documents and ESI in Respondents' custody and control, the custodians being searched, and whether Respondents would produce ESI in accordance with the format requested in the RFPs (which they ultimately did not). *See* Averill Decl. at ¶ 5, CCX- A4. Respondents' counsel did not respond to any of these reasonable

requests for information. Averill Decl. at ¶ 5. On January 27, in advance of filing the original motion to compel, Complaint Counsel asked to meet and confer about Respondents' Responses and document production. Averill Decl., CCX-A7. Respondents' counsel postponed that conversation until February 1, 2021, and then sought to cancel it hours before the scheduled time. Averill Decl., CCX-A8. Because of the tight timeline for discovery in the administrative case, Complaint Counsel insisted on proceeding with the conference to discuss deficiencies in Respondents' Responses and spent approximately 75 minutes trying to meet and confer about specific questions and problems related to Respondents' Responses and initial document production, as well as their Objections and Answers to the First Set of Interrogatories. *See* Averill Decl. at ¶¶ 14, 15, CCX-A8. However, Respondents' counsel repeatedly resisted substantively participating in that conversation based on his contention that further discovery was not necessary or relevant, and he stated Respondents would not produce additional documents or otherwise supplement any of their discovery responses. *Id.* at ¶ 15. During a telephone conference held on March 23, 2021 to discuss this second motion to compel, Respondents' counsel confirmed their position is that Respondents should not be required to participate in further discovery since they intend to amend their Answer pursuant to Rule 3.12(b)(2).

IV. CONCLUSION

For all of the above reasons, Complaint Counsel requests an order requiring Respondents to: (1) identify any categories of documents responsive to Requests 1 and 2 they are withholding based on objections other than attorney-client privilege or the work product doctrine; (2) produce all non-privileged documents responsive to Requests 1 and 2 within 10 business days of the Order; and (3) produce a privilege log providing sufficient information to allow Complaint Counsel to evaluate Respondents' assertions of privilege or the work product doctrine within 15 business days of the Order.

Respectfully submitted,

s/ Elizabeth J. Averill

Elizabeth J. Averill

Jonathan Cohen

Federal Trade Commission

600 Pennsylvania Ave, NW, CC-9528

Washington, DC 20580

(202) 326-2993 (Averill); -2551 (Cohen)

Eaverill@ftc.gov; Jcohen2@ftc.gov

(202) 326-3197 (facsimile)

Complaint Counsel

CERTIFICATE OF COMPLIANCE

Pursuant to Paragraph 4 of the Court's December 14, 2020 Scheduling Order, the undersigned counsel represents that she and Jonathan Cohen conferred with Respondents' counsel, Joel Reese, in a good faith effort to resolve by agreement the issues raised in this motion to compel, but the parties were unable to resolve any of the issues by agreement. The telephone conference took place by telephone on March 23, 2021 starting at 2:45 PM (Eastern).

s/ Elizabeth J. Averill
Elizabeth J. Averill
Federal Trade Commission
600 Pennsylvania Ave, NW, CC-9528
Washington, DC 20580
(202) 326-2993; eaverill@ftc.gov

CERTIFICATE OF SERVICE

I certify that I served a copy of Complaint Counsel's Second Motion to Compel Respondents to Produce Documents and attachments to Respondents' Counsel on March 24, 2021 via electronic mail.

Joel Reese
Joshua Russ
Reese Marketos LLP
750 N. Saint Paul St., Suite 600
Dallas, TX 75201
Joel.reese@rm-firm.com
Josh.russ@rm-firm.com

I also served one electronic copy via the Administrative E-Filing System and one electronic courtesy copy to the **Office of the Secretary** via email to ElectronicFilings@ftc.gov.

I served one electronic courtesy copy via email to the **Office of the Administrative Law Judge**:

The Honorable D. Michael Chappell
Administrative Law Judge
600 Pennsylvania Ave, N.W., Room H-110
Washington, DC 20580

s/ Elizabeth J. Averill
Elizabeth J. Averill
Federal Trade Commission
600 Pennsylvania Ave, NW, CC-9528
Washington, DC 20580
(202) 326-2993; eaverill@ftc.gov

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**KRAMER DUHON,
individually and as an officer of
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and WHOLE BODY SUPPLEMENTS, LLC.**

DOCKET NO. 9397

**[PROPOSED] ORDER GRANTING COMPLAINT COUNSEL'S SECOND
MOTION TO COMPEL RESPONDENTS TO PRODUCE DOCUMENTS**

This matter having come before the Chief Administrative Law Judge on March 24, 2021, upon Complaint Counsel's Second Motion to Compel Respondents to Produce Documents, it is hereby **ORDERED** that:

1. The Motion is **GRANTED**; and
2. Within 5 days of this Order, Respondents shall identify all categories of documents responsive to Complaint Counsel's First Set of Request for Production they are withholding on grounds other than privilege or the work product doctrine;
3. Within 10 business days of this Order, Respondents shall produce all non-privileged documents that are responsive to Complaint Counsel's First Set of Request for Production;

4. Within 15 business days of this Order, Respondents shall produce to Complaint Counsel a privilege log identifying all documents withheld on the basis of any privilege or the work product doctrine. The log must provide sufficient information to allow Complaint Counsel to evaluate Respondents' assertions of privilege and the work product doctrine including, but not limited to, information such as the type of document, title or file name of documents, authors, recipients, date, and the subject lines of any type of correspondence.

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Date:

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DECLARATION OF ELIZABETH J. AVERILL

I, Elizabeth J. Averill, hereby state that I have personal knowledge of the facts set forth below. I submit this declaration in support of Complaint Counsel's Second Motion to Compel Respondents to Produce Documents. If called as a witness, I could and would testify as follows:

1. I am a United States citizen and am over eighteen years of age. I am employed by the Federal Trade Commission ("FTC") as an attorney in the Division of Enforcement, Bureau of Consumer Protection. I am acting as Complaint Counsel in the above-captioned matter. I also worked as an attorney representing the Federal Trade Commission in *FTC and State of Maine v. Health Research Laboratories, LLC, et al.*, Case No. 2:17-cv-00467-JDL (D. Me.).

2. On December 9, 2020, I served Complaint Counsel's Initial Disclosures on Respondents' counsel via email. A true and correct copy of those Initial Disclosures are attached as CCX-A1.

3. On December 10, 2020, I received Respondents' Initial Disclosures from Respondents' counsel, Joel Reese. A true and correct copy of these Initial Disclosures are attached as CCX-A2. They appeared to have been largely copied from Complaint Counsel's Initial Disclosures, and they do not provide any information about where Respondents are storing potentially relevant documents. Respondents also did not list categories of relevant documents one would expect to be in their custody such as emails, documents related to work performed by non-attorney consultants and copywriters related to the challenged ads, or business records related to advertising or marketing strategy for Black Garlic Botanicals, BG18, The Ultimate Heart Formula, or Neupathic.

4. On December 22, 2020, I served Complaint Counsel's First Requests for Production to Respondents ("RFPs") by email to their counsel, Joel Reese and Joshua Russ. A true and correct copy of the RFPs are attached as CCX-A3.

5. On January 6, 2021, my co-counsel, Jonathan Cohen, and I had a telephone conference with Joel Reese to discuss questions related to the RFPs and Respondents' request that Complaint Counsel provide search terms. During that conference, I asked Mr. Reese for specific information about the Respondents' document collection efforts, the custodians searched, how and where ESI was stored, as well as the volume and format of stored ESI. Mr. Reese did not provide any specific information about Respondents' collection efforts or any information relevant to assessing burden. On January 11, 2021, I sent a letter to Mr. Reese following up about some of these unanswered questions. A true and correct copy of this letter is attached as CCX-A4. I never received any information from Mr. Reese in response to these questions.

6. On January 21, 2021, I received Respondents' Objections and Responses to Complaint Counsel's First Requests for Production ("Responses"). A true and correct copy of the Responses are attached as CCX-A5.

7. A vendor working with Respondents' counsel produced documents on January 25, 2021 ("January 25 Production"). This is the only document production Complaint Counsel has received in response to the RFPs. It included 492 documents.

8. On January 25, 2021, Respondents' counsel stated he planned to review and produce additional responsive documents to Complaint Counsel within two weeks. A true and correct copy of this email is attached as CCX-A6.

9. I personally reviewed all of the documents in the January 25 Production. During my review, I noticed the majority of the documents had previously been produced to the FTC as part of the contempt investigation related to *FTC and State of Maine v. Health Research Laboratories, LLC, et al.*, Case No. 2:17-cv-00467-JDL (D. Me.).

