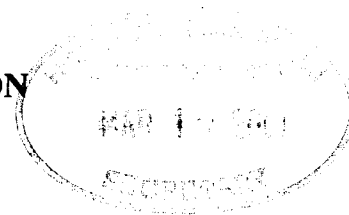


**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**



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
Chief Administrative Law Judge

**RESPONDENTS' MOTION TO
QUASH SUBPOENA SERVED ON GERALD A. KESSLER**

INTRODUCTION

On March 6, 2001, Complaint Counsel served a subpoena on Respondent Gerald A. Kessler for a deposition in Los Angeles, on March 20, 2001. Pursuant to FTC Rules of Practice §§ 3.22, 3.31(d), and 3.34(c), Respondents move to quash this subpoena. As demonstrated below, this relief is necessary to protect Mr. Kessler from "annoyance, embarrassment, oppression [and] undue burden or expense." Rule 3.31(d).

Complaint Counsel and the undersigned had arranged for Mr. Kessler to be deposed in Santa Barbara, California, 40 minutes from his home, on March 6, 2001. Many facts led to Complaint Counsel's decision to cancel the deposition, the afternoon before it was to occur. However, several crucial facts are not and cannot be disputed: (1) On March 2, 2001, Complaint Counsel and the undersigned had agreed on a time and

place for the deposition (See Exhibit A); (2) As a result, the undersigned flew from Baltimore to Los Angeles on March 4, 2001; (3) The undersigned would not have flown to California except to defend Mr. Kessler's deposition; (4) When Complaint Counsel informed the undersigned on March 5, 2001, that the agreed-upon site was unavailable, Complaint Counsel knew the undersigned was already in California; and (5) When the parties could not agree on a site for the deposition, Complaint Counsel rejected the undersigned's suggestions to take the deposition in person in Santa Ynez, California, or alternatively, take the deposition over the telephone. Instead, Complaint Counsel cancelled the deposition, never having left his office.

Respondents' counsel collectively have been practicing law for many years. None of the attorneys representing Respondents have been involved in, or heard about, a situation where a party has scheduled a deposition, allowed opposing counsel to travel a great distance, and cancelled the deposition because of unhappiness with the site.

We recognize that precluding Complaint Counsel from taking Mr. Kessler's deposition is a serious action. This course is warranted here based on the facts set forth below. Granting this Motion is fully warranted.

FACTUAL BACKGROUND LEADING TO THE DEPOSITION'S CANCELLATION

Respondents agreed to allow Complaint Counsel to depose Mr. Kessler long before the recent subpoena was issued. In December 2000, just weeks after Respondents' new counsel was retained, we agreed to allow Complaint Counsel to depose Mr. Kessler and two other Natural Organics employees in New York in mid-February 2001. (See

December 27, 2000 Letter from Matthew Gold, attached as Exhibit B). Subsequently, Respondents requested that the depositions be held earlier. After Mr. Kessler arranged to be in New York, Complaint Counsel agreed to a change of dates, but decided to postpone Mr. Kessler's deposition until the end of February because Complaint Counsel wanted to depose three other Natural Organics' employees. See letter from Matthew Gold dated January 24, 2001, attached as Exhibit C.

Respondents' counsel responded by letter dated January 26, 2001. (Exhibit D). We agreed to the depositions of all six employees the week of February 14, 2001, even though no subpoenas had been issued. We notified Complaint Counsel that since Mr. Kessler had already made arrangements to fly to New York for his and the other depositions, Complaint Counsel should take all six depositions there that week. We even offered to extend the depositions through Saturday of that week so that Complaint Counsel would have plenty of opportunity to complete all six depositions. Regrettably, Complaint Counsel simply refused to take Mr. Kessler's deposition that week, citing no reason other than he was too important to their case.

On these facts alone many lawyers would have said that Complaint Counsel had waived their opportunity to take Mr. Kessler's deposition. Instead, in addition to permitting (without subpoenas) the other five employee depositions to occur that same week, Respondents' counsel agreed to allow Complaint Counsel to take Mr. Kessler's deposition on March 6, 2001, in Santa Barbara, California. Of course, having the deposition there meant that Complaint Counsel, based in San Francisco, had a much shorter trip than Respondents' counsel, who would travel across the country. We agreed

to this location as an accommodation to Complaint Counsel, even though they had not availed themselves of the proffered site of New York in February where Respondents' counsel and Mr. Kessler were going to attend the other Natural Organics' employees' depositions.

After an agreement was reached as to the date of this deposition, a number of discussions occurred regarding its site. We suggested having the deposition at a hotel in Santa Barbara which had a government rate, so as to limit the FTC's costs. However, Complaint Counsel rejected this notion because Respondents would not pay for the hotel room for the deposition. We are aware of no authority or precedent for forcing the deponent to pay for the site of the deposition.¹

Complaint Counsel next suggested having the deposition at the Santa Barbara County District Attorney's Office. Respondents' counsel objected, citing the potential embarrassment to Mr. Kessler in a city where he is well known. As a result, the parties reached agreement on an alternative site on Friday afternoon, March 2, 2001. The deposition would occur at the offices of the Court Reporting service. (Exhibit A).

After the undersigned arrived in California, we learned of two problems with Mr. Kessler's deposition. First, on the afternoon before the deposition, Complaint Counsel stated that planes leaving San Francisco that day were cancelled and that no flight

¹ Respondents took the generous step of paying approximately \$1000 for a hotel site in New York for the February depositions of the Natural Organics' employees. We certainly had no obligation to incur this expense and it was a generous gesture to accommodate Complaint Counsel who had agreed to hold the depositions less than a mile from Natural Organics' headquarters.

between the two cities was open until the morning of March 6. Also, Complaint Counsel advised that he had erroneously indicated the site of the Court Reporting service was available the next day. Complaint Counsel unilaterally determined to have the deposition at the Santa Barbara City Attorney's office.

Regarding the first issue, Respondents' counsel suggested that the two Complaint Counsel drive to Santa Barbara, a trip of 294 miles, which would take approximately five hours. Without explanation, Mr. Gold rejected this idea even though it would have undoubtedly been much less expensive to the government than for two attorneys to fly to Santa Barbara. Once this notion was rejected, we indicated we were sympathetic to the weather problems and would be flexible as to the time when the deposition would start. We indicated that whenever Complaint Counsel arrived, the deposition could start and could continue, if necessary into March 7. Regrettably, this accommodation, which most counsel will try to extend to reasonable opposing counsel, was not reciprocated.

Regarding the second issue, the undersigned informed Complaint Counsel that Mr. Kessler would not agree to the deposition in the local City Attorney's office. Mr. Kessler is 6 feet 7 inches tall and is well known in his local community. He indicated (through his counsel) to Complaint Counsel a willingness to go forward with the deposition at the scheduled time, but not in a local government building, fearing he would be exposed to ridicule and gossip as to why he was being questioned in a local government building.

Whether or not Complaint Counsel or even Your Honor would react the same way is not the issue. Also, we acknowledge that a lawyer scheduling a deposition is generally given latitude to pick the place for the deposition. Nevertheless, Complaint Counsel

should have taken all necessary steps to accommodate Mr. Kessler's concern, particularly in light of the flexibility he had shown regarding the scheduling of his deposition.

As soon as we learned that Complaint Counsel desired to take the deposition at a place Mr. Kessler considered potentially embarrassing, Mr. Kessler spent the better part of several hours looking for an alternative location. He directly, or through others, contacted several law firms seeking an alternative site in Santa Barbara. Mr. Kessler did so with the explicit understanding that any location he would find would not charge the FTC for the site.

Although we could not locate a site in Santa Barbara, we did find a bank located in Santa Inez, which agreed to house the deposition on March 6, for the full day without charge to the FTC. That site is only approximately twenty minutes further from the Santa Barbara airport than the location Complaint Counsel had selected in Santa Barbara. Moreover, had Complaint Counsel driven, instead of flown, the Santa Ynez site was twenty minutes closer to San Francisco than the FTC's designated site in Santa Barbara.

On the afternoon of March 5, we advised Mr. Gold that (1) we would not agree to the deposition in a government building in Santa Barbara; (2) we had found an alternative site in Santa Ynez that would be free to the FTC; and (3) if Complaint Counsel did not want to travel because of the inclement weather, we would agree to a telephone deposition of Mr. Kessler. He and his counsel were meeting, and had all the documents Complaint Counsel had identified as exhibits at the previous depositions.

Regrettably, Mr. Gold refused to go to Santa Ynez, refused to agree to a telephone deposition, and cancelled the deposition.

ARGUMENT

The facts presented above demonstrate that Mr. Kessler needs protection against the FTC's March 6, 2001 subpoena. He went beyond what any reasonable person would have expected to accommodate Complaint Counsel. Among other things, he incurred legal fees and the expense of flying the undersigned to California solely for this deposition.² This expense was incurred after Complaint Counsel earlier rejected our suggestion to hold the deposition in New York, when Mr. Kessler was going to be present for his and other depositions.

We do not know why Complaint Counsel took these actions. Perhaps, he saw choosing a site for the deposition as a test of his competitiveness. What is clear is that Mr. Gold, the attorney seeking discovery (indeed discovery without a subpoena) should have accommodated Mr. Kessler's concerns about taking the deposition in a local government building. Aware that Mr. Kessler had incurred great expense (in terms of flight costs and fees) of flying the undersigned to California, Complaint Counsel had a special responsibility to accommodate Mr. Kessler's concern, to avoid dissipating Respondents' resources.

Experience has shown to the undersigned that in FTC litigation, FTC lawyers diligently represent their clients without resorting to scorched-earth tactics employed by

² Once the deposition was scheduled, the undersigned signed up for a conference held elsewhere in California. The cost of his participation was refundable and he would have cancelled that part of the trip had Complaint Counsel cancelled the deposition before the trip to California had already occurred.

other lawyers. For whatever reason, Complaint Counsel did not follow the path of courtesy normally followed by FTC lawyers specifically, and other government counsel.

There is a longstanding understanding that government lawyers have greater responsibilities to pursue the common good of the public interest than their counterparts who represent private clients.³ In Berger v. United States, the Supreme Court concluded:

The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor – indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.⁴

The proposition that government lawyers have obligations beyond those of private lawyers was applied by the D.C. Circuit in 1992 in the civil context. In citing to Berger, the D.C. Circuit stated that while “[t]he Supreme Court was speaking of government prosecutors, . . . no one, to our knowledge . . . has suggested that the principle does not

³ Steven K. Berenson, Public Lawyers, Private Values: Can, Should, and Will Government Lawyers Serve the Public Interest?, 41 B.C. L. Rev. 789 (July 2000).

⁴ Berger v. United States, 295 U.S. 78, 88 (1935).

apply with equal force to the government's civil lawyers.”⁵ More recently, in a civil case, a United States District Court cited numerous other decisions for this proposition.⁶

As shown above, Complaint Counsel did not meet the standards of conduct expected of any counsel, especially government counsel. As result, Respondents are entitled to relief from the Subpoena. At this point the deposition of Mr. Kessler sought by the subpoena would be annoying and oppressive, and would place an undue burden and additional expense on him.

Before filing this Motion, the undersigned suggested several alternatives to Complaint Counsel. We recognize that Mr. Kessler is a party. We are not, and have not been, adverse to Complaint Counsel obtaining information from him. Accordingly, we suggested that Complaint Counsel either promulgate interrogatories to Mr. Kessler pursuant to Rule 3.35⁷ or have a deposition upon written questions, pursuant to Rule 3.33(e).

Of course, Complaint Counsel had every opportunity during its three-year investigation of Respondents to issue a subpoena to Mr. Kessler to require his testimony. Had such a subpoena been issued, Complaint Counsel would not be in the position of imposing burdensome discovery on Respondents before the upcoming hearing.

⁵ Freeport-McMoRan Oil & Gas Co. v. FERC, 962 F.2d 45, 47 (D.C. Cir. 1992).

⁶ Cobell v. Babbitt, No. 1:96CV01285, 1999 U.S. Dist. LEXIS 20918, at * 197 (D.D.C. Dec. 3, 1999), aff'd in pertinent part, No. 00-5081, 2001 U.S. App. LEXIS 2638 (D.C. Cir. 2001).

⁷ Respondents agreed to allow interrogatories even though, as noted by Complaint Counsel, the time for promulgating interrogatories has arguably passed.

We also recognize that Your Honor might find that quashing the subpoena under ordinary circumstances would be too extreme a measure. Accordingly, and without prejudice to our strongly held position that Complaint Counsel has forfeited their right to depose Mr. Kessler, the undersigned stated to Complaint Counsel that we would raise another alternative, namely that if Your Honor wants Mr. Kessler deposed, Complaint Counsel should pay the undersigned's travel costs, as well as attorneys fees to go again to California.⁸

On March 14, 2001 Mr. Gold rejected all three notions and offered no counterproposal to the subpoena at issue in this Motion. Under these circumstances, Respondents were left with no alternative but to seek relief from the subpoena.

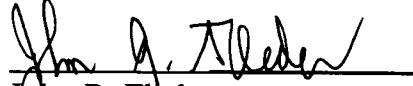
⁸ The undersigned is in trial the week of March 26, 2001, and Mr. Kessler cannot leave California the following two weeks. Because discovery closes on April 13, 2001, the undersigned did not suggest having the deposition in Washington after that date. In any event, we would have insisted that the FTC pay all of Mr. Kessler's expenses to travel to Washington. We also did not again raise the possibility of a telephone deposition. Unlike on March 5, when Mr. Kessler, the undersigned and the relevant exhibits were in one location, there is no date prior to the close of discovery when Mr. Kessler and the undersigned will be in the same state or will otherwise be in close proximity. The FTC cannot expect Mr. Kessler to agree to a deposition when his counsel is not present.

CONCLUSION

For the foregoing reasons, Respondents' Motion to Quash Subpoena served on Gerald A. Kessler should be granted.

Dated: March 19, 2001

Respectfully Submitted,



John R. Fleder

Stephen H. McNamara

A. Wes Siegner

Holly M. Bayne

HYMAN, PHELPS & MCNAMARA, P.C.

700 13th Street, N.W.

Suite 1200

Washington, D.C. 20005

(202) 737-5600

(202) 737-9329 (FAX)

Attorneys for Respondents

From: John R. Fleder
To: Matthew Gold
Date: 3/2/01 2:22PM
Subject: Re: Santa Barbara Deposition

Matthew: Thanks for accomodating us on the site of the deposition. See you on Tuesday! Also, we will have some additional documents to provide to you before Tuesday's deposition, pursuant to your February 21, 2001 letter. You should have them in one form or another by Monday.

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

John R. Fleder
Hyman, Phelps & McNamara P.C.
700 Thirteenth Street, N.W.
Washington, D.C. 20005
202-737-4580
Fax-202-737-9329

>>> "Matthew Gold" <mgold@ftc.gov> 03/02/01 11:58AM >>>

John -- The view from here is that you are overreacting tremendously, but I do not purport to stand in Mr. Kessler's shoes. Nor am I willing to spend any energy fighting over this. I have arranged to use a conference room at the offices of the court reporting agency we are using. That address is: Ahlstrand and Associates, 411 E. Carrillo Street, Santa Barbara. Their phone number is (805) 963-3659.

>>> "John R. Fleder" <JRF@hpm.com> 3/1/01 2:44 PM >>>

Matthew: I have spoken with Mr. Kessler about the site of the deposition. He will not attend the deposition if held at the location you have chosen. He refuses to be embarassed in his local community, which is much smaller than San Francisco. He does not want to deal with possible gossip and speculation that will occur if the deposition is located at the D.A.'s office. Mr. Kessler has not been charged with a crime and does not want any one to believe that his presence in that building suggests he is involved in a criminal matter.

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

John R. Fleder
Hyman, Phelps & McNamara P.C.
700 Thirteenth Street, N.W.
Washington, D.C. 20005
202-737-4580
Fax-202-737-9329

>>> "Matthew Gold" <mgold@ftc.gov> 03/01/01 05:10PM >>>

John: Please be assured that we were not attempting to embarrass Mr. Kessler. We were scrambling to find a location at rather short notice, and it turns out we had a contact in that office.

>>> "John R. Fleder" <JRF@hpm.com> 3/1/01 11:42 AM >>>

Matthew: We will see you on Tuesday at the location you have identified. I must tell you that holding this deposition at that location is, in my view, an insult to Mr. Kessler, and appears to be an attempt to

embarrass him in his local community. Surely there were other governmental offices you could have chosen which do not carry the "criminal" stigma associated with a D.A.'s office. Whether or not you did this intentionally, you should have been more sensitive to the appearances you have unnecessarily created.

This e-mail is sent by a law firm and may contain information that is privileged or confidential. If you are not the intended recipient, please delete the e-mail and any attachments and notify us immediately.

John R. Fleder
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>>> "Matthew Gold" <mgold@ftc.gov> 03/01/01 02:03PM >>>

The Kessler deposition will begin at 9:00, a.m., March 6, 2001, at the following location:

Santa Barbara County District Attorney's Office
1105 Santa Barbara Street (cross street Figueroa)
Santa Barbara, CA 93101

The contact person there is Allan Kaplan, Senior Deputy District Attorney. His phone number is 805-568-2300.



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

December 27, 2000

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:

This will confirm our conversation of earlier today. As we discussed, we have reserved February 21-23, 2001, for the depositions of Gerald Kessler, James Gibbons, and Marci Dunnder. These depositions will take place at the offices of the FTC's Northeast Region, which are located at One Bowling Green, Suite 318, New York, NY 10004. I propose that we start at 9:00 a.m., on February 21. I will let you know shortly the order in which I would like to conduct these depositions.

Please note that we may wish to depose additional Natural Organics personnel. I will let you know of any additions as soon as possible after receiving the company's internal documents.

I appreciate your flexibility in scheduling these depositions. Of course, we will make every effort to be equally flexible in future scheduling decisions, consistent with the constraints set by our Discovery and Trial Schedule.

Very truly yours,

A handwritten signature in cursive script that reads "Matthew D. Gold".

Matthew D. Gold



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WESTERN REGION

901 Market Street, Suite 570
San Francisco, CA 94103-1768
Voice: (415) 356-5276
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Matthew D. Gold
Attorney

January 24, 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:

I would like to confirm a few matters that we discussed yesterday. First, although final decisions on depositions of Natural Organics personnel must await our receipt of your reply to my letter of January 18, 2001, we have made the following tentative requests: We would like to take the depositions of Marcy Dunnder, Rafael Avila, Christine Anderson, and Gerard McIntee on February 14-16, 2001, at the offices of the FTC's Northeast Region in New York City. These are the dates that we had reserved a few weeks ago for the depositions of Ms. Dunnder, Gerald Kessler and James Gibbons. In addition, we would like to depose Mr. Kessler and Mr. Gibbons on February 28-March 2, 2001, at the same location.

Second, we would like to take the depositions of the Aceto Corp., Lucas Meyer, Euromed, An Mar, and Basic's personnel by telephone. We will contact you shortly to arrange for dates.

Third, David Read will be available on February 21, 2001 for a deposition. At that time, he will be prepared to elaborate on the matters covered in the proposed stipulations that we sent you on January 17, 2001.

Please contact me if you have any questions.

Very truly yours,

Matthew D. Gold

LAW OFFICES

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DIRECT DIAL (202) 737-4580

*NOT ADMITTED IN DC

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.

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

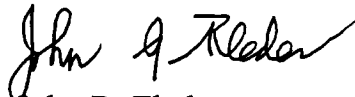
HYMAN, PHELPS & MCNAMARA, P.C.

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,



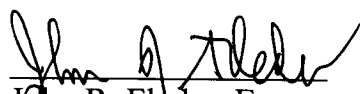
John R. Fleder

JRF/HMB/sas

March 14, 2001, Matthew Gold rejected all three alternatives and presented Respondents with no other suggestions to resolve the Motion. Therefore, we were unable to reach an agreement.

Dated: March 19, 2001

Respectfully Submitted,



John R. Fleder, Esq.
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(202) 737-4580
Fax (202) 737-9329

Attorneys for Respondents

**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

**ORDER GRANTING RESPONDENTS' MOTION TO QUASH SUBPOENA
SERVED ON GERALD A. KESSLER**

On March 19, 2001, Respondents filed a Motion to Quash Subpoena Served on Gerald A. Kessler. Complaint Counsel filed an answer on March , 2001.

Upon consideration of Respondents' Motion to Quash Subpoena Served on Gerald A. Kessler, and Complaint Counsel's answer, I hereby GRANT the Moton to Quash Subpoena Served on Gerald A. Kessler.

**James P. Timony
Adminstrative Law Judge**

Dated: , 2001

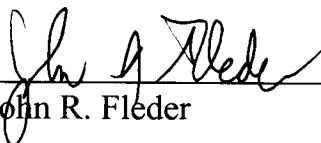
CERTIFICATE OF SERVICE

I hereby certify that on this nineteenth day of March 2001 copies of the foregoing Respondents' Motion to Quash Subpoena Served on Gerald A. Kessler, Statement of John R. Fleder Pursuant to Rule 3.22(f) of the Federal Trade Commission's Rules of Practice, and Proposed Order Granting Respondents' Motion to Quash Subpoena Served on Gerald A. Kessler, were served by facsimile transmittal and first-class mail, postage prepaid, on the following parties:

Matthew D. Gold, Esq.
Kerry O'Brien, Esq.
Dean Graybill, Esq.
Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103,

and two copies were hand delivered to :

Judge James P. Timony
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580.



John R. Fleder