PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of **HEALTH RESEARCH LABORATORIES, LLC,** **a limited liability company,** **WHOLE BODY SUPPLEMENTS, LLC,** **a limited liability company, and** **KRAMER DUHON,** **individually and as an officer of** **HEALTH RESEARCH LABORATORIES, LLC** **and WHOLE BODY SUPPLEMENTS, LLC.**	**DOCKET NO. 9397**

EXPEDITED MOTION TO RESCHEDULE EVIDENTIARY HEARING DATE

Based on Respondents' failures to respond to discovery and shifting legal positions, Complaint Counsel requests that the Commission extend the evidentiary hearing date to September 21, 2021 pursuant to Rules 3.21(c)(1) and 3.41(b).[1]

On February 12, 2021, Respondents filed a motion to amend their Answer to admit all material factual allegations in the Complaint pursuant to Rule 3.12(b)(2). No. 600668. Based on the pendency of that motion, the ALJ dismissed Complaint Counsel's outstanding motions to compel discovery without prejudice. No. 600817. The ALJ granted Respondents' motion to amend on March 10, 2021. No. 600937. However, his decision left the state of discovery unclear, and Respondents continue to refuse to engage in the discovery process. This refusal is

[1] If the Commission is not able to consider this motion on an expedited basis, Complaint Counsel respectfully requests an appropriate extension of the hearing date based on the date of the Commission's decision. Complaint Counsel requests corresponding adjustments of discovery and pre-hearing deadlines in the Scheduling Order and intends to submit a separate motion to the ALJ.

important because limited discovery related to the scope of relief (such as facts related to the seriousness and deliberateness of Respondents' unlawful conduct) remains necessary following the amendment of Respondents' Answer.[2] Under these unusual circumstances, an extension of time for discovery in this matter is essential because there otherwise will be insufficient time to conduct discovery after a decision is issued confirming the permissibility of additional discovery. Because such an extension is only workable if the Commission reschedules the evidentiary hearing to a later date, we request the above-described continuance.

CASE BACKGROUND

Respondents have a long history of advertising their products to consumers as effective cures and treatments for a variety of diseases without possessing anything close to adequate substantiation for their claims. *See FTC and State of Maine v. Health Research Laboratories, LLC, et al*., 2:17-cv-00467-JDL (D. Me.), Dkt. 1. The administrative Complaint alleges Respondents deceptively advertised four products with unsubstantiated claims the products would effectively relieve, cure, or protect consumers from the serious health conditions of cardiovascular disease, atherosclerosis, hypertension, and diabetic neuropathy.

The ALJ entered a Scheduling Order on December 14, 2020. No. 600095. Complaint Counsel served Respondents with Interrogatories and Requests for Production on December 22, 2020. Averill Decl. ¶2, Exs. A & B. At the end of January, Respondents served incomplete interrogatory answers[3] and produced 492 documents (containing multiple copies of the same documents). Averill Decl. ¶¶3-5, Exs. C & D. Respondents initially promised to supplement their initial document production within two weeks but later refused to do so. Averill Decl. ¶6,

[2] This issue is central to motions to compel discovery currently pending before the ALJ. Nos. 601039, 601041.

[3] Respondents refused to provide answers to certain interrogatories, including one requiring them to identify substantiation for the challenged ad claims, and they provided incomplete answers to many interrogatories such as those requesting information about product sales and the dissemination of the ads that are relevant to evaluating the seriousness of Respondents' unlawful conduct. *See* Averill Decl., Ex. D.

Ex. E. To date, Respondents have produced no emails, notes, or correspondence from the relevant period. Averill Decl. ¶9. They also have not produced any documents related to Respondents' advertising and marketing strategy for the four products at issue. *Id.* Further, Respondents produced virtually no documents related to work performed by consultants or advisors who Respondents previously identified as being involved in developing and reviewing the challenged advertisements and identifying purported substantiation for ad claims. *Id.* Moreover, Respondents produced essentially no documents showing how they developed, reviewed, and approved ad content. *Id*. Tellingly, Respondents have not produced a single document 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.*

On February 1, 2021, Respondents' Counsel advised Complaint Counsel for the first time Respondents did not intend to participate in further discovery and would instead seek to terminate the administrative action through settlement, by amending or withdrawing their answer, or by refusing to cooperate with discovery and incurring sanctions terminating the proceeding. *See* Averill Decl. ¶15. Respondents subsequently filed an unsuccessful Motion for Acceptance of a Contested Cease and Desist Order.[4] No. 600441. On February 12, Respondents filed a motion seeking permission to amend their Answer ("Respondents' Motion to Amend"), and Complaint Counsel later filed a Cross-Motion to Amend the Complaint. Nos. 600668, 600771. On February 19, Complaint Counsel filed motions to compel discovery from Respondents that the ALJ subsequently denied without prejudice on March 1, 2021 pending resolution of the motions to amend the pleadings. *See* Nos. 600702, 600703, 600817. Following the ALJ's decision granting Respondents' Motion to Amend, Complaint Counsel re-filed modified versions of the motions to compel seeking limited discovery related to the seriousness and deliberateness of Respondents' unlawful conduct on March 24, 2021. Nos. 601039, 601041.

[4] In this novel motion, Respondents essentially sought to unilaterally impose a cease and desist order in this matter. *See also* No. 600607 (Feb. 1, 2021) (denying motion).