10. Furthermore, the January 25 Production includes multiple copies of the same articles, random website content, and excerpted sections of alternative health books related to individual ingredients in the four challenged products. For example, six copies of an article entitled "Aged Garlic Extract Reduces Low Attenuation Plaque in Coronary Arteries of Patients with Metabolic Syndrome in a Prospective Randomized Double-Blind Study" authored by Matsumoto et al. were produced with Bates numbers of HRLAC_00186 to 00191; HRLAC_00720 to 00725; HRLAC_01444 to 01449; HRLAC_01991 to 01996; HRLAC_02566 to 02571; and HRLAC_03113 to 03118. Six copies of an article entitled "Garlic Shows Promise for Improving Some Cardiovascular Risk Factors" authored by Ackermann et al. were produced with Bates numbers of HRLAC_00672 to 00683; HRLAC_00684 to 00695; HRLAC_01943 to

001954; HRLAC_01955 to 01966; HRLAC_03065 to 03076; and HRLAC_03077 to 03088.

Three copies of an abstract related to an article entitled “Inhibiting progression of coronary calcification using Aged Garlic Extract in patients receiving statin therapy: a preliminary study” authored by Budoff et al. were produced with Bates numbers of HRLAC_00016 to 00017; HRLAC_01262 to 01263; and HRLAC_02384 to 02385. There are three copies of a website article entitled “14 Biggest Myths About Type 2 Diabetes” apparently downloaded from <http://community.ihealthlabs.com> that was produced with Bates numbers HRLAC_01426 to 01431; HRLAC_00168 to 00173; and HRLAC_02548 to 02553. Respondents produced three copies of an article entitled “Applicable People fermented black garlic; green natural org” apparently downloaded from <http://www.iblackgarlic.com> and produced with Bates numbers HRLAC_01305 to 01306; HRLAC_00059 to 00060; and HRLAC_02427 to 02428.

Respondents produced three copies of an excerpt entitled “Chelation Therapy” from a book entitled “Alternative Medicine: the definitive guide” with Bates numbers HRLAC_01832 to 01842; HRLAC_00561 to 00571; and HRLAC_02954 to 02964. This is just a very small sample of the extensive amount of duplicative materials in the January 25 Production.

11. Based on my review, the January 25 Production did not include any documents related to the development, analysis, review, or approval of the challenged advertisements other than a few statements of ad approval apparently signed by Richard Cohen. The production did not include any communications or documents clearly related to work done by individuals or entities who assisted the Respondents on projects related to advertising and substantiation such as documents involving Inna Yegerova, Inna Consulting, Curtis Walcker, Dietary Supplement Experts, LLC, or Stephen Kimball. The production did not include documents or any communications related to either Respondents’ advertising and marketing strategy or product

development for Black Garlic Botanicals, BG18, The Ultimate Heart Formula, or Neupathic. Respondents have not produced any contemporaneous emails, notes, or correspondence. Respondents have not produced any documents clearly authored by, or addressed to, either Kramer Duhon or Kyle Duhon. The January 25 Production does not include any documents related to Respondents' alleged defense that Kramer Duhon was not responsible for the conduct of the corporate Respondents.

12. Respondents have not produced a privilege log.

13. On January 27, 2021, I sent an email to Respondents' counsel asking to schedule a time to meet and confer about issues related to Respondents' Initial Disclosures, the Responses, as well as Respondents' Objections and Answers to the First Set of Interrogatories. Respondents' counsel advised that the earliest date he was available for such a conference was February 1, 2021. A true and correct copy of an email string between counsel related to scheduling the time to meet and confer is attached as CCX-A7.

14. On February 1, a few hours prior to the scheduled time for counsel to meet and confer about discovery issues, Respondents' counsel, Joel Reese, sent an email indicating Respondents would agree to all relief requested in the Notice of Contemplated Relief without any conditions. Mr. Reese further indicated he believed, as a result, the scheduled meet and confer was not necessary. I responded by advising him it was important for us to meet and confer as scheduled to try to resolve issues related to Respondents' Initial Disclosures, the Responses, and Respondents' Objections and Answers to the First Set of Interrogatories. A true and correct copy of an email string reflecting this exchange between counsel is attached as CCX-A8.

15. On February 1, 2021 starting at 4:30 PM (Eastern), Jonathan Cohen and I spoke by telephone with Joel Reese in an effort to discuss and resolve the issues raised in the Motion to Compel Respondents to Produce Documents as well other issues related to their Objections and Answers to the First Set of Interrogatories. A FTC paralegal, Celia Garrett, also listened to the call. I repeatedly tried to focus the conversation on specific questions and issues related to document production, the Responses, and Respondents' Objections and Answers to the First Set of Interrogatories in an effort to determine if issues could be narrowed by agreement. Mr. Reese was generally unwilling to engage in a detailed discussion about specific discovery issues and instead insisted that all of those issues were irrelevant because Respondents would not participate further in discovery in the administrative action because of cost. During the conference, Mr. Reese stated Respondents were willing to admit to all allegations in the Complaint. He stated that Respondents intended to terminate the administrative proceeding either by settlement, withdrawing their answer, filing a motion to amend their answer to admit allegations in the Complaint, or by declining to participate further in discovery and eventually incurring what he referred to as "death penalty" sanctions from the Court that would terminate the administrative proceeding. During the conference, Mr. Reese also stated Respondents would not review or produce additional documents, produce a privilege log, or otherwise supplement their discovery responses. I did not note the exact time when the conference concluded, but estimate that we spoke for a total of approximately 75 minutes.

16. Following the conference on February 1, counsel for the parties had a discussion related to settlement that was ultimately not successful.

17. During the conversation on February 1 and during a subsequent telephone call on February 11, 2021, Mr. Reese advised us Respondents' position is that attorney-client privilege

and/or the work product doctrine applies to documents related to unidentified non-attorney consultants who were involved in reviewing the challenged advertisements and evaluating substantiation. He told us the law firm of Olshan Frome Wolosky LLP referred Respondents to those consultants, and that such documents would not be produced to Complaint Counsel on the grounds they are protected by the attorney-client privilege or the work product doctrine.

18. During a telephone call with Mr. Reese held on March 23 to meet and confer about Complaint Counsel's Second Motion to Compel Respondents to Produce Documents and other anticipated motions, he confirmed that Respondents' position is they should not be required to participate in any additional discovery because of their intention to file an amended Answer pursuant to Rule 3.12(b)(2).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on: March 24, 2021

/s/ Elizabeth J. Averill

Alexandria, VA

CCX-A1

**UNITED STATES OF AMERICA
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**HEALTH RESEARCH LABORATORIES, LLC,
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**WHOLE BODY SUPPLEMENTS, LLC,
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**KRAMER DUHON,
individually and as an officer of
HEALTH RESEARCH LABORATORIES, LLC
and WHOLE BODY SUPPLEMENTS, LLC.**

DOCKET NO. 9397

INITIAL DISCLOSURES

Complaint Counsel provides the following initial disclosures to Respondents' Counsel as required by the Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.31(b).

I. Individuals Likely to have Discoverable and Relevant Information

Complaint Counsel hereby provides the names and, if known, the address and telephone number of persons likely to have discoverable information relevant to the allegations in the Commission's complaint, to the proposed relief, or to the defenses of the Respondents.

A. Respondents' current and former officers and employees

Respondents' current and former officers and employees are likely to have discoverable information. These individuals include, but are not limited to, the following individuals of whom Complaint Counsel is currently aware and whose contact information would be in the Respondents' possession, custody, and control.

1. Kramer Duhon
2. Kyle Duhon
3. Debbie Curley

B. Third Parties

Various third parties are also likely to have discoverable information relevant to the allegations in the Commission's complaint, to the proposed relief, or to the defenses of the Respondents. They include, but are not limited to, the following individuals of whom Complaint Counsel is currently aware.

