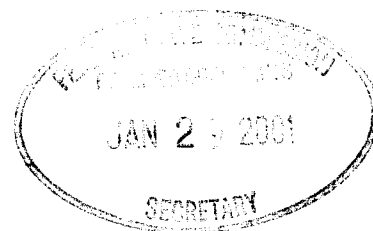


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of)
)
)
NATURAL ORGANICS, INC.,)
a corporation, and)
)
GERALD A. KESSLER,)
individually and as an officer)
of the corporation.)
_____)

DOCKET NO. 9294

TO: The Honorable James P. Timony
Administrative Law Judge

COMPLAINT COUNSEL'S MOTION TO COMPEL
RESPONDENTS TO SUPPLEMENT THEIR INITIAL DISCLOSURES

Complaint counsel, pursuant to Section 3.38(a) of the Commission's Rules of Practice, respectfully move for an order compelling respondents to supplement their initial disclosures.

The statement required by Rule 3.22(f) is attached to this motion.

Respectfully submitted,

Matthew D. Gold

Matthew D. Gold (415) 356-5276
Kerry O'Brien (415) 356-5289
Dean Graybill (415) 356-5224
Linda K. Badger (415) 356-5275

Complaint Counsel
Western Region, Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103

Dated: January 29, 2001

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
NATURAL ORGANICS, INC.,)	DOCKET NO. 9294
a corporation, and)	
)	
GERALD A. KESSLER,)	
individually and as an officer)	
of the corporation.)	

TO: The Honorable James P. Timony
Administrative Law Judge

MEMORANDUM IN SUPPORT OF COMPLAINT COUNSEL'S MOTION TO
COMPEL RESPONDENTS TO SUPPLEMENT THEIR INITIAL DISCLOSURES

Complaint counsel, pursuant to Section 3.38(a) of the Commission's Rules of Practice, respectfully move for an order compelling respondents to supplement their initial disclosures, which were demonstrably and clearly deficient. Astonishingly, despite repeated requests by complaint counsel, respondents have refused to do this simple task that is clearly called for under the Rule 3.31(e)(1). As a result, we do not know the identity of numerous individual who have relevant information regarding the allegations in the complaint and respondents' defenses. Respondents even refuse to provide this information regarding their own employees and former employees.

Section 3.31(b) of the Rules of Practice requires each party, within five days of receipt of a respondent's answer, to "provide to each other: (1) The name, and, if known, the address and telephone number of each individual likely to have discoverable information relevant to the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the

respondent, as set forth in Sec. 3.31(c)(1).” Rule 3.31(e)(1) specifies that each “party is under a duty to supplement at appropriate intervals its initial disclosures under Sec. 3.31(b) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.”

Background

Complaint counsel and respondents’ counsel exchanged initial disclosures on September 25, 2000 (Exhibits A and B). Even a cursory glance at these two documents makes obvious the relative seriousness with which the parties took this obligation. Complaint counsel listed numerous experts and other third parties who were consulted during the pre-complaint investigation of this matter. In addition, we provided a detail list and copies of over 150 documents that we had in our files. In short, we virtually emptied our files of non-privileged documents and provided them to respondents.¹

Respondents, on the other hand, provided virtually no documents with their initial disclosures. In addition, they listed only two individuals – Gerald A. Kessler, President of the company and a named respondent, and James Gibbons, an employee of Natural Organics. No other employees, and no third parties, were listed. Although this list looked insufficient, complaint counsel took it at face value; we do not know how the company is organized (or even its size), and it seemed possible that these two individuals possessed all of the relevant information within the company. We knew that the company had consulted at least one expert,

¹ In addition, on at least three occasions, and without prior request, we have supplemented our initial disclosures by providing additional documents that have come into our possession.

Dr. Charles Gant, but we attributed his absence from the initial disclosure list as an indication that respondents would use Dr. Gant as an expert, and that his disclosure would therefore be made at a later date pursuant to the discovery schedule.

Nevertheless, we immediately notified respondents that their initial disclosure document appeared to be facially deficient. On October 3, 2000, when it became apparent that respondents would not correct the situation in a timely manner, complaint counsel sent a subpoena duces tecum to respondents calling for them to provide responsive documents by November 2, 2000. (See Exhibit C). At that time, we told respondents that we would accept a subpoena response as a substitute for initial disclosure documents.

When respondents' counsel died on October 9, 2000, Your Honor granted respondents a 60-day stay in the proceeding to allow them to obtain new counsel and to allow that counsel to become familiar with the case. Respondents' new counsel contacted complaint counsel in late November 2000. During the initial conversation, complaint counsel described to counsel our problems with respondents' initial disclosures and our general frustrations with obtaining information from the prior counsel. We told counsel that they need not supplement the initial disclosures at that time, as the outstanding subpoena was designed to cover any documents that may have been called for in the initial disclosures. Again, we took the names included in the disclosures at face value.

The parties proposed an Amended Discovery and Trial Schedule, which Your Honor entered on December 11, 2000. This amended schedule called for respondents to provide the subpoena responses in two waves – the first on January 12, 2001, and the second on February 7, 2001.

By agreement, the parties agreed to put off the first wave until January 16, 2001. Respondents sent 178 pages in this first wave, none of which had been previously provided or identified to complaint counsel.² When those documents arrived, they bore out our original conclusions regarding the deficiency of the initial disclosures.

More importantly, however, it was apparent from the first wave of documents that the list of names included in respondents' initial disclosure was seriously deficient. At the very least, it was obvious that numerous other Natural Organics employees possessed highly relevant information regarding Pedi-Active A.D.D., the product at issue, and efforts that the company made during the investigation to obtain substantiation for the alleged claims about the product.

On January 17, 2001, complaint counsel telephoned respondents' counsel to remind him of his continuing duty under Rule 3.31(e) to supplement his initial disclosures. Complaint counsel informed counsel that the previous day's submission established that the respondents had failed to comply in good faith with the Rule's initial disclosure requirement. Those documents showed that there were numerous individuals inside and outside of Natural Organics who were likely to have discoverable information relevant to this matter. Complaint counsel then requested that respondent's counsel supplement respondents' initial disclosures as they relate to the identity of individuals.

To complaint counsel's amazement, counsel indicated that he would not supplement the initial disclosures. Rather, counsel stated that we will be able to discover, during depositions, the identity of any other individuals who may have discoverable information. We noted that his

² Complaint counsel received very few internal documents during the investigation of this matter.

position directly undermined the purpose of the disclosures. He stated that if complaint counsel would provide a list of relevant subject areas, he might consider providing a list of individuals who had information regarding those areas. Accordingly, on January 18, 2001, complaint counsel sent a letter to respondents formally requesting them to update their initial disclosures. (See Exhibit D). In an effort to cooperate with counsel, we set out a list of four topics and told counsel that we would accept, in lieu of a supplement of the initial disclosures, a list of people with knowledge regarding those topics.

On January 26, 2001, counsel informed complaint counsel that they would not supplement their initial disclosures. (Exhibit E). In addition, they did not respond to our attempt to take them up on their alternative idea of providing the names of individuals with knowledge about specific topics.

Discussion

The Commission required initial disclosures for the first time when it substantially changed its Rules of Practice in 1996. At that time, the Commission stated: "These initial disclosures are intended to expedite discovery by reducing the need for parties to request basic documents and other information." 61 F.R. 50643 (Sept. 26, 1996). The need to comply with the initial disclosure requirement is particularly acute given the truncated discovery process called for by the new rules.

As a result of respondents' refusal to provide this basic information, Complaint counsel do not even know the identity of all internal Natural Organics personnel who drafted the ads at issue, formulated the product, or devised the product. Nor do we know the names of all medical personnel or experts with whom respondents have consulted about the efficacy/substantiation of

the product.³ We have invited respondents to state whether the names that appear on documents provided so far sufficiently identify these people, yet they have refused to do even this.

Respondents' initial witness list includes the names of several Natural Organics employees whom respondents would like to testify. (See Exhibit F). Of course, all of those individuals were known to respondents at the outset of this matter and, by definition, respondents believe they have relevant information. As such, they should have been identified to complaint counsel in September 2000. In any event, while of some help, that list represents only the names of individuals whom respondents would like to call as witnesses. There is no guarantee that it constitutes the entire list of even internal employees with relevant information. In addition, it does not include the names of any prior employees who possess relevant information. Also notably, it does not include the names of any outside experts or consultants with whom respondents may have consulted regarding Pedi-Active A.D.D. The identities of all of these individuals were known to respondents in September 2000, and they remain known to them now. Given the clear intent of the initial disclosure requirement, respondents' insistence that we discover such individuals through other, more cumbersome, discovery methods is nothing short of obstructionist.

Respondents are under a clear, continuing requirement to supplement their initial disclosures. Complaint counsel note that to do so would impose a very low burden on respondents. Surely, one or two brief interviews with Natural Organics personnel will allow counsel to discover the appropriate names. It is very likely that respondents' counsel are already

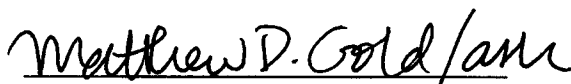
³ Identification of testifying experts comes at a later date, and we do not expect to learn the identity of them until the date called for in the Scheduling Order.

aware of individuals with discoverable information. One of the very purposes of the 60-day stay was to allow respondents' new counsel to become familiar with the case. Surely, during that period, and while they were choosing their fact witnesses, respondents' new counsel became aware of other individuals with discoverable information.

Complaint counsel acknowledge that respondents' current counsel were not retained until sometime during November 2000. As such, they were not involved in the drafting of the original initial disclosure document. Although they did not personally create this problem, they inherited it and it is their duty to remedy it. In any event, it is the party's obligation, not counsel's, to supplement the disclosures.

Complaint counsel regret the need to file this motion. Respondents' curious and continued refusal to comply with this most basic requirement has given us no choice. Accordingly, we respectfully request that Your Honor issue the attached order requiring respondents to supplement their initial disclosures.

Respectfully submitted,



Matthew D. Gold (415) 356-5276
Kerry O'Brien (415) 356-5289
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Complaint Counsel
Western Region
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103

Dated: January 29, 2001

EXHIBIT A

COMPLAINT COUNSEL'S INITIAL DISCLOSURES (9/25/00)

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of
NATURAL ORGANICS, INC.,
a corporation, and
GERALD A. KESSLER,
individually and as an officer
of the corporation.

DOCKET NO. 9294

COMPLAINT COUNSEL'S INITIAL DISCLOSURES

Pursuant to § 3.31(b)(1) and (2) of the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, complaint counsel hereby submits its initial disclosures to respondents Natural Organics, Inc., and Gerald A. Kessler. Set forth below are the names of individuals likely to have discoverable information relevant to the allegations asserted in the complaint, to the proposed relief, or to the defenses raised in the respondents' answer. In addition, complaint counsel is providing documents in complaint counsel's possession, custody or control that are, or may be, relevant to the allegations in this matter, the proposed relief, or to the defenses raised in the answer, except for those documents covered by § 3.31(c)(2)-(4) of the Rules of Practice.

I. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION

The following individuals are likely to have discoverable information relevant to the allegations in this matter, the proposed relief, or defenses raised in the answer. Where available, complaint counsel has set forth each individual's full name, address, and telephone number. Complaint counsel is not disclosing the identity of any non-testifying experts pursuant to the

protection from disclosure provided in §§ 3.31(c)(3) and (4) of the Rules. Complaint counsel will disclose the identity of its testifying experts on the date provided in the Discovery Schedule entered by the Administrative Law Judge. Finally, complaint counsel is not identifying any persons who were identified to complaint counsel by respondents or their counsel during the course of the pre-complaint investigation.

- A. James Swanson, M.D.
Director, Child Development Center
University of California at Irvine
(949) 824-1824

- B. Alan Zametkin
National Institute of Mental Health
(301) 496-4707

- C. Dr. Xavier Castellanos
NIH
Bldg 10/6n240
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Bethesda, MD 20892-1600
(301) 496-4319

- D. Russell Barkley, M.D.
Professor of Psychology & Neurology
University of Massachusetts (Worcester)
(508) 856-2552
(508) 856-0011

- E. James Harris, M.D.
Professor Psychiatry - Child Psychiatry
School of Medicine
Johns Hopkins University
Baltimore, MD 21205
(410) 955-7674

- F. Paul Wender, M.D.
Professor of Psychiatry
University of Utah
Department of Psychiatry
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Salt Lake City, Utah 84132
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G. Dr. Gilman Grave
National Institute of Child Health & Human Development
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31 Center Drive
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H. David T. Read
Center for Drug Evaluation and Research
FDA
(301) 594-5605

I. Joel Aronson
Food and Drug Administration
7520 Standish Place, Room 162
Rockville, Maryland 20855
(301) 594-0070

J. Daniel A. Kracov
Patton Boggs, L.L.P.
2550 M Street, N.W.
Washington, D.C. 20037
(202) 457-6000
Counsel for Lucas Meyer, Inc.

II. RELEVANT DOCUMENTS

Complaint counsel is producing the attached documents that are or may be relevant to the allegations in the complaint, the proposed relief, or the defenses set forth in respondents' answer. See Index of Attached Documents. In addition to the attached documents, complaint counsel has in its possession the following potentially relevant documents, which we are not producing because they are easily available to respondents:

A. Documents related to the NIH Consensus Development Conference entitled "Diagnosis and Treatment of Attention Deficit Hyperactivity Disorder." These

documents are available online at:

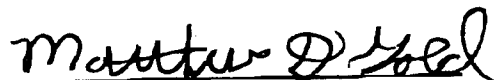
http://odp.od.nih.gov/consensus/cons/110/110_intro.htm

- B. ADD and ADHD: Complementary Medicine Solutions, Charles Gant, MD, PhD, MindMender Publishers, 1999.
- C. Nature's Plus, "All Vitamins Are Not Created Equal: Are You Getting Your Money's Worth?"
- D. American Academy of Pediatrics, "Diagnosis and Evaluation of the Child with Attention-Deficit/Hyperactivity Disorder (AC0002)." This document is available online at: <http://www.aap.org/policy/ac0002.html>.
- E. FDA, "Guidance for Industry: Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements" (Dec. 22, 1999). This document is available online at:
<http://vm.cfsan.fda.gov/~dms/ssaguide.html>
- F. Printed versions of respondents' Web site.

Complaint counsel also is not producing numerous documents that respondents submitted to Commission staff during the investigation of this matter. The parties have agreed that such documents need not be exchanged as part of each party's initial disclosures. In two letters from

Matthew D. Gold to John M. Desiderio, dated September 11, 2000, and September 20, 2000, the parties identified the documents that need not be exchanged for this reason.

Respectfully submitted,



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901 Market Street, Suite 570
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Dated: September 25, 2000

Index of Attached Documents

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133. "Natural Solutions Research, Inc. (NSR) Business Opportunity" (001976).
134. Dr. Waldvogel advertisement (001979).
135. Various Pedi-Active A.D.D. advertisements (002829-48).
136. Various Pedi-Active A.D.D. advertisements (002544-47).
137. "Hyperactivity Hype?," Parenting, September 2000, pp120-129 (002849-54).
138. Various items that Natural Organics submitted to the FTC in response to our access letter:
 - a. Responses to FTC Requests for information and documents (000885-89, 000884, 002855-69).
 - b. Pedi-Active A.D.D. advertisements and packaging (000893, 000934, 001911 (2-pages), 0001206, 001207, 001208, 1209 (4-pages),).
 - c. Correspondence between Natural Organics and consumers (000894, 001012, 001199-1200, 001201-02, 001203, 001204).
 - d. "Pedi-Active A.D.D. Advertising Schedule" (000895).
 - e. Civil investigational demands from the states of Texas and Wisconsin and related correspondence (000896-921, 000981-86, 000988-89, 001011).
 - f. Draft Pedi-Active A.D.D. advertisements and packaging (000922-23, 000924-27, 000928-33).
 - g. Correspondence between Bass & Ullman to the Food and Drug Administration (000940-46).
 - h. Letters from Natural Organics to FDA (Oct. 21, 1997) (001010).

- i. Other Natural Organics' products that contain PC, PS, and DMAE (0001205).
 - j. Advertisements and packaging of other products (001210 (2-pages), 1211, 1212, 1213, 1214 (2-pages), 0001215 (4-pages), 001216 (4-pages), 001217, 001218, 1219, 001220, 001221, 001222, 001223, 001224, 001225, 001226, 001227, 001228, 001229, 001230, 001231, 001232, 001233).
 - k. Ingredients lists (000794, 000804).
139. Mitchell, et al., "Clinical Characteristics and Serum Essential Fatty Acid Levels in Hyperactive Children," 26 CLINICAL PEDIATRICS 406 (1987) (000795-800).
140. Murphree, et al., "The Stimulant Effect of 2-dimethylaminoethanol (Deanol) in Human Volunteer Subjects," 1 CLINICAL PHARMACOLOGY AND THERAPEUTICS 303 (000810-17).

EXHIBIT B

RESPONDENTS' INITIAL DISCLOSURES (9/25/00)

KAPLAN, THOMASHOWER & LANDAU LLP

ATTORNEYS AT LAW

26 BROADWAY

20TH FLOOR

NEW YORK, NEW YORK 10004-1801

(212) 693-1700

FAX: (212) 593-1707

E-MAIL: KTLAW@AOL.COM

MARK S. LANDAU
WILLIAM J. THOMASHOWER
EUGENE NEAL KAPLAN
JONATHAN P. WOLFERT

LOUIS I. KAPLAN
JOHN M. DEBIDERIO, P.C.
ALFRED M. MARKS
COUNSEL

September 25, 2000

VIA FEDEX AND FACSIMILE

Matthew D. Gold, Esq.
Federal Trade Commission
Western Region
901 Market Street, Suite 570
San Francisco, CA 94130

Re: Natural Organics, Inc. et al.,
FTC Docket No. 9294

Dear Mr. Gold:

Pursuant to FTC Rule 3.31(a), Respondents hereby identify the following individuals:

Gerald Kessler
Natural Organics, Inc.
548 Broadhollow Road
Melville, New York 11747
(631) 293-0030

James Gibbons
Natural Organics, Inc.
548 Broadhollow Road
Melville, New York 11747
(631) 293-0030

KAPLAN, THOMASHOWER & LANDAU LLP

Matthew D. Gold, Esq.
September 25, 2000
Page 2

Pursuant to FTC Rule 3.31(b), Respondents are herewith serving upon you copies of the following documents:

1. The civil investigative demands of the State of New Jersey addressed to Respondent Natural Organics, Inc., together with the written responses thereto, and the responsive documents produced therewith, by Respondent Natural Organics, Inc.;
2. The civil investigative demands of the State of North Carolina addressed to Respondent Natural Organics, Inc., together with the written responses thereto, and the responsive documents produced therewith, by Respondent Natural Organics, Inc.; and
3. Revised label proofs for Pediacitive A.D.D. (for 60 tablet and 120 tablet purchases) implemented on or about October 8, 1998.

Natural Organics also has in its possession numerous scientific studies and reports (87 or more of which have been previously submitted to your office) that the company believes provide substantiation for the claims made in connection with Pediacitive A.D.D. All of said studies and reports are located at company headquarters at 548 Broadhollow Road, Melville, New York 11747. This will confirm our discussion that at your request we will provide you with a list of these studies and reports and copies thereof.

Very truly yours,



John M. Desiderio

JMD/md
Enclosures (by FedEx only)

EXHIBIT C

LETTER FROM MATTHEW D. GOLD TO JOHN M. DESIDERIO, ET AL. (10/3/00)

COPY



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WESTERN REGION

901 Market Street, Suite 570
San Francisco, CA 94103-1768
Voice: (415) 356-5266
Fax: (415) 356-5242

Matthew D. Gold
Attorney

Direct Dial
(415) 356-5276

October 3, 2000

VIA FACSIMILE AND
REGISTERED MAIL

John M. Desiderio, Esq.
Mark S. Landau, Esq.
Kaplan, Thomashower & Landau LLP
26 Broadway
New York, NY 10004

Milton A. Bass, Esq.
2 Sutton Place South
New York, N.Y. 10022

Re: Natural Organics, Inc., *et al.*
FTC Docket No. 9294

Dear Messrs. Desiderio, Kaplan, and Bass:

We have received your letter of September 25, 2000, which sets out your client's initial disclosures under Rule 3.31(b). As you know, because of a Federal Express mix-up, we did not receive the accompanying documents until September 29, 2000. After receiving those documents, it is now apparent that your initial disclosures were inadequate. I, therefore, have enclosed a Subpoena Duces Tecum directed to your clients.

As you know, Rule 3.31(b) requires the parties to exchange:

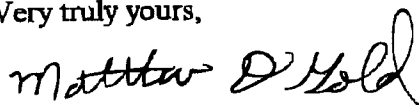
“[a] copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the Commission or respondent(s) that are relevant to the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the respondent, as set forth in Sec. 3.31(c)(1)...”

John M. Desiderio, Esq.
Mark S. Landau, Esq.
Milton A. Bass, Esq.
Page 2

In numerous ways, some of which I touched on during my conversation with Messrs. Desiderio and Landau on September 27, 2000, your initial disclosures appear to violate both the letter and spirit of the Commission's rules, and are in direct conflict with the agreements that are memorialized in my letters of September 11, 2000, and September 20, 2000.

Please call me if you have any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Matthew D. Gold". The signature is written in dark ink and is positioned to the right of the typed name.

Matthew D. Gold

Enclosure

EXHIBIT D

LETTER FROM MATTHEW D. GOLD TO JOHN R. FLEDER (1/18/01)



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WESTERN REGION

901 Market Street, Suite 570
San Francisco, CA 94103-1768
Voice: (415) 356-5276
Fax: (415) 356-5242

Matthew D. Gold
Attorney

January 18, 2001

VIA FACSIMILE

John R. Fleder, Esq.
Hyman, Phelps & McNamara, P.C.
700 Thirteenth Street, N.W.
Washington, D.C. 20005-5929

Re: Natural Organics, Inc., *et al.*
Docket No. 9294

Dear Mr. Fleder:

On October 3, 2000, I wrote to John Desiderio, former counsel to your clients, regarding Natural Organics' initial disclosures. In that letter, I stated that the volume and nature of the documents included in the initial disclosures appeared to violate the requirements of Rule 3.31(b). Accordingly, I sent a subpoena duces tecum with that letter. The documents you provided on Tuesday, January 16, 2001, in partial response to that subpoena, bear out my conclusions regarding Mr. Desiderio's initial disclosures.

It is now apparent from Tuesday's submission that your client's initial disclosures were deficient in another, highly material manner. The initial disclosures listed Gerald Kessler and James Gibbons as the only individuals likely to have discoverable information relevant to the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the respondent. The documents you provided on Tuesday make clear that several other Natural Organics employees, including at least Gerard McIntee and Rafael Avila (as well as numerous outsiders), have been significantly involved over the years.

I realize that when we first spoke in November 2000 and discussed the initial disclosures, I told you that I would not ask you to supplement the disclosures at that time. As I believe I made clear to you, however, I was basing that statement on the fact that the documents requested in the subpoena would cover any documents that may have been called for in the initial disclosures. I took the names included in the disclosures at face value, however, and did not discover until yesterday that the list was seriously incomplete.

I must, therefore, request that you supplement your clients' initial disclosures with the names of additional individuals who are likely to possess the type of information set out in Rule 3.31(b)(1). As you know, Rule 3.31(e) requires you to supplement your initial disclosures "if the

John R. Fleder, Esq.
Page 2

party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing." In this regard, if you contend that the identities of all such individuals are apparent on the face of yesterday's submission, please so state.

If you prefer not to formally supplement your initial disclosures, I will accept a list identifying all individuals with knowledge regarding the following topics:

1. The creation and dissemination of all Natural Organics ads for Pedi-Active A.D.D.
2. The creation and formulation of Pedi-Active A.D.D.
3. Substantiation for any claim made for Pedi-Active A.D.D.
4. Experts or consultants with whom respondents have discussed the efficacy of Pedi-Active A.D.D.

Because the number and identity of such additional individuals will likely have a bearing on next month's depositions, I ask that you provide this information to me no later than January 25, 2001. If I do not hear from you by then, I will seek the appropriate relief from Judge Timony.

Very truly yours,



Matthew D. Gold

EXHIBIT E

LETTER FROM JOHN R. FLEDER TO MATTHEW D. GOLD (1/26/01)

LAW OFFICES

HYMAN, PHELPS & MCNAMARA, P.C.

JAMES R. PHELPS
 PAUL M. HYMAN
 ROBERT A. DORMER
 STEPHEN H. MCNAMARA
 ROGER C. THIES
 THOMAS SCARLETT
 JEFFREY N. GIBBS
 BRIAN J. DONATO
 FRANK J. SASINOWSKI
 DIANE B. MCCOLL
 A. WES SIEGNER, JR.
 ALAN M. KIRSCHENBAUM
 DOUGLAS B. FAROUHAR
 JOHN A. GILBERT, JR.
 JOHN R. FLEDER
 ROBERT T. ANCAROLA
 (1949-1996)

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SAMIA N. RODRIGUEZ
 MARY KATE WHALEN
 OF COUNSEL

JENNIFER B. DAVIS
 FRANCES K. WU
 DAVID B. CLISSOLD
 KATE DUFFY MAZAN
 HOLLY M. BAYNE
 CASSANDRA A. SOLTIS
 JOSEPHINE N. TORRENTE
 MICHELLE L. BUTLER
 PATRICIA A.A. VANSTORY
 THOMAS R. GIBSON
 LEIGH E. KENNEDY
 ANNE MARIE MURPHY
 PAUL L. FERRARI
 JEFFREY N. WASSERSTEIN
 BRIAN J. MALKIN

*NOT ADMITTED IN CA

DIRECT DIAL (202) 737-4590

January 26, 2001

BY FACSIMILE/CONFIRMATION COPY BY MAIL

Matthew D. Gold, Esq.
 San Francisco Regional Office
 Western Region
 Federal Trade Commission
 901 Market Street, Suite 570
 San Francisco, California 94103

Matthew
 Dear Mr. Gold:

This is in response to your letters dated January 17th, January 18th, and January 24th, 2001. We will address these letters seriatim.

A set of stipulations was enclosed with your January 17th letter that would, in your view, obviate the need for David T. Read to testify. After reviewing the stipulations, we must inform you that we cannot agree to them. Indeed, as noted during our January 25th, 2001, conversation, we are filing a Motion to take the deposition of Mr. Read, to occur on February 21, 2001, a date as to which you have agreed on behalf of Mr. Read.

Your letter dated January 18th, 2001, expresses concern about the initial disclosures made by Respondents' former counsel. Your letter correctly notes that in our early discussions, we asked you if there were any deficiencies in the initial disclosures made by prior counsel. You responded that you believed there were deficiencies, but had remedied your concerns by issuing a subpoena to the Respondents. You also said that, in light of the subpoena, it was not necessary for us to amend our initial disclosures. Of course, when we asked about Respondents' initial disclosures, we had not yet reviewed these disclosures. Thus, we did not assume there were any deficiencies with Respondents' initial disclosures.

Matthew D. Gold, Esq.
January 26, 2001
Page 2

HYMAN, PHELPS & MCNAMARA, P.C.

As you know, we have already responded, in part, to the broad subpoena duces tecum issued to the Respondents, and will complete our response by February 7th, in accordance with the Discovery and Trial Schedule. Clearly, the documents that have been produced in Respondents' initial reply to the subpoena, along with additional documents that will be provided by February 7th, as well as other extensive discovery that is underway, have more than remedied any alleged deficiencies in the initial disclosures. Furthermore, Complaint Counsel has made good use of the broad discovery available to it under the FTC's rules since the Complaint was filed. We are confident that you will continue to undertake any further discovery which you believe is appropriate. We fail to understand what more you need from the Respondents, particularly since discovery in this matter will not close for over two and a half months.

Again, we do not concede that there were any deficiencies in the Respondents' initial disclosures. Indeed, the undersigned had no role in the initial disclosures and has no information as to the beliefs of prior counsel concerning their responsibilities in this regard. Pursuant to our review of Rule 3.31(e), Respondents do not have any further obligation with regard to their initial disclosures. Thus, for the reasons set forth above, there is no longer any issue concerning Respondents' initial disclosures.

Regarding your January 24th letter, you proposed a deposition schedule for six Natural Organics employees for depositions that would occur during the weeks of February 14th and 28th, 2001. As you know, we earlier agreed to your request to depose Marci Dunnder, James Gibbons and Gerald Kessler during February 14th to 16th, 2001. Your January 24th letter proposes a modification of the earlier schedule. After consultation with our clients, we want to hold to the week of February 14th for the depositions.

As we discussed yesterday, we are pleased to make Rafael Avila, Christine Anderson and Gerard MacIntee available that week, along with Ms. Dunnder, Mr. Gibbons and Mr. Kessler. Without requiring you to issue subpoenas, we are pleased to agree to the new depositions you have requested, assuming we can work out several logistical issues. We see no reason why all six individuals cannot be deposed that week. We are willing to begin the depositions as early in the week as you desire and to extend the depositions through Saturday, February 17th, if necessary.

In response to your earlier request to take the deposition of Mr. Kessler during the week of the 14th, he arranged to travel from California and to be in New York during that entire week for the deposition you scheduled. He has now arranged to do other things in New York that week.

It is our understanding that postponing the depositions of Mr. Kessler and Mr. Gibbons would be very difficult. Thus, please inform us at your earliest convenience if you agree to have all six depositions conducted during the week of February 14th. Of course, you might consider other alternatives. You could choose to "postpone" any of the four

Matthew D. Gold, Esq.
January 26, 2001
Page 3

HYMAN, PHELPS & MCNAMARA, P.C.

people you want us to schedule for the 14th through the 16th until a later date that we can agree upon. You may well find, for instance, that if you depose Ms. Dunnder and Mr. Avila, it will be unnecessary to depose Ms. Anderson and Mr. MacIntee.

Finally, we request that all the depositions occur at Natural Organics' office in Melville, New York. Both sides will save on travel expenses and there is no question that the depositions will proceed more quickly and smoothly than if they are held in New York City. We understand that it would be a substantial inconvenience for the deponents to travel into New York City, in which case they would not be able to perform any work for the company. Moreover, it would be unreasonable to expect them to travel separately or to stay in New York City while the other depositions are occurring.

Please give me a call if you have any questions.

Sincerely,



John R. Fleder

JRF/HMB/sas

EXHIBIT F

RESPONDENTS' INITIAL WITNESS LIST (1/19/01)

LAW OFFICES
HYMAN, PHELPS & MCNAMARA, P.C.

JAMES R. PHELPS
 PAUL M. HYMAN
 ROBERT A. DORMER
 STEPHEN H. MCNAMARA
 ROGER C. THIES
 THOMAS SCARLETT
 JEFFREY N. GIBBS
 BRIAN J. DONATO
 FRANK J. SASINOWSKI
 DIANE B. MCCOLL
 A. WES SIEGNER, JR.
 SAMIA N. RODRIGUEZ
 ALAN M. KIRSCHENBAUM
 DOUGLAS B. FARQUHAR
 JOHN A. GILBERT, JR.
 JOHN R. FLEDER
 ROBERT T. ANGAROLA
 (1945-1996)

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MARY KATE WHALEN
 OF COUNSEL

JENNIFER B. DAVIS
 FRANCES K. WU
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 KATE DUFFY MAZAN
 HOLLY M. BAYNE
 CASSANDRA A. SOLTIS
 JOSEPHINE M. TORRENTE
 MICHELLE L. BUTLER
 PATRICIA A.A. VANSTORY
 THOMAS R. GIBSON
 LEIGH E. KENNEDY*
 ANNE MARIE MURPHY*
 PAUL L. FERRARI
 JEFFREY N. WASSERSTEIN

*NOT ADMITTED IN DC

January 19, 2001

DIRECT DIAL (202) 737-4580

BY FACSIMILE/CONFIRMATION COPY BY MAIL

Matthew D. Gold, Esq.
 San Francisco Regional Office
 Western Region
 Federal Trade Commission
 901 Market Street, Suite 570
 San Francisco, California 94103

RECEIVED
 FEDERAL
 TRADE COMMISSION

JAN 25 2001

San Francisco
 Regional Office

Re: **Natural Organics, Inc., et al**
Docket No. 9294

~~Mr. Hester~~
 Dear Mr. Gold:

Respondents Natural Organics, Inc. and Gerald A. Kessler, in accordance with the Discovery and Trial Schedule in the above-referenced matter, provide the following list of potential non-expert witnesses.

Suppliers of Ingredients in Pedi-Active A.D.D.

Aceto Corp. (DMAE Supplier)
 One Hollow Lane
 Lake Success, NY 11042
 516-627-6000, ext. 284
 Contact: Ray Bartone

Lucas Meyer Inc. (Phosphatidylserine-LECI-PS Supplier)
 P.O. Box 3218
 Decatur, IL 62524-3218
 217-875-3660
 Scott Hagerman and Lori Nolan (no longer with company)

Matthew D. Gold, Esq.
January 19, 2001
Page 2

HYMAN, PHELPS & MCNAMARA, P.C.

Potential testimony is expected to relate to issues concerning Respondents' good faith actions regarding the supply of raw materials, including the ingredients in Pedi-Active A.D.D., to the dietary supplement industry generally, and to Respondents.

Suppliers of Other Raw Materials to Natural Organics

Euromed
Manor Oak One, Suite 405
1910 Cochran Road
Pittsburgh, PA 15220
925-935-0334
Contact: Guy Woodman

AnMar International
540 Barnum Avenue
Bridgeport, CT 06608
203-336-8330
Contact: John Blanco

Potential testimony is expected to relate to issues concerning the supply of raw materials to the dietary supplement industry and to Respondents, including Respondents' good faith conduct and fair dealing in business.

Natural Organics' Retailer

Peter Roang
Basic's
1221 Woodman Road
Janesville, WI 63545
608-754-3925

Potential testimony is expected to relate to issues concerning the retail sale of dietary supplements and Respondents' commitment to quality, integrity and good faith business practices.

Natural Organics' Employees

Gerald A. Kessler
Jim Gibbons
Marci Dunnder
Rafael Avila
Christine Anderson

Matthew D. Gold, Esq.
January 19, 2001
Page 3

HYMAN, PHELPS & MCNAMARA, P.C.

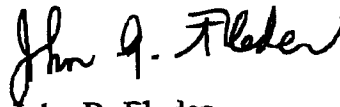
Lourdes Degquem
Gerard McIntee

Natural Organics, Inc.
548 Broadhollow Road
Melville, New York 11747

Potential testimony is expected to relate to issues concerning the marketing of dietary supplements and Natural Organics' good faith effort to comply with the Federal Trade Commission Act and all other applicable laws and regulations.

If you have any questions, please contact me.

Sincerely,


John R. Fleder

JRF/HMB/vam

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
NATURAL ORGANICS, INC.,)	
a corporation, and)	DOCKET NO. 9294
)	
GERALD A. KESSLER,)	
individually and as an officer)	
of the corporation.)	
)	
)	

TO: The Honorable James P. Timony
Administrative Law Judge

STATEMENT REQUIRED BY SECTION 3.22(f)
OF THE COMMISSION'S RULES OF PRACTICE

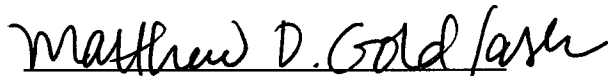
Complaint counsel has conferred with respondents' counsel in a good faith attempt to resolve the issues raised by the attached motion, as evidenced by the following:

1. On October 2, 2000, complaint counsel Matthew Gold telephoned respondents' counsel John Desiderio and informed him that respondents' initial disclosures appeared to be deficient. Mr. Gold informed Mr. Desiderio that complaint counsel would shortly issue a subpoena duces tecum that would cover the documents that should have been provided with the initial disclosures. With a letter dated October 3, 2000, complaint counsel issued the subpoena.
2. On January 17, 2001, the day after respondents provided a partial response to the subpoena, Matthew Gold telephone respondents' counsel John Fleder. Mr. Gold informed Mr. Fleder that it was apparent from the first wave of documents that the list of

names included in respondents' initial disclosure was seriously deficient. Mr. Gold reminded Mr. Fleder of his continuing duty under Rule 3.31(e) to supplement his initial disclosures. Mr. Fleder indicated that he would not supplement the initial disclosures. Mr. Fleder stated that if complaint counsel would provide a list of relevant subject areas, he might consider providing a list of individuals who had information regarding those areas.

3. January 18, 2001, complaint counsel sent a letter to respondents formally requesting them to update their initial disclosures. (See Exhibit D). In that letter, complaint counsel set out a list of four topics and stated that we would accept, in lieu of a supplement of the initial disclosures, a list of people with knowledge regarding those topics.
4. On January 26, 2001, counsel informed complaint counsel that they would not supplement their initial disclosures. (Exhibit E). In addition, they did not respond to complaint counsel's attempt to take them up on their alternative idea of providing the names of individuals with knowledge about specific topics.

Respectfully submitted,



Matthew D. Gold (415) 356-5276
Kerry O'Brien (415) 356-5289
Dean Graybill (415) 356-5224
Linda K. Badger (415) 356-5275

Complaint Counsel
Western Region, Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103

Dated: January 29, 2001

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
NATURAL ORGANICS, INC.,)	
a corporation, and)	DOCKET NO. 9294
)	
GERALD A. KESSLER,)	
individually and as an officer)	
of the corporation.)	
)	
)	

TO: The Honorable James P. Timony
Administrative Law Judge

ORDER REQUIRING RESPONDENTS TO SUPPLEMENT
THEIR INITIAL DISCLOSURES PURSUANT TO RULE 3.31(e)

Section 3.31(e)(1) of the Commission's Rules of Practice requires each party "to supplement at appropriate intervals its initial disclosures under Sec. 3.31(b) if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing." It is obvious that respondents' initial disclosure document was deficient when it was created in September 2000 and that it has not been remedied by subsequent discovery. Accordingly,

IT IS ORDERED that:

Respondents shall, within three (3) days of service of this order, provide to complaint counsel a list of the name, address, and telephone number of each individual likely to have discoverable information relevant to the allegations of the Commission's complaint, to the

proposed relief, or to the defenses of the respondents.

James P. Timony
Administrative Law Judge

Dated: