

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
WASHINGTON, D.C.



**In the Matter of**

**BASIC RESEARCH, LLC  
A.G. WATERHOUSE, LLC  
KLEIN-BECKER USA, LLC  
NUTRASPORT, LLC  
SOVAGE DERMALOGIC LABORATORIES, LLC  
BAN LLC d/b/a BASIC RESEARCH LLC  
    **OLD BASIC RESEARCH, LLC  
    BASIC RESEARCH, A.G. WATERHOUSE,  
    KLEIN-BECKER USA, NUTRA SPORT, and  
    SOVAGE DERMALOGIC LABORATORIES**  
**DENNIS GAY  
DANIEL B. MOWREY d/b/a AMERICAN  
    PHYTOTHERAPY RESEARCH  
    LABORATORY, and  
MITCHELL K. FRIEDLANDER,  
    Respondents****

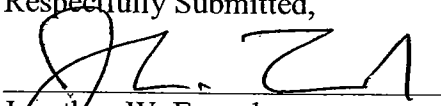
**PUBLIC**

**Docket No. 9318**

**PETITION FOR LEAVE TO FILE REPLY**

Respondents Basic Research, LLC; A.G. Waterhouse LLC; Klein-Becker USA LLC; Nutrasport, LLC; Sovage Dermalogic Laboratories, LLC; Ban, LLC; Dennis Gay; Daniel B. Mowrey d/b/a American Phytotherapy Research Laboratory; and Mitchell K. Friedlander (hereinafter "Respondents") hereby move the Presiding Officer for leave to file the attached reply to "Complaint Counsel's Opposition to Respondents' Motion to Add an Expert Witness and to Reopen Discovery" ("Opposition"). Respondents seek leave to correct two false representations of material fact contained in the Opposition.

Respectfully Submitted,



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Jonathan W. Emord  
Emord & Associates, P.C.  
1800 Alexander Bell Drive  
Suite 200  
Reston, VA 20191  
Tel. (202) 466-6937  
Fax (202) 466-6938

**Counsel for Basic Research, LLC**  
**A.G. Waterhouse, LLC**  
**Klein-Becker USA, LLC**  
**Nutrasport, LLC**  
**Sovage Dermalogic Laboratories,**  
**LLC, BAN, LLC**

Stephen E. Nagin  
Nagin, Gallop & Figueredo, P.A.  
18001 Old Cutler Road  
Miami, Florida 33157  
Tel. (305) 854-5353  
Fax (305) 854-5351

**Counsel for Basic Research, LLC**

Richard Burbidge, Esq.  
Burbidge & Mitchell  
215 South State Street  
Suite 920  
Salt Lake City, Utah 84111

**Counsel for Dennis Gay**

Ronald F. Price  
PETERS SCOFIELD PRICE  
*A PROFESSIONAL CORPORATION*  
340 Broadway Centre  
111 East Broadway  
Salt Lake City, Utah 84111  
Telephone: (801) 322-2002  
Facsimile: (801) 322-2003

**Counsel for Respondent Daniel B.**  
**Mowrey**

Mitchell K. Friedlander  
5742 West Harold Gatty Drive  
Salt Lake City, Utah 84111,

*Pro se.*

Date submitted: October 13, 2005

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
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**In the Matter of**

**BASIC RESEARCH, LLC  
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    **OLD BASIC RESEARCH, LLC  
    BASIC RESEARCH, A.G. WATERHOUSE,  
    KLEIN-BECKER USA, NUTRA SPORT, and  
    SOVAGE DERMALOGIC LABORATORIES**  
DENNIS GAY  
DANIEL B. MOWREY d/b/a AMERICAN  
    **PHYTOTHERAPY RESEARCH  
    LABORATORY, and**  
MITCHELL K. FRIEDLANDER,  
    **Respondents****

**PUBLIC**

**Docket No. 9318**

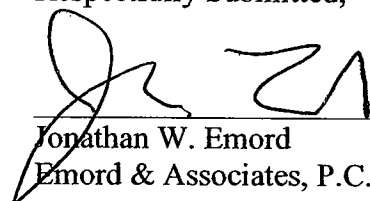
**RESPONDENTS' REPLY TO CORRECT FALSE REPRESENTATIONS IN  
OPPOSITION TO RESPONDENTS' MOTION TO ADD AN EXPERT WITNESS  
AND TO REOPEN DISCOVERY**

Respondents Basic Research, LLC; A.G. Waterhouse LLC; Klein-Becker USA LLC; Nutrasport, LLC; Sovage Dermalogic Laboratories, LLC; Ban, LLC; Dennis Gay; Daniel B. Mowrey d/b/a American Phytotherapy Research Laboratory; and Mitchell K. Friedlander (hereinafter "Respondents") hereby reply to "Complaint Counsel's Opposition to Respondents' Motion to Add an Expert Witness and to Reopen Discovery" ("Opposition") to correct two false representations of material fact contained in the Opposition