1. Dr. Richard Cohen
61243 Gorge View Street
Bend, OR 97702
2. Dr. Inna Yegorova
PO Box 280848
Northridge, CA 91328
818-437-8185 (telephone no. for Inna Consulting)
3. Kurt Comae or Kurt Komae
16808 Wilkie Avenue
Torrance, CA 90504
4. Curtis Walcker
Dietary Supplement Experts, LLC
1781 W Janet Ct
Eagle, ID 83616
Mr. Walcker is represented by counsel, Justin Prochnow of Greenberg Traurig, LLP, 303-572-6562
5. Andrew Graham, Ship-Right Solutions LLC
165 Pleasant Avenue
South Portland, ME 04106
6. Andrew Lustigman
Olshan Frome Wolosky
1325 Avenue of Americas
New York, NY 10019
212-451-2258
7. Sheldon Lustigman
Olshan Frome Wolosky
1325 Avenue of Americas
New York, NY 10019
212-451-2262
8. Scott Shaffer
Olshan Frome Wolosky

1325 Avenue of Americas
New York, NY 10019
212-451-2302

9. Stephen Kimball
9489 Canyon Heights Drive
Cedar Hills, UT 84062
330-671-5920
10. Joseph Russo, Impulse Media, Inc.
248 Main Street
Danbury, CT 06820-6635
203-207-0227
11. Tom Sarraco, Direct Access Marketing Services, Inc.
6851 Jericho Turnpike, #245
Syosset, NY 11791
12. Phil Terriaca, TLC Global Impression
5710 Rue Donahue
Saint-Laurent, QC H4S 1C1, Canada
1-514-337-0311
13. Scott Scordas, Evolution Marketing Concepts
1595 Peachtree Parkway
Cumming, GA 30041
678-513-4180
14. Teddy Laiw, NextRep, LLC
Two City Center, Suite 4
Portland, ME 04101
207-523-5128
NextRep is represented by counsel, A.J. Hungerford in Portland, Maine, 207-409-4843
15. Jennifer Osterhouse
3752 Danube Drive
Davidsonville, MD 21035
16. Joel Myerson, Pure Source, LLC
9750 NW 17th Street
Miami, FL 33172
305-477-8111

C. FTC Staff

Respondents should contact any FTC employee only through Complaint Counsel. The following FTC staff have information that may be used to support allegations in the Commission's complaint:

Adam Rottner
Federal Trade Commission
600 Pennsylvania Avenue, NW
Mailstop CC-9528
Washington, DC 20580

Mr. Rottner is an investigator assigned to the FTC's Bureau of Consumer Protection, Division of Enforcement, who has performed website captures related to websites operated by the Respondents and obtained corporate filings for Health Research Laboratories, LLC and Whole Body Supplements, LLC.

II. Documents and Electronically Stored Information

Complaint Counsel lists the following categories of documents and electronically stored information ("ESI") in its possession, custody, or control that may be relevant to the Commission's complaint, to the proposed relief, or to the defenses of the Respondents. Unless otherwise noted, these documents and ESI are located at 600 Pennsylvania Avenue, NW, Washington, DC 20580 or 400 7th Street, SW, Washington, DC, 20024.

A. Submissions to the FTC's Division of Enforcement from Health Research Laboratories, LLC, Whole Body Supplements, LLC, and/or Kramer Duhon

- Statement of Compliance containing acknowledgment of receipt of Stipulated Final Judgment and Order entered on January 16, 2018 signed by Kramer Duhon on 1/23/2018.
- Compliance report dated 3/29/2018 and exhibits.
- Supplemental Compliance report dated 5/4/2018 and exhibits.
- Supplemental Statement of Compliance dated 6/6/2018 and documents HRL004895-005223.
- 1/30/2019 Submission including Letter from A. Lustigman to Robert Frisby and production HRL005224-005680.
- 4/10/2019 Letter from A. Lustigman to R. Frisby.

- 5/3/2019 Submission including Letter from A. Lustigman to R. Frisby and production HRL005681-HRL007710.
- 6/20/2019 Letter from A. Lustigman to R. Frisby and HRL007711-8133.
- Certification verifying Jan. 30, 2019, May 3, 2019, and June 20, 2019 responses signed by Kramer Duhon on July 2, 2019.
- 8/7/2019 Submission including Letter from S. Shaffer to E. Averill and production HRL007732-7749, HRL007992-8020, HRL008146-8148; HRL008150-8162.
- 9/5/2019 Email from A. Lustigman to E. Averill and HRL008149
- 9/27/2019 Letter from A. Lustigman to E. Averill and production HRL008163, 8164-8231.
- 10/11/2019 Letter from A. Lustigman to E. Averill and R. Frisby

Complaint Counsel's understanding is that Respondents already have copies of all of the above submissions.

B. Correspondence between FTC attorneys and counsel for Health Research Laboratories, LLC, Whole Body Supplements, LLC, and Kramer Duhon.

Complaint Counsel's understanding is that Respondents already have copies of all correspondence between FTC attorneys and their counsel.

C. Corporate filings for Health Research Laboratories, LLC and Whole Body Supplements, LLC from the Nevada Secretary of State.

Complaint Counsel's understanding is that Respondents already have these documents. They are also publicly available.

D. Mailers for BG18, Black Garlic Botanicals, The Ultimate Heart Formula, and Neupathic submitted to the FTC by consumers.

Complaint Counsel's understanding is that Respondents already have copies of these documents, because they disseminated the mailers.

E. Docket entries in *FTC and State of Maine v. Health Research Laboratories, LLC, et al.*, 2:17-cv-00467-JDL (D. Maine).

F. Warning Letter from U.S. Federal Drug Administration to Kramer Duhon and Health Research Laboratories, LLC dated October 9, 2014.

A copy of this letter was previously produced to the FTC by Health Research Laboratories with a Bates stamp of HRL000705-709. A response from Andrew Lustigman on behalf of Health Research Laboratories to the FDA was previously produced to the FTC with a Bates stamp of HRL00710.

G. Consumer complaints related to the Respondents in the FTC's Consumer Sentinel database.

CERTIFICATE OF SERVICE

I certify that a copy of Complaint Counsel's Initial Disclosures pursuant to 16 C.F.R. § 3.31(b) was served on counsel for the Respondents on December 9, 2020 via electronic mail.

Joel Reese
Joshua Russ
Reese Marketos LLP
750 N. Saint Paul St., Suite 600
Dallas, TX 75201
Joel.reese@rm-firm.com
Josh.russ@rm-firm.com

s/ Elizabeth J. Averill
Elizabeth J. Averill
Federal Trade Commission
600 Pennsylvania Ave, NW, CC-9528
Washington, DC 20580
Telephone: 202-326-2993
Email: eaverill@ftc.gov

CCX-A2

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of

HEALTH RESEARCH LABORATORIES, LLC,
a limited liability company,

WHOLE BODY SUPPLEMENTS, LLC
a limited liability company, and

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

DOCKET NO. 9397

RESPONDENTS' INITIAL DISCLOSURES

Respondents Health Research Laboratories, LLC (“HRL”), Whole Body Supplements, LLC (“WBS”) and Kramer Duhon (collectively, “Respondents”) provide the following initial disclosures to the Complaint counsel as required by Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.31(b).

I. Individuals Likely to have Discoverable and Relevant Information

Respondents hereby provide the names and, if known, the address and telephone number of persons likely to have discoverable information relevant to the allegations in the complaint, to the proposed relief, or to the defenses of the Respondents.

A. Respondents’ current and former officers and employees

Respondents’ current and former officers and employees are likely to have discoverable information. These individuals include, but are not limited to, the following individuals of whom Respondents are currently aware and whose contact information would be in the Respondents’ possession, custody, and control.

1. Kramer Duhon
c/o Joel W. Reese
Reese Marketos, LLP
750 N. St. Paul Street, Suite 600
Dallas, TX 75225
214-382-9801
2. Kyle Duhon
c/o Joel W. Reese
Reese Marketos, LLP
750 N. St. Paul Street, Suite 600
Dallas, TX 75225
214-382-9801

B. Third Parties

Various third parties are also likely to have discoverable information relevant to the allegations in the complaint, to the proposed relief, or to the defenses of the Respondents. They include, but are not limited to, the following individuals of whom Respondents are currently aware.

1. Elizabeth Averill
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
202-326-2993
2. Dr. Richard Cohen
61243 Gorge View Street
Bend, OR 97702
3. Joel Myerson
Pure Source, LLC
9750 NW 17th Street
Miami, FL 33172
305-477-8111
4. Dr. Inna Yegorova
PO Box 280848
Northridge, CA 91328
818-437-8185 (telephone no. for Inna Consulting)

5. Curtis Walcker
Dietary Supplement Experts, LLC
1781 W Janet Ct
Eagle, ID 83616
c/o Justin Prochnow
Greenberg Traurig, LLP
303-572-6562

C. FTC Staff

Respondents should contact any FTC employee only through Complaint Counsel. The following FTC staff has information that may be used to support allegations in the complaint:

Adam Rottner
Federal Trade Commission
600 Pennsylvania Avenue, NW Mailstop CC-9528
Washington, DC 20580

Mr. Rottner is an investigator assigned to the FTC's Bureau of Consumer Protection, Division of Enforcement, who has performed website captures related to websites operated by the Respondents and obtained corporate filings for Health Research Laboratories, LLC and Whole Body Supplements, LLC.

II. Documents and Electronically Stored Information

Respondents' Counsel lists the following categories of documents and electronically stored information ("ESI") in its possession, custody, or control that may be relevant to the complaint, to the proposed relief, or to the defenses of the Respondents. Unless otherwise noted, these documents and ESI are located at 600 Pennsylvania Avenue, NW, Washington, DC 20580 or 400 7th Street, SW, Washington, DC, 20024.

- A. **Correspondence between FTC attorneys and Health Research Laboratories, LLC, Whole Body Supplements, LLC, and Kramer Duhon, including information and studies provided to the FTC.**

Complaint Counsel already has copies of all correspondence between FTC attorneys and their counsel. In fact, the FTC's experts have already cited many of these documents in their prior reports in federal court.

- B. **Corporate filings for Health Research Laboratories, LLC and Whole Body Supplements, LLC from the Nevada Secretary of State.**

Complaint Counsel already has these documents. They are also publicly available.

- C. Mailers for BG18, Black Garlic Botanicals, The Ultimate Heart Formula, and Neupathic submitted to the FTC by consumers.

Complaint Counsel already has these documents.

- D. Docket entries in *FTC and State of Maine v. Health Research Laboratories, LLC, et al.*, 2:17-cv-00467-JDL (D. Maine).

Complaint Counsel already has these documents.

- E. Customer testimonials on the products at issue.

Complaint Counsel has the documents or the documents will be provided.

Dated: December 11, 2020

Respectfully submitted,

REESE MARKETOS LLP

By: /s/ Joel W. Reese

Joel W. Reese
Texas Bar No. 00788258
joel.reese@rm-firm.com
Joshua M. Russ
Texas Bar No. 24074990
josh.russ@rm-firm.com

750 N. Saint Paul St., Suite 600
Dallas, TX 75201-3201
Telephone: (214) 382-9810
Facsimile: (214) 501-0731

ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

I certify that a copy of Complaint Counsel’s Initial Disclosures pursuant to 16 C.F.R. § 3.31(b) was served on Complaint Counsel on December 10, 2020 via electronic mail:

Elizabeth J. Averill
Jonathan Cohen
Federal Trade Commission
600 Pennsylvania Ave. NW, CC-9528
Washington, DC 20580
202.326.2993
eaverill@ftc.gov
jcohen2@ftc.gov

/s/ Joel W. Reese
Joel W. Reese

CCX-A3

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

In the Matter of

**HEALTH RESEARCH LABORATORIES, LLC,
a limited liability company,**

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

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

DOCKET NO. 9397

FIRST REQUESTS FOR PRODUCTION TO RESPONDENTS

Pursuant to the Rules of Practice, 16 C.F.R. § 3.37, Complaint Counsel requests that Respondents produce the Documents and tangible things described below by January 21, 2021 via electronic submission through a Secure File Transfer link to be provided by Complaint Counsel. Complaint Counsel also requests a conference to discuss the form and manner in which Respondents will produce these Documents.

REQUESTS FOR PRODUCTION

1. Produce a copy of each unique Advertisement for every Identified Product disseminated on or after January 17, 2018, Documents sufficient to establish Basic Dissemination Data for each such Advertisement, and all Documents Related To the content, development, analysis, review or approval of such Advertisements.
2. Produce all Documents constituting or reflecting Communications Related To any Identified Product with any Subject Third Party.

3. Produce all Scientific and Efficacy Information Related To any of the Subject Claims.
4. Produce physical samples of each Physical Product shipped or delivered to consumers on or after January 17, 2018.
5. Produce Documents sufficient to establish the formulation of each Identified Product including (i) the exact type and dosage of the ingredients that You expected each Identified Product would contain; (ii) the exact type and dosage of the ingredients each Identified Product actually contained when shipped to consumers; and (iii) testing, measurements or analysis of any sort Related To either of the foregoing.
6. Produce all Documents Related To whether and how an Identified Product, or any ingredient therein, is absorbed or used by the human body after the Identified Product is taken orally.
7. Produce Documents sufficient to establish the volume of sales of each Identified Product, and the Net Revenue from such sales, on or after January 17, 2018.
8. Produce all Documents Related To any defenses You intend to assert in this matter.
9. Produce all Documents constituting or reflecting Communications with Your customers on or after January 17, 2018 Related To the efficacy or lack of efficacy of any Identified Product.
10. Produce a Customer List.
11. Produce all Documents You rely on, or refer to, in any answer to any Interrogatory in this matter.

DEFINITIONS

- A. **“And,”** as well as **“or,”** shall be construed both conjunctively and disjunctively, as necessary, to bring within the scope of any Request all information that otherwise might be construed as outside its scope.
- B. **“Any”** includes **“all,”** and **“all”** includes the word **“any.”**
- C. **“Advertisement” or “Advertisements” or “Advertising”** 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 and was disseminated to consumers. The terms include, but are not limited to: labeling, packaging, package inserts, radio, television, promotional materials, print (including but not limited to brochures, newspapers, magazines, pamphlets, leaflets, circulars, mailers, book inserts, free standing inserts, letters, catalogues, posters, charts, billboards, public transit cards, point of purchase displays), audio programs transmitted over a telephone system, telemarketing scripts, on-hold scripts, upsell scripts, training materials provided to telemarketing firms, program-length commercials or other infomercials, website content, social media, and other digital content, including electronic newsletters.
- D. **“Basic Dissemination Data”** means all of the following information about an Advertisement: (i) how it was disseminated; (ii) when it was disseminated; (iii) the total number disseminated; (iv) where it was disseminated; and (v) the identity and contact information of the individuals or entities that disseminated the Advertisements.

E. **“Communications”** means conversations, meetings, discussions, and any other communicative exchange or message, whether in person, by telephone, email, text message, social media, or otherwise, as well as all Documents reflecting those communications.

F. **“Customer List”** means Documents sufficient to identify the name, address, email, and phone number for all consumers that purchased, received, to whom you delivered, or whom you billed for each Identified Product on or after January 17, 2018.

G. **“Document”** or **“Documents”** mean the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, filmed, punched, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, including, but not limited to, any advertisement, book, pamphlet, periodical, contract, correspondence, file, invoice, memorandum, note, report, record, handwritten note, working paper, routing slip, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book or label. “Document” shall also include all Electronically Stored Information.

H. **“Each”** includes **“every,”** and **“every”** includes **“each.”**

I. **“Electronically Stored Information”** or **“ESI”** mean the complete original and any non-identical copy (whether different from the original because of notations, different metadata, or otherwise), regardless of origin or location, of any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any electronic medium from which information can be obtained either directly or, if necessary, after You translate it into a reasonably usable form. This includes, but is not limited to, email, text, instant messaging, videoconferencing, social media, and other electronic correspondence

(whether active, archived, or in a deleted items folder), metadata, word processing files, spreadsheets, databases, and recordings, whether stored on: cards; magnetic or electronic tapes; disks; computer hard drives, network shares or servers, or other drives; cloud-based platforms; cell phones, PDAs, computer tablets, or other mobile devices; or other storage media.

J. **“Identified Product”** means Black Garlic Botanicals, BG18 (also known as BG-18), The Ultimate Heart Formula, and Neupathic.

K. **“Net Revenue”** means all amounts buyers paid (including charges for each Identified Product, shipping and handling, or any other charges buyers paid) minus any refunds.

L. **“Referring To”** or **“Relating To”** means discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting on, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

M. **“Respondents”** mean Health Research Laboratories, LLC; Whole Body Supplements, LLC; and Kramer Duhon, either individually or collectively.

N. **“Scientific and Efficacy Information”** means: (i) tests, reports, studies, clinical trials, experiments, demonstrations, scientific literature, and written opinions Related To any Identified Product or any ingredient (or combination of ingredients) therein; (ii) any information that You contend experts in the scientific community might rely upon, in whole or in part, to determine whether any Identified Product provide or confer any benefit or other effect; and (iii) any other material questioning, confirming, contradicting, or analyzing any of the foregoing.

O. **“Subject Claims”** means the claims identified in paragraphs 7, 9, 11, 13, 14, 16, 18 and 20 of the Complaint issued in this matter.

P. **“Subject Third Party”** means Richard Cohen, M.D., Inna Yegorova, Inna Consulting, Curtis Walcker, AIBMR Life Sciences, Inc., Dietary Supplement Experts, LLC, Stephen Kimball, and Jesse Duvell.¹

Q. **“Physical Product”** means an Identified Product and its packaging as shipped or delivered to consumers, including labelling, images, inserts, bottling, and any other packaging or materials that accompany the Identified Product and contain or reflect Communications.

R. **“You”** or **“Your”** means Respondents.

INSTRUCTIONS

A. **Ongoing Duty to Supplement:** These Requests for Production are continuing in nature and require supplemental responses pursuant to the Rules of Practice, § 3.31(e). Responsive Documents obtained or discovered after your initial production must be produced promptly.

B. **Covered Documents:** You must furnish every responsive Document in the possession, custody, or control of Respondents, Your attorneys, accountants, agents, affiliates, directors, officers, consultants, employees, contractors, bailees, other representatives, or any other person or entity from whom You can obtain such Documents by demand, request, or otherwise.

C. **Document Identification:** Documents responsive to more than one Request herein need only be submitted once. If any responsive Documents have been previously supplied to the FTC, You may comply with these Requests for Production by identifying the Document(s) previously provided, the date of submission, and designating particular previously-produced Documents (by Bates number) as responsive to a specific Request or Requests.

D. **Document Production:** You must produce Documents in the order in which they appear in Your files or as electronically stored and without being manipulated or otherwise rearranged; if Documents are removed from their original folders, binders, covers, containers, or electronic

¹ Exhibit A to the Complaint (HRL004991) mentions Duvell.

source to be produced, then You must specify the folder, binder, cover, container, or electronic media or file paths from which such Documents came. In addition, number by page (or file, for those Documents produced in native electronic format) all Documents in Your submission, with a unique Bates identifier.

E. **Privilege Claims:** If You withhold any responsive Document based on a claim of privilege or any similar claim, You must assert the claim no later than the return date for these Requests for Production. In addition, submit, together with the claim, a schedule of the items withheld, stating individually as to each item: (1) the type, specific subject matter, date, and number of pages; (2) the names, addresses, positions, and organizations of all authors and recipients; and (3) the specific grounds for making the privilege or similar claim. If only a portion of any responsive material is privileged, You must produce all non-privileged portions.

F. **Electronic Submission of Documents:** Guidelines for producing ESI or digitally imaged hard copy Documents are located in Attachment A.

G. **Sensitive Personally Identifiable Information:** Unless specifically requested herein, do not produce any Sensitive Personally Identifiable Information (“Sensitive PII”) or Sensitive Health Information (“SHI”) before conferring with Complaint Counsel. You must transmit Sensitive PII or SHI to Complaint Counsel. For purposes of these Requests, Sensitive PII includes: an individual’s Social Security number alone; or an individual’s name or address or phone number in combination with one or more of the following: date of birth, Social Security number, driver’s license number or other state identification number, or a 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.

Dated: Dec. 22, 2020

/s/ Elizabeth J. Averill
ELIZABETH J. AVERILL
JONATHAN COHEN
Federal Trade Commission
Division of Enforcement
600 Pennsylvania Ave., NW, Mailstop CC-9528
Washington, DC 20580
(202) 326-2993, eaverill@ftc.gov
(202) 326-2551, jcohen2@ftc.gov
(202) 326-3197 (Fax)

Complaint Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this date, the foregoing was served via email on Respondents' counsel.

Joel W. Reese
Joshua M. Russ
Reese Marketos LLP
750 N. Saint Paul Street, Suite 600
Dallas, TX 75201-3201
joel.reese@rm-firm.com
josh.russ@rm-firm.com

Dated: December 22, 2020

/s/ Elizabeth J. Averill
ELIZABETH J. AVERILL
Federal Trade Commission
Division of Enforcement
600 Pennsylvania Ave., NW, Suite CC-9528
Washington, DC 20580
(202) 326-2993, *eaverill@ftc.gov*
(202) 326-3197 (Fax)

Complaint Counsel

ATTACHMENT A

Federal Trade Commission - Bureau of Consumer Protection
Production Requirements
Revised July 2020

In producing information to the FTC, comply with the following requirements, unless the FTC agrees otherwise. If you have questions about these requirements, please contact FTC counsel before production.

Production Format

1. **General Format:** Provide load-ready electronic productions with:

- a. A delimited data load file (.DAT) containing a line for every document, unique id number for every document (DocID), metadata fields, and native file links where applicable; and
- b. A document level text file, named for the DocID, containing the text of each produced document.

Do not produce corresponding image renderings (e.g., TIFF or JPEG) for files in native format unless the FTC requests them. If the FTC requests corresponding image renderings, provide an Opticon image load file (.OPT) containing a line for every image file.

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 below, submit in native format with all metadata and either document level extracted text or Optical Character Recognition (OCR). Do not produce corresponding image renderings (e.g., TIFF or JPEG) for files in native format unless the FTC requests them. If the FTC requests corresponding image renderings, they should be converted to Group IV, 300 DPI, single-page TIFF (or color JPEG images when 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 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 the production format with FTC counsel.

3. **Hard Copy Documents:** Documents stored in hard copy in the ordinary course of business must be scanned and submitted as either one multi-page pdf per document or as 300 DPI single page TIFFs (or color JPEGs when necessary to interpret the contents or render them intelligible), with corresponding document-level OCR text and logical document determination in an accompanying load file.

4. **Document Identification:** Provide a unique DocID 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.

5. **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.

6. **Metadata Production:** For each document submitted electronically, include the standard metadata fields listed below in a standard 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 standard Concordance 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

7. **De-duplication:** Do not use de-duplication or email threading software without FTC approval.

8. **Password-Protected Files:** Remove passwords prior to production. If password removal is not possible, provide the original and production filenames and the passwords, under separate cover.

Producing Data to the FTC

1. Prior to production, scan all data and media for viruses and confirm they are virus-free.

2. For productions smaller than 50 GB, submit data electronically using the FTC’s secure file transfer protocol. Contact FTC counsel for instructions. **The FTC cannot accept files via Dropbox, Google Drive, OneDrive, or other third-party file transfer sites.**

3. If you submit data using physical media:
 - a. Use only CDs, DVDs, flash drives, or hard drives. Format the media for use with Windows 7;

 - b. Use data encryption to protect any Sensitive Personally Identifiable Information or Sensitive Health Information (as defined in the instructions), and provide passwords in advance of delivery, under separate cover; and

 - c. Use a courier service (e.g., Federal Express, UPS) because heightened security measures delay postal delivery.

4. Provide a transmittal letter with each production that includes:
 - a. Production volume name (e.g., Volume 1) and date of production;

 - b. Numeric DocID range of all documents in the production, and any gaps in the DocID range; and

 - c. List of custodians and the DocID range for each custodian.

DAT FILE FIELDS	DEFINITIONS	POPULATE FIELD FOR:
DocID	Unique ID number for each document	All Documents
FamilyID	Unique ID for all documents in a family including parent and all child documents	All Documents
ParentID	Document ID of the parent document. This field will only be populated on child items	All Documents
File Path	Path to produced native file	All Documents
TextPath	Path to document level text or OCR file	All Documents
Custodian	Name of the record owner/holder	All Documents
AllCustodians	Names of all custodians that had copy of this record (populate if data was deduplicated or email threading was used)	All Documents
Source	Source of documents: CID, Subpoena, Third Party Data, etc.	All Documents
Filename	Original file name	All Documents
File Size	Size of documents	All Documents
File Extensions	Extension of file type	All Documents
MD5 Hash	Unique identifier for electronic data used in de-duplication	All Documents
PRODUCTION_VOLUME	Production Volume	All Documents
HASREDACTIONS	Redacted document	All Documents
Exception Reason	Reason for exception encountered during processing (e.g., empty file, source file, password-protected file, virus)	All Documents
PRODBEG	Beginning production bates number	Documents with Produced Images
PRODEND	Ending production bates number	Documents with Produced Images
PRODBEG_ATTACH	Beginning production family bates number	Documents with Produced Images
PRODEND_ATTACH	Ending production family bates number	Documents with Produced Images
Page Count	The number of pages the document contains	Documents with Produced Images
From	Names retrieved from the FROM field in a message	Emails
To	Names retrieved from the TO field in a message; the recipient(s)	Emails
CC	Names retrieved from the CC field in a message; the copied recipient(s)	Emails
BCC	Names retrieved from the BCC field in a message; the blind copied recipient(s)	Emails
EmailSubject	Email subject line	Emails
Date Sent	The date an email message was sent	Emails
Time Sent	The time an email message was sent	Emails
Date Received	The date an email message was received	Emails
Time Received	The time an email message was received	Emails
Author	File Author	Loose Native Files and Email Attachments
Title	File Title	Loose Native Files and Email Attachments
Subject	File Subject	Loose Native Files and Email Attachments
Date Created	Date a document was created by the file system	Loose Native Files and Email Attachments
Time Created	Time a document was created by the file system	Loose Native Files and Email Attachments
Date Modified	Last date a document was modified and recorded by the file system	Loose Native Files and Email Attachments
Time Modified	Last time a document was modified and recorded by the file system	Loose Native Files and Email Attachments
Date Printed	Last date a document was printed and recorded by the file system	Loose Native Files and Email Attachments
Time Printed	Last time a document was printed and recorded by the file system	Loose Native Files and Email Attachments

CCX-A5

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

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

In the Matter of

HEALTH RESEARCH LABORATORIES, LLC,
a limited liability company,

WHOLE BODY SUPPLEMENTS, LLC
a limited liability company, and

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

DOCKET NO. 9397

RESPONDENTS’ OBJECTIONS AND RESPONSES TO COMPLAINT
COUNSEL’S FIRST REQUESTS FOR PRODUCTION

Respondents Health Research Laboratories, LLC (“HRL”), Whole Body Supplements, LLC (“WBS”) and Kramer Duhon (collectively, “Respondents”) provide the following Objections and RESPONSE to Complaint Counsel’s First Requests for Production as required by Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.37.

OBJECTION TO PRODUCTION OF PRIVILEGED DOCUMENTS

Respondents object to the production of privileged attorney client communications and privileged work product. Respondents will interpret the requests as seeking non-privileged documents.

RESPONSES TO REQUESTS FOR PRODUCTION

1. Produce a copy of each unique Advertisement for every Identified Product disseminated on or after January 17, 2018, Documents sufficient to establish Basic Dissemination Data for each such Advertisement, and all Documents Related To the content, development, analysis, review or approval of such Advertisements.

RESPONSE: Respondents object to the request for “all Documents Related to the content, development, analysis, review or approval of such Advertisements” because this request is overly broad, because it fails to describe the documents sought with reasonable particularity, and because it seeks documents privileged by the attorney client privilege and the work product privilege. Non-privileged documents will be produced. Privileged attorney client communications and work product will not be produced.

2. Produce all Documents constituting or reflecting Communications Related To any Identified Product with any Subject Third Party.

RESPONSE: Respondents object to producing any privileged communications. Non-privileged documents will be produced.

3. Produce all Scientific and Efficacy Information Related To any of the Subject Claims.

RESPONSE: Documents responsive to this request will be produced.

4. Produce physical samples of each Physical Product shipped or delivered to consumers on or after January 17, 2018.

RESPONSE: Items responsive to this request will be produced.

5. Produce Documents sufficient to establish the formulation of each Identified Product including (i) the exact type and dosage of the ingredients that You expected each Identified Product would contain; (ii) the exact type and dosage of the ingredients each Identified Product actually contained when shipped to consumers; and (iii) testing, measurements or analysis of any sort Related To either of the foregoing.

RESPONSE: Documents responsive to this request will be produced.

6. Produce all Documents Related To whether and how an Identified Product, or any ingredient therein, is absorbed or used by the human body after the Identified Product is taken orally.

RESPONSE: Documents responsive to this request will be produced.

7. Produce Documents sufficient to establish the volume of sales of each Identified Product, and the Net Revenue from such sales, on or after January 17, 2018.

RESPONSE: Documents responsive to this request will be produced.

8. Produce all Documents Related To any defenses You intend to assert in this matter.

RESPONSE: Respondents object to this request because it is overly broad, because it seeks privileged documents, and because it does not identify any requested document with specificity. Respondents will produce non-privileged documents.

9. Produce all Documents constituting or reflecting Communications with Your customers on or after January 17, 2018 Related To the efficacy or lack of efficacy of any Identified Product.

RESPONSE: Documents responsive to this request will be produced.

10. Produce a Customer List.

RESPONSE: Documents responsive to this request will be produced.

11. Produce all Documents You rely on, or refer to, in any answer to any Interrogatory in this matter.

RESPONSE: Documents responsive to this request will be produced.

Dated: January 21, 2021

Respectfully submitted,

REESE MARKETOS LLP

By: /s/ Joel W. Reese

Joel W. Reese

Texas Bar No. 00788258

joel.reese@rm-firm.com

750 N. Saint Paul St., Suite 600

Dallas, TX 75201-3201

Telephone: (214) 382-9810

Facsimile: (214) 501-0731

ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

I certify that, pursuant to 16 C.F.R. § 3.37, copy of this document was served on Complaint Counsel on January 21, 2021 via electronic mail:

Elizabeth J. Averill
Jonathan Cohen
Federal Trade Commission
600 Pennsylvania Ave. NW, CC-9528
Washington, DC 20580
202.326.2993
eaverill@ftc.gov
jcohen2@ftc.gov

/s/ Joel W. Reese
Joel W. Reese

CCX-A6

From: [Joel Reese](#)
To: [Averill, Elizabeth](#)
Cc: [Dee Dee Carr](#); [Cohen, Jonathan](#); [Hall Ann](#); [Welby, Grant](#)
Subject: Re: Dkt. 9397 - Document production?
Date: Monday, January 25, 2021 10:12:51 AM

Liz:

We will have additional productions. We haven't finished the review, but should have it done in the next two weeks.

Reese Marketos LLP

Joel W. Reese

750 N. Saint Paul St., Suite 600
Dallas, Texas 75201 | Direct: (214) 382-9801 | Main: (214) 382-9810
www.rm-firm.com

On Jan 25, 2021, at 9:09 AM, Averill, Elizabeth <eaverill@ftc.gov> wrote:

Grant tells me we received notice of the production from Mr. Kinney within moments of when I sent the email to you, so I wanted to update that it looks like the documents have been uploaded.

From: Averill, Elizabeth
Sent: Monday, January 25, 2021 10:03 AM
To: Dee Dee Carr <deedee.carr@rm-firm.com>; Joel Reese <joel.reese@rm-firm.com>
Cc: Cohen, Jonathan <jcohen2@ftc.gov>; Hall Ann <ann.hall@rm-firm.com>; Welby, Grant <gwelby@ftc.gov>
Subject: Dkt. 9397 - Document production?

Joel,

We still have not received your first document production.

Please send the physical product samples via FedEx or UPS to the address below.
Please do not send them to us via USPS.

Elizabeth Averill
600 Pennsylvania Avenue, NW
Mailstop CC-9528
Washington, DC 20580

We expect to send copies of subpoena productions to Ms. Carr later this afternoon.

Liz

From: Dee Dee Carr <deedee.carr@rm-firm.com>
Sent: Friday, January 22, 2021 12:53 PM
To: Averill, Elizabeth <eaverill@ftc.gov>
Cc: Joel Reese <joel.reese@rm-firm.com>; Cohen, Jonathan <jcohen2@ftc.gov>; Hall Ann <ann.hall@rm-firm.com>; Welby, Grant <gwelby@ftc.gov>
Subject: Re: FTC v. HRL; Discovery Responses

I'll talk to Jeff Kenney about handling this.

Dee Dee Carr
(214) 382-9808

On Jan 22, 2021, at 11:51 AM, Averill, Elizabeth <eaverill@ftc.gov> wrote:

Ms. Carr,

We have not received the document production yet. Grant Welby will send you another SFTP link directly. My understanding is that SFTP links won't work when the original recipient forwards the link to someone else.

Thank you.

From: Dee Dee Carr <deedee.carr@rm-firm.com>
Sent: Friday, January 22, 2021 11:52 AM
To: Averill, Elizabeth <eaverill@ftc.gov>
Cc: Joel Reese <joel.reese@rm-firm.com>; Cohen, Jonathan <jcohen2@ftc.gov>; Hall Ann <ann.hall@rm-firm.com>; Welby, Grant <gwelby@ftc.gov>
Subject: Re: FTC v. HRL; Discovery Responses

Good morning, I'm re-sending via your ftp site now. Please confirm once recieved.

Good Day

Dee Dee Carr
(214) 382-9808

On Jan 22, 2021, at 8:00 AM, Jeff Kinney <Jkinney@digitalverdict.com> wrote:

Please do.

From: Averill, Elizabeth <eaverill@ftc.gov>
Sent: Friday, January 22, 2021 8:00 AM
To: Jeff Kinney <jkinney@digitalverdict.com>; Joel Reese <joel.reese@rm-firm.com>; Cohen, Jonathan <jcohen2@ftc.gov>
Cc: Hall Ann <ann.hall@rm-firm.com>; Dee Dee Carr <deedee.carr@rm-firm.com>; Welby, Grant <gwelby@ftc.gov>
Subject: RE: FTC v. HRL; Discovery Responses

Joel and Mr. Kinney,

We are unfortunately not permitted to download documents from any type of outside document sharing site or dropbox. However, we can easily send you a secure file transfer link to transfer the files. Mr. Kinney - Should we email that link to you?

Liz

From: Jeff Kinney <jkinney@digitalverdict.com>
Sent: Thursday, January 21, 2021 8:25 PM
To: Joel Reese <joel.reese@rm-firm.com>; Cohen, Jonathan <jcohen2@ftc.gov>; Averill, Elizabeth <eaverill@ftc.gov>
Cc: Hall Ann <ann.hall@rm-firm.com>; Dee Dee Carr <deedee.carr@rm-firm.com>
Subject: RE: FTC v. HRL; Discovery Responses

Jonathan/Liz,

Below is a link to the production Joel referred to in the previous email.

[HRLAC_00001-HRLAC_03582](#)

From: Joel Reese <joel.reese@rm-firm.com>
Sent: Thursday, January 21, 2021 5:21 PM
To: Cohen, Jonathan <jcohen2@ftc.gov>; Averill, Elizabeth <eaverill@ftc.gov>
Cc: Hall Ann <ann.hall@rm-firm.com>; Jeff Kinney <jkinney@digitalverdict.com>; Dee Dee Carr <deedee.carr@rm-firm.com>

Subject: FTC v. HRL; Discovery Responses

Jonathan and Liz:

Attached are our responses to the FTC's discovery requests. Jeff Kinney with Digital Verdict will be sending you a link for documents.

Reese Marketos LLP

Joel W. Reese

750 N. Saint Paul St., Suite 600

Dallas, Texas 75201 | Direct: (214) 382-9801 | Main: (214) 382-9810

www.rm-firm.com

CCX-A7

From: [Averill, Elizabeth](#)
To: [Joel Reese](#)
Cc: [Cohen, Jonathan](#)
Subject: RE: Dkt. 9397 - Request for Meet and Confer
Date: Friday, January 29, 2021 6:58:00 PM

Joel,

The production format issues are not on my agenda for the meet and confer on Monday. However, I did think it was important to explain the differences between the production and the guidelines given your earlier response. I have asked to meet and confer about the Initial Disclosures as well as your responses to our Interrogatories and Requests for Production which indicate that you are not willing to provide information Respondents are required to produce.

That said, it might be helpful to set up a short, separate call involving attorneys and both of our litigation support folks to discuss production mechanics. Please let me know what times might work for that call next week on your end, and I'll check with my litigation support colleague to schedule it.

We will plan to talk with you 3:30 to 5:00 (Central) on Monday. I'll circulate a dial-in number on Monday morning.

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

From: Joel Reese <joel.reese@rm-firm.com>
Sent: Friday, January 29, 2021 6:15 PM
To: Averill, Elizabeth <eaverill@ftc.gov>
Cc: Cohen, Jonathan <jcohen2@ftc.gov>
Subject: Re: Dkt. 9397 - Request for Meet and Confer

Liz:

Let's talk through these issues.

1. As for the filings, I only finished in this case what had to get done (i.e., the response to the motion to strike and the witness list).
2. 2:30 PM to 4:00 doesn't work, but 3:30 PM to 5:00 PM does work. Tell me if that works for you. If not, we can try to move some things around.
3. I am going to suggest that the vendor participate in at least part of the call. We use the vendor on all of our cases, so I feel comfortable he will understand the issues.
4. I will print off copies of all of the discovery responses for the call.

Reese Marketos LLP**Joel W. Reese**

750 N. Saint Paul St., Suite 600

Dallas, Texas 75201 | Direct: (214) 382-9801 | Main: (214) 382-9810

www.rm-firm.com

On Jan 29, 2021, at 2:23 PM, Averill, Elizabeth <eaverill@ftc.gov> wrote:

Joel,

You seem to have invested time on motion practice yesterday and today, so we don't understand why you claim you are completely unavailable to meet and confer about discovery on either date.

Let's schedule the meet and confer for 2:30 (Central) on Monday. We need to discuss a number of issues related to Respondents' discovery responses so we are planning on reserving at least 90 minutes. If that time on Monday is impossible for you, propose alternative times on Monday that do work. The compressed timeline for fact discovery in the administrative case means that we need to resolve issues promptly.

Perhaps you should speak with your vendor again. A summary of some of the differences between your first production and the production guidelines is set forth below. As I said earlier during our telephone call on January 6, we are willing to discuss and can accommodate productions with different formats/characteristics but asked to discuss deviations from the guidelines prior to production.

The more important issues at the moment are related to Respondents' Initial Disclosures as well as your Responses to the First Set of Interrogatories and Requests for Production. That is what we plan to focus on during the meet and confer on Monday.

Liz

Differences between Respondents' First Production and Requested Guidelines
(Attachment A)

1. Section 1.b and 2 clearly asks Respondents NOT to render native files into image (e.g. TIFF or JPEG) unless the FTC requests them. With respect to ESI, Section 2.a and 2.b requests parties to produce documents in Native format rather than as image renderings (TIFF or JPEG). Your first production converted almost all native files to image renderings. The only native files produced were some Excel spreadsheets.

2. Many things are not consistent with the Guidelines in the provided DAT file (HRLAC001.DAT):
 - a) Number of fields in FTC production guideline are 38 vs 29 number of fields in HRLAC001.DAT
 - b) Below fields are not found in HRLAC001.DAT
 - DOCID
 - ALLCustodians
 - SOURCE
 - FILESIZE
 - FileExtension
 - PRODUCTION_Volume
 - HASRedactions
 - Exception Reason
 - Email Subject
 - c) Below fields are not required but were provided in HRLAC001.DAT
 - a) ATTACHMENT
 - b) FAMDATE
 - c) FAMTIME
 - d) PATH
 - d) Many fields are provided under different name

Field name in HRLAC001.DAT	Field name in FTC production guideline
BEGBATES	ProdBEG
ENDBATES	ProdEnd
BEGATTACH	ProdBeg_Attach
ENDATTACH	ProdEnd_Attach
PARENTBATES	ParentID
DEDUPHASH	MD5Hash
NATIVEPATH	FilePath
OCRPATH	TextPath

3. Your production included .lfp, .log files provided along with .OPT and .DAT file, which are unnecessary and not requested. If you want to provide them, that is of course fine.

From: Joel Reese <joel.reese@rm-firm.com>
Sent: Friday, January 29, 2021 9:20 AM
To: Averill, Elizabeth <eaverill@ftc.gov>
Cc: Cohen, Jonathan <jcohen2@ftc.gov>
Subject: Re: Dkt. 9397 - Request for Meet and Confer

Again, I can talk on Monday.

On the production guidelines issue, I have spoken with my ediscovery vendor. He, of course, had the FTC's production guidelines that were attached as Exhibit A when we were processing the documents for production. We reviewed them again. We followed EXACTLY what was set forth in the guidelines.

Reese Marketos LLP

Joel W. Reese

750 N. Saint Paul St., Suite 600

Dallas, Texas 75201 | Direct: (214) 382-9801 | Main: (214) 382-9810

www.rm-firm.com

On Jan 27, 2021, at 9:11 AM, Averill, Elizabeth <eaverill@ftc.gov> wrote:

Joel,

We are certainly willing to discuss your request for a two-week extension for Respondents' production of documents. However, we need additional information about what categories of documents have not yet been reviewed and produced as well as a commitment that all non-privileged, responsive documents will be produced by the extended deadline.

We would like to schedule a meet and confer this week. Would 2:30 (Central) tomorrow or later in the day tomorrow work? If so, I'll circulate a dial-in number. We would like to meet and confer about: (1) Respondents' failure to supplement their initial disclosures as previously requested; (2) Respondents' objections and failures to respond to the First Set of Interrogatories; and (3) clarify whether Respondents are withholding any non-privileged documents based on objections set forth in their Responses to Complaint Counsel's First Requests for Production as well as the bases for specific objections.

In light of our previous conversation, I was surprised that Respondents' first document production on January 25 was not produced in a format consistent with the requested production guidelines. (Almost no native files were produced.) We should be able to load this first production into Relativity, but my litigation support team informs me that the path names provided are unusual because they include a file name at the end. Please ask your vendor why the file name is included in the path field. The solution proposed by my litigation support team is for you to provide an overlay file for the path name, where the first column is BEG BATES and the second column is the path without the file name. (This would be provided as a DAT file.) We would like to discuss whether future productions will be made in accordance with the guidelines in Attachment A to the First Requests for Production. My understanding is that it is actually more costly and time-intensive to convert all documents to image

files as you did in the first production.

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

From: Joel Reese <joel.reese@rm-firm.com>
Sent: Monday, January 25, 2021 10:13 AM
To: Averill, Elizabeth <eaverill@ftc.gov>
Cc: Dee Dee Carr <deedee.carr@rm-firm.com>; Cohen, Jonathan <jcohen2@ftc.gov>; Hall Ann <ann.hall@rm-firm.com>; Welby, Grant <gwelby@ftc.gov>
Subject: Re: Dkt. 9397 - Document production?

Liz:

We will have additional productions. We haven't finished the review, but should have it done in the next two weeks.

Reese Marketos LLP

Joel W. Reese

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Dallas, Texas 75201 | Direct: (214) 382-9801 | Main: (214) 382-9810

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On Jan 25, 2021, at 9:09 AM, Averill, Elizabeth <eaverill@ftc.gov> wrote:

Grant tells me we received notice of the production from Mr. Kinney within moments of when I sent the email to you, so I wanted to update that it looks like the documents have been uploaded.

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To: Dee Dee Carr <deedee.carr@rm-firm.com>; Joel Reese <joel.reese@rm-firm.com>
Cc: Cohen, Jonathan <jcohen2@ftc.gov>; Hall Ann <ann.hall@rm-firm.com>; Welby, Grant <gwelby@ftc.gov>

Subject: Dkt. 9397 - Document production?

Joel,

We still have not received your first document production.

Please send the physical product samples via FedEx or UPS to the address below. Please do not send them to us via USPS.

Elizabeth Averill
600 Pennsylvania Avenue, NW
Mailstop CC-9528
Washington, DC 20580

We expect to send copies of subpoena productions to Ms. Carr later this afternoon.

Liz

From: Dee Dee Carr <deedee.carr@rm-firm.com>
Sent: Friday, January 22, 2021 12:53 PM
To: Averill, Elizabeth <eaverill@ftc.gov>
Cc: Joel Reese <joel.reese@rm-firm.com>; Cohen, Jonathan <jcohen2@ftc.gov>; Hall Ann <ann.hall@rm-firm.com>; Welby, Grant <gwelby@ftc.gov>
Subject: Re: FTC v. HRL; Discovery Responses

I'll talk to Jeff Kenney about handling this.

Dee Dee Carr
(214) 382-9808

On Jan 22, 2021, at 11:51 AM, Averill, Elizabeth <eaverill@ftc.gov> wrote:

Ms. Carr,

We have not received the document production yet. Grant Welby will send you another SFTP link directly. My understanding is that SFTP links won't work when the original recipient forwards the link to someone else.

Thank you.

From: Dee Dee Carr <deedee.carr@rm-firm.com>
Sent: Friday, January 22, 2021 11:52 AM
To: Averill, Elizabeth <eaverill@ftc.gov>
Cc: Joel Reese <joel.reese@rm-firm.com>; Cohen, Jonathan <jcohen2@ftc.gov>; Hall Ann <ann.hall@rm-firm.com>; Welby, Grant <gwelby@ftc.gov>
Subject: Re: FTC v. HRL; Discovery Responses

Good morning, I'm re-sending via your ftp site now. Please confirm once recieved.

Good Day

Dee Dee Carr
(214) 382-9808

On Jan 22, 2021, at 8:00 AM,
Jeff Kinney
<Jkinney@digitalverdict.com>
wrote:

Please do.

From: Averill, Elizabeth
<eaverill@ftc.gov>
Sent: Friday, January 22, 2021
8:00 AM
To: Jeff Kinney
<jkinney@digitalverdict.com>;
Joel Reese <joel.reese@rm-firm.com>; Cohen, Jonathan
<jcohen2@ftc.gov>
Cc: Hall Ann <ann.hall@rm-firm.com>; Dee Dee Carr
<deedee.carr@rm-firm.com>;
Welby, Grant <gwelby@ftc.gov>
Subject: RE: FTC v. HRL; Discovery

Responses

Joel and Mr. Kinney,

We are unfortunately not permitted to download documents from any type of outside document sharing site or dropbox. However, we can easily send you a secure file transfer link to transfer the files. Mr. Kinney - Should we email that link to you?

Liz

From: Jeff Kinney
<jkinney@digitalverdict.com>
Sent: Thursday, January 21, 2021
8:25 PM
To: Joel Reese <joel.reese@rm-firm.com>; Cohen, Jonathan
<jcohen2@ftc.gov>; Averill,
Elizabeth <eaverill@ftc.gov>
Cc: Hall Ann <ann.hall@rm-firm.com>; Dee Dee Carr
<deedee.carr@rm-firm.com>
Subject: RE: FTC v. HRL; Discovery
Responses

Jonathan/Liz,

Below is a link to the production
Joel referred to in the previous
email.

[HRLAC_00001-HRLAC_03582](#)

From: Joel Reese <joel.reese@rm-firm.com>
Sent: Thursday, January 21, 2021
5:21 PM
To: Cohen, Jonathan
<jcohen2@ftc.gov>; Averill,
Elizabeth <eaverill@ftc.gov>
Cc: Hall Ann <ann.hall@rm-firm.com>

[firm.com](#)>; Jeff Kinney
<kinney@digitalverdict.com>;
Dee Dee Carr <deedee.carr@rm-firm.com>

Subject: FTC v. HRL; Discovery Responses

Jonathan and Liz:

Attached are our responses to the FTC's discovery requests. Jeff Kinney with Digital Verdict will be sending you a link for documents.

Reese Marketos LLP

Joel W. Reese

750 N. Saint Paul St., Suite 600
Dallas, Texas 75201 | Direct: (214)
382-9801 | Main: (214) 382-9810
www.rm-firm.com

CCX-A8

From: [Averill, Elizabeth](#)
To: [Joel Reese](#)
Cc: [Cohen, Jonathan](#); [Garrett, Celia](#)
Subject: RE: FTC v. HRL; Administrative Complaint.
Date: Monday, February 1, 2021 3:20:00 PM

We disagree with your contentions about the administrative action below. Yes, we want to meet and confer about the discovery issues today as planned.

From: Joel Reese <joel.reese@rm-firm.com>
Sent: Monday, February 1, 2021 3:18 PM
To: Averill, Elizabeth <eaverill@ftc.gov>
Cc: Cohen, Jonathan <jcohen2@ftc.gov>; Garrett, Celia <cgarrett1@ftc.gov>
Subject: Re: FTC v. HRL; Administrative Complaint.

If you want to continue the case under these circumstances, I will participate in the call, but this is our position. Please advise if you want to continue with the call today.

Reese Marketos LLP

Joel W. Reese

750 N. Saint Paul St., Suite 600
Dallas, Texas 75201 | Direct: (214) 382-9801 | Main: (214) 382-9810
www.rm-firm.com

On Feb 1, 2021, at 2:05 PM, Joel Reese <joel.reese@rm-firm.com> wrote:

Liz:

We are agreeing to all of the relief requested by the FTC in Administrative Complaint.

The only reason to continue the administrative action is that the administrative action is a stalking horse for some other type of action — which is improper under federal law and applicable rules.

Reese Marketos LLP

Joel W. Reese

750 N. Saint Paul St., Suite 600
Dallas, Texas 75201 | Direct: (214) 382-9801 | Main: (214) 382-9810
www.rm-firm.com

On Feb 1, 2021, at 1:58 PM, Averill, Elizabeth <eaverill@ftc.gov> wrote:

Joel,

I don't understand your email. The next step is for us to meet and confer today about issues with Respondents' Initial Disclosures, Responses to the Requests for Production, and Objections and Answers to the Interrogatories at the time you suggested. (Today at 3:30 Central.) There is a limited time period for discovery in this case, and we need to resolve issues promptly.

We'll plan to speak with you then on the conference line below. Or let us know if you are now refusing to meet and confer.

888-675-2535
Access code: 3263186

Liz

From: Joel Reese <joel.reese@rm-firm.com>
Sent: Monday, February 1, 2021 2:48 PM
To: Averill, Elizabeth <eaverill@ftc.gov>; Cohen, Jonathan <jcohen2@ftc.gov>
Subject: FTC v. HRL; Administrative Complaint.

Liz and Jonathan:

As I have stated previously, my clients do not have the funds to continue this fight. My clients will agree to all of the relief requested by the FTC in Administrative Complaint (a - 1) with no conditions. Please advise as to the next steps.

Considering this issue, it seems like the call today is unnecessary.

Reese Marketos LLP

Joel W. Reese

750 N. Saint Paul St., Suite 600

Dallas, Texas 75201 | Direct: (214) 382-9801 | Main: (214) 382-9810

www.rm-firm.com