Respondents filed an Amended Answer, in a form different from what was approved by the ALJ, on March 30.

RELEVANT LAW

Rules 3.21(c)(1) and 3.41(b) provide the Commission may "upon a showing of good cause" postpone the original hearing date. 16 C.F.R. §§ 3.21(c)(1), 3.41(b). Good cause is established when the movant demonstrates circumstances, not attributable to lack of diligence on the part of the movant, that necessitate a later hearing date. *See, e.g., In re Impax Laboratories, Inc.*, Dkt. 9373 (June 15, 2017) (rescheduling hearing date to accommodate 5-week extension of discovery); *In re ECM Biofilms, Inc.*, Dkt. 9358 (Apr. 8, 2014) (postponing evidentiary hearing date by 45 days to provide additional time for discovery).

Rule 3.12(b)(2) provides that a respondent's general admission of all material factual allegations does not resolve the issue of appropriate relief. *See* 16 C.F.R. § 3.12(b)(2) (answer and complaint "will provide a record basis on which the Commission shall issue … appropriate findings and conclusions and a final order[.]") Further, the Rule permits limited discovery and an evidentiary hearing concerning facts relevant to the scope of relief because it states the pleadings "provide *a* record basis" rather than the only basis for decision[5] and specifies the answer operates as "a waiver of hearings *as to the facts alleged in the complaint*" rather than all hearings.[6] However, these questions have not yet been specifically addressed in the handful of decisions involving Rule 3.12(b)(2).[7]

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[5] Facts outside of the complaint generally may be considered in determining proper relief. *See In re Zale Corp.*, 77 F.T.C. 1635, 1970 WL 117293, *1 (June 17, 1970) ("The selection of an appropriate remedy, and the admissibility of evidence with regard thereto, are governed by the unlawful practices actually found to exist, and not by the allegations of the complaint.").

[6] Rule 3.12(b)(2) additionally provides that Respondents may reserve the right to submit proposed findings of fact and conclusions of law pursuant to Rule 3.46.

[7] *See In re Sir Carpet, Inc.*, 85 F.T.C. 190, 1975 WL 172194 (Feb. 6, 1975); *In re Auslander Decorator Furniture, Inc.*, 83 F.T.C. 1542, 1974 WL 175916 (Apr. 23, 1974); *In re Market Fur Dressing Corp.*, 76 F.T.C. 101, 1969 WL 101378 (July 24, 1969). However, there is a previous ALJ decision in a Rule 3.12(b)(2) case expressing the view that he was required to issue an initial decision with "findings of fact

In every litigated administrative case, the factual record crucially informs the Commission's decisions about appropriate relief. *See, e.g., In re Telebrands Corp.*, 140 F.T.C. 278, 334-340 (Sept. 19, 2005); *Kraft, Inc. v. FTC*, 970 F.2d 311, 326-27 (7th Cir. 1992) (upholding Commission order with fencing-in provisions based on factual findings). Importantly, in this case, the Notice of Contemplated Relief includes fencing-in provisions intended to prevent future violations. Fencing-in relief necessarily extends to conduct beyond the unlawful acts specifically described in the complaint. *See, e.g., FTC v. Colgate-Palmolive, Co.*, 380 U.S. 374, 394 (1965) (recognizing Commission may frame broad orders to prevent respondents from engaging in similar illegal conduct in the future). Development of the relevant factual record is necessary in determining whether proposed relief is reasonably related to the alleged violative conduct and includes facts 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 violations. *See, e.g., Telebrands Corp. v. FTC*, 457 F.3d 354, 358 (4th Cir. 2006) (quoting *Stouffer Foods Corp.,* 118 F.T.C. 746, 811 (1994)); *see also Colgate-Palmolive*, 380 U.S. at 394 (stating "the propriety of a broad order depends upon the specific circumstances of the case"). Therefore, discovery focused on revealing such facts is essential.

ARGUMENT

A. Limited discovery relevant to scope of relief is necessary and appropriate following Respondents' Amended Answer.

Although Respondents now intend to admit all material factual allegations in the Complaint, the issue of relief remains outstanding. By refusing to participate in discovery on the basis of their Rule 3.12(b)(2) admissions, Respondents are improperly attempting to cut off any further development of the factual record that is critical to the Commission in making an informed decision concerning appropriate relief. The need for a complete record explains why

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and conclusions of law *in haec verba* with the complaint." *In re New Home Sewing Center*, 76 F.T.C. 191, 1969 WL 101146, at *5 (Aug. 5, 1969).

Rule 3.12(b)(2) does not preclude limited discovery concerning the appropriate scope of relief. *See also* No. 600817, at 5 ("There is nothing in Rule 3.12(b)(2) … that prevents Complaint Counsel from pursuing discovery regarding issues that remain relevant after [the motions to amend the answer and complaint] are resolved."). Further, Complaint Counsel's limited discovery is focused on just such issues, specifically facts related to the seriousness and deliberateness of Respondents' unlawful conduct. *See also* Rule 3.31(c)(1) ("Parties 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).

B. Complaint Counsel has diligently attempted to complete discovery in accordance with Scheduling Order deadlines.

Good cause for the requested continuance of the hearing date in this matter exists because Complaint Counsel has diligently worked to compel Respondents to produce evidence concerning the seriousness and deliberateness of Respondents' unlawful conduct, but Respondents have obstructed such discovery. Complaint Counsel served their Interrogatories and Requests for Production on Respondents eight days after entry of the Scheduling Order. Once it became evident that Respondents refused to participate in further discovery, Complaint Counsel promptly filed motions to compel that the ALJ denied without prejudice on March 1, 2021 pending resolution of the motions concerning the pleadings. Complaint Counsel recently re-filed narrower motions to compel and anticipates decisions from the ALJ on April 1.

Complaint Counsel also attempted to obtain documents relevant to determining the appropriate scope of relief from third parties, but has had limited success in that effort. Specifically, on January 4, 2021, Complaint Counsel sent *subpoenas duces tecum* to fourteen individuals and companies, including several copywriters and consultants who may have assisted Respondents in developing and reviewing advertisements. Averill Decl. ¶11. Unfortunately, neither of the copywriters produced responsive documents, and two consultants only produced a

very small number of documents to Complaint Counsel.[8] Averill Decl. ¶¶ 12-13. As a result, Respondents' refusal to produce documents in this case has, among other things, prevented Complaint Counsel from gaining access to documents showing: (1) how the challenged advertisements were developed, reviewed, and approved; (2) Respondents' advertising strategy; or (3) specific details concerning Kramer Duhon's knowledge and participation. Such documents, along with other categories of business records missing from Respondents' limited document production such as emails, correspondence, and planning documents, are likely to be highly relevant to evaluating the deliberateness of Respondents' unlawful conduct. For example, one of a few emails produced by a third party consultant shows he advised Kyle Duhon on May 29, 2018 that the black garlic mailers were "pretty egregious in terms of blatantly express disease claims being made." He additionally shared with Duhon that he "did not know many companies that are still going out this aggressively." *See* Averill Decl. ¶12, Ex. F.

The deadline for Complaint Counsel to issue document requests, interrogatories, and subpoenas *duces tecum* was March 25, 2021. *See* No. 600095. Fact discovery is currently scheduled to close on April 29. *Id.* Expert reports currently must be filed by May 6, but Respondents still have not provided interrogatory responses identifying which substantiation materials they relied on to support the challenged advertising claims. *Id.* Given the paltry number of documents produced by Respondents and their incomplete interrogatory responses, it is extremely difficult for Complaint Counsel to effectively conduct party and third party depositions or to prepare expert reports evaluating Respondents' purported substantiation. Under these circumstances, the discovery deadlines in the current Scheduling Order are not workable and should be extended.

[8] One consultant, Inna Yegorova, who appears to have reviewed ads and/or substantiation for ad claims for Respondents asserts she has no documents responsive to the subpoena. *See* Averill Decl. ¶14, Ex. G.

CONCLUSION

For the above reasons, Complaint Counsel respectfully requests that the Commission issue an order rescheduling the evidentiary hearing date in this matter and corresponding adjustments of discovery and pre-hearing deadlines in the Scheduling Order.

Respectfully submitted,

s/ Elizabeth J. Averill
Elizabeth J. Averill
Jonathan Cohen
Federal Trade Commission
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(202) 326-2993 (Averill); -2551 (Cohen)
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(202) 326-3197 (facsimile)

Complaint Counsel

CERTIFICATE OF COMPLIANCE

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, but were not able to reach an agreement. This conference took place by telephone starting at 2:45PM (Eastern) on March 23, 2021.

s/ Elizabeth Averill
Elizabeth 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 Expedited Motion to Reschedule Evidentiary Hearing Date as well as a supporting Declaration of Elizabeth J. Averill, attached Exhibits, and a Proposed Order to counsel for the Respondents on March 30, 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
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PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Rebecca Kelly Slaughter, Acting Chair**
Noah Joshua Phillips
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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**

[PROPOSED] ORDER RESCHEDULING EVIDENTIARY HEARING DATE

On November 13, 2020, the Commission issued an administrative complaint against Respondents Health Research Laboratories, LLC, Whole Body Supplements, LLC, and Kramer Duhon alleging that advertising for their Black Garlic Botanicals, BG18, The Ultimate Heart Formula, and Neupathic products violated Sections 5(a) and 12 of the Federal Trade Commission Act. The Complaint was accompanied by a Notice specifying that the evidentiary hearing would commence on July 13, 2021. Complaint Counsel has filed a Motion requesting that the Commission reschedule the original hearing date to September 21, 2021 to permit additional time for fact and expert discovery to take place.

Commission Rules of Practice 3.21(c)(1) and 3.41(b) provides the Commission may order a later date for the commencement of the evidentiary hearing "upon a showing of good cause." 16 C.F.R. §§ 3.21(c)(1), 3.41(b).

Under the circumstances presented, we find there is good cause for the requested continuance of the hearing date. Although Respondents admitted all material allegations in the administrative Complaint pursuant to Rule 3.12(b)(2), Complaint Counsel remains entitled to conduct discovery concerning relevant facts 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 violations. *See, e.g., Telebrands Corp. v. FTC*, 457 F.3d 354, 358 (4th Cir. 2006) (quoting *Stouffer Foods Corp.,* 118 F.T.C. 746, 811 (1994)); *see also Colgate-Palmolive*, 380 U.S. at 394 (stating "the propriety of a broad order depends upon the specific circumstances of the case"). Because Respondents have not yet responded to outstanding discovery requests, several of which are the subject of pending motions before the ALJ, it is unlikely discovery can be completed in accordance with Scheduling Order deadlines required by the July 13, 2021 hearing date. Accordingly,

IT IS ORDERED that Complaint Counsel's Expedited Motion to Reschedule Evidentiary Hearing Date is **GRANTED**. The evidentiary hearing in this matter is rescheduled and will begin on September 21, 2021 at 10:00 AM at the Federal Trade Commission offices, 600 Pennsylvania Avenue, NW, Room 532-H, Washington, DC 20580. The Chief Administrative Judge is directed to correspondingly adjust discovery deadlines and other pre-hearing deadlines set forth in the Scheduling Order.

By the Commission.

April J. Tabor
Acting Secretary

SEAL:

ISSUED:

PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

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

In the Matter of **HEALTH RESEARCH LABORATORIES, LLC,** **a limited liability company,** **WHOLE BODY SUPPLEMENTS, LLC,** **a limited liability company, and** **KRAMER DUHON,** **individually and as an officer of** **HEALTH RESEARCH LABORATORIES, LLC** **and WHOLE BODY SUPPLEMENTS, LLC.**	**DOCKET NO. 9397**

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 Expedited Motion for Extension of Hearing Date. 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.

2. On December 22, 2020, I served Complaint Counsel's First Requests for Production to Respondents ("RFPs") and Complaint Counsel's First Set of Interrogatories on

Respondents by email to their counsel, Joel Reese and Joshua Russ. True and Correct copies of the RFPs and Interrogatories are attached as Exs. A & B.

3. On January 21, 2021, I received Respondents' Objections and Responses to Complaint Counsel's First Requests for Production ("RFP Responses"). A true and correct copy of the RFP Responses is attached as Ex. C.

4. On January 21, 2021, I received Respondents' Objections and Responses to Complaint Counsel's First Set of Interrogatories ("Interrogatory Responses"). A true and correct copy of the Interrogatory Responses is attached as Ex. D.

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

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

7. 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.).

8. 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 were 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.

9. 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 Yegorova, 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 his nephew, Kyle Duhon, who assisted Kramer Duhon in operating the businesses.

10. Respondents have not produced a privilege log in this matter.

11. During this case, Complaint Counsel sent *subpoenas duces tecum* to fourteen individuals and companies known to have had business relationships with the Respondents. Subpoenas were sent to two copywriters who worked with Respondents, Kent Komae and Stephen Kimball. Neither produced responsive documents. Mr. Komae claims he did not work on the challenged advertisements. Mr. Kimball produced a small number of electronic files to Complaint Counsel in an unreadable format and has been unresponsive to further inquiries.

12. Complaint Counsel also sent a subpoena to Richard Cohen, a consultant and endorser who appears in Respondents' challenged advertisements. He produced 26 documents.

13. Complaint Counsel also sent a subpoena to Dietary Supplement Experts, LLC ("DSE"). DSE served as a consultant to Respondents during the relevant period and produced 128 documents in response to the subpoena. An email string from May 2018 between Curtis

Walcker, owner of DSE, and Kyle Duhon was produced to Complaint Counsel. A true and correct copy of this email string (with mobile phone numbers redacted) is attached as Ex. F.

14. Complaint Counsel also sent a subpoena to a former consultant, Inna Yegorova, who worked with Respondents on consulting projects related to the challenged products. In her response, Ms. Yegorova claimed to have no responsive documents. A true and correct copy of Ms. Yegorova's response to the subpoena is attached as Ex. G.

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 original Motion to Compel Respondents to Produce Documents as well other issues related to their Objections and Answers to the First Set of Interrogatories. 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 by settling, withdrawing their answer, filing a motion to amend their answer to admit allegations in the Complaint, or declining to participate further in discovery and eventually incurring what he referred to as "death penalty" sanctions 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.

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

17. 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 Second Motion to Compel Respondents to Supplement Interrogatory Responses, 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 30, 2021 /s/ Elizabeth J. Averill

Alexandria, VA

Exhibit A

PUBLIC

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.

PUBLIC

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

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(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.

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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.

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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
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(202) 326-2551, jcohen2@ftc.gov
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Complaint Counsel

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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
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Complaint Counsel

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ATTACHMENT A

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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	Þ	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.

Standard Metadata Fields

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

Exhibit B

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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 SET OF INTERROGATORIES TO RESPONDENTS

Pursuant to the Rules of Practice, 16 C.F.R. § 3.35, Complaint Counsel asks Respondents to answer these Interrogatories.

INTERROGATORIES

1. Specify every Document that constitutes Substantiation Material including its Bates number and the date You first possessed the Document.

2. State the exact type and dosages of the ingredients that You expected each Identified Product would contain when consumed and, if different, the exact type and dosages of the ingredients each Identified Product actually contained when shipped to consumers.

3. Provide Basic Dissemination Data for each unique Advertisement for each Identified Product disseminated on or after January 17, 2018.

4. If You deny paragraph 14 of the Complaint in this matter, in whole or in part, State the Basis for Your denial.

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5. If You deny paragraph 15 of the Complaint in this matter, in whole or in part, State the Basis for Your denial.

6. If You contend that some or all of the claims in paragraph 7 of the Complaint in this matter have Substantiation, State the Basis for that contention with respect to each claim You contend has Substantiation, including identifying all Substantiation Materials.