Complaint Counsel represent to the Presiding Officer that all six of the fraudulent studies Dr. Steven B. Heymsfield ("Heymsfield") co-authored with Dr. John R. Darsee were retracted by the publications in question. Opposition at 1, 6. Not so. Four of the six studies were retracted. Two were not (that according to National Library of Medicine's "PubMed" database). See Exhibit 1 (Darsee JF, Fulenwider JT, Rikkers LF, Ansley JD, Nordlinger BF, Ivey G, Heymsfield SB, Hemodynamics of LeVeen shunt pulmonary Edema, 194(2) Annals of Surgery 189-92 (1981); Darsee JR, Nutter DO, Heymsfield SB, Hypertrophic cardiomyopathy, 301(8) New England Journal of Medicine 442-443 (August 23, 1979)). Heymsfield lists none of the six studies on his CV, not the four that were retracted and not the two that were not. See Exhibit 2. None of the six fraudulent studies appears on any list supplied by Complaint Counsel to Respondents.

Complaint Counsel contend without transcript or affidavit support that Dr. Heymsfield had no involvement with Darsee in obtaining the data used in the six fraudulent studies. Opposition at 6. Not so, as explained in Respondents' Motion, Dr. Heymsfield admitted in his August 30, 2005 deposition that he did obtain data for the studies. Complaint Counsel's statement conflicts with the witness' testimony. Exhibit 3 at 454-461. In his August 30, 2005 deposition Heymsfield testified that he had performed tests on patients in association with the studies. See id. at 455 ("I saw some of the patients that were in the study and I helped him prepare the manuscript, manuscripts, several").

Respectfully Submitted,

  
Jonathan W. Emord  
Emord & Associates, P.C.

1800 Alexander Bell Drive  
Suite 200  
Reston, VA 20191  
Tel. (202) 466-6937  
Fax (202) 466-6938

**Counsel for Basic Research, LLC**  
**A.G. Waterhouse, LLC**  
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**Nutrasport, LLC**  
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18001 Old Cutler Road  
Miami, Florida 33157  
Tel. (305) 854-5353  
Fax (305) 854-5351

**Counsel for Basic Research, LLC**

Richard Burbidge, Esq.  
Burbidge & Mitchell  
215 South State Street  
Suite 920  
Salt Lake City, Utah 84111

**Counsel for Dennis Gay**

Ronald F. Price  
PETERS SCOFIELD PRICE  
*A PROFESSIONAL CORPORATION*  
340 Broadway Centre  
111 East Broadway  
Salt Lake City, Utah 84111  
Telephone: (801) 322-2002  
Facsimile: (801) 322-2003

**Counsel for Respondent Daniel B.  
Mowrey**

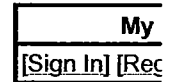
Mitchell K. Friedlander  
5742 West Harold Gatty Drive  
Salt Lake City, Utah 84111,

Date submitted: October 13, 2005

*Pro se.*

# **EXHIBIT 1**





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Consumer Health  
Clinical Alerts  
ClinicalTrials.gov  
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1: [Nutter DO, Heymsfield SB, Glenn JF.](#) [Related Articles, Links](#)

Retraction. Darsee JR, Heymsfield SB, Nutter DO. Hypertrophic cardiomyopathy and human leukocyte antigen linkage: differentiation of two forms of hypertrophic cardiomyopathy. *N Engl J Med* 1979;300:877-82.

*N Engl J Med.* 1983 Jun 9;308(23):1400. No abstract available.  
PMID: 6341849 [PubMed - indexed for MEDLINE]

2: [Heymsfield SB, Glenn JF.](#) [Related Articles, Links](#)

Retraction. Darsee JR, Heymsfield SB. Decreased myocardial taurine levels and hypertauninuria in a kindred with mitral-valve prolapse and congestive cardiomyopathy. *N Engl J Med* 1981;304:129-35.

*N Engl J Med.* 1983 Jun 9;308(23):1400. No abstract available.  
PMID: 6341848 [PubMed - indexed for MEDLINE]

3: [Darsee JR, Fulenwider JT, Rikkers LF, Ansley JD, Nordlinger BF, Ivey G, Heymsfield SB.](#) [Related Articles, Links](#)

Hemodynamics of LeVeen shunt pulmonary edema. *Ann Surg.* 1981 Aug;194(2):189-92.

PMID: 7259346 [PubMed - indexed for MEDLINE]

4: [Darsee JR, Heymsfield SB.](#) [Related Articles, Links](#)

Decreased myocardial taurine levels and hypertauninuria in a kindred with mitral-valve prolapse and congestive cardiomyopathy.

*N Engl J Med.* 1981 Jan 15;304(3):129-35. Retraction in: [Heymsfield SB, Glenn JF. N Engl J Med.](#) 1983 Jun 9;308(23):1400.  
PMID: 7003386 [PubMed - indexed for MEDLINE]

5: [Darsee JR, Miklozek CL, Heymsfield SB, Hopkins LC Jr, Wenger NK.](#) [Related Articles, Links](#)

Mitral valve prolapse and ophthalmoplegia: a progressive, cardioneurologic syndrome.

*Ann Intern Med.* 1980 Jun;92(6):735-41. Retraction in: *Ann Intern Med.* 1983 Aug;99(2):275-6.  
PMID: 6992676 [PubMed - indexed for MEDLINE]

6: [Darsee JR, Nutter DO, Heymsfield SB.](#) [Related Articles, Links](#)

Hypertrophic cardiomyopathy.

*N Engl J Med.* 1979 Aug 23;301(8):442-3. No abstract available.  
PMID: 572482 [PubMed - indexed for MEDLINE]

[Darsee JR, Heymsfield SB, Nutter DO.](#)

[Related Articles, Links](#)

7:

Hypertrophic cardiomyopathy and human leukocyte antigen linkage:  
differentiation of two forms of hypertrophic cardiomyopathy.

N Engl J Med. 1979 Apr 19;300(16):877-82. Retraction in: [Nutter DO, Heymsfield SB, Glenn JF. N Engl J Med. 1983 Jun 9;308\(23\):1400.](#)  
PMID: 370596 [PubMed - indexed for MEDLINE]

 8: [Darsee JR, Nutter DO, Hopkins LC Jr, Heymsfield SB.](#)[Related Articles, Links](#)

Neurogenic skeletal myopathy in patients with primary cardiomyopathy.

Circulation. 1979 Mar;59(3):492-7. Retraction in: [Nutter DO, Hopkins LC Jr, Heymsfield SB. Circulation 1984 Jan;69\(1\):202.](#)  
PMID: 367632 [PubMed - indexed for MEDLINE]

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# **EXHIBIT 2**

## **Appendix 1**

**Steven B. Heymsfield, M.D.**  
Obesity Research Center  
St. Luke's-Roosevelt Hospital  
1090 Amsterdam Avenue #14C  
New York, N.Y. 10025  
Phone: 212-523-3561  
Fax: 212-523-3571  
E-mail: SBH2@Columbia.edu  
Beeper: 877-861-2687

**Birth date:** July 15, 1944  
**Birthplace:** Brooklyn, New York  
**Citizenship:** U.S.A.

### **Academic Training**

Hunter College, City University of New York, B.A. Chemistry: 1962-1966  
Mt. Sinai School of Medicine, New York, NY, M.D. 1969-1971  
Licensed in GA, 1973  
Licensed in NY, 1987

### **Traineeship**

Emory University, Atlanta, Georgia; Medical Intern: 1971-1972  
Emory University, Atlanta, Georgia; Medical Resident  
Internal Medicine: 1972-1973  
Emory University, Atlanta, Georgia; Fellow in Medicine,  
Dept of Pharmacology: 1973-1975

### **Professional Organizations**

American Federation of Clinical Research  
American Institute of Nutrition  
American Society of Clinical Nutrition  
Southern Society of Clinical Investigation (inactive)  
American Society of Parenteral and Enteral Nutrition  
North American Association for the Study of Obesity

### **Academic Appointments**

1975-1978	Assistant Professor of Medicine, Emory University, School of Medicine
1975-1983	Assistant Director, Emory University, Clinical Research Facility
1978-1986	Associate Professor of Medicine,

- Emory University, School of Medicine  
 1980-1984 Director, Division of Nutrition, Department of Medicine,  
 Emory University, School of Medicine  
 1986-1994 Associate Professor of Medicine, Columbia University,  
 College of Physicians and Surgeons, N.Y.  
 1986- Visiting Physician,  
 Rockefeller University, N.Y.  
 1986- Director, Human Body Composition Laboratory and Weight  
 Control Unit of the Obesity Research Center,  
 St. Luke's-Roosevelt Hospital Center.  
 1987- Research Scientist, Department of Energy,  
 Brookhaven National Laboratory  
 1990-1997 Associate Professor of Applied Physiology,  
 Teachers College, Columbia University  
 1990- Deputy Director, Obesity Research Center,  
 St. Luke's-Roosevelt Hospital  
 1994- Professor of Medicine, Columbia University, College of  
 Physicians and Surgeons, N.Y.  
 1998- Affiliate Faculty Member, Columbia University, Department of  
 Biomedical Engineering

### **Hospital Appointments**

Associate Attending Physician, St. Luke's-Roosevelt Hospital Center

### **Honors**

Dean's List, 1965, 1966 - Hunter College, City University of New York.  
 Phi Sigma, 1966 - Honorary biology society, Hunter College.  
 Dean's List, 1968, 1969 - Medical Units, University of Tennessee.  
 Mosby Award in Clinical Medicine, 1971 - Mt. Sinai School of Medicine.  
 First Place Award - Annual Emory Univ. Housestaff Research Day, 1972.  
 Crutcher Award - Annual Emory Univ. Housestaff Research Day, 1974.  
 Clinical and Research Scholar, American College of Physicians, 1979-1982.  
 Honorary Member, Latin American & Argentine Medical Associations, 1985.  
 Horowitz Alumni Award, Mount Sinai School of Medicine - Outstanding  
 Medical Investigator, 1987.  
 Buttroughs-Welch Scholar in Basic Science, 1988.  
 Honorary Member, American Dietetic Association, 1996.  
 Honorary Member, Chilean Clinical Nutrition Association, 1997.  
 Honorary Member, New York Dietetic Association, 1997.  
 Fourth Beaudette-Thompson Lectureship, Rutgers University, 1998.  
 Hellenistic Medical Society Lectureship, 1999.  
 Fifth Annual Clinical Nutrition Foundation Lectureship, 1999.  
 Rhoades Award, American Society of Parenteral and Enteral Nutrition, 2002.  
 TOPS Award, North American Association for the Study of Obesity, 2003.

## **Departmental Committees**

Executive Committee, Obesity Research Center  
Institute of Human Nutrition, Executive Committee  
Nutrition Committee, Head, St. Luke's-Roosevelt Hospital

## **Other Professional Activities**

### **Editorial Boards:**

#### ***Current:***

Journal of Parenteral and Enteral Nutrition  
American Journal of Clinical Nutrition  
International Journal of Body Composition Research  
Age & Nutrition  
Nutrition Reviews  
Clinical Nutrition  
Adipocytes

#### ***Past:***

Nutrition in Clinical Practice  
American Journal of Human Biology  
The Journal of Nutrition, Health & Aging

### **Consultative:**

#### ***Current:***

Board of Advisors, American Society of Parenteral and Enteral Nutrition  
Science Committee, International Ctr. for Assessment of Nutritional Status, Milan, It.  
North American Association for the Study of Obesity, IASO representative  
National Academy of Sciences, Institute of Medicine, Committee on Military  
Nutrition  
National Academy of Sciences, Institute of Medicine, Committee on Testosterone  
Replacement in Elderly Men  
Budget, Finance, and Audit Committee; and Long Range Planning Committee,  
American Society of Clinical Nutrition

#### ***Past:***

Board of Directors, American Society of Parenteral and Enteral Nutrition  
Publications Management Committee, American Society of Clinical Nutrition  
United States Pharmacopoeia Convention, Advisory Panel on Nutrition and  
Electrolytes

---

North American Association for the Study of Obesity (NAASO), Nominations  
 Committee  
 Secretary, American Society of Clinical Nutrition  
 Governmental Relations Committee, American Society of Parenteral and Enteral  
 Nutrition  
 Chair, Nutrition Support Guideline Committee, American Society Parent and Enteral  
 Nutrition  
 Chair, Public Policy Committee, North American Association for the Study of  
 Obesity  
 Chair, Publication Committee, American Society of Parenteral and Enteral Nutrition  
 Chair, Postgraduate Education Committee, American Society of Clinical Nutrition  
 Nominating Committee, American Society of Clinical Nutrition  
 President, Food and Nutrition Council of Greater New York  
 President, American Society of Parenteral and Enteral Nutrition  
 Vice President, American Society of Clinical Nutrition  
 President, American Society of Clinical Nutrition  
 Council, American Society of Clinical Nutrition

## **PUBLICATIONS**

### **Original Peer-Reviewed Articles**

1. Metzger AL, Heymsfield SB, Grundy SM. The lithogenic index - a numerical expression for the relative lithogenicity of bile. *Gastroenterology* 62:499-501, 1972.
  2. Metzger AL, Adler R, Heymsfield SB, Grundy SM. Diurnal variation in biliary lipid composition. *N Eng J Med* 288:333-336, 1973.
  3. Heymsfield SB. Cystic dilation of the intrahepatic biliary tree (Carolis Disease) - a suggested treatment. *Gastroenterology* 64:663, 1973.
  4. Wenger J, Heymsfield SB. Adsorption of bile by aluminum hydroxide. *J Pharmacol Exp Ther* 14:163-165, 1974.
  5. Rudman D, Chawla RK, Heymsfield SB, Bethel RA, Shoji M, Vogler WR, Nixon DW. Urinary excretion of the cancer-related glycoprotein EDCI: effect of chemotherapy. *Ann Intern Med* 86:174-179, 1977.
  6. Chawla RK, Heymsfield SB, Wadsworth AA, Shoji M, Rudman D. Isolation and characterization of a glycoprotein (JBB5) in the urine of a patient with carcinoma of the colon. *Cancer Res* 37:873-878, 1977.
- 
7. Heymsfield SB, Bethel RA, Rudman D. Hyperresponsiveness of patients with clinical and premyopathic myotonic dystrophy to human growth hormone. *J Clin Endocrinol Metab* 45:147-158, 1977.

8. Schlant RC, Felner JM, Heymsfield SB, Gilbert CA, Shulman NB, Tuttle EP, Blumenstein BA. Echocardiographic studies of left ventricular anatomy and function in essential hypertension. *Cardiovasc Med* 2:477-491, 1977.
9. Gilbert CA, Nutter DO, Felner JM, Perkins JV, Heymsfield SB, Schlant RC. Echocardiographic study of cardiac dimensions and function in the endurance-trained athlete. *Am J Cardiol* 40:528-533, 1977.
10. Cutter G, Heymsfield SB, Kraus J, Lee ES, McDill M, Stamler T, Watson R. Race, education and prevalence of hypertension. *Am J Epidemiol* 106:351-361, 1977.
11. Heymsfield SB, Bethel RA, Hall EC, Mills JB, Moseley MH, Kostyo JL, Rudman D. Anabolic actions of reduced and S-Carbamidomethylated human growth hormone and its plasmin digest in man. *J Clin Invest* 60:563-570, 1977.
12. Heymsfield SB, Bethel RA, Ansley JD, Gibbs DM, Felner JM, Nutter DO. Cardiac abnormalities in cachectic patients before and during nutritional repletion. *Am Heart J* 95:584-594, 1978.
13. Heymsfield SB, McNish T, Perkins JV, Felner JM. Sequence of cardiac changes in Duchenne muscular dystrophy. *Am Heart J* 95:283-294, 1978.
14. Rudman D, Davis GT, Priest JH, Patterson JH, Kutner MH, Heymsfield SB, Bethel RA. Prevalence of growth hormone deficiency in children with cleft lip or palate. *J Pediatr* 93:378-382, 1978.
15. Bethel RA, Jansen RD, Heymsfield SB, Ansley JD, Hersh T, Rudman D. Nasogastric hyperalimentation through a polyethylene catheter: an alternative to central venous hyperalimentation. *Am J Clin Nutr* 32:1112-1120, 1979.
16. Heymsfield SB, Olafson RP, Kutner MH, Nixon DW. A radiographic method of quantifying protein-calorie undernutrition. *Am J Clin Nutr* 32:693-702, 1979.
17. Nutter DO, Murray G, Heymsfield SB, Fuller EO. The effect of chronic protein-calorie undernutrition in the rat on myocardial function and cardiac function. *Circ Res* 45:144-152, 1979.
18. Heymsfield SB, Fulenwider T, Nordlinger B, Barlow R, Sones P, Kutner M. Accurate measurement of liver, kidney and spleen volume and mass by computerized axial tomography. *Ann Intern Med* 90:185-187, 1979.
19. Heymsfield SB, Noel R, Lynn M, Kutner M. Accuracy of soft tissue density predicted by CT. *J Comput Assist Tomogr* 3:859-360, 1979.
20. Heymsfield SB, Bethel RA, Ansley JD, Nixon DW, Rudman D. Enteral hyperalimentation: an alternative to central venous hyperalimentation. *Ann Intern*



Med 90:63-71, 1979.

21. Nixon DW, Heymsfield SB, Cohen AE, Kutner MH, Ansley J, Lawson DH, Rudman D. Protein-calorie undernutrition in hospitalized cancer patients. *Am J Med* 68:683-690, 1980.
22. Horowitz JH, Smith J, Heymsfield SB. Nutritional support of the trauma patient. *J Med Assoc* 69:815-819, 1980.
23. Heymsfield SB, Smith J, Kasriel S, Barlow J, Lynn MJ, Nixon D, Lawson D. Energy malabsorption: measurement and nutritional consequences. *Am J Clin Nutr* 34:1954-1960, 1981.
24. Horowitz JH, Rypins EB, Henderson JM, Heymsfield SB, Moffitt SD, Bain RP, Chawla RK, Bleier JC, Rudman D. Evidence for impairment of transsulfuration pathway in cirrhosis. *Gastroenterology* 81:668-675, 1981.
25. Lawson DH, Nixon DW, Kutner MH, Heymsfield SB, Rudman D, Moffitt S, Ansley J, Chawla R. Enteral versus parenteral nutritional support in cancer patients. *Cancer Treat Rep* 65 (supplement 5): 101-106, 1981.
26. Nixon DW, Lawson DH, Kutner M, Ansley J, Schwartz M, Heymsfield SB, Chawla R, Cartwright TH, Rudman D. Hyperalimentionation of the cancer patient with protein-calorie undernutrition. *Cancer Res* 41:2038-2045, 1981.
27. Henderson JM, Heymsfield SB, Horowitz J, Kutner MH. Measurement of liver and spleen volume by computed tomography. An assessment of reproducibility, and changes found following a selective distal splenorenal shunt. *Radiology* 141:525-527, 1981.
28. Nixon DW, Moffitt S, Lawson DH, Ansley J, Lynn MJ, Kutner MH, Heymsfield SB, Wesley M, Chawla R, Rudman D. Total parenteral nutrition as an adjunct to chemotherapy of metastatic colorectal cancer. *Cancer Treat Rep* 65; Supplement 5:121-128, 1981.
29. Smith J, Horowitz J, Henderson JM, Heymsfield SB. Enteral hyperalimentionation in undernourished patients with cirrhosis and ascites. *Am J Clin Nutr* 35:56-72, 1982.
30. Heymsfield SB, McManus C, Smith J, Stevens V, Nixon DW. Anthropometric measurement of muscle mass: revised equations for calculating bone-free arm muscle area. *Am J Clin Nutr* 36:680-690, 1982.
31. Smith JL, Arteaga C, Heymsfield SB. Increased ureagenesis and impaired nitrogen use during infusion of a synthetic amino acid formula. *N Eng J Med* 306:1013-1018, 1982.

32. Heymsfield SB, McManus C, Stevens V, Smith J. Muscle mass: Reliable indicator of protein-energy malnutrition severity and outcome. *Am J Clin Nutr* 35:1192-1199, 1982.
33. Heymsfield SB, Stevens V, Noel R, McManus C, Smith J, Nixon D. Biochemical composition of muscle in normal and semistarved human subjects: relevance to anthropometric measurements. *Am J Clin Nutr* 36:131-142, 1982.
34. Brubaker LH, Prisant ML, Heymsfield SB. Computer-assisted nutritional assessment. *Phys Comp* 1:39-41, 1983.
35. Heymsfield SB, Arteaga C, McManus C, Smith J, Moffitt S. Measurement of muscle mass in humans: validity of the 24 hour urinary creatinine method. *Am J Clin Nutr* 37:478-494, 1983.
36. Smith JL, Heymsfield SB. Enteral nutritional support: formula preparation from modular ingredients. *JPEN* 7:280-288, 1983.
37. Bagatell CJ, Heymsfield SB. Effect of meal size on myocardial oxygen requirements: implications for postmyocardial infarction diet. *Am J Clin Nutr*, 39:421-426, 1984.
38. Heymsfield SB, Bleier J, Whitmire L, McManus C, Smith-Andrews J, Hallenbeck J, Hersh T. Nutrient bioavailability from nasojejunally administered enteral formulas: comparison to solid food. *Am J Clin Nutr* 39:243-250, 1984.
39. McManus C, Newhouse H, Seitz S, Nixon D, Poppendiek H, Heymsfield S. Human gradient-layer calorimeter: development of an accurate and practical instrument for clinical studies. *JPEN* 8(3):317-320, 1984.
40. Head CA, McManus CB, Seitz S, Grossman GD, Staton GW, Heymsfield SB. A simple and accurate indirect calorimetry system for assessment of resting energy expenditure. *JPEN* 8(1):45-48, 1984.
41. Hill JO, Heymsfield SB, McManus III C, DiGirolamo M. Meal size and thermic response to food in male subjects as a function of maximum aerobic capacity. *Metabolism* 33:743-749, 1984.
42. Heymsfield SB, Head CA, McManus III CB, Seitz S, Staton GW, Grossman GD. Respiratory, cardiovascular, and metabolic effects on enteral hyperalimentation: Influence of formula dose and composition. *Am J Clin Nutr* 40:116-130, 1984.

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43. Daly JM, Heymsfield SB, Head CA, Harvey LP, Nixon DW, Katzef H, Grossman GD. Human energy requirements: Overestimation by widely used prediction equation. *Am J Clin Nutr* 42:1170-1174, 1985.

44. Isner JM, Roberts WC, Heymsfield SB, Yager J. Anorexia nervosa and sudden death. *Ann Intern Med* 102:49-52, 1985.
45. Hill JO, DiGirolamo M, Heymsfield SB. Thermic effect of food after ingested versus tube-delivered meals. *Am J Physiol* 248:370-374, 1985.
46. Head CA, Grossman GD, Jordan JC, Hepler EL, Heymsfield SB. A valve system for the accurate measurement of energy expenditure during mechanically ventilated patients. *Resp Care* 30:969-973, 1985.
47. Hill JO, DiGirolamo M, Heymsfield SB. A new approach for studying the thermic response to dietary fuels. *Am J Clin Nutr* 42:1290-1298, 1985.
48. Lawson DH, Stockton LH, Bleier JC, Acosta PB, Heymsfield SB, Nixon DW. The effect of a phenylalanine and tyrosine restricted diet on elemental balance studies and plasma aminograms of patients with disseminated malignant melanoma. *Am J Clin Nutr* 41:73-84, 1985.
49. Heymsfield SB, McManus CB. Tissue components of weight loss in cancer patients. *Cancer* 55:238-249, 1985.
50. Heymsfield SB, McManus C, Hill J, DiGirolamo M, Nixon D, Head A, Grossman G. Bioenergetic studies in adult patients recovering from semi-starvation. *Int J of Obesity* 9(supp. 2): 147-153, 1985.
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Kodama M, Sato H, Heymsfield SB. Apparatus of determining basal metabolism.

# **EXHIBIT 3**

1 HEYMSFIELD

2 more than likely you will be able to find if  
3 you type in Darsee, D-A-R-S-E-E, you should  
4 be able to pull up those papers. Even though  
5 they are retracted they are still more than  
6 likely in electronic form on the internet.

7 Q. Pardon the question, but what's the  
8 role of a co-author?

9 A. What is the role of a co-author?

10 Q. Yes.

11 A. It's actually fairly  
12 well-described. There's criteria for  
13 co-authorship that's published by each  
14 journal and so you can see it there, but  
15 there's a criteria for co-authorship and  
16 there are a number of different functions a  
17 co-author has. It doesn't -- it may not  
18 necessarily be one function. It can be three  
19 or four different functions.

20 Q. Does a co-author have any  
21 responsibility in regards to how a study is  
22 published, a review of the data, things like  
23 that?

24 A. I'm not sure, you know, exactly  
25 what the question is you are asking. Of

1 HEYMSFIELD

2 course that, you know, people who are  
3 co-authors share certain responsibilities for  
4 the data.

5 Q. So did you share any responsibility  
6 in the fraudulent data being supplied by  
7 Darsee?

8 A. You mean, are you asking me if I  
9 was involved in the fraud?

10 Q. I'm asking you what your  
11 involvement was in the study?

12 A. I was a colleague and I  
13 participated in the research with him. I saw  
14 some of the patients that were in the study  
15 and I helped him prepare the manuscript,  
16 manuscripts, several.

17 Q. So you were privy to all the data?

18 A. No. "All of the data," no. I  
19 rarely see all the data in any study, except  
20 in studies which I'm the primary author of  
21 the paper.

22 Q. So when you are a co-author you see  
23 less of the data and take less  
24 responsibility; is that what you are saying?

25 A. No, that's what you are saying.

1 HEYMSFIELD

2 Q. Okay.

3 A. You know, co-authorship, as I  
4 mentioned, can be based on any set of  
5 criteria. There are ten different things you  
6 do when you are a co-author. You have to  
7 meet usually two or three of those different  
8 things to be a co-author, so a part of it  
9 could be getting the funds to the study,  
10 helping to prepare the manuscript, analyzing  
11 the data, designing the studies.

12 It's a rather long list. So  
13 co-authorship is very variable depending on  
14 specific study.

15 Q. So in your list of publications,  
16 many of them list you as a co-author?

17 A. Yes.

18 Q. We would have to go through each  
19 and every one of those studies to find out  
20 what your participation is, has been?

21 A. Yes, yes.

22 Q. And in some of them you list it  
23 could have been minimal, like just getting  
24 the funding; is that correct?

25 A. Not necessary -- you know, that's

1 HEYMSFIELD

2 what you are saying. The contribution on a  
3 paper could have involved, as I said, there  
4 are about ten different criteria. Usually  
5 most journals require two to three of those  
6 criteria, so it could be any one of those two  
7 combination, those two or three.

8 If you get the money for a study  
9 that usually means you had the idea and wrote  
10 the grant, as in academia, and so that  
11 already commutes a lot of responsibility in  
12 terms of conception of the ideas and so on.

13 Q. And how do you determine, when you  
14 put your name on a study as a co-author and  
15 you don't have the ultimate responsibility as  
16 being the lead author --

17 A. Yes.

18 Q. -- how do you determine that all of  
19 the data that they are providing you to  
20 review is correct?

21 A. It's called trust and integrity.  
22 And if somebody lies to you then they  
23 violated that trust and it's just like in any  
24 business, in any relationship, people can be  
25 either honest or dishonest. And so there's a

1                                    HEYMSFIELD  
2        certain level of trust that you have and if  
3        they violate it then, you know, there's  
4        nothing you can do to test someone's  
5        honestly, including lie detector tests or  
6        whatever so, you know, so you have to depend  
7        on integrity. And that's what science is  
8        based on and it doesn't always work  
9        perfectly, but it works most of the time.

10            Q.    You used the word "fraud" when I  
11        asked you a question and you answered me  
12        back, are you accusing me of fraud; is that  
13        correct?

14            A.    Well, I think you used the word to  
15        begin with. We can read it back. I was  
16        just --

17            Q.    What do you mean by "fraud"?

18                    MS. KAPIN: Objection, relevance.

19            A.    I'm not sure why you are asking me  
20        this or what it has to do with what we're  
21        discussing. "Fraud" is a word and you'd have  
22        to give me a context to put it in into.

23            Q.    Well, you just used the word --  
24        could you find that in the transcript where  
25        he used the word fraud?



1 HEYMSFIELD

2 A. Well --

3 MR. FELDMAN: He asked if you were  
4 accusing him of participating in fraud,  
5 that was the question of Dr. Heymsfield  
6 to you.

7 Q. What do you mean when you use the  
8 word "fraud"?

9 A. What was the sentence that I was  
10 responding to when I asked that, can I get  
11 that from you?

12 (Record read.)

13 A. So I'm just responding back to your  
14 use of the word "fraudulent."

15 Q. Well, what did you mean by the use  
16 of the word "fraud"?

17 A. Well, I told you.

18 MS. KAPIN: I'm going to renew my  
19 objection.

20 MR. FELDMAN: Can we get that  
21 colloquy read back, the three, four  
22 sentences that led up to the comment  
23 that Dr. Heymsfield made.

24 (Record read.)

25 Q. Was there fraud involved in the

1 HEYMSFIELD

2 Darsee studies?

3 A. Yes.

4 Q. What do you mean by the word

5 "fraud" in that context?

6 A. Darsee made up data that was  
7 eventually put into the papers. He  
8 fabricated the data. He claims to have  
9 evaluated patients that actually were not  
10 able to be found later. I'm not sure Darsee  
11 ever admitted to it, but there was a  
12 committee formed that established that the  
13 patients who were in some of his papers could  
14 not be identified.

15 Q. When you talk about the "student"  
16 that student was Darsee; is that correct?

17 A. Yes.

18 Q. And was Darsee under your  
19 supervision?

20 A. Not at the time he was caught for  
21 his fabrication, no, he was at Harvard at  
22 that point.

23 Q. The time he committed the fraud was  
24 he under your supervision?

25 A. No, he was not under my direct

1                                    HEYMSFIELD  
2 supervision. He was working as a medical  
3 resident, in fact, he was chief resident at  
4 Emory University. He is under the direct  
5 supervision of the chief of medicine,  
6 Willis Hearst (phonetic).

7            Q. Was he under your supervision in  
8 any way; direct, indirect?

9            A. I don't think so, I mean other than  
10 I had a higher rank than he did. I was  
11 probably an assistant professor and he was  
12 still in training and, therefore, our ranks  
13 were different, but I didn't supervise him.  
14 And in the world I live in today, the word  
15 "supervision" has very specific meaning.

16                                No, he was not an employee of mine,  
17 nor did I evaluate him or grade him in any  
18 way.

19            Q. Did you write to the peer review  
20 journals that published the studies and ask  
21 for retraction of the studies?

22            A. Well, I think that there were  
23 retraction letters and I believe that I did  
24 sign some of them. I would have to go back.  
25 My memory on this is not impeccable, but

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
WASHINGTON, D.C.**

**In the Matter of**

**BASIC RESEARCH, LLC  
A.G. WATERHOUSE, LLC  
KLEIN-BECKER USA, LLC  
NUTRASPORT, LLC  
SOVAGE DERMALOGIC LABORATORIES, LLC  
BAN LLC d/b/a BASIC RESEARCH LLC  
    **OLD BASIC RESEARCH, LLC  
    BASIC RESEARCH, A.G. WATERHOUSE,  
    KLEIN-BECKER USA, NUTRA SPORT, and  
    SOVAGE DERMALOGIC LABORATORIES**  
DENNIS GAY  
DANIEL B. MOWREY d/b/a AMERICAN  
    **PHYTOTHERAPY RESEARCH  
    LABORATORY, and**  
MITCHELL K. FRIEDLANDER,  
    **Respondents****

**Docket No. 9318**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13<sup>th</sup> day of October, 2005 I caused the Respondents' Petition for Leave to File Reply and the attached Respondents' Reply to Correct False Representations in Opposition to Respondents' Motion to Add an Expert Witness and to Reopen Discovery and the exhibits thereto to be filed and served as follows:

- 1) an original and one paper copy filed by hand delivery and one electronic copy in PDF format filed by electronic mail to

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Washington, D.C. 20580

Email: [secretary@ftc.gov](mailto:secretary@ftc.gov)

2) two paper copies delivered by hand delivery to:

The Hon. Stephen J. McGuire  
Chief Administrative Law Judge  
U.S. Federal Trade Commission  
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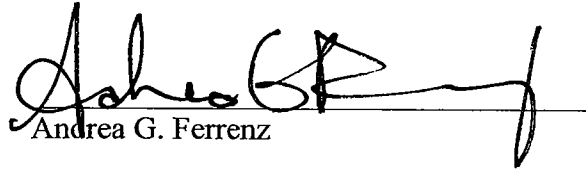
Laureen Kapin  
Joshua S. Millard  
Laura Schneider  
Walter C. Gross III  
Lemuel W. Dowdy  
Edwin Rodriguez  
U.S. Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Suite NJ-2122  
Washington, D.C. 20580  
Email: [lkapin@ftc.gov](mailto:lkapin@ftc.gov)  
[jmillard@ftc.gov](mailto:jmillard@ftc.gov)  
[lschneider@ftc.gov](mailto:lschneider@ftc.gov)  
[wgross@ftc.gov](mailto:wgross@ftc.gov)  
[ldowdy@ftc.gov](mailto:ldowdy@ftc.gov)  
[erodriguez@ftc.gov](mailto:erodriguez@ftc.gov)

Stephen E. Nagin  
Nagin, Gallop & Figueredo, P.A.  
3225 Aviation Avenue  
Third Floor  
Miami, FL 33133-4741  
Email: [snagin@ngf-law.com](mailto:snagin@ngf-law.com)

Richard D. Burbidge  
Burbidge & Mitchell  
215 South State Street  
Suite 920  
Salt Lake City, UT 84111  
Email: [rburbidge@burbidgeandmitchell.com](mailto:rburbidge@burbidgeandmitchell.com)

Ronald F. Price  
Peters Scofield Price  
340 Broadway Center  
111 East Broadway  
Salt Lake City UT 84111  
Email: [rpf@psplawyers.com](mailto:rpf@psplawyers.com)

Mitchell K. Friedlander  
c/o Compliance Department  
5742 West Harold Gatty Drive  
Salt Lake City, UT 84116  
Email: [mkf555@msn.com](mailto:mkf555@msn.com)

  
Andrea G. Ferrenz