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

In the Matter of	)	
DYNAMIC HEALTH OF FLORIDA, LLC, CHHABRA GROUP, LLC, DBS LABORATORIES, LLC, VINEET K. CHHABRA, a/k/a VINCENT K. CHHABRA, and JONATHAN BARASH, Respondents.	)	DOCKET NO. 9317 PUBLIC DOCUMENT

To: The Honorable Stephen J. McGuire
Chief Administrative Law Judge

COMPLAINT COUNSEL'S MOTION TO COMPEL ADEQUATE AND COMPLETE RESPONSES TO REQUEST FOR ADMISSIONS

Pursuant to Rule 3.38(a) of the Commission's Rule of Practice, 16 C.F.R. 3.38(a), Complaint Counsel respectfully moves for an order compelling Respondents Dynamic Health of Florida, LLC, Chhabra Group, LLC, and Vineet Chhabra to provide adequate and complete responses to Complaint Counsel's Request for Admissions by Respondents ("RFAs"). The grounds for this motion are set forth below:

I. BACKGROUND

On November 2, 2004, Complaint Counsel served Respondents with its Request for Admissions. Exhibit A attached. On December 4, 2004, Respondents served Complaint Counsel with Respondents' Response to Complaint Counsel's Request for Admissions by Respondents ("Respondents' Response to Requests for Admissions"). Exhibit B attached. The responses provided by Respondents are woefully inadequate. Among other things, Respondents

Vineet Chhabra and Chhabra Group, LLC fail to provide any response to the RFAs. In addition, the answers of Dynamic Health of Florida, LLC contain numerous evasive responses, including denials that do not "fairly meet the substance of the requested admission" as required by the Commission's Rules of Practice.

II. ARGUMENT

Commission Rule 3.32 governs the procedure for requesting and responding to a RFA. The rule provides that where an RFA is not admitted, the party to whom the request is directed may respond in certain other ways. It states, in pertinent part:

> The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify its answer or deny only a part of the matter. . . the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known to or readily obtainable by the party is insufficient to enable it to admit or deny.

16 C.F.R. 3.32 (b). In sum, when responding to a RFA, the rule requires the party to admit, deny, admit part, or state that after reasonable inquiry the party cannot truthfully admit or deny. As discussed below, Respondents responses to the RFAs have failed to comply with these requirements, instead asserting various theories and arguments designed to avoid their obligations to respond to the RFAs.

1. Respondents' objections to the form of the RFAs have been addressed by the Court's Order dated December 9, 2004

Respondents raised objections to the form of the RFAs, arguing that it was improper for

Complaint Counsel to submit a single set of RFAs to Respondents. Respondents contend that the Commission's Rules require that each individual Respondent be served separately. Such arguments were addressed by the Court in its "Order Denying Respondents' Motion to Compel," dated December 9, 2004. Accordingly, Respondents' contentions as to the form inquiries do not justify their failure to fully and accurately respond to the RFAs.

2. Respondents' general objections are without merit.

Respondents have raised a number of general objections to Complaint Counsel's RFAs, and also have incorporated by reference those general objections as the grounds for their objection to each RFA. Respondents' general objections asserted at the beginning of their responses include, for example, the assertion that the RFAs are duplicative, vague, ambiguous, overbroad, unduly burdensome, and that the answers may disclose privileged communications.[1] Respondents' objections are without merit.

In defining the scope of admissions, the Commission's Rules allow the parties to request admissions about a broad range of matters, including "statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request." 16 C.F.R. 3.32 (a). This broad scope allows the parties to narrow the issues prior to trial. Indeed, this Court has held that, "A purpose of requests for admission is to narrow the issues for trial by relieving the parties of the need to prove facts that will not be disputed at trial and the truth of which can be easily ascertained." *Basic Research, LLC.*, 2004 FTC LEXIS 225, *3

[1] To the extent that Respondents seek to assert the attorney-client privilege or some other privilege in response to the RFAs, they have, in fact, failed to provide a privilege log listing the alleged privileged documents as required by the Commission's Rules of Practice. *See* Commission Rule 3.38A.

(2004) (citations omitted). *See also United Coal Cos. v. Powell Construction Co.,* 839 F.2d 958, 967 (3rd Cir. 1988) (federal courts interpreting the analogous Rule 36(a) of the Federal Rules of Civil Procedure have held that RFAs serve the highly desirable purpose of seeking to "narrow the issues for trial to those which are genuinely contested"). Complaint Counsel's RFAs are clearly appropriate because they are carefully crafted to seek a narrowing of the issues presented in the case. Accordingly, Respondents Vineet Chhabra and Chhabra Group, LLC should be required to answer the RFAs, and Respondent Dynamic Health of Florida, LLC should be required to provide non-evasive, substantive answers to the RFAs.

3. Vineet Chhabra is required to provide answers to the RFAs.

Respondents refused to provide any answers by Vineet Chhabra to the Requests for Admissions, based upon an assertion of Mr. Chhabra's Fifth Amendment privilege against self-incrimination. *See* Exhibit B, p. 5. Respondents' assertion of Mr. Chhabra's Fifth Amendment privilege against self-incrimination is without merit. Mr. Chhabra is no longer entitled to plead the Fifth Amendment following his voluntary plea agreement in his criminal proceeding before the United States District Court for the Eastern District of Virginia. His plea agreement with the United States Government requires him, among other things, to "cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the government." Plea Agreement of Vineet K. Chhabra, ¶ 12. *See* Exhibit C, attached. By entering such an agreement, Mr. Chhabra has waived his Fifth Amendment privilege. Recent case law has held that, "It is well settled that a defendant may waive his right . . . to claim his Fifth Amendment privilege against self-incrimination by negotiating a voluntary plea agreement with the government." *United States v. Scruggs*, 356

F.3d 539, 546 (4th Cir. 2003) (quoting *United States v. Wiggins*, 907 F.2d 51, 52 (4th Cir. 1990)). In *Scruggs*, the court also noted that, "a number of courts have recognized that 'a plea agreement that states in general terms the defendant's obligation to cooperate with the government can constitute a waiver of the defendant's Fifth Amendment privilege against self-incrimination.'" *Id.* (citing *United States v. Bad Wound*, 203 F.3d 1072, 1075 (8th Cir. 2000); *United States v. Lawrence*, 918 F.2d 68, 72 (8th Cir. 1990); *United States v. Resto*, 74 F.3d 22, 27 (2nd Cir. 1996); *United States v. Wise*, 603 F.2d 1101, 1104 (4th Cir. 1979)).

4. Respondents' argument that the United States government seized documents that are necessary to answer the RFAs is factually incorrect.

Respondents contend that information and documents of the dietary supplement business necessary to answer the RFAs were seized by the United States government in December 2003. *See* Exhibit B at p. 2 and Answer to Request 6. Respondents' representation regarding the unavailability of the documents is a gross exaggeration of the facts, and represents an attempt to hide Respondents' failure to conduct a search for the responsive information.

Complaint Counsel has learned that on or about December 3, 2003, agents of the United States did conduct a search of Vineet Chhabra's business premises. The warrants authorized seizure of documents related to the unlawful distribution and dispensing of prescription drugs sold over the internet or through toll-free telephone numbers. Exhibit D attached. Specifically, the agents were directed to seize evidence relating to the "unlawful distribution and dispensing of controlled substances and other prescription drugs sold over the internet or through toll-free telephone numbers, including financial records and electronic devices related to such unlawful activities." *See* Exhibit D, Attachment B To Affidavit of Probable Cause Items to be Seized.

Documents pertaining to the operations of the dietary supplement business operated by

Vineet Chhabra, including the operations of Dynamic Health of Florida, LLC, were *not* the subject of the search warrants. A United States government agent who participated in the search confirms that the agents only seized documents relating to Vineet Chhabra's dietary supplement business to the extent they were interwoven with documents related to the warrant. *See* Declaration of Michael Widenhouse, Exhibit E attached. Indeed, Special Agent Widenhouse states that most of the records found at the locations during the search were left behind because they were deemed to be unrelated to the execution of the search warrant. *Id.* Further, he states that he has personally reviewed the seized documents and found only a small number of documents relating to the dietary supplement business among the seized documents.[2]

Respondents have provided no information regarding the disposition of the documents that were left behind after the execution of the search warrants. At the very least, Respondents must state affirmatively that they made a "reasonable inquiry" to determine the whereabouts of documents needed to respond to the RFA.

5. Dynamic Health of Florida has not made the reasonable inquiry required by the Commission's Rules.

Dynamic Health's answers to RFAs are heavily qualified with phrases such as "To the best of Dynamic Health's knowledge" or "Dynamic Health is not sure." In its response to RFAs 1, 2, 4, 8, 9, 11, 12, 22, 23, 26, and 30, Dynamic Health has failed to conduct a "reasonable

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[2] Complaint Counsel was not aware of the document seizure until very recently. Upon learning of the existence of the seized documents, we made arrangements to review them. To date, we have reviewed approximately one half of the documents seized pursuant to the search warrant. We copied documents that were potentially relevant to the issues in this matter, and on December 14, 2004 sent copies of those documents to Respondents' counsel via Federal Express. We reviewed additional files on December 22, 2004, and on December 27, 2004 we will provide Respondents' counsel with copies of the few additional potentially relevant documents that we found.

inquiry" that would permit them to respond to the substance of the inquiry set forth in each RFA.[3] In providing their response, Dynamic Health has failed to state that they have made reasonable inquiry and that the information known or readily obtainable is insufficient to enable Dynamic Health to admit or deny the plain substance of the RFA. Dynamic Health should be required to conduct a reasonable inquiry and submit accurate responses to the RFAs.

6. Dynamic Health of Florida, LLC's evasive and non-responsive answers do not comply with the Commission's Rules.

The vast majority of the responses submitted on behalf of Respondent Dynamic Health of Florida, LLC ("Dynamic Health") are both evasive and non-responsive to the substance of the individual RFAs. Indeed, the responses to RFA Nos. 1, 2, 4, 7- 9, 11-14, 18-20, 22-24, 26, 30, 37, 43, 44, 46, and 47 all demonstrate various types of evasive responses. For example, RFAs 1, 2, and 4 all seek admissions regarding Vineet Chhabra's ownership interest in and control of individual companies that Complaint Counsel's investigation shows played a role in the challenged practices in this case. For example RFA 1 states:

> Vineet Chhabra owns 50% or more of, and is an officer or manager of, Dynamic Health of Florida, LLC, Chhabra Group, LLC, Chhabra Internet Support Center, LLC, Chhabra Fulfillment Services, LLC (formerly known as Chhabra Internet Fulfillment Services, LLC), and Metability of Florida, LLC

Dynamic Health's answer states:

> OBJECTION: The admission is vague, indefinite, compound in nature and/or ambiguous. It does not state the time period at issue.

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[3] In its general objections, Respondents state that "Respondents have not completed their investigation" including meetings "with potentially knowledgeable parties and witnesses." Exhibit B, p. 3. Such a failure to engage the knowledgeable parties "in Florida" demonstrates that Dynamic Health has not is arguably an acknowledgment that Respondents have not conducted the reasonable inquiry required by the Commission's Rule 3.32 (b).

> Respondent Dynamic Health is unsure of the percentages, if any, that Vineet Chhabra owned. To the best of Dynamic Health's knowledge, Vineet Chhabra does not own 50% or more, or is an officer or manager, of all of the entities set forth in Admission Number One as of the date of answering this admission, and therefore, the request for Admission No. 1 is DENIED.

This response, provided by Dynamic Health, avoids the substance of the RFA. Comporate filings submitted with the State of Florida by the companies identified in RFA 1 showed that Vineet Chhabra and his sister, Sabina Faruqui, were the *sole* managing members of each of the entities identified in that RFA. *See* Exhibit F. It is thus incomprehensible that a reasonable inquiry would not reveal to Dynamic Health the precise extent of Mr. Chhabra's ownership of these companies. Further, Dynamic Health's response appears to assume that if some small portion of the admission may be denied, it can deny the RFA in its entirety.[4] However, the Commission's Rules specify that "when good faith requires that a party qualify its answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder." Thus, Dynamic Health's denial of RFA 1 in its entirety is improper. Evasiveness of this nature permeates the responses to the RFAs.

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[4] Dynamic Health in many instances answers RFAs by stating that one or more of the Chhabra-controlled corporations may now be defunct. Complaint Counsel is unaware of any corporate documents purporting to dissolve any of those entities. However, to avoid future disputes with regard to these issues, if Respondents are required to submit new responses to the RFAs, Complaint Counsel seeks answers as to ownership and control of the various entities in 2003, when the challenged practices occurred.

III. CONCLUSION

For the reasons set forth above, Complaint Counsel respectfully requests that the Administrative Law Judge issue the attached order compelling the Respondents to provide adequate and complete responses to Complaint Counsels' Request for Admissions.

Respectfully submitted,

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Dated: December 23, 2004

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

In the Matter of	)	
DYNAMIC HEALTH OF FLORIDA, LLC, CHHABRA GROUP, LLC, DBS LABORATORIES, LLC, VINEET K. CHHABRA, a/k/a VINCENT K. CHHABRA, and JONATHAN BARASH, Respondents.	)	DOCKET NO. 9317 PUBLIC DOCUMENT

[Proposed] ORDER GRANTING MOTION TO COMPEL

On _____, Complaint Counsel filed a motion to compel Respondents Dynamic Health of Florida, LLC, Chhabra Group, LLC, and Vincent Chhabra to provide adequate and complete responses to Complaint Counsel's Request for Admissions.

IT IS HEREBY ORDERED that the motion to compel is GRANTED. Respondents shall produce such information within 10 days from the date of this Order.

ORDERED:

_____
Stephen J. McGuire
Chief Administrative Law Judge

Dated:

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of December, 2004 filed and served the attached **COMPLAINT COUNSEL'S MOTION TO COMPEL ADEQUATE AND COMPLETE RESPONSES TO REQUEST FOR ADMISSIONS** and **[Proposed] ORDER GRANTING MOTION TO COMPEL** upon the following as set forth below:

(1) the original and one (1) paper copy filed by hand delivery and one electronic copy via email to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, D.C. 20580
E-mail: secretary@ftc.gov

(2) two (2) paper copies served by hand delivery to:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
600 Pennsylvania Ave., N.W. Room H-112
Washington, D.C. 20580

(3) one (1) electronic copy via email and one (1) paper copy via overnight delivery to:

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I further certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original, and that a paper copy with an original signature is being filed with the Secretary of the Commission on the same day by other means.

Sydney Knight