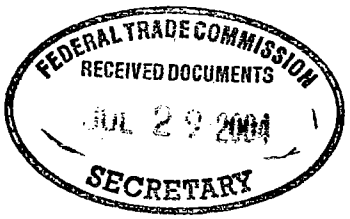
UNITED STATE OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of	)	
DYNAMIC HEALTH OF FLORIDA, LLC,	)	
CHHABRA GROUP, LLC,	)	
DBS LABORATORIES, LLC,	)	
Limited liability companies,	)	
VINCENT K. CHHABRA,	)	**DOCKET NO. 9317**
Individually and as an officer of	)	
Dynamic Health of Florida, LLC,	)	
And Chhabra Group, LLC, and	)	
JONATHAN BARASH,	)	
Individually and as an officer of	)	
DBS Laboratories, LLC.	)	

RESPONDENTS VINCENT CHHABRA, DYNAMIC HEALTH OF SOUTH FLORIDA, LLC, AND CHHABRA GROUP, LLC'S JOINT MOTION FOR PROTECTIVE ORDER PURSUANT TO CIV.R. 26(C) AND FOR STAY OF PROCEEDINGS

TO THE HONORABLE STEPHEN J. McGUIRE:

COMES NOW Respondents Vincent Chhabra, Dynamic Health of South Florida, LLC and Chhabra Group, LLC (collectively referred to as "Respondents"), and respectfully request this Honorable Tribunal for a protective order pursuant to Civil Rule 26(C) and to stay the above-styled case until the decision in the case of *United States v. Vincent Chhabra and Chhabra Group, LLC, et al.*, Criminal No. 03-530-A, United States District Court for the Eastern District of Virginia, Alexandria Division, Brinkema, J., presiding. The trial in this criminal case is scheduled for September 7, 2004 and is described more fully below.

A stay of these proceedings (1) will be relatively short in duration, (2) would cause no serious damage to the public interest, (3) would not adversely affect in any way any government interest, and (4) no evidence will be lost or destroyed due to the imposition of the stay order.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

FACTUAL BACKGROUND

On or about June 15, 2004, the Federal Trade Commission ("FTC") filed the above-styled case.

Prior to the filing, the United States of America indicted Vincent Chhabra and Chhabra Group, LLC, on 108 counts, including Food, Drug and Cosmetic Act counts, numerous money laundering conspiracy and substantive money laundering counts, and in the case of Mr. Chhabra, a count alleging the running of a continuing criminal enterprise which carries a mandatory 20 year sentence if convicted. *United States v. Vincent Chhabra and Chhabra Group, LLC, et al.*, Criminal No. 03-530-A, United States District Court for the Eastern District of Virginia, Alexandria Division, Brinkema, J., presiding. Indictment (in pertinent part), Exhibit A attached. This case is currently set for trial on

September 7, 2004. Mr. Chhabra and Chhabra Group, LLC, are currently devoting most of their time and resources to the defense of this criminal case.

In addition to the indictment, on November 24, 2003, the district court issued a Restraining Order enjoining and restraining the Defendants, including Vincent Chhabra and Chhabra Group, LLC, "their agents, representatives, servants, employees, attorneys, family members" and others from "selling, transferring, assigning, pledging, distributing, giving away, encumbering or otherwise participating in the disposal of or removal from the jurisdiction of [the Alexandria district court] . . . of any property, real or personal, of the defendants." Restraining Order (in pertinent part), p.2, Exhibit B attached. For all practical purposes, Respondents are unable to meaningfully participate in this process until the criminal case is concluded. The government has seized literally millions of dollars in assets that will either be returned or forfeited at the conclusion of the criminal case. It is counsel's understanding that inquiries to DOJ attorneys were made by representatives of the FTC as to whether $19,000 in seized funds could be used in an attempt to resolve this matter. Department of Justice attorneys refused to release any monies.[1]

At first glance, the case before the FTC would not appear to involve or overlap with the Alexandria indictment. However, in the criminal case, the government is alleging that all financial transactions with funds obtained from the prescription and dispensing of medications conducted via Internet algorithmic assessments without a face-

[1] The fact that Respondents would obviously prefer to settle, rather than try this case, bears no relationship to the merits of the defenses asserted in Respondents' Answer. The preference to settle is solely related to the expenses and time that would be needed to defend two products that are no longer being distributed to the public and whose gross sales total approximately $19,000. Because Respondents' counsel was not privy to the conversations between FTC and DOJ lawyers concerning the release of $19,000 in seized assets, counsel may not be totally accurate in this assertion.

to-face examination between the doctor and patient constitute money laundering. The allegations in the FTC Complaint overlap in time with the dates set forth in the Alexandria indictment. Eight of the indictment counts concern the Food, Drug and Cosmetic Act. Until the trial in Alexandria, Virginia is completed in September, Mr. Chhabra will exercise his Fifth Amendment privilege to any interrogatories, admissions, requests for production and depositions.