7. If You deny paragraph 16 of the Complaint in this matter, in whole or in part, State the Basis for Your denial.

8. If You deny paragraph 17 of the Complaint in this matter, in whole or in part, State the Basis for Your denial.

9. If You contend that some or all of the claims in paragraph 9 of the Complaint in this matter have Substantiation, State the Basis for that contention with respect to each claim You contend has Substantiation, including identifying all Substantiation Materials.

10. If You deny paragraph 18 of the Complaint in this matter, in whole or in part, State the Basis for Your denial.

11. If You deny paragraph 19 of the Complaint in this matter, in whole or in part, State the Basis for Your denial.

12. If You contend that some or all of the claims in paragraph 11 of the Complaint in this matter have Substantiation, State the Basis for that contention with respect to each claim You contend has Substantiation, including identifying all Substantiation Materials.

13. If You deny paragraph 20 of the Complaint in this matter, in whole or in part, State the Basis for Your denial.

14. If You deny paragraph 21 of the Complaint in this matter, in whole or in part, State the Basis for Your denial.

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15. If You contend that some or all of the claims in paragraph 13 of the Complaint in this matter have Substantiation, State the Basis for that contention with respect to each claim You contend has Substantiation, including identifying all Substantiation Materials.

16. If You currently contend that the Identified Products (including any of their active ingredients) are Bioavailable after ingestion by consumers, State The Basis for Your contention.

17. Identify each person You intend to call at the hearing in this matter including contact information and the subjects his or her testimony will address.

18. If You contend that Kramer Duhon is not responsible for the conduct of other Respondents in this action, State the Basis for Your contention.

19. Identify all affirmative defenses You intend to raise in this matter.

DEFINITIONS

A. **"Advertisement" or "Advertisements"** 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 and other infomercials, website content, social media, and other digital content, including electronic newsletters.

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B. **"And," as well as "or," shall be construed both conjunctively and disjunctively, as necessary, to bring within the scope of any Interrogatory all information that otherwise might be construed as outside its scope.

C. **"Any"** includes **"all,"** and **"all"** includes the word "**any**."

D. **"Basic Dissemination Data"** means all of the following information about each version of 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. **"Bioavailable"** means the availability of a substance to be absorbed and used by the human body.

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

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, telegram, 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"** and **"Identified Products"** means Black Garlic Botanicals, BG18 (also known as BG-18), The Ultimate Heart Formula, and Neupathic, either individually or collectively.

K. **"State the Basis"** means explain with sufficient detail that Complaint Counsel can rely on Your answer, before and during the hearing in this matter, as providing a sufficiently comprehensive response to avoid surprise with respect to the subject the Interrogatory addresses.

L. **"Substantiation"** means any evidence establishing that a claim is true or evidence providing a reasonable basis for a claim.

M. **"Substantiation Materials"** means any information that You rely on to substantiate any of the Subject Claims, including but not limited to tests, reports, studies, clinical trials, experiments, demonstrations, scientific literature, written opinions, anecdotal evidence, and any other information You contend an expert in the scientific community would rely upon.

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

O. "**You**" or "**Your**" means Health Research Laboratories, LLC; Whole Body Supplements, LLC; Kramer Duhon, either individually or collectively.

INSTRUCTIONS

A. **Duty to Supplement**. These Interrogatories require supplemental responses. 16 C.F.R. § 3.31(e).

B. **Return Date.** Your response is due thirty days after service.

C. **Answer Form.** You must answer each Interrogatory separately, in writing, and under oath. Your response should set forth the Interrogatory fully preceding each answer.

D. **Period Covered.** Unless otherwise specified, no Interrogatory is limited in time.

E. **Scope.** The Interrogatories cover information 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.

F. **Reference to Documents.** If You answer an Interrogatory with reference to Documents, Your answer must attach the Document (or identify it by Bates number if already produced), and refer to specific responsive section and page. 16 C.F.R. § 3.35(c).

G. **Waiver.** Any objection You fail to raise through Your initial response is waived.

H. **Objections.** If You object to any Interrogatory or a part thereof, Your response must provide Your exact objection and the facts upon which You base the objection. If you object to part of an Interrogatory, You must answer the remainder fully. If You object to an Interrogatory or part thereof as allegedly irrelevant, You must provide all responsive information

that You concede is relevant. If You object to an Interrogatory or part thereof as unduly burdensome, You must describe any alleged burden a response would entail.

I. **Privilege Claims.** If You object to any Interrogatory based on privilege or any similar claim, You must assert the claim no later than the return date for these Interrogatories. Your response must include the basis for the privilege or similar claim, and any responsive information that Your objection does not cover.

J. **Notice.** If any party files any dispositive motion, or at the commencement of the hearing, Complaint Counsel may move to preclude You from offering evidence regarding responsive matters Your answers to these Interrogatories fail to include.

Dated: Dec. 22, 2020

/s/ Elizabeth J. Averill
ELIZABETH J. AVERILL
JONATHAN COHEN
Federal Trade Commission
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Complaint Counsel

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CERTIFICATE OF SERVICE

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

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Dated: December 22, 2020

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Complaint Counsel

Exhibit C

PUBLIC

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.

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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

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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:

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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

Exhibit D

PUBLIC

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 ANSWERS TO COMPLAINT COUNSEL'S FIRST SET OF INTERROGATORIES

Respondents Health Research Laboratories, LLC ("HRL"), Whole Body Supplements, LLC ("WBS") and Kramer Duhon (collectively, "Respondents") provide the following Objections and Answers to Complaint Counsel's First Set of Interrogatories as required by Federal Trade Commission's Rules of Practice, 16 C.F.R. § 3.31.

ANSWERS TO INTERROGATORIES

1. Specify every Document that constitutes Substantiation Material including its Bates number and the date You first possessed the Document.

ANSWER: Pursuant to 16 C.F.R. § 3.31(c) and (d), Defendants object to this Request because it seeks to require Respondents to marshal all of their evidence and because it is unnecessarily burdensome. Respondents are the in the process of producing "every Document that constitutes Substantiation Material." Complaint Counsel can answer this interrogatory by reviewing and compiling the information from the documents produced.

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2. State the exact type and dosages of the ingredients that You expected each Identified Product would contain when consumed and, if different, the exact type and dosages of the ingredients each Identified Product actually contained when shipped to consumers.

ANSWER: Respondents expected the type and dosages of the ingredients that each Identified Product would contain when consumed would be the same as the exact types and dosages referenced in the Complaint. Per the FTC's request, samples of each Identified Product are being produced.

3. Provide Basic Dissemination Data for each unique Advertisement for each Identified Product disseminated on or after January 17, 2018.

ANSWER: Please see Basic Dissemination Data spreadsheet in the document production.

4. If You deny paragraph 14 of the Complaint in this matter, in whole or in part, State the Basis for Your denial.

ANSWER: Respondents object to this Interrogatory because it is overly broad, unduly burdensome, and improper. Kramer Duhon disagrees that he represented any of the items in paragraph 14. HRL and Kramer Duhon both disagree that the advertisements represented any of the items in paragraphs (a) through (e).

5. If You deny paragraph 15 of the Complaint in this matter, in whole or in part, State the Basis for Your denial.

ANSWER: First, as explained in the previous answer, Respondents disagree that they made the representations in the manner characterized by the FTC. Second, with regard to any statements or claims actually made by the advertisements, Respondents believe that the statements and claims are supported by the materials provided to the FTC.

6. If You contend that some or all of the claims in paragraph 7 of the Complaint in this matter have Substantiation, State the Basis for that contention with respect to each claim You contend has Substantiation, including identifying all Substantiation Materials.

ANSWER: Respondents object to this Request. The Request identifies an advertisement and then requests that Respondents "State the Basis" for the contention that "each claim" has "Substantiation." Defendants object to this Request because it seeks to require Respondents to marshal all of their evidence and because it is unnecessarily burdensome. Respondents are in the process of producing the Substantiation Material, which Respondents believe is already in the FTC's possession.

7. If You deny paragraph 16 of the Complaint in this matter, in whole or in part, State the Basis for Your denial.

ANSWER: Respondents object to this Interrogatory because it is overly broad, unduly burdensome, and improper. Kramer Duhon disagrees that he represented any of the items in paragraph 16. HRL and Kramer Duhon both disagree that the advertisements represented any of the items in paragraphs (a) through (e).

8. If You deny paragraph 17 of the Complaint in this matter, in whole or in part, State the Basis for Your denial.

ANSWER: First, as explained in the previous answer, Respondents disagree that they made the representations in the manner characterized by the FTC. Second, with regard to any statements or claims actually made by the advertisements, Respondents believe that the statements and claims are supported by the materials provided to the FTC.

9. If You contend that some or all of the claims in paragraph 9 of the Complaint in this matter have Substantiation, State the Basis for that contention with respect to each claim You contend has Substantiation, including identifying all Substantiation Materials.

ANSWER: Respondents object to this Request. The Request identifies an advertisement and then requests that Respondents "State the Basis" for the contention that "each claim" has "Substantiation." Defendants object to this Request because it seeks to require Respondents to marshal all of their evidence and because it is unnecessarily burdensome. Respondents are in the process of producing the Substantiation Material, which Respondents believe is already in the FTC's possession.

10. If You deny paragraph 18 of the Complaint in this matter, in whole or in part, State the Basis for Your denial.

ANSWER: Respondents object to this Interrogatory because it is overly broad, unduly burdensome, and improper. Kramer Duhon disagrees that he represented any of the items in paragraph 18. HRL and Kramer Duhon both disagree that the advertisements represented any of the items in paragraphs (a) through (e).

11. If You deny paragraph 19 of the Complaint in this matter, in whole or in part, State the Basis for Your denial.

ANSWER: First, as explained in the previous answer, Respondents disagree that they made the representations in the manner characterized by the FTC. Second, with regard to any statements or claims actually made by the advertisements, Respondents believe that the statements and claims are supported by the materials provided to the FTC.

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12. If You contend that some or all of the claims in paragraph 11 of the Complaint in this matter have Substantiation, State the Basis for that contention with respect to each claim You contend has Substantiation, including identifying all Substantiation Materials.

ANSWER: Respondents object to this Request. The Request identifies an advertisement and then requests that Respondents "State the Basis" for the contention that "each claim" has "Substantiation." Defendants object to this Request because it seeks to require Respondents to marshal all of their evidence and because it is unnecessarily burdensome. Respondents are in the process of producing the Substantiation Material, which Respondents believe is already in the FTC's possession.

13. If You deny paragraph 20 of the Complaint in this matter, in whole or in part, State the Basis for Your denial.

ANSWER: Respondents object to this Interrogatory because it is overly broad, unduly burdensome, and improper. Kramer Duhon disagrees that he represented any of the items in paragraph 20. HRL and Kramer Duhon both disagree that the advertisements represented any of the items in paragraph (a).

14. If You deny paragraph 21 of the Complaint in this matter, in whole or in part, State the Basis for Your denial.

ANSWER: First, as explained in the previous answer, Respondents disagree that they made the representations in the manner characterized by the FTC. Second, with regard to any statements or claims actually made by the advertisements, Respondents believe that the statements and claims are supported by the materials provided to the FTC.

15. If You contend that some or all of the claims in paragraph 13 of the Complaint in this matter have Substantiation, State the Basis for that contention with respect to each claim You contend has Substantiation, including identifying all Substantiation Materials.

ANSWER: Respondents object to this Request. The Request identifies an advertisement and then requests that Respondents "State the Basis" for the contention that "each claim" has "Substantiation." Defendants object to this Request because it seeks to require Respondents to marshal all of their evidence and because it is unnecessarily burdensome. Respondents are in the process of producing the Substantiation Material, which Respondents believe is already in the FTC's possession.

16. If You currently contend that the Identified Products (including any of their active ingredients) are Bioavailable after ingestion by consumers, State The Basis for Your contention.

ANSWER: Products are essentially equivalent to the ingredients in the produced studies.

17. Identify each person You intend to call at the hearing in this matter including contact information and the subjects his or her testimony will address.

ANSWER:

Rick Cohen

Kramer Duhon

Kyle Duhon

Curtis Walker

Plus, Respondents intend to call any witnesses called by the FTC, including any witnesses deposed by the FTC or the Respondents.

18. If You contend that Kramer Duhon is not responsible for the conduct of other Respondents in this action, State the Basis for Your contention.

ANSWER: Respondents object to this interrogatory because it seeks a legal opinion or legal conclusion, which Respondents are not required to provide. From a factual perspective, Respondents contend that the alleged conduct of Kramer Duhon is not a legal basis for the FTC to seek the relief that it seeks against him.

19. Identify all affirmative defenses You intend to raise in this matter.

ANSWER:

Requested Relief Exceeds Statutory Authorization: Section 5 of the FTC Act only grants the Commission the legal authority to enter an "order requiring such person, partnership, or corporation to cease and desist from using such method of competition or such act or practice." 15 U.S.C. § 45(b). The FTC's Administrative Complaint does not make a proper request for relief consistent with the FTC Act. Instead, the FTC requests relief that exceeds the authority granted to the FTC under the FTC Act. Respondents object to any Order that includes any findings, statements, or relief that exceeds the statutory authority granted by the FTC Act.

Mootness and Lack of Statutory Authority: The causes of action alleged in the Complaint are barred by mootness because all alleged conduct (i.e., marketing and advertising) referenced in the Complaint ceased more than year prior to the filing of the Complaint and will not reoccur in the future. The FTC has alleged no facts regarding a likelihood of reoccurrence. Further, the FTC Act does not grant the FTC the authority to seek a cease

and desist order for conduct that ceased prior to the Administrative Complaint without evidence that the conduct will likely reoccur in the future.

Not in the public interest: Neither the filing of the administrative action nor the contemplated relief is in the public interest as required by 15 U.S.C. § 45.

Violation of the United States Constitution: The FTC's administrative process violates the Fifth Amendment to the United States Constitution because it seeks to deny Respondents of property and rights without due process of law. Further, the FTC receives its authority through Article II of the United States Constitution. The FTC's structure violates and is inconsistent with Article II of the United States Constitution because the Commissioners and the Administrative Law Judges ("ALJs") can only be removed by the President for "inefficiency, neglect of duty, or malfeasance in office," which means that the Commissioners and the ALJs are not subject to the supervision and authority of the President.

De Novo Review of Factual Findings Violates of the United States Constitution: Even though the Commissioners do not hear live testimony from witnesses, the Commissioners conduct a *de novo* review of the ALJ's factual findings. This *de novo* review of the ALJ's factual findings violates the United States Constitution and the Administrative Procedure Act.

Res Judicata and Collateral Estoppel: The actions alleged in the Administrative Complaint are barred under the doctrines of res judicata and/or collateral estoppel due to the January 16, 2018 Stipulated Final Judgment and Order for Permanent Injunction and Other Equitable Relief ("Final Judgment") and/or the August 12, 2020 Order in Case No. 2:17-cv-00467-JDL, styled *Federal Trade Commission, et al. v. Health Research Laboratories, LLC, et al,* pending in the United States District Court for the District of Maine.

Consent Judgment Settlement: The actions alleged in the Administrative Complaint are barred due to the settlement as referenced in the Final Judgment.

Fails as a matter of law: The Complaint fails to state a claim upon which relief can be granted.

No Vicarious Liability and No Direct Liability: The Complaints' claims against Kramer Duhon are barred because Duhon is not responsible for the conduct of the other Respondents.

Respondents reserve the right to supplement this response as additional discovery is conducted.

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Dated: January 21, 2021

Respectfully submitted,

REESE MARKETOS LLP

By: */s/ Joel W. Reese*

Joel W. Reese
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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, pursuant to 16 C.F.R. § 3.31, a 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

Exhibit E

PUBLIC

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

PUBLIC

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>

PUBLIC

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

Exhibit F

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Re: Black Garlic Botanicals Mailer

Curtis Walcker <experts@dietarysupplementexperts.com>
Tue 5/29/2018 7:28 PM
To: Kyle Duhon <kyle@kramerduhon.com>

Hi Kyle,

Thanks for sending all of these materials. I have had some time to look them over. On the DM pieces, if these versions of the Black Garlic and the BladderEZE have been reviewed and approved by your lawyer and your past consultant - I am a bit in shock, as my view would be that they are pretty egregious in terms of blatantly explicit disease claims being made. The context is so disease-centric that wordsmithing to tone the claims down would be difficult to do while maintaining the points being made. I do not know many companies that are still going out this aggressively. Most have toned things back significantly from this level, even in the mail.

Pulling from my current rate card, here are some of the services and fees that you might be interested in:

-Dietary supplement custom formulation - $1,760
-Dietary supplement claims substantiation file - $3,100 (for up to 5 dietary ingredients)
-Advertising copy review - $TBD depending on length, density, and starting level of compliance (~$1,200-2,000 for ~16 pages like yours)
-Monthly retainers also available ($3,100 for up to 10 hours, $4,400 for up to 20 hours, and $8,000 for up to 40 hours - billed against in 15-min increments, or by flat-fee items)

Let me know you thoughts, and if you have any questions please let me know.

Sincerely,

Curtis Walcker, M.S.
Consultant / Owner
Dietary Supplement Experts, LLC
[redacted]

We are now offering a third-party compliance audit and certification program for all business models.

From: Kyle Duhon <kyle@kramerduhon.com>
Sent: Tuesday, May 29, 2018 4:59:44 PM
To: Curtis Walcker
Subject: Re: Black Garlic Botanicals Mailer

We can discuss this, but we do not currently see these as being very aggressive. Not from a product claims perspective. All three of these products were formulated by a formulator. There are competitors out there with much stronger claims then these. All of these have been attorney reviewed at some point and mostly corrected within reason according to the backup on file. We've also worked closely with Inna on these pieces. With that being said as you know we've always worked backwards allowing the writer to do the research on his own and then questioning him on his claims if we felt there was an issue based on conversations with Inna and our attorney.

Thanks,

Kyle Duhon
Health Research Labs
Office:972-354-7344
[redacted]

On May 29, 2018, at 4:51 PM, Curtis Walcker <experts@dietarysupplementexperts.com> wrote:

Maybe 9.75/10

Sincerely,

Curtis

From: Curtis Walcker
Sent: Tuesday, May 29, 2018 4:50:41 PM
To: Kyle Duhon
Subject: Re: Black Garlic Botanicals Mailer

Early comment - these are some very aggressive pieces (9/10). Would you agree?

Sincerely,

Curtis

From: Kyle Duhon <kyle@kramerduhon.com>
Sent: Tuesday, May 29, 2018 2:22:53 PM
To: Curtis Walcker
Subject: Black Garlic Botanicals Mailer

Thanks,

Kyle Duhon
Health Research Labs
Office:972-354-7344
[redacted]

Exhibit G

PUBLIC

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

○ *in person.*

◉ *by registered mail.* By Federal Express overnight mail, pursuant to Rule 4.4(a)(2) of the Federal Trade Commission's Rules of Practice.

○ *by leaving copy at principal office or place of business, to wit:*

_____

_____

on the person named herein on:

January 16, 2021
(Month, day, and year)

Elizabeth Averill
(Name of person making service)

Attorney, Federal Trade Commission
(Official title)

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DECLARATION OF RECORDS CUSTODIAN
PURSUANT TO FED R. EVID. 803(6) AND 902 (11)

I, Inna Yegorova, being of legal age, do hereby declare and depose as follows:

1. I am a custodian of records for Inna Yegorova ("Yegorova"). In that capacity, I am responsible for the compilation and maintenance of records pertaining to business Yegorova conducts. Due to my responsibilities, I have personal knowledge of the manner in which the subpoenaed party creates and maintains records of the business that it conducts.

2. On January 16, 2021, in response to a subpoena dated January 4, 2021 issued by the Federal Trade Commission, Yegorova transmitted to the Federal Trade Commission true and accurate copies of records maintained by the subpoenaed party consisting of 0 pages, and 0 files.

3. The documents produced are true and accurate copies of records maintained by the subpoenaed party in the regular course of business.

4. The records produced in response to the Federal Trade Commission's subpoena were made at or near the time of the occurrence of the matters and transactions set forth therein by, or from information transmitted by, a person with knowledge of those transactions.

4. Yegorova made the records produced to the Federal Trade Commission in response to the subpoena as part of regular practice in its regularly conducted business.

5. Yegorova kept the records produced to the Federal Trade Commission in response to the subpoena in the course of its regularly conducted business.

I declare under penalty of perjury that the foregoing is true and correct under 28 U.S.C. § 1746(2).

Executed on January 16, 2021, in Northridge, California.

I. Yegorova
Signature

INNA YEGOROVA
Printed name

OWNER Inna Consulting
Title of records custodian