Respondents are mindful of this Tribunal's requirement to finish a case within one year. This is not a complicated case. Fabulously Feminine and Pedia Loss are not being distributed to the public at this time. Total sales from these products were approximately $19,000. A stay until October 15, 2004 will not materially affect the ability to resolve this case within one year. Respondents will file a proposed scheduling order before the conference on Thursday, July 29, 2004.

SUMMARY OF ARGUMENT

Neither Vincent Chhabra, Chhabra Group, LLC or Dynamic Health of Florida, LLC, have the resources to defend this case at this time. Mr. Chhabra and Chhabra Group, LLC's present efforts concern the criminal case set forth above. Chhabra Group, LLC and Dynamic Health of Florida, LLC, do not have a Fifth Amendment privilege against self-incrimination. Mr. Chhabra, however, plans to assert his Fifth Amendment privilege to all discovery until his criminal trial is concluded. This civil proceeding, if not temporarily deferred, will undermine Mr. Chhabra's Fifth Amendment privilege against self-incrimination, or unfairly, have Mr. Chhabra's assertions of the privilege used against him as an adverse inference concerning the merits of his defenses. A delay of this civil proceeding will not seriously jeopardize any public or government interest.

LEGAL ARGUMENT

A court has the discretion to stay civil proceedings, postpone civil discovery, or impose protective orders and conditions "when the interests of justice seem to require such action, sometimes at the request of the prosecution . . . sometimes at the request of the defense." *United States v. Kordel*, 397 U.S. 1, 12 n.27 (1970).

> Other than where there is specific evidence of agency bad faith or malicious governmental tactics, the strongest case for deferring civil proceedings until after completion of criminal proceedings is where a party under indictment for a serious offense is required to defend a civil or administrative action involving the same matter.

Securities and Exchange Commission v. Dresser Industries, Inc., 628 F.2d 1368, 1375-76 (D.C. Cir. 1980). See also, *Wehling v. Columbia Broadcasting System*, 608 F.2d 1084, 1089 (5th Cir. 1979).

Courts generally apply a balancing test, weighing the advantages to the movant against the harm to others which would result from granting the motion for a stay. In *Federal Savings and Loan Insurance Corp. v. Molinaro*, 889 F.2d 899, 903 (9th Cir. 1989), the Ninth Circuit set out five factors for consideration in determining whether a stay should be issued: (1) plaintiff's interests in resolving the civil case quickly; (2) the burdens a stay will impose upon the Respondents; (3) the effect a stay will have on the courts; (4) third parties' interests; and (5) the public's interest. For example, in *Molinaro*, a stay was denied because the defendant was disposing of assets, the civil case had been pending more than one year, and non-parties would be "frustrated" by the delay. The court found most important, however, the lack of a criminal indictment. None of these factors is present in this case.

Once again, the strongest case for a stay of discovery in a civil case occurs after an indictment is returned. *Southern District of New York Judge Milton Pollak in Parallel Civil and Criminal Proceedings,* 129 F.R.D. 201, 203 (1989) ("potential harm to civil litigants arising from delaying them is reduced due to the promise of a fairly quick resolution of the criminal case under the Speedy Trial Act"); *Dienstag v. Bronsen*, 49 F.R.D. 327 (S.D.N.Y. 1970) (civil discovery stayed where criminal case pending to protect Fifth Amendment privilege).

The prejudice to Respondents by proceeding immediately with discovery and other timetables is great. If the civil proceeding is allowed to proceed, an "adverse inference" instruction may be requested concerning Mr. Chhabra if he asserts his Fifth Amendment privilege. If Mr. Chhabra intends to testify at the trial of this matter, his testimony, at a minimum, could be used in his criminal trial as impeachment, or even substantive evidence in the government's case-in-chief.[2]

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[2] The protection extends to grand jury proceedings, civil proceedings and applies not only to evidence which may directly support a criminal conviction, but to information which would furnish a link in the chain of evidence that could lead to prosecution, as well as evidence which an individual reasonably believes could be used against him in a criminal prosecution. *Marchetti v. United States*, 390 U.S. 39 (1968); *McCarthy v. Arndstein*, 266 U.S. 34 (1924); *Ohio v. Reiner*, 532 U.S. 17, 20-21 (2001), citing *Hoffman v. United States*, 341 U.S. 479, 486 (1951). "[I]t need only be evident from the implications of the question, in the setting in which it is asked, that a response answer to the question or an explanation of why it cannot be answered might be dangerous because injurious disclosure could result." *Ohio v. Reiner,* 532 U.S. 20-21, citing *Hoffman*, 341 U.S. 486-487.

In determining a claim of privilege under the Fifth Amendment, deference is accorded to those who seek to invoke the privilege. *United States v. Lowell*, 649 F.2d 950, 963-64 (3rd Cir. 1981). There is a strong presumption against finding that a person has waived a constitutional right. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938), and a waiver of the Fifth Amendment privilege must be knowingly, intelligently and voluntarily waived. *Gardener v. Broderick*, 392 U.S. 273, 276 (1968).

In determining whether a response may incriminate, courts cannot compel a claimant to respond since compelling a response would "surrender the very protection the privilege is designed to guarantee." *Hoffman v. United States*, 341 U.S. 479, 486 (1951). The privilege may be invoked even though a claimant insists that he has never committed a crime and is innocent. *Ohio v. Reiner,* 532 U.S. at 21 ("To the contrary, we have emphasized that one of the Fifth Amendment's 'basic functions . . . is to protect innocent [women] . . . who otherwise might be ensnared by ambiguous circumstances.'"; *Grunewald v. United States*, 353 U.S. 391, 421 (1957). A response cannot be compelled unless it is "perfectly clear" from a careful consideration of all the circumstances in the case that the witness "cannot possibly" incriminate himself. *Hoffman*, 341 U.S. at 488.

CONCLUSION

All courts have broad powers to regulate or prevent discovery, and a stay of trial proceedings until after the September 7, 2000 criminal trial in Alexandria, Virginia is well within the discretion of the district court. A stay of the civil suit would not be prejudicial to any party or injure the public trust, or frustrate any important governmental interest. To the contrary, the refusal to grant a stay will cripple Respondents ability to defend this action, result in substantial prejudice to Respondents rights and deny Respondents due process of law.

"[T]here are testimonial and potentially incriminating communications inherent in the act of responding to a subpoena which may themselves be protected by the Fifth Amendment." *United States v. Hubbell*, 167 F.3d 552 (D.C.Cir. 1999), *affirmed,* 120 S.Ct. 2037 (1999). The act of production communicates at least four different statements. It testifies to the fact that: (i) documents responsive to a given subpoena exist; (ii) they are in the possession or control of the subpoenaed party; (iii) the documents provided in the response to the subpoena are authentic; and (iv) the responding party believes that the documents produced are those described in the subpoena. *Hubbell*, 167 F.3d 567-68.

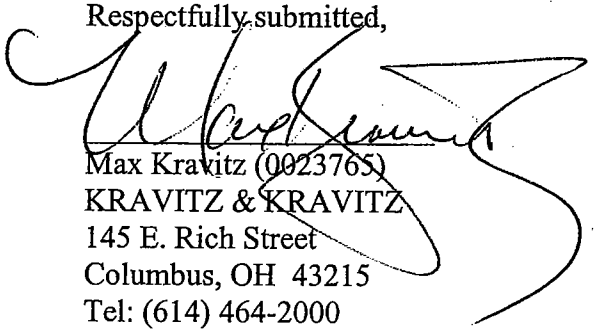
In *Fisher v. United States*, 425 U.S. 391 (1976), the Supreme Court also held that the act of producing documents pursuant to a subpoena duces tecum is protected by the fifth amendment privilege. The *Fisher* holding was restated by the Supreme Court in *United States v. Doe*, 465 U.S. 605 (1984): the act of production and its implicit authentication of the documents could constitute a testimonial communication, and absent a grant of immunity, a person could not be compelled to produce business records. Precisely when the act of production is sufficiently testimonial to come within the umbrella of Fifth Amendment protection is a case specific, factual inquiry in this "admittedly abstract and under-determined area of the law." *Hubbell*, 167 F.3d at 570. "Compelled testimony that communicates information that may "lead to incriminating evidence" is privileged even if the information itself is not inculpatory." *Doe v. United States*, 487 U.S. 201, 208n6 (1988); *United States v. Hubbell*, 120 S.Ct. 2037, 2044 (2000). The Supreme Court concluded in *Hubbell*:

> In sum, we have no doubt that the constitutional privilege against self-incrimination protects the target of a grand jury investigation from being compelled to answer questions designed to elicit information about the existence of sources of potentially incriminating evidence. That constitutional privilege has the same application to the testimonial aspect of a response to a subpoena seeking discovery of those sources.

Id. at 2047.

Nor can the government attempt to argue that the existence of the records subpoenaed are a "foregone conclusion" and therefore outside the scope of Fifth Amendment protection. *See Fisher v. United States*, 425 U.S. 391 (1975). As a threshold matter, even the United States Supreme Court is unclear as to the scope of the "foregone conclusion" rationale. *See Hubbell*, 120 S. Ct. at 2048. In *Hubbell,* the Court rejected the government argument that individuals, and particularly business people, will always possess general business and tax records that fall within the categories described in the attached subpoena. The Court noted that "[t]he *Doe* subpoenas also sought several broad categories of general business records, yet we upheld the District Court's finding that the act of producing those records would involve testimonial self-incrimination." *Hubbell*, 120 S.Ct. at 2048.

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that on July 28, 2004, I caused a copy of the attached Motion for Protective Order Pursuant to Civ.R.26(C) and for Stay of Proceedings to be served upon the following persons by Federal Express:

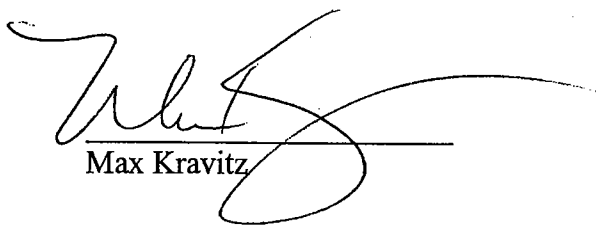
Donald S. Clark, Secretary
Federal Trade Commission, Room 159
600 Pennsylvania Avenue, NW
Washington, DC 20580

The Honorable Stephen J. McGuire
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Mary Engle
Associate Director for Division of Advertising Practices
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20580

Janet Evans
Syd Knight
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dated: Columbus, Ohio
July 28, 2004



Max Kravitz

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	) CRIMINAL NO. 03-530-A
	)
v.	) Count 1: Conspiracy
	) 21 U.S.C. § 846
VINEET K. CHHABRA,	)
(a.k.a. VINCENT K. CHHABRA)	) Count 2: Continuing Criminal
	) Enterprise
DANIEL L. THOMPSON,	) 21 U.S.C. § 848(a) and (c)
	)
SABINA S. FARUQUI,	) Counts 3-42: Unlawful Distribution and
(a.k.a. SABINA K. CHHABRA)	) Dispensing of Controlled Substances
	) 21 U.S.C. § 841(a)(1), 841(b)(1)(D),
JAMES A. TROVATO, JR.,	) 841(b)(2) & 21 C.F.R. § 1306.04
	)
SUNIL K. SETHI,	) Count 43: Conspiracy to Launder
	) Money
DANIEL M. VARALLI,	) 18 U.S.C. § 1956(h)
	)
WILLIAM D. THOMPSON,	) Counts 44-82: Promotional Money
	) Laundering
LAURENCE L. COCKERILLE, JR.,	) 18 U.S.C. § 1956(a)(1)(A)(i)
	)
ARTURO L. PORTALES,	) Counts 83-99: Transactional Money
	) Laundering
RUSSELL A. JOHNSON,	) 18 U.S.C. § 1957
	)
USA PRESCRIPTION, INC.,	) Counts 100-108: Introduction of
	) Misbranded Drugs into Interstate
CHHABRA GROUP, LLC, and	) Commerce
	) 21 U.S.C. §§ 331(a), 333(a)(2), 352(a)
VKC CONSULTING, LLC,	)
	) Criminal Forfeiture
Defendants.	) 18 U.S.C. § 982(a)(1) & (b);
	) 21 U.S.C. § 853

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond, Virginia

UNITED STATES OF AMERICA)
Plaintiff,)
v.)
)
VINEET K. CHHABRA, et al.) CRIMINAL NO. 03-530-A
(aka VINCENT K. CHHABRA))

RESTRAINING ORDER

UPON MOTION OF the United States of America, pursuant to Title 21, United States Code, Section 853(e)(1), and Title 18, United States Code, Section 982(b)(l), incorporating the same, which provides courts with jurisdiction to enter restraining orders and take such other action in connection with any property or other interest subject to forfeiture to ensure its availability for forfeiture, and pursuant to this Court's inherent power to make orders necessary and proper to the orderly carrying on of litigation brought within the Court's jurisdiction, and

IT APPEARING TO THE COURT THAT on October 30, 2003, an indictment was returned against the defendants seeking criminal forfeiture pursuant to 21 U.S.C. § 853 and 18 U.S.C. § 982, of certain assets with respect to which this order is sought, it is hereby ORDERED pursuant to Title 21, United States Code, Section 853(e)(1) and Title 18, United States Code, Section 982(b)(l), incorporating Title 21, United States Code, Section 853(e)(1):

THAT THE DEFENDANTS, their agents, representatives, servants, employees, attorneys, family members and those persons in active concert or participation with them, and anyone holding property, both real or personal, including escrow and bank accounts, for

them, be and are hereby ENJOINED AND RESTRAINED from selling, transferring, assigning, pledging, distributing, giving away, encumbering or otherwise participating in the disposal of (by transfer of stock or otherwise) or removal from the jurisdiction of this Court, or removal from any checking or savings account of all or part of a defendants' interest, direct or indirect, in all property, real or personal, of the defendants, without prior approval of the court upon notice to the United States and an opportunity for the United States to be heard, except as specified in this Order. The United States is hereby authorized to record a notice of *lis pendens* on the real property named in the Indictment, or file any other documents to ensure the property is preserved for forfeiture. The defendants are further required to provide the vehicle titles for the cars listed on Attachment C.

The property subject to this order includes, but is not limited to, each defendants' interest, whether joint or exclusive, in any BANK ACCOUNT, REAL PROPERTY, CURRENCY, PERSONAL PROPERTY, BUSINESS ENTITY, or FINANCIAL INSTRUMENT, including the properties listed in Attachments A, B and C.

Should a defendant desire to transfer, convey, liquidate or encumber any property, and if the United States consents to such action, said action may take place upon condition that all sale proceeds shall be placed in escrow in an account(s) approved by counsel for the government. In the event that forfeiture is ultimately ordered, any funds received from the sale of property for the actual property forfeited shall be substituted for the actual property and such funds shall also be available to satisfy an order forfeiting substitute assets pursuant to

Title 21, United States Code, Section 853(p), and Title 18, United States Code, Section 982(b)(1).

If any defendant demonstrates that assets with value exceeding the value of assets described in the Indictment has been restrained, the Court will review the execution of this order as it applies to that defendant and make an appropriate determination and consider modification of this restraining order in relation to that defendant's property interests.

RESTRAINT OF ASSETS
HELD AT FINANCIAL INSTITUTIONS

IT IS HEREBY ORDERED that the accounts and other property of the defendants maintained at United States financial institutions be and the same are "frozen". The United States financial institutions are directed to prevent and are otherwise enjoined from transferring (by wire or otherwise), conveying or disposing of all monies or other property currently within any accounts or safe deposit boxes of the defendants. In ordering the financial institutions to "freeze" all the accounts, it is the intention of the court that the financial institutions shall not honor any demands by the correspondent banks to release any money nor shall the financial institutions honor any checks or other negotiable instruments drawn on the accounts of the specific banks, if to do so would reduce the balance of the account below the "amount frozen".

It is DIRECTED that all United States financial institutions which maintain accounts identified herein shall immediately inform the government agents who serve the certified copies of this order, of the account balances on the date of service. The respective financial institutions are further DIRECTED to continue to receive and credit monies to the defendants'

accounts.As for the foreign financial institutions which maintain accounts identified herein, Defendant Vincent K. Chhabra is hereby ORDERED to repatriate the funds he owns in the foreign bank accounts listed on Attachment B, pursuant to 21 U.S.C. §853(e)(4)(A).

The court also DIRECTS that the United States serve a certified copy of this order on the each affected financial institution.

The United States is authorized and directed to serve a copy of this order on each defendant, counsel for all defendants, and any other entity or individual the government believes may be in control or possession of property of any defendant.

So ORDERED this 24th day of November, 2003

Leonie M. Brinkema

LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE