

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

In the Matter of)	
)	
)	
BASIC RESEARCH, L.L.C.,)	
A.G. WATERHOUSE, L.L.C.,)	
KLEIN-BECKER USA, L.L.C.,)	
NUTRASPORT, L.L.C.,)	
SOVAGE DERMALOGIC)	Docket No. 9318
LABORATORIES, L.L.C.,)	
BAN, L.L.C.,)	PUBLIC DOCUMENT
DENNIS GAY,)	
DANIEL B. MOWREY, and)	
MITCHELL K. FRIEDLANDER,)	
)	
Respondents.)	
)	

**COMPLAINT COUNSEL’S MOTION FOR PROTECTIVE ORDER TO LIMIT
RESPONDENTS’ DISCOVERY OR, IN THE ALTERNATIVE, TO CLARIFY
SCHEDULING ORDER**

Complaint Counsel moves for a protective order to limit Respondents’ discovery to those 60 interrogatories, 60 document requests and 60 requests for admissions discussed during the initial hearing and to clarify the Scheduling Order as limiting the amount of written discovery from Respondents to a total of 60 document requests, 60 interrogatories, and 60 requests for admission (“written discovery”). Respondents’ latest rounds of discovery brings the total number of their discrete requests to approximately 157 requests for admission, 75 document requests, and 92 interrogatories.¹ This amount exceeds the limits contemplated by the Courts’

¹ The sheer number and redundancy of the Admissions that Respondents have sought in this case demonstrates Respondents’ abusive discovery tactics. *See* Respondents’ collective admissions requests attached as Exhibit 1. The total number of interrogatory numbers are underestimated to the extent that Interrogatory One in the latest round of interrogatories seek detailed information as to facts, witnesses, and documents regarding “each response to the Requests for Admissions that is other than an unqualified admission.” *See Interrogatory 1 to Respondent Dennis Gay’s First Set of Interrogatories* . As Respondent Gay served 54 Requests

Scheduling Order. Respondents oppose this motion.² We respectfully request that the Court order an expedited response to this motion in order to avoid further discovery disputes and clarify Complaint Counsel's obligations.³

This Court has the power to issue a protective order whenever such an order is needed to "protect a party or other person from annoyance . . . oppression or undue burden or expense." Rule 3.31(d). Complaint Counsel's understanding of the Scheduling Order, as informed by the Initial Hearing, was that "each side" was entitled to 60 of the three types of discovery requests set forth in the Scheduling Order. Complaint Counsel's interpretation is reasonable because to allow each of the nine Respondents 60 of each type of discovery request, would be truly oppressive and burdensome in that it could subject Complaint Counsel to as many as 540 (9 x 60) of **each** category of written discovery.

The Scheduling Order provides that "[e]ach party is limited to a total of 60 document requests, 60 interrogatories, and 60 requests for admissions" and that "additional discovery may be permitted only for good cause upon application to and approval by the Administrative Law Judge." Scheduling Order at ¶ 6. The draft scheduling order provided to the parties allowed for only 50 of each type of discovery request. At the initial hearing Respondents' Counsel requested

for Admissions, this specification alone may constitute dozens of interrogatories. *See Respondent Dennis Gay's First Set of Requests For Admissions* (Gay Admissions attached in Exhibit 1, Gay Interrogatories attached as Exhibit 2).

² Although we attempted to seek Respondents' agreement to schedule a brief status conference on this issue, Respondents declined and invited us to file the instant motion. We left a message with Respondent Friedlander to discuss this motion, however, we did not receive a response from him prior to the filing of this motion.

³ Complaint Counsel's responses to Respondents' latest round of discovery are due on November 16th.

75 requests per side.

Mindful that a scheduling order allowing 75 requests (as requested by Mr. Feldman) would result in Complaint Counsel being “mowed under” by written discovery, Complaint Counsel objected to Mr. Feldman’s proposal. Further, Complaint Counsel sought clarification as to whether “each” Respondent would be entitled to 50 requests under the Court’s originally proposed order. The following excerpt is pertinent:

JUDGE McGUIRE: What are you seeking?

MR. FELDMAN: I was going to say 75.

JUDGE McGUIRE: Ms. Kapin any objection?

MS. KAPIN: Your honor, I have concerns about that. First of all, they have all those respondents. I’m not sure – and I would ask you, Your Honor, do they each have 50? If that is the case, it seems to me they have a lot of document requests in their quiver.

JUDGE McGUIRE: That’s going to be a problem.

MR. FELDMAN: I actually was interpreting this to mean that you were giving us the sides.

JUDGE McGUIRE: Yes, and that’s how this order is intended.⁴

This discussion is instructive for many reasons. First, it contains Respondents’ counsel’s acknowledgment that he, himself, shared Complaint Counsel’s interpretation that the draft order

⁴ The entire discussion on this issue is attached as Exhibit 3. The ensuing dialogue addressed Respondents’ concerns that each of the individual Respondents be able to propound its discovery and Complaint Counsel’s concerns that an avalanche of discovery would interfere with its efforts to focus on the “nuts and bolts of this case.” Tr. at p. 29-31.

applied to each side, not each individual party. Second, it reflects the concern that run-away discovery could potentially “be a problem” and notes that “the rules have been interpreted in the past to confine it to that number per side.” Tr. At 30.

Counsel’s prediction that discovery could become a problem has been more than realized in this case. Respondents have issued multiple sets of irrelevant and unduly burdensome discovery requests and followed up their requests with time-consuming discovery discussions and motions to compel. Respondents now, even after the discussion referenced above, take the position that each individual Respondent is entitled to 60 document requests, 60 interrogatories, and 60 requests for admission. With today’s November 8th deadline for written discovery, Complaint Counsel could face even more discovery requests by that date (nine respondents each issuing their alleged entitlement to 60 document requests, 60 admissions, and 60 interrogatories) in addition to the excessive requests already issued. Complaint Counsel does not agree with Respondents that the Court’s Scheduling Order allows such an avalanche and requests clarification as soon as possible in order to avoid further discovery disputes and avoid diverting further resources away from Complaint Counsel’s prosecution of the key issues in this matter.

Complaint Counsel anticipates that Respondents will argue that it is taking an inconsistent position regarding its own discovery requests. This is not the case. Complaint Counsel named six corporations and three individuals in its Complaint, alleging that Respondents collectively “operated a common enterprise business enterprise while engaging in the deceptive acts and practices” set forth in the Complaint. Complaint at ¶ 9. Consistent with this theory, and mindful that Respondents’ web of companies enables them to scatter pertinent information about the Challenged Products and advertisements among their many different

entities, Complaint Counsel have issued identical sets of discovery to all Respondents. Furthermore, as Complaint Counsel serves copies of its discovery responses to each Respondent, all Respondents benefit from the information provided.

Issuing identical discovery to all Respondents is a far cry from Respondents' practice which has been to issue separate and numerous requests from the many Respondents (*e.g.*, interrogatories from both Basic Research *and* A.G. Waterhouse, *and* Gay *and* Mowrey *and* Friedlander; Admissions from Basic Research *and* Mowrey *and* Gay *and* Friedlander). Respondents' discovery, unfettered by concerns about number limits, is often repetitive and unreasonable. For example, Respondent Mowrey recently issued requests for admissions. These admissions contained numerous repetitive questions regarding the Commission's guidance on professional expertise (*see* Requests 1-6), what number of subjects a study must include to constitute a "competent and reliable scientific evidence" (*see* Requests 20-29) and the length of time over which a study must be conducted in order to constitute a "competent and reliable scientific evidence" (*see* Requests 31-34). Exhibit 1. Starting with 6 subjects, and ending with 103 subjects, Respondent Mowrey issued 10 separate admissions on the number-of-subjects topic alone. Respondent Basic Research has engaged in similar tactics issuing 12 Requests for Admissions on the topic of whether the Commission engages in the "pre-screening" of advertisements (*see* Requests 10-21 at Exhibit 1). Respondents' repetitive discovery emphasizes the need for an order limiting Respondents to the original 60 requests for their side.

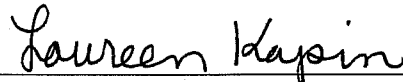
The burden of discovery upon Respondents has been minimized because Respondents have responded to discovery collectively. Respondents behave collectively when in their interest (*i.e.*, to *respond* to discovery) and separately when in their interest (*i.e.*, to *issue* discovery). Respondents apparently have a joint defense agreement in practice, if not in fact. Their collective efforts have resulted in a carefully coordinated response to issuing and responding to discovery. For example, the six corporate Respondents collectively responded to Complaint Counsel's First Set of Interrogatories. In addition, despite document requests issued to all Respondents, only two Respondents, Basic Research and Ban, have actually produced documents. Indeed, in their latest responses to our discovery, the corporate and individual Respondents collectively submitted one document. *See Response to Complaint Counsel's Second Set of Interrogatories* and *Response to Complaint Counsel's Third Request for Production of Documentary Materials and Tangible Things* (both attached as Exhibit 4). These responses demonstrate that both the individuals and the corporate Respondents generally view Complaint Counsel's discovery essentially as requests aimed at one collective entity. As a result, it would be neither inconsistent nor unreasonable to limit Respondents' discovery in this matter.

Respondents' latest discovery responses demonstrate the need for prompt clarification of the Scheduling Order as these submissions lack *any* information responsive to Complaint Counsel's requests. *See Exhibit 4.* Complaint Counsel previously issued 10 interrogatories to each Respondent and Respondents had not objected to the proper numbering of these interrogatories. Nevertheless, Respondents now assert the untenable argument that Complaint Counsel had exceeded its allotted interrogatories (*i.e.*, that our ten interrogatories actually amounted to 58). Especially egregious, Respondents failed to provide a single substantive

answer to any of the interrogatories propounded; their response consists entirely of objections.

Respondents' discovery tactics are unreasonable and inconsistent with the discussion regarding the Scheduling Order that took place during the Initial Hearing. Respondents have launched an avalanche of irrelevant and repetitive requests and refused to provide information responsive to Complaint Counsel's discovery. As a result, we respectfully urge the Court to issue a Protective Order limiting the amount of discovery requests to 60 of each type of discovery request per side, or in the alternative to issue an order clarifying the parties' discovery obligations.

Respectfully submitted,



Laureen Kapin (202) 326-3237
Joshua S. Millard (202) 326-2454
Robin M. Richardson (202) 326-2798
Laura Schneider (202) 326-2604

Division of Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Dated: November 8, 2004

EXHIBIT 1

EXHIBIT 2

EXHIBIT 3

EXHIBIT 4

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of November, 2004, I caused *Complaint Counsel's Motion To Clarify Scheduling Order* to be filed and served as follows:

- (1) the original, two (2) paper copies filed by hand delivery and one (1) electronic copy via email to:
Donald S. Clark, Secretary
Federal Trade Commission
600 Penn. Ave., N.W., Room H-159
Washington, D.C. 20580
- (2) two (2) paper copies served by hand delivery to:
The Honorable Stephen J. McGuire
Chief Administrative Law Judge
600 Penn. Ave., N.W., Room H-104
Washington, D.C. 20580
- (3) one (1) electronic copy via email and one (1) paper copy by first class mail to the following persons:

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Respondent Pro Se
mkf555@msn.com


COMPLAINT COUNSEL

EXHIBIT 1

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

In the Matter of

BASIC RESEARCH, L.L.C.,
A.G. WATERHOUSE, L.L.C.,
KLEIN-BECKER USA., L.L.C.,
NUTRASPORT, L.L.C.
SOVAGE DERMALOGIC LABORATORIES, L.L.C.,
 dba BASIC RESEARCH, L.L.C.,
 OLD BASIC RESEARCH, L.L.C.,
 BASIC RESEARCH, A.G. WATERHOUSE,
BAN, L.L.C.,
 dba KLEIN, BECKER, USA, NUTRA SPORT, and
 SOVAGE DERMALOGIC LABORATORIES,
DENNIS GAY,
DANIEL B. MOWREY,
 dba AMERICAN PHYTOTHERAPY RESEARCH
 LABORATORY, and
MITCHELL K. FRIEDLANDER,

Respondents.

DOCKET NO. 9318

RESPONDENT DENNIS GAY'S FIRST SET OF REQUESTS FOR ADMISSIONS

Respondent Dennis Gay, by and through his undersigned counsel and pursuant to 16 CFR §3.32, hereby requests that the Federal Trade Commission respond to the following Requests for Admissions.

DEFINITIONS

Notwithstanding any definition below, each word, term, or phrase used in these Requests is intended to have the broadest meaning permitted under the Federal Trade Commission's Rules of Practice.

1. "FTC," "you," and "your" shall mean the Federal Trade Commission, its employees, agents, attorneys, consultants, representatives, officers, and all other persons acting or purporting to act on its behalf.

2. "Complaint" shall mean the administrative complaint issued by the Federal Trade Commission and any amendments to that Complaint, in the above-captioned matter.

3. "Respondents" shall mean all Respondents, unless otherwise stated.

4. "Mr. Gay" shall mean Respondent Dennis Gay.

5. "Corporate Respondents" shall mean the following Respondents: Basic Research, LLC, A.G., Waterhouse, LLC, Klein-Becker, USA, LLC, Nutrasport, LLC, Sovage Dermalogic Laboratories, LLC, and BAN, LLC, both individually and collectively as defined in the Complaint, including all of their operations under any trade names.

6. "Advertising Guide" means the FTC's publication titled "Dietary Supplements: An Advertising Guide for the Industry."

7. The phrase "professionals in the relevant area" refers to the phrase "professionals in the relevant area" which appears on page 9 of the FTC's Advertising Guide.

8. "Topical Fat Reduction Study" shall mean the article "Topical Fat Reduction" by Frank L. Greenway, George A. Bray, and David Heber which appeared in the journal Obesity Research in 1995.

9. "Regional Fat Loss Study" shall mean "Regional fat loss from the thigh in obese women after Adrennergic Modulation," by Dr. Frank L. Greenway and Dr. George A. Bray, which appeared in the journal Clinical Therapeutics, Vol. 9, No. 6, 1987.

10. "GREENWAY/BRAY/HEBER PUBLISHED STUDIES" shall mean the "Topical Fat Reduction Study" and "Regional Fat Loss Study."

11. "First Fiber Study" shall mean "Effect of glucomannan on obese patients: a clinical study" which appeared in the *International Journal of Obesity* (1984) and was authored by David E. Walsh, Vazgen Yaghoubian, and Ali Behforooz.

12. "Second Fiber Study" shall mean "Usefulness of highly purified extract of *Proteinophallus rivieri* fibers in childhood obesity," by Livieri C., Novazi F., and Lorini R., which appeared in the journal *Ped. Med. Chir.* in 1992.

13. "Ephedrine Study" shall mean "Comparison of Ephedrine/Caffeine Combination and Dexfenfluramine in the Treatment of Obesity. A Double-Blind Multi-Centre Trial in General Practice," which appeared in the *International Journal of Obesity* (1994) 18, 99 - 103 by Leif Breum, et al.

14. The "Garvey case" shall mean *Federal Trade Commission v. Garvey*, 383 F.3d 891 (9th Cir. 2004).

15. "Garvey" shall mean Steven Patrick Garvey, one of the Defendants-Appellees in the Garvey case.

INSTRUCTIONS

The Requests for Admissions ("Requests"), as separately set forth below, shall be admitted unless, within ten (10) days after service of these Requests, a sworn written answer or objection addressed to the Requests is served upon Mr. Gay and filed with the Secretary. Answers shall specifically deny the Request or set forth in detail the reasons why the Request cannot truthfully be

admitted or denied. A denial shall fairly meet the substance of the Request, and when good faith requires that party to qualify its answer or deny only a part of the Request, so much of it as is true shall be specified, and the remainder shall be qualified or denied. Lack of information or knowledge shall not be given as a reason for failure to admit or deny unless a reasonable inquiry that the information known to or readily obtainable is insufficient to enable an admission or denial. If it is believed that a Request presents a genuine issue for trial, the Request may not, on that ground alone, be objected to; the Request may either be denied, or the reasons why the Request cannot be admitted or denied set forth.

REQUESTS FOR ADMISSIONS

1. Admit that the advertisements for Dermalin-APg, Cutting Gel, and Tummy Flattening Gel referenced in the Complaint contain caveats (the "Caveats") representing that exercise or a decrease in caloric intake is essential in order to achieve any reduction in fat.
2. Admit that the Caveats would be material to a reasonable purchaser of Dermalin-APg, Cutting Gel, and Tummy Flattening Gel.
3. Admit that, taken as a whole, and considering the Caveats, the advertisements for Dermalin-APg, Cutting Gel, and Tummy Flattening Gel referenced in the Complaint do not claim that these products by themselves cause rapid and visibly obvious fat loss to the areas of the body to which they are applied.
4. Admit that, Dr. Greenway, Dr. Bray, and Dr. Heber all are "professionals in the relevant area" of weight loss and fat reduction using topical aminophylline compounds.
5. Admit that Dennis Gay could reasonably rely on representations made in the GREENWAY/BRAY/HEBER PUBLISHED STUDIES.

6. Admit that the GREENWAY/BRAY/HEBER PUBLISHED STUDIES provide a reasonable basis to substantiate a representation that when aminophylline is applied in the manner described in the GREENWAY/BRAY/HEBER PUBLISHED STUDIES, it causes a rapid fat, and visibly obvious loss in women's thighs.

7. Admit that the Topical Fat Reduction Study involved a series of clinical trials using one thigh as a double-blind control.

8. Admit that the five subjects treated with aminophylline in the third clinical trial in the Topical Fat Reduction Study all lost weight and lost on average 1.5 centimeters more girth on the treated thigh than on the control thigh.

9. Admit that the average loss of girth in the third clinical trial in the Topical Fat Reduction Study would be visible to the naked eye.

10. Admit that the fourth clinical trial in the Topical Fat Reduction Study was double blinded, counter balanced, and a clinical study.

11. Admit the subjects in the fourth clinical trial in the Topical Fat Reduction Study lost more girth in the thigh treated with aminophylline than the control thigh.

12. Admit that the average loss of girth in the fourth clinical trial in the Topical Fat Reduction Study would be visible to the naked eye.

13. Admit that the weight of the subjects in the fourth clinical trial in the Topical Fat Reduction Study declined by an average of 3.3 kilograms.

14. Admit that the fifth clinical trial in the Topical Fat Reduction Study tested the efficacy of a 2% concentration of aminophylline.

15. Admit that the subjects in the fifth clinical trial in the Topical Fat Reduction Study were placed on no specific diet.

16. Admit that the fifth clinical trial in the Topical Fat Reduction Study was double blinded and conducted in a counter-balanced fashion.

17. Admit that 10 of the 11 subjects who completed the fifth clinical trial in the Topical Fat Reduction Study lost more girth on the thigh treated with aminophylline than on the controlled thigh.

18. Admit that the average loss of girth reported in the fifth clinical trial in the Topical Fat Reduction Study would be visible to the naked eye.

19. Admit that the fifth clinical trial in the Topical Fat Reduction Study was a “clinical study” or “clinical trial.”

20. Admit that the subjects in the sixth clinical trial in the Topical Fat Reduction Study were treated with 0.5% aminophylline.

21. Admit that the sixth clinical trial in the Topical Fat Reduction Study included six women who had one thigh treated with aminophylline and the other thigh treated with a control in a double-blind fashion.

22. Admit that the Topical Fat Reduction Study represents that the sixth clinical trial was a “clinical trial.”

23. Admit that in the sixth clinical trial in the Topical Fat Reduction Study all 12 subjects lost more girth on the treated thigh than on the control thigh at the end of the five week study.

24. Admit that the average loss of girth reported in the sixth clinical trial in the Topical Fat Reduction Study would be visible to the naked eye.

25. Admit that, in the concluding statement in the Topical Fat Reduction study, the authors reported “now there is an effective method to achieve local fat reduction topically.”
26. Admit that the authors of the Regional Fat Loss Study were medical doctors.
27. Admit that all the trials in the Regional Fat Loss Study involved women subjects who were more than 20% above their desirable body weight.
28. Admit that all the trials in the Regional Fat Loss Study employed a double-blind design.
29. Admit that all the trials in the Regional Fat Loss Study were clinical trials.
30. Admit that in one of the trials in the Regional Fat Loss Study, aminopylline was applied to human subjects.
31. Admit that the Regional Fat Loss Study represented that all subjects who completed four weeks of treatment with aminophylline lost weight.
32. Admit that the Regional Fat Loss Study represented that all five subjects who completed the four weeks of treatment with aminophylline lost a mean of 1.5 centimeters more girth in a thigh treated with aminophylline as compared to the subject’s control thigh.
33. Admit that the Regional Fat Loss Study concluded that all the clinical studies described therein, including the study involving aminophylline, demonstrate that local fat can be reduced with topical treatments both safely and effectively.
34. Admit that the the Regional Fat Loss Study represented that thigh fat is more difficult to mobilize than abdominal fat.
35. Admit that the First Fiber Study was an eight-week, double-blind clinical study.

36. Admit that the First Fiber Study's objective was to determine the effect of gluconomman as a weight reduction aid in obese patients.
37. Admit that the First Fiber Study involved 20 obese subjects.
38. Admit that the subjects in the First Fiber Study lost an average of 5.5 lbs. at the end of eight weeks.
39. Admit that the Second Fiber Study was a clinical study involving children.
40. Admit that the Second Fiber Study reported that the 23 children who had regularly taken the *P. Rivieri* capsules showed a drop in "excess body weight" from 51% to 41%.
41. Admit that the Ephedrine Study was a double-blind clinical study.
42. Admit that the subjects in the Ephedrine Study lost an average of 8.3 kilograms.
43. Admit that one subgroup of subjects in the Ephedrine Study, consisting of significantly obese subjects, lost an average of 9 kilograms.
44. Admit that in the context of substantiation claims in cases involving nutraceutical weight loss products, the FTC has not published or otherwise publicly identified any specific, objective threshold level of science against which the reasonableness of one's reliance may be measured.
45. With respect to the repeated assertions by the FTC in the instant Complaint that Respondents "did not possess and rely upon a reasonable basis that substantiated the representations," admit that the FTC has not published or otherwise publicly identified any guidelines or standards that describe, define or even discuss the objective threshold science necessary for one's reliance to be "reasonable" in cases involving nutraceutical weight loss products.

46. Admit that the FTC has not adopted, published or otherwise publicly identified any objective standard to which a developer, manufacturer, marketer or seller contemplating substantiation claims in the context of nutraceutical weight loss products can look for guidance concerning the threshold level of science that must be satisfied in order for its reliance thereon to be “reasonable,” as that term is used by the FTC in its Complaint in this case.

47. Admit that there exists no objective FTC standard to which a developer, manufacturer, marketer or seller contemplating substantiation claims in the context of nutraceutical weight loss products can look for guidance concerning the threshold level of science that must be satisfied in order for its reliance thereon to be “reasonable,” as that term is used by the FTC in its Complaint in this case.

48. Admit that there exists no objective FTC standard against which a judge and/or jury may measure whether a developer, manufacturer, marketer or seller that has made substantiation claims in the context of nutraceutical weight loss products satisfied the threshold level of science necessary for its reliance thereon to be “reasonable,” as that term is used by the FTC in its Complaint in this case.

49. Admit that the amount of substantiation for the Advertisements equals or exceeds the amount of substantiation deemed adequate in the Garvey case.

50. Admit that Garvey relied partly upon booklets (“Booklets”) produced by the manufacturer of “Fat Trapper” and “Exercise in A Bottle” to substantiate the representations he made in the advertisements that were the subject of the Garvey case.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was provided to the following parties on the 29th day of October, 2004 as follows:

(1) One (1) copy via e-mail to Commission Complaint Counsel, Laureen Kapin, Joshua S. Millard, and Laura Schneider, all care of lkapin@ftc.gov, jmillard@ftc.gov, richardson@ftc.gov, and lschneider@ftc.gov with one (1) paper courtesy copy via U.S. Postal Service to Laureen Kapin, Bureau of Consumer Protection, Federal Trade Commission, Suite NJ-2122, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580;

(2) One (1) copy via United States Postal Service to Stephen Nagin, Esq. Nagin Gallop & Figueredo, 3225 Aviation Avenue, Suite 301, Miami, Florida 33131.

(3) One (1) copy via United States Postal Service to Ronald F. Price, Peters Scofield Price, 310 Broadway Centre, 111 East Broadway, Salt Lake City, UT 84111, counsel for Dr. Mowrey.

(4) One (1) copy via United States Postal Service to Jeffrey D. Feldman FELDMANGALE, P.A., Miami Center – 19th Floor 201 S. Biscayne Blvd., Miami, Florida 33131, Counsel for Respondents, A.G. Waterhouse, L.L.C., Klein-Becker, L.L.C. Nutrasport, L.L.C., Sovage, Dermalogic Laboratories, L.L.C., and BAN, L.L.C.

One (1) copy via United States Postal Service to Mitchell K. Friedlander, 5742 West Harold Gatty Drive, Salt Lake City, Utah 84111, *pro se*

\s/

Kathy Wisner

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

In the Matter of

BASIC RESEARCH, L.L.C.,
A.G. WATERHOUSE, L.L.C.,
KLEIN-BECKER USA, L.L.C.,
NUTRASPORT, L.L.C.,
SOVAGE DERMALOGIC LABORATORIES, L.L.C.,
 d/b/a BASIC RESEARCH, L.L.C.,
 OLD BASIC RESEARCH, L.L.C.,
 BASIC RESEARCH, A.G. WATERHOUSE,
BAN, L.L.C.,
 d/b/a 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

RESPONDENT DANIEL B. MOWREY'S FIRST REQUEST FOR ADMISSIONS

Respondent Daniel B. Mowrey, through his undersigned counsel and pursuant to 16 CFR §3.32 hereby requests that the Federal Trade Commission admit the following within fifteen (15) days of service hereof.

DEFINITIONS

Notwithstanding any definition below, each word, term, or phrase used in these Interrogatories is intended to have the broadest meaning permitted under the Federal Trade Commission's Rule of Practice.

1. "FTC," "you," and "your" shall mean the Federal Trade Commission, its

employees, agents, attorneys, consultants, representatives, officers, and all other persons acting or purporting to act on its behalf.

2. "Complaint" shall mean the administrative complaint issued by the Federal Trade Commission and any amendments to that Complaint, in the above-captioned matter.

3. "Respondents" shall mean all Respondents, unless otherwise stated.

4. "Dr. Mowrey" shall mean Respondent Daniel B. Mowrey.

5. "Corporate Respondents" shall mean the following Respondents: Basic Research, LLC, A.G. Waterhouse, LLC, Klein-Becker, usa, LLC, Nutrasport, LLC, Söväge Dermalogic Laboratories, LLC and BAN, LLC, both individually and collectively as defined in the Complaint, including all of their operations under any trade names.

6. "Advertising Guide" means the FTC's publication titled "Dietary Supplements: An Advertising Guide for the Industry."

7. The phrase "expertise of professionals in the relevant area" refers to the phrase "expertise of professionals in the relevant area" which appears on page 9 of the FTC's Advertising Guide.

INSTRUCTIONS

The Requests for Admissions, as separately set forth below, shall be admitted unless, within fifteen (15) days after service, a sworn written answer or objection addressed to the Requests is served upon Dr. Mowrey and filed with the Secretary. Answers shall specifically deny the Request or set forth in detail the reasons why the Request cannot truthfully be admitted or denied. A denial shall fairly meet the substance of the Request, and when good faith requires that a party qualify its answer or deny only a part of the Request, so much of it as is true shall be specified, and the remainder shall be qualified or denied. Lack of information or knowledge

shall not be given as a reason for failure to admit or deny unless a reasonable inquiry that the information known to or readily obtainable is insufficient to enable an admission or denial. If it is believed that a Request presents a genuine issue for trial, the Request may not, on that ground alone, be objected to; the Request may either be denied, or the reasons why the Request cannot be admitted or denied set forth.

REQUESTS FOR ADMISSIONS

1. Admit that, with respect to the phrase "expertise of professionals in the relevant area" which appears in the Advertising Guide, and as that phrase is applied to cases involving nutraceutical weight loss products, the FTC has not established any specific threshold level of expertise, credentials, experience or background a person must possess in order to be qualified as a "professional in the relevant area."

2. Admit that, with respect to the phrase "expertise of professionals in the relevant area" which appears in the Advertising Guide, and as that phrase is applied to cases involving nutraceutical weight loss products, the FTC has not published or otherwise publicly identified any specific threshold level of expertise, credentials, experience or background a person must possess in order to be qualified as a "professional in the relevant area."

3. Admit that, with respect to the phrase "expertise of professionals in the relevant area" which appears in the Advertising Guide, and as that phrase is applied to cases involving nutraceutical weight loss products, the FTC has not published any specific guidelines which describe, identify or set forth the level of expertise, credentials, experience or background a person must possess in order to be qualified as a "professional in the relevant area."

4. Admit that, with respect to the phrase "expertise of professionals in the relevant

area” which appears in the Advertising Guide, and as that phrase is applied to this case, the FTC has not established any specific threshold level of expertise, credentials, experience or background a person must possess in order to be qualified as a “professional in the relevant area.”

5. Admit that, with respect to the phrase “expertise of professionals in the relevant area” which appears in the Advertising Guide, and as that phrase is applied to this case, the FTC has not published or otherwise publicly identified any specific threshold level of expertise, credentials, experience or background a person must possess in order to be qualified as a “professional in the relevant area.”

6. Admit that, with respect to the phrase “expertise of professionals in the relevant area” which appears in the Advertising Guide, and as that phrase is applied to this case, the FTC has not published any specific guidelines which describe, identify or set forth the level of expertise, credentials, experience or background a person must possess in order to be qualified as a “professional in the relevant area.”

7. Admit that, with respect to the phrase “expertise of professionals in the relevant area” which appears in the Advertising Guide, and as that phrase is applied to this case, Dr. Mowrey is a “professional in the relevant area.”

8. Admit that Dr. Mowrey is qualified to determine whether a scientific study is competent and reliable scientific evidence.

9. Admit that the FTC has not defined the phrase “expertise of professionals in the relevant area,” as that phrase is applied to cases involving nutraceutical weight loss products, as requiring that a person possess any specific level of expertise, credentials, experience or

background in order to be qualified as a “professional in the relevant area.”

10. Admit that the FTC has not defined the phrase “expertise of professionals in the relevant area,” as that phrase is applied to this case, as requiring that a person possess any specific level of expertise, credentials, experience or background in order to be qualified as a “professional in the relevant area.”

11. Admit that the FTC must defer to the opinions of “professionals in the relevant area” in order for the FTC to determine whether a scientific study constitutes competent and reliable scientific evidence upon which a company can base product efficacy claims.

12. Admit that a person who is not a medical doctor can be a “professional in the relevant area,” as that phrase is used in the FTC’s Advertising Guide, for purposes of determining whether a scientific study is competent and reliable scientific evidence.

13. Admit that a person who holds a Ph.D. in psychology can be a “professional in the relevant area,” as that phrase is used in the FTC’s Advertising Guide, for purposes of determining whether a scientific study is competent and reliable scientific evidence.

14. Admit that Dr. Mowrey did not disseminate any of the advertisements referenced in the Complaint.

15. Admit that Dr. Mowrey did not cause of the advertisements referenced in the Complaint to be disseminated.

16. Admit that Dr. Mowrey did not control any of the Corporate Respondents at the time the advertisements referenced in the Complaint were disseminated.

17. Admit that Dr. Mowrey did not have the authority to control any of the Corporate Respondents at the time the advertisements referenced in the Complaint were disseminated.

18. Admit that a scientific study can constitute competent and reliable scientific evidence even if the study contains errors or mistakes, or is otherwise not a "perfect" study.

19. Admit that the FTC has not published or otherwise disseminated any specific guidelines and/or rules as to how many persons must participate in a scientific study in order for the study to constitute competent and reliable scientific evidence upon which a company can base product efficacy claims for a nutraceutical weight loss product.

20. Admit that a scientific study which has 6 subjects can constitute competent and reliable scientific evidence upon which a company can base product efficacy claims for a nutraceutical weight loss product.

21. Admit that a scientific study which has 10 subjects can constitute competent and reliable scientific evidence upon which a company can base product efficacy claims for a nutraceutical weight loss product.

22. Admit that a scientific study which has 16 subjects can constitute competent and reliable scientific evidence upon which a company can base product efficacy claims for a nutraceutical weight loss product.

23. Admit that a scientific study which has 18 subjects can constitute competent and reliable scientific evidence upon which a company can base product efficacy claims for a nutraceutical weight loss product.

24. Admit that a scientific study which has 20 subjects can constitute competent and reliable scientific evidence upon which a company can base product efficacy claims for a nutraceutical weight loss product.

25. Admit that a scientific study which has 24 subjects can constitute competent and

reliable scientific evidence upon which a company can base product efficacy claims for a nutraceutical weight loss product.

26. Admit that a scientific study which has 30 subjects can constitute competent and reliable scientific evidence upon which a company can base product efficacy claims for a nutraceutical weight loss product.

27. Admit that a scientific study which has 53 subjects can constitute competent and reliable scientific evidence upon which a company can base product efficacy claims for a nutraceutical weight loss product.

28. Admit that a scientific study which has 76 subjects can constitute competent and reliable scientific evidence upon which a company can base product efficacy claims for a nutraceutical weight loss product.

29. Admit that a scientific study which has 103 subjects can constitute competent and reliable scientific evidence upon which a company can base product efficacy claims for a nutraceutical weight loss product.

30. Admit that the FTC has not published or otherwise disseminated any specific guidelines and/or rules as to over what length of time a scientific study must be conducted in order for the study to constitute competent and reliable scientific evidence upon which a company can base product efficacy claims for a nutraceutical weight loss product.

31. Admit that a scientific study conducted over a period of 6 weeks can constitute competent and reliable scientific evidence upon which a company can base product efficacy claims for a nutraceutical weight loss product.

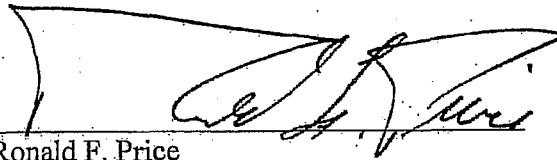
32. Admit that a scientific study conducted over a period of 8 weeks can constitute

competent and reliable scientific evidence upon which a company can base product efficacy claims for a nutraceutical weight loss product.

33. Admit that a scientific study conducted over a period of 12 weeks can constitute competent and reliable scientific evidence upon which a company can base product efficacy claims for a nutraceutical weight loss product.

34. Admit that a scientific study conducted over a period of 6 months can constitute competent and reliable scientific evidence upon which a company can base product efficacy claims for a nutraceutical weight loss product.

Dated 6 October 2004.



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
E-mail: rfp@psplawyers.com

Counsel for Respondent Daniel B. Mowrey

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided to the following parties this 6th day of October, 2004 as follows:

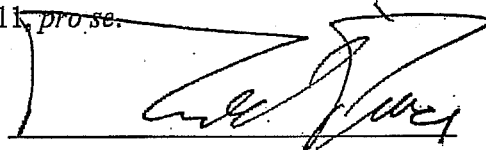
(1) One (1) copy via e-mail attachment in Adobe® “.pdf” format to Commission Complaint Counsel, Lauren Kapin, Joshua S. Millard, and Laura Schneider, all care of lkapin@ftc.gov, jmillard@ftc.gov; rrichardson@ftc.gov; lschneider@ftc.gov with one (1) paper courtesy copy via U. S. Postal Service to Lauren Kapin, Bureau of Consumer Protection, Federal Trade Commission, Suite NJ-2122, 600 Pennsylvania Avenue, N.W., Washington, D.C., 20580;

(2) One (1) copy via United States Postal Service to Stephen Nagin, Esq., Nagin Gallop & Figueredo, 3225 Aviation Avenue, Suite 301, Miami, Florida 33131.

(3) One (1) copy via United States Postal Service to Richard Burbidge, Esq., Jefferson W. Gross, Esq. and Andrew J. Dymek, Esq., Burbidge & Mitchell, 215 South State Street, Suite 920, Salt Lake City, Utah 84111, Counsel for Dennis Gay.

(4) One (1) copy via United States Postal Service to Jeffrey D. Feldman FELDMANGALE, P.A. Miami Center - 19th Floor 201 S. Biscayne Boulevard, Miami, FL 33131, Counsel for Respondents A. G. Waterhouse, L.L. C., Klein-Becker, L.L. C., Nutrasport, L.L. C., Sovage, Dermalogic Laboratories, L.L. C., and BAN, L.L. C.

(5) One (1) copy via United States Postal Service to Mitchell K. Friedlander, 5742 West Harold Gatty Drive, Salt Lake City, Utah 84111, *pro se.*



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

In the Matter of

BASIC RESEARCH, L.L.C.,
A.G. WATERHOUSE, L.L.C.,
KLEIN-BECKER USA, L.L.C.,
NUTRASPORT, L.L.C.,
SOVAGE DERMALOGIC LABORATORIES, L.L.C.,
d/b/a BASIC RESEARCH, L.L.C.,
OLD BASIC RESEARCH, L.L.C.,
BASIC RESEARCH, A.G. WATERHOUSE,
BAN, L.L.C.,
d/b/a 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

DOCKET NO. 9318

Respondents.

BASIC RESEARCH, LLC'S FIRST REQUEST FOR ADMISSIONS

Respondent, Basic Research, LLC, by and through its undersigned counsel and pursuant to 16 CFR §3.32 hereby requests that the Federal Trade Commission admit the following within fifteen (15) days of service hereof.

DEFINITIONS

1. "Commission" or "FTC" shall mean the Federal Trade Commission, its employees, agents, attorneys, consultants, representatives, officers, and all other persons acting or purporting to act on its behalf.

2. "Staff Counsel" shall mean any attorney(s) employed by the Federal Trade Commission, excluding the Commissioners, including without limitation Complaint Counsel in the above-captioned matter.

3. "Complaint" shall mean the administrative complaint issued by the Federal Trade Commission and any amendments to that Complaint, in the above-captioned matter.

4. "Challenged Products" shall mean each product referred to in the Complaint, including: Dermalin-APg, Cutting Gel, Tummy Flattening Gel, Leptroprin, Anorex, and PediaLean, both individually and collectively.

5. "Challenged Advertisements" shall mean the advertising, both individually and collectively, for the Challenged Products referred to in the Complaint.

6. "Challenged Claims" shall mean the claims, both express and implied, appearing in the Challenged Advertisements and referred to in the Complaint.

7. "Respondent(s)" shall mean" all Corporate Respondents and all Individual Respondents, both individually and collectively, unless otherwise stated.

8. "Corporate Respondents" shall mean the following Respondents: Basic Research, LLC, A.G. Waterhouse, LLC, Klein-Becker, usa, LLC, Nutrasport, LLC, Söväge Dermalogic Laboratories, LLC and BAN, LLC, both individually and collectively as defined in the Complaint, including all of their operations under any trade names.

9. "Individual Respondents" shall mean: Respondents Dennis Gay, Daniel B. Mowrey, and Mitchell K. Friedlander, both individually and collectively, unless otherwise stated.

10. "Efficacy" shall mean the ability of the product to achieve the results for which it is advertised.

11. "Safety" shall mean the ability of the product to be used without risk or adverse health consequences for the user.

12. "Operating Manual" means the Federal Trade Commission Operating Manual.

INSTRUCTIONS

The Requests for Admissions, as separately set forth below, shall be admitted unless, within fifteen (15) days after service, a sworn written answer or objection addressed to the Requests is served upon Basic Research, LLC and filed with the Secretary. Answers shall specifically deny the Request or set forth in detail the reasons why the Request cannot truthfully be admitted or denied. A denial shall fairly meet the substance of the Request, and when good faith requires that a party qualify its answer or deny only a part of the Request, so much of it as is true shall be specified, and the remainder shall be qualified or denied. Lack of information or knowledge shall not be given as a reason for failure to admit or deny unless a reasonable inquiry that the information known to or readily obtainable is insufficient to enable an admission or denial. If it is believed that a Request presents a genuine issue for trial, the Request may not, on that ground alone, be objected to; the Request may either be denied, or the reasons why the Request cannot be admitted or denied set forth.

REQUESTS FOR ADMISSIONS

1. Admit that the Federal Trade Commission has not conducted any studies regarding the Efficacy of the Challenged Products.

2. Admit that the Federal Trade Commission has not conducted consumer surveys or other research relating to how reasonable consumers would interpret or understand the Challenged Advertisements.

3. Admit that the Federal Trade Commission has not conducted consumer surveys or other research relating to what types of substantiation reasonable consumers would expect the Respondents to possess in order to have a reasonable basis for the Challenged Claims in the Challenged Advertisements.

4. Admit that at the time the Complaint was filed, the Federal Trade Commission had no expert opinion as to what express and/or implied claims were made in the Challenged Advertisements.

5. Admit that at the time the Complaint was filed, the Federal Trade Commission had no expert opinion that Respondents lacked a "reasonable basis" for the Challenged Advertisements.

6. Admit that at the time the Complaint was filed, the Federal Trade Commission had no expert opinion to support the allegations in paragraphs 24, 26, 32, and 41 of the Complaint.

7. Admit that the interpretation of Challenged Advertisements used to support the filing of the Complaint was performed by Staff Counsel for the Federal Trade Commission.

8. Admit that the term "Rapid" can mean different things to different reasonable consumers.

9. Admit that the term "Substantial" can mean different things to different reasonable consumers.

10. Admit that at the time the Challenged Advertisements were published, the Federal Trade Commission had no pre-screening protocol for the approval of the Challenged Advertisements.

11. Admit that at the time the Challenged Advertisements were published, the Federal Trade Commission had no pre-screening protocol for determining the adequacy of the substantiation supporting the claims made in the Challenged Advertisements.

12. Admit that the Federal Trade Commission will not give advertisers definitive answers on the adequacy of their claim substantiation before advertisements are disseminated.

13. Admit that 16 C.F.R. §1.1 does not provide a pre-screening protocol for advertisers to receive approval of their advertising.

14. Admit that advice provided by the Federal Trade Commission under 16 C.F.R. §1.1 is not binding on the Federal Trade Commission.

15. Admit that the Federal Trade Commission is under no obligation to issue warning letters if it changes its position regarding advice previously provided under 16 C.F.R. §1.1.

16. Admit that in 2000, the Federal Trade Commission received a petition to adopt a rule for the pre-screening of dietary supplement advertisements.

17. Admit that in 2000, the Federal Trade Commission denied a petition to adopt a rule for the pre-screening of dietary supplement advertisements.

18. Admit that in 2000, the Federal Trade Commission denied a petition to adopt a rule for pre-screening of dietary supplement advertisements because it was impracticable.

19. Admit that the Federal Trade Commission, at one time, had a pre-screening protocol for approving advertisements prior to dissemination.

20. Admit that the Federal Trade Commission abolished its pre-screening protocol for approving advertisements prior to dissemination.

21. Admit that the Federal Trade Commission would pre-screen Respondents' advertisements in the event that a cease and desist order is issued against them.

22. Admit that the Federal Trade Commission defines, in each case, the substantiation needed to constitute a reasonable basis for the Challenged Advertising.

23. Admit that in the case of specific establishment claims, the only substantiation required of the advertiser is the substantiation specifically referenced by the advertiser in the advertisement.

24. Admit that what constitutes a "reasonable basis" changes from case to case.

25. Admit that the Federal Trade Commission coordinated the filing of the Complaint with the Congressional hearings held on June 16, 2004 before the Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, United States House of Representatives ("the Hearings").

26. Admit that the Federal Trade Commission was asked by Congressional representatives to delay filing of the Complaint until the commencement of the Hearings.

27. Admit that J. Howard Beales III is not a medical doctor.

28. Admit that at the Hearings J. Howard Beales III was addressed as "Dr. Beales."

29. Admit that at the Hearings, when addressed as "Dr. Beales," Dr. Beales did not correct any member of Congress that he was not a medical doctor.

30. Admit that Dr. Wexler is not a medical doctor.

31. Admit that the Federal Trade Commission deems Dr. Wexler to be an expert on child obesity.

32. Admit that at the Hearings Dr. Wexler was addressed as "Dr. Wexler."

33. Admit that at the Hearings, when addressed as "Dr. Wexler," Dr. Wexler did not correct any member of Congress that he was not a medical doctor.

34. Admit that there is no Federal Trade Commission rule that prohibits a Ph.D. from being referred to as a "doctor."

35. Admit that the conclusion that Respondents did not possess or rely upon a reasonable basis that substantiated the accused advertising is premised upon the Respondents not having a specific type and amount of substantiation for its claims.

36. Admit that the Federal Trade Commission's authority is limited to determining whether the representations made in the Challenged Advertisements are in accord with the level of substantiation Respondents possessed.

37. Admit that it is the Federal Trade Commission's position that "competent and reliable scientific evidence" can mean different types and amounts of evidence in different cases.

38. Admit that the Federal Trade Commission has not defined "competent and reliable scientific evidence" to require any specific kinds, types or amounts of scientific studies.

39. Admit that the Federal Trade Commission has not defined "competent and reliable scientific evidence" to require any specific testing or research protocol or controls.

40. Admit that the Federal Trade Commission's position is that the state of the science renders all the representations made in the Challenged Advertisements unsupported.

41. Admit that it is the Federal Trade Commission's position that claims about the Safety and Efficacy of dietary supplements must be substantiated by competent and reliable scientific evidence.

42. Admit that it is the Federal Trade Commission's position that Respondents needed competent and reliable scientific evidence to substantiate the representations made in the Challenged Advertisements.

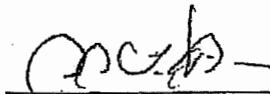
43. Admit that the FTC Commissioners have no formal training or expertise in advertising interpretation.

44. Admit that the FTC Commissioners are not given any formal training in advertising interpretation prior to being commissioned.

45. Admit that the FTC Commissioners have no formal training or expertise in the interpretation of science and/or medical studies.

46. Admit that the FTC Commissioners are not given any formal training in the interpretations of science and/or medical studies prior to being commissioned.

47. Admit that the attorneys for the Federal Trade Commission are bound to follow the procedures specifically discussed in the FTC Operating Manual.



Jeffrey D. Feldman
Gregory L. Hillyer
Chris Demetriades
FELDMANGALE, P.A.
Miami Center - 19th Floor
201 South Biscayne Blvd.
Miami, Florida 33131
Telephone: (305) 358-5001
Facsimile: (305) 358-3309

**Counsel for Respondents Basic Research, L.L.C.,
A.G. Waterhouse, L.L.C., Klein-Becker USA,
L.L.C., Nutrasport, L.L.C., Sovage Dermalogic
Laboratories, L.L.C. and Ban, L.L.C**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was provided to the following parties this 9th day of September, 2004 as follows:

(1) One (1) copy via e-mail attachment in Adobe® “.pdf” format to Commission Complaint Counsel, Laureen Kapin, Joshua S. Millard, and Laura Schneider, all care of lkapin@ftc.gov, jmillard@ftc.gov; r-richardson@ftc.gov; lschneider@ftc.gov with one (1) paper courtesy copy via U. S. Postal Service to Laureen Kapin, Bureau of Consumer Protection, Federal Trade Commission, Suite NJ-2122, 600 Pennsylvania Avenue, N.W., Washington, D.C., 20580;

(2) One (1) copy via United States Postal Service to Stephen Nagin, Esq., Nagin Gallop & Figueredo, 3225 Aviation Avenue, Suite 301, Miami, Florida 33131.

(3) One (1) copy via United States Postal Service to Richard Burbidge, Esq., Jefferson W. Gross, Esq. and Andrew J. Dymek, Esq., Burbidge & Mitchell, 215 South State Street, Suite 920, Salt Lake City, Utah 84111, Counsel for Dennis Gay.

(4) One (1) copy via United States Postal Service to Ronald F. Price, Esq., Peters Scofield Price, A Professional Corporation, 340 Broadway Centre, 111 East Broadway, Salt Lake City, Utah 84111, Counsel for Daniel B. Mowrey.

(5) One (1) copy via United States Postal Service to Mitchell K. Friedlander, 5742 West Harold Gatty Drive, Salt Lake City, Utah 84111, *pro se*.

A handwritten signature in black ink, appearing to be "M. Friedlander", is written over a horizontal line.

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

In the Matter of

BASIC RESEARCH, L.L.C.,
A.G. WATERHOUSE, L.L.C.,
KLEIN-BECKER USA, L.L.C.,
NUTRASPORT, L.L.C.,
SOVAGE DERMALOGIC LABORATORIES, L.L.C.,
 d/b/a BASIC RESEARCH, L.L.C.,
 OLD BASIC RESEARCH, L.L.C.,
 BASIC RESEARCH, A.G. WATERHOUSE,
BAN, L.L.C.,
 d/b/a 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

DOCKET NO. 9318

Respondents.

PRO SE RESPONDENT FRIEDLANDER'S FIRST REQUEST FOR ADMISSIONS

Respondent, Friedlander pursuant to 16 CFR §3.32, hereby requests that the Federal Trade Commission admit the following within fifteen (15) days of service hereof.

DEFINITIONS

1. "Commission" or "FTC" shall mean the Federal Trade Commission, its employees, agents, attorneys, consultants, representatives, officers, and all other persons acting or purporting to act on its behalf.

2. "Staff Counsel" shall mean any attorney(s) employed by the Federal Trade Commission, excluding the Commissioners, including without limitation Complaint Counsel in the above-captioned matter.

3. "Complaint" shall mean the administrative complaint issued by the Federal Trade Commission and any amendments to that Complaint, in the above-captioned matter.
4. "Challenged Products" shall mean each product referred to in the Complaint, including: Dermalin-APg, Cutting Gel, Tummy Flattening Gel, Leptroprin, Anorex, and PediaLean, both individually and collectively.
5. "Challenged Advertisements" shall mean the advertising, both individually and collectively, for the Challenged Products referred to in the Complaint.
6. "Challenged Claims" shall mean the claims, both express and implied, appearing in the Challenged Advertisements and referred to in the Complaint.
7. "Respondent(s)" shall mean" all Corporate Respondents and all Individual Respondents, both individually and collectively, unless otherwise stated.
8. "Corporate Respondents" shall mean the following Respondents: Basic Research, LLC, A.G. Waterhouse, LLC, Klein-Becker, usa, LLC, Nutrasport, LLC, Söavage Dermalogic Laboratories, LLC and BAN, LLC, both individually and collectively as defined in the Complaint, including all of their operations under any trade names.
9. "Individual Respondents" shall mean: Respondents Dennis Gay, Daniel B. Mowrey, and Mitchell K. Friedlander, both individually and collectively, unless otherwise stated.
10. "Efficacy" shall mean the ability of the product to achieve the results for which it is advertised.
11. "Safety" shall mean the ability of the product to be used without risk or adverse health consequences for the user.
12. "Operating Manual" means the Federal Trade Commission Operating Manual.

13. "Substantiation" shall mean all studies, reports, data, tests, statistics and other materials that demonstrate the efficacy of the Challenged Products.

14. "Commissioners" shall mean Federal Trade Commissioners.

15. "PubMed" shall mean Pub Med Central and more specifically the web site <http://www.pubmedcentral.nih.gov/> which is the US National Library of Medicine's free digital archive of biomedical and life sciences journal literature.

INSTRUCTIONS

1. The Requests for Admissions, as separately set forth below, shall be admitted unless, within fifteen (15) days after service, a sworn written answer or objection addressed to the Requests is served upon Respondent Friedlander and filed with the Secretary.
2. Answers shall specifically deny the Request or set forth in detail the reasons why the Request cannot truthfully be admitted or denied.
3. A denial shall fairly meet the substance of the Request, and when good faith requires that a party qualifies its answer or deny only a part of the Request, so much of it as is true shall be specified, and the remainder shall be qualified or denied.
4. Lack of information or knowledge shall not be given as a reason for failure to admit or deny unless a reasonable inquiry that the information known to or readily obtainable is insufficient to enable an admission or denial.
5. If it is believed that a Request presents a genuine issue for trial, the Request may not, on that ground alone, be objected to; the Request may either be denied, or the reasons why the Request cannot be admitted or denied set forth.

6. Unless otherwise specified, the time period covered by these requests shall not be limited. Comprehensive responses to all requests— regardless of dates or time periods involved – must be provided.
7. Each request shall operate and be construed independently.
Unless otherwise indicated, no paragraph limits the scope of any other paragraph.

REQUESTS FOR ADMISSIONS

1. Admit that the Federal Trade Commission will not give advertisers such as Respondent Friedlander definitive answers on the adequacy of their claim substantiation before advertisements are disseminated.
2. Admit that the Federal Trade Commission utilizes no identifiable standard in determining that the Challenged Advertisements Respondent Friedlander is allegedly responsible for lacked adequate substantiation.
3. Admit that 16 C.F.R. §1.1 does not provide a pre-screening protocol for advertisers such as Respondent Friedlander to receive approval of their advertising.
4. Admit that FTC staff in conjunction with its consulting and testifying experts determine whether a scientific study constitutes reliable and scientific evidence upon which a company can base product efficacy claims.
5. Admit that FTC staff in conjunction with its consulting and testifying experts determine whether a scientific study constitutes reliable and scientific evidence upon which a company can base product efficacy claims is decided on a case-by-case basis.
6. Admit that determining advertising substantiation requirements on a case-by-case basis means that there is no set standard upon which an advertiser can rely upon with certainty.
7. Admit that Respondent Friedlander is not engaged in commerce among the several

States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation in regards to any of the challenged products.

8. In regards to the Complaint, including paragraph 9, admit the Federal Trade Commission believes Respondent Friedlander developed products for the limited liability corporations.

9. In regards to the Complaint, including paragraph 9, admit that the Federal Trade Commission has not alleged that Respondent Friedlander developed any of the challenged products for the limited liability corporations.

10. In regards to the Complaint, including paragraph 9, admit that the Federal Trade Commission has alleged that the limited liability corporations marketed products developed by Respondent Friedlander.

11. In regards to the Complaint, including paragraph 9, admit that the Federal Trade Commission has not alleged that Respondent Friedlander actually marketed any of the challenged products.

12. Admit that it is the Federal Trade Commission's position that claims about the Safety and Efficacy of dietary supplements must be substantiated by "competent and reliable scientific evidence".

13. Admit that the Federal Trade Commission defines, in each case, the substantiation needed to constitute a reasonable basis for the any challenged advertising.

14. Admit that there is no objective standard delineating what the Federal Trade Commission considers "competent and reliable scientific evidence" under the Federal Trade

Commission Act.

15. Admit that the Federal Trade Commission has not delineated what type and amount of scientific evidence qualifies as “competent and reliable scientific evidence” under the Federal Trade Commission Act.

16. Admit that the Federal Trade Commission has not published an update to its Policy Statement on Deception subsequent to October 13, 1983.

17. Admit that the Federal Trade Commission’s position is that the state of the science renders all the representations made in the Challenged Advertisements unsupported.

18. In the instant case, admit that the FTC must defer to the opinions of “professionals in the relevant area” in order to determine whether a scientific study constitutes competent and reliable scientific evidence upon which Respondents can base the Challenged Claims.

19. Admit that what constitutes competent and reliable scientific evidence differs at various phases of FTC prosecutorial proceedings.

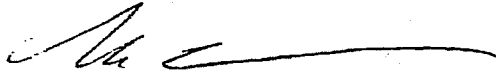
20. Admit that peer reviewed studies available on the PubMed database are generally accepted by the scientific community.

21. Admit that within the weight loss discipline, the PubMed database is an avenue for retrieval of competent information.

22. Admit that although FTC staff in conjunction with its consulting and testifying experts determines whether a scientific study constitutes competent and reliable scientific evidence upon which advertisers can make claims and such determination can vary during different stages of the proceedings.

Dated:

Respectfully submitted,



Mitchell K. Friedlander
c/o Compliance Department
5742 West Harold Gatty Drive
Salt Lake City, Utah 84116
Telephone: (801) 414-1800
Facsimile: (801) 517-7108

Pro Se Respondent

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of November, 2004, I caused RESPONDENT FRIEDLANDER'S FIRST REQUEST FOR ADMISSIONS to be served and filed as follows:

One (1) electronic copy via email and one (1) paper copy by first class mail to the following persons:

- (1) Commission Complaint Counsel Laureen Kapin, Walter Gross, Joshua Millard and Laura Schneider and Robin Richardson all care of lkapin@ftc.gov, wgross@ftc.gov, jmillard@ftc.gov, lschneider@ftc.gov, richardson@ftc.gov, with the paper copy via U.S. Postal Service to Laureen Kapin, Bureau of Consumer Protection, Federal Trade Commission, Suite NJ-2122, 600 Pennsylvania Avenue, N.W., Washington D.C. 20580;
- (2) snagin@ngf-law.com, Stephen Nagin, Esq., Nagin Gallop & Figueredo, 3225 Aviation Avenue, Suite #301, Miami, Florida 33131-counsel for Respondents.
- (3) jfeldman@feldmangale.com; Jeffrey D. Feldman, FELDMAN GALE, P.A., Miami Center-19th Floor 201 S. Biscayne Boulevard, Miami, Florida, 33131-co-counsel For Corporate Respondents A.G. Waterhouse, LLC, Klein-Becker, LLC, Nutrasport, LLC, Sovage Dermalogic Laboratories, LLC and BAN, LLC.
- (4) rfp@psplawyers.com, Ronald F. Price, Peters Scofield Price, 310 Broadway Centre, 111 East Broadway, Salt Lake City, Utah 84111-counsel for individual Dr. Daniel Mowrey.
- (5) rburbidge@burbidgeandmitchell.com, Richard Burbidge, Burbidge & Mitchell, 215 South State Street, Suite #920, Salt Lake City, UT 84111-counsel for individual Dennis Gay.

Mitchell K. Friedlander
c/o Compliance Department
5742 West Harold Gatty Drive
Salt Lake City, Utah 84116
Telephone: (801) 414-1800
Facsimile: (801) 517-7108

Pro Se Respondent

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

In the Matter of

BASIC RESEARCH, L.L.C.,
A.G. WATERHOUSE, L.L.C.,
KLEIN-BECKER USA., L.L.C.,
NUTRASPORT, L.L.C.
SOVAGE DERMALOGIC LABORATORIES, L.L.C.,
 dba BASIC RESEARCH, L.L.C.,
 OLD BASIC RESEARCH, L.L.C.,
 BASIC RESEARCH, A.G. WATERHOUSE,
BAN, L.L.C.,
 dba KLEIN, BECKER, USA, NUTRA SPORT, and
 SOVAGE DERMALOGIC LABORATORIES,
DENNIS GAY,
DANIEL B. MOWREY,
 dba AMERICAN PHYTOTHERAPY RESEARCH
 LABORATORY, and
MITCHELL K. FRIEDLANDER,

Respondents.

DOCKET NO. 9318

RESPONDENT DENNIS GAY'S FIRST SET OF INTERROGATORIES

Respondent Dennis Gay, by and through his undersigned counsel and pursuant to 16 CFR §3.35, hereby propounds these Interrogatories, to which Complaint Counsel shall respond separately and fully, in writing and under oath, within thirty (30) days of service hereof.

DEFINITIONS

Notwithstanding any definition below, each word, term, or phrase used in these Interrogatories is intended to have the broadest meaning permitted under the Federal Trade Commission's Rules of Practice.

1. “FTC,” “you,” and “your” shall mean the Federal Trade Commission, its employees, agents, attorneys, consultants, representatives, officers, and all other persons acting or purporting to act on its behalf.

2. “Complaint” shall mean the administrative complaint issued by the Federal Trade Commission and any amendments to that Complaint, in the above-captioned matter.

3. “Advertisements” shall mean the advertisements referenced in the Complaint.

4. “Respondents” shall mean all Respondents, unless otherwise stated.

5. “Mr. Gay” shall mean Respondent Dennis Gay.

6. “Corporate Respondents” shall mean the following Respondents: Basic Research, LLC, A.G., Waterhouse, LLC, Klein-Becker, USA, LLC, Nutrasport, LLC, Sovage Dermalogic Laboratories, LLC, and BAN, LLC, both individually and collectively as defined in the Complaint, including all of their operations under any trade names.

7. “Advertising Guide” means the FTC’s publication titled “Dietary Supplements: An Advertising Guide for the Industry.”

8. The phrase “expertise of professionals in the relevant area” refers to the phrase “expertise of professionals in the relevant area” which appears on page 9 of the FTC’s Advertising Guide.

9. “Requests for Admissions” shall mean the RESPONDENT DENNIS GAY’S FIRST SET OF REQUESTS FOR ADMISSIONS, which are served concurrently herewith.

10. The phrase “professionals in the relevant area” refers to the phrase “professionals in the relevant area” which appears on page 9 of the FTC’s Advertising Guide.

11. "Topical Fat Reduction Study" shall mean the article "Topical Fat Reduction" by Frank L. Greenway, George A. Bray, and David Heber which appeared in the journal *Obesity Research* in 1995.

12. "Regional Fat Loss Study" shall mean "Regional fat loss from the thigh in obese women after Adrenergic modulation," by Dr. Frank L. Greenway and Dr. George A. Bray, which appeared in the journal *Clinical Therapeutics*, Vol. 9, No. 6, 1987.

13. "GREENWAY/BRAY/HEBER PUBLISHED STUDIES" shall mean the "Topical Fat Reduction Study" and "Regional Fat Loss Study."

14. "First Fiber Study" shall mean "Effect of glucomannan on obese patients: a clinical study" which appeared in the *International Journal of Obesity* (1984) and was authored by David E. Walsh, Vazgen Yaghoubian, and Ali Behforooz.

15. "Second Fiber Study" shall mean "Usefulness of highly purified extract of *Proteinophallus rivieri* fibers in childhood obesity," by Livieri C., Novazi F., and Lorini R., which appeared in the journal *Ped. Med. Chir.* in 1992.

16. "Ephedrine Study" shall mean "Comparison of Ephedrine/Caffeine Combination and Dexfenfluramine in the Treatment of Obesity. A Double-Blind Multi-Centre Trial in General Practice," which appeared in the *International Journal of Obesity* (1994) 18, 99 - 103 by Leif Breum, et al.

17. The "Garvey case" shall mean *Federal Trade Commission v. Garvey*, 383 F.3d 891 (9th Cir. 2004).

18. "Garvey" shall mean Steven Patrick Garvey, one of the Defendants-Appellees in the Garvey case.

19. “**Challenged Products**” shall mean any of the products (i.e., Cutting Gel, Pedia Lean) referenced in the Complaint.

INSTRUCTIONS

1. Unless otherwise specified, the time period covered by an Interrogatory shall not be limited. All information responsive to the Interrogatory – regardless of dates or time periods involved – must be provided (unless otherwise specified).

2. Each interrogatory must be completely set forth, preceding the answer to it and must be answered separately and fully in writing, under oath.

3. All answers shall be served within fifteen (15) days after service of these interrogatory requests.

4. Information covered by these interrogatory requests shall include all information within your knowledge or possession, or under your actual or constructive custody or control, whether or not such information is located in the files or records of, or may be possessed by: Commission staff, employees or agents of any government agency other than the Federal Trade Commission, expert witnesses, consultants, or otherwise; and whether or not such information is received from or disseminated to any other person or entity including individual Commissioners, Commission staff, employees of any government agencies other than the Federal Trade Commission, and employees of any private consumer protection organizations, attorneys, accountants, economists, statisticians, experts, and consultants.

5. If you object to any interrogatory or a part of any interrogatory, state the interrogatory or part to which you object, state the exact nature of the objection, and describe in detail the facts upon which you base your objection. If any interrogatory cannot be answered in full, it shall be

answered to the fullest extent possible and the reasons for the inability to answer fully shall be provided. If you object to any interrogatory on the grounds of relevance or overbreadth, you shall provide all responsive information that is concededly relevant to claims, defenses, or requested relief in this proceeding.

6. This First Set of Interrogatories is continuing in character so as to require you to produce additional information promptly upon obtaining or discovering different, new or further information before the close of discovery.

7. If any requested information is withheld based on any claim or privilege or otherwise, submit together with such claim for information that is withheld: (a) the specific subject matter; (b) the date of the information; (c) the names, addresses, positions, and organizations of all authors and recipients of the information; and (d) the specific grounds for claiming that the information is privileged or otherwise is withheld. If only part of the responsive information is privileged, all non-privileged portions of the information must be provided.

8. The use of the singular includes the plural, and the plural includes the singular.

9. The use of a verb in any tense shall be construed to include all other tenses.

10. The spelling of a name shall be construed to include all similar variants of such name.

INTERROGATORIES

1. For each response to the Requests for Admissions that is other than an unqualified admission, identify each fact upon which you do or may rely to support your denial or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

2. State whether you contend that Mr. Gay had actual knowledge that any of the Advertisements contained a representation that was either false or misleading and, if so, state the following:

a. Identify each and every such representation, including the specific advertisement in which such representation appears;

b. Identify each fact upon which you do or may rely to support any such contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

3. State whether you contend that Mr. Gay was recklessly indifferent to the truth of any of the representations in the Advertisements or was aware that fraud was highly probable and intentionally avoided the truth and, if so, state the following:

a. Identify each such representation, including the specific advertisement in which the representation appears; and

b. Identify each fact upon which you do or may rely to support any such contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

4. State whether you contend that Mr. Gay participated directly in the dissemination of any of the Advertisements, and if so, state the following:

a. Identify each such advertisement; and

b. Identify each fact upon which you do or may rely to support any such contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

5. State whether you contend that Mr. Gay had the authority to control the dissemination of any of the Advertisements, and if so, state the following:

a. Identify each such advertisement; and

b. Identify each fact upon which you do or may rely to support any such contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts

6. State what amount of fat loss over what period of time that you contend would constitute a “rapid” fat loss, and identify each fact upon which you do or may rely to support any such contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

7. State the amount of fat loss you contend that is required to constitute a “visibly obvious” fat loss, and identify each fact upon which you do or may rely to support any such contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

8. State whether you contend that the GREENWAY/BRAY/HEBER STUDIES do not provide a reasonable basis to substantiate the representation that, when applied in the manner described in the GREENWAY/BRAY/HEBER STUDIES, aminophylline causes a “rapid” and “visibly obvious” fat loss in women’s thighs, and if so, identify each fact upon which you do or may rely to support any such contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

9. State whether you contend that the GREENWAY/BRAY/HEBER STUDIES do not provide a reasonable basis to substantiate the representation that Dermalin-APg, Cutting Gel, and Tummy Flattening Gel cause “rapid” and “visibly obvious” fat loss in the areas of the body to which they are applied, and if so, identify each fact upon which you do or may rely to support your denial or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

10. State whether you contend that the GREENWAY/BRAY/HEBER STUDIES do not provide a reasonable basis to substantiate the representation that published, clinical testing proves that Cutting Gel and Tummy Flattening Gel cause “rapid” and “visibly obvious” fat loss in the areas of the body to which they are applied, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

11. State whether you contend that the First Fiber Study and/or Second Fiber Study do not provide a reasonable basis to substantiate the representation that PediaLean causes substantial weight loss in overweight or obese children, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

12. State whether you contend that the First Fiber Study and/or the Second Fiber Study do not provide a reasonable basis to substantiate the representation that clinical testing proves that PediaLean causes substantial weight loss in overweight or obese children, and if so, identify each

fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

13. State whether you contend that the Ephedrine Study does not provide a reasonable basis to substantiate the representation that, when ingested in the manner described in the Ephedrine Study, a mixture of ephedrine and caffeine can cause a loss of weight of more than 20 lbs. in significantly overweight users, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

14. State whether you contend that the Ephedrine Study does not provide a reasonable basis to substantiate the representation that clinical testing proves that, when ingested in the manner described in the Ephedrine Study, a mixture of ephedrine and caffeine can cause loss of weight of more than 20 pounds in significantly overweight users, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

15. State whether you contend that weight losses of 50, 60, and/or 147 pounds in significantly overweight individuals, which losses occurred during a clinical test of the efficacy of a mixture of ephedrine and caffeine in promoting weight loss, do not provide a reasonable basis to substantiate the representation that a mixture ephedrine and caffeine can cause a weight loss as much as 50, 60 and 147 pounds, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has

knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

16. State whether you contend that the Ephedrine Study does not provide a reasonable basis to substantiate the representation that Leptoprin can cause weight losses as much as 50, 60 or 147 pounds, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

17. State whether you contend that the Ephedrine Study does not provide a reasonable basis to substantiate the representation that clinical testing proves that Leptoprin can cause weight losses as much as 50, 60 or 147 pounds, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

18. State whether you contend that the Topical Fat Reduction Study, Regional Fat Loss Study, GREEWAY/BRAY/HEBER PUBLISHED STUDIES, First Fiber Study, Second Fiber Study, or the Ephedrine Study provide a less reasonable basis to substantiate the Advertisements than the basis upon which Garvey relied to substantiate the advertisements in the Garvey case, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

19. State whether you contend that Mr. Gay's circumstances, actions, or mens rea regarding the Advertisements are distinguishable from Garvey's circumstances, actions, or mens rea

regarding the advertisements in the Garvey case such that Mr. Gay should be found to have violated either Section 5 or Section 12 of the Federal Trade Commission Act, and if so, identify each fact upon which you do or may rely to support your contention or other response, identify each person who witnessed or otherwise has knowledge of such facts and identify each document evidencing, constituting or otherwise relating to such facts.

20. Identify all documents and things that the FTC has considered, reviewed, or relied upon in evaluating Respondents' Advertisements.

21. Identify all documents and things that the FTC has considered, reviewed, or relied upon in evaluating the Challenged Products.

22. Identify all documents and things that the FTC has considered, reviewed, or relied upon in evaluating any of the substantiation or documents (e.g., GREENWAY/BRAY/HEBER PUBLISHED STUDIES) Respondents have provided in support of the Advertisements and/or Challenged Products.

23. Identify all persons with whom the FTC has communicated relating to any of the Advertisements, and the subject matter of any such communication.

24. Identify all persons with whom the FTC has communicated relating to any of the Challenged Products, and the subject matter of any such communication.

25. Identify all persons with whom the FTC has communicated relating to any of the substantiation or documents (e.g., GREENWAY/BRAY/HEBER PUBLISHED STUDIES) Respondents have provided in support of the Advertisements and/or Challenged Products, and the subject matter of any such communication.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was provided to the following parties on the 29th day of October, 2004 as follows:

(1) One (1) copy via e-mail to Commission Complaint Counsel, Laureen Kapin, Joshua S. Millard, and Laura Schneider, all care of lkapin@ftc.gov, jmillard@ftc.gov, rrichardson@ftc.gov, and lschneider@ftc.gov with one (1) paper courtesy copy via U.S. Postal Service to Laureen Kapin, Bureau of Consumer Protection, Federal Trade Commission, Suite NJ-2122, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580;

(2) One (1) copy via United States Postal Service to Stephen Nagin, Esq. Nagin Gallop & Figueredo, 3225 Aviation Avenue, Suite 301, Miami, Florida 33131.

(3) One (1) copy via United States Postal Service to Ronald F. Price, Peters Scofield Price, 310 Broadway Centre, 111 East Broadway, Salt Lake City, UT 84111, counsel for Dr. Mowrey.

(4) One (1) copy via United States Postal Service to Jeffrey D. Feldman FELDMANGALE, P.A., Miami Center – 19th Floor 201 S. Biscayne Blvd., Miami, Florida 33131, Counsel for Respondents, A.G. Waterhouse, L.L.C., Klein-Becker, L.L.C. Nutrasport, L.L.C., Sovage, Dermalogic Laboratories, L.L.C., and BAN, L.L.C.

One (1) copy via United States Postal Service to Mitchell K. Friedlander, 5742 West Harold Gatty Drive, Salt Lake City, Utah 84111, *pro se*

\s\

Kathy Wisner

OFFICIAL TRANSCRIPT PROCEEDING

FEDERAL TRADE COMMISSION

MATTER NO. D09318

TITLE BASIC RESEARCH, LTD., ET AL

**PLACE FEDERAL TRADE COMMISSION
600 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C.**

DATE AUGUST 10, 2004

PAGES 1 THROUGH 61

PREHEARING CONFERENCE

**FOR THE RECORD, INC.
603 POST OFFICE ROAD, SUITE 309
WALDORF, MARYLAND 20602
(301)870-8025**

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UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

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

Tuesday, August 10, 2004

Room 532
Federal Trade Commission
600 Pennsylvania Ave., N.W.
Washington, D.C. 20580

The above-entitled matter came on for
prehearing conference, pursuant to notice, at 11:32 a.m.

BEFORE THE HONORABLE STEPHEN J. McGUIRE

For The Record, Inc.
Waldorf, Maryland
(301) 870-8025

1 APPEARANCES:

2

3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:

4 LAUREEN KAPIN, Attorney

5 JOSHUA MILLARD, Attorney

6 ROBIN RICHARDSON, Attorney

7 LAURA SCHNEIDER, Attorney

8 U.S. Federal Trade Commission

9 Bureau of Consumer Protection

10 Division of Enforcement

11 600 Pennsylvania Avenue, N.W.

12 Washington, D.C. 20580-0000

13 (202) 326-3237

14

15 ON BEHALF OF THE CORPORATE RESPONDENTS:

16 JEFFREY D. FELDMAN, Attorney

17 FeldmanGale, P.A.

18 Miami Center - 19th Floor

19 201 South Biscayne Boulevard

20 Miami, Florida 33131-4332

21 (305) 358-5001

22

23

24

25

1 APPEARANCES: (continued)

2

3 ON BEHALF OF THE CORPORATE RESPONDENTS:

4 **STEPHEN E. NAGIN, Attorney**

5 Nagin, Gallop & Figueredo, P.A.

6 3225 Aviation Avenue - Third Floor

7 Miami, Florida 33133-4741

8 (305) 854-5353

9

10 ON BEHALF OF DENNIS GAY:

11 **BRIAN MITCHELL, Attorney (via phone)**

12 **ANDREW DYMEK, Attorney (via phone)**

13 Burbidge and Mitchell

14 215 South State Street

15 Suite 920

16 Salt Lake City, Utah 84111

17 (801) 355-6677

18

19 ON BEHALF OF DANIEL MOWREY:

20 **RONALD PRICE, Attorney (via phone)**

21 Peters Scofield Price

22 340 Broadway Centre

23 111 East Broadway

24 Salt Lake City, Utah 84111

25 (801) 322-2002

1 APPEARANCES: (continued)

2

3 ON BEHALF OF MITCHELL FRIEDLANDER:

4 MITCHELL FRIEDLANDER (pro se)
5 5742 West Harold Gatty Drive
6 Salt Lake City, Utah 84116
7 (801) 517-7000

8

9 ALSO PRESENT:

10 ERIN WIRTH, Staff Counsel

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1 MS. KAPIN: It seemed to me also, Your Honor, to
2 be inconsistent, and I was wondering if there was
3 something I didn't understand as to what --

4 JUDGE McGUIRE: All right. We'll take a look at
5 that, and if it is in fact inconsistent, we'll -- are
6 you proposing then, Mr. Feldman, that paragraph 5 just
7 be deleted in its entirety or just the one --

8 MR. FELDMAN: I think so, Judge, because what
9 paragraph 5 says is that you'll serve subpoenas and
10 discovery requests sufficiently in advance of discovery
11 cutoff, but you've set a deadline for the last day that
12 you could propound written discovery, so it seems almost
13 superfluous.

14 JUDGE McGUIRE: All right. I'll take a look at
15 that.

16 MR. FELDMAN: In item 6, we have -- Your Honor
17 proposes a cutoff of 50 requests, RFPs and
18 interrogatories.

19 JUDGE McGUIRE: Yes.

20 MR. FELDMAN: And what I was -- I don't want to
21 horse-trade with the court, but I was going to ask the
22 court if it would give us a little bit more leeway with
23 that because of the number of respondents that we're
24 dealing with.

25 JUDGE McGUIRE: What are you seeking?

1 MR. FELDMAN: I was going to say 75.

2 JUDGE MCGUIRE: Ms. Kapin, any objection?

3 MS. KAPIN: Your Honor, I have concerns about
4 that.

5 First of all, they have all those respondents.
6 I'm not sure -- and I would ask you, Your Honor, do they
7 each have 50?

8 If that is the case, it seems to me they have a
9 lot of document requests in their quiver.

10 JUDGE MCGUIRE: That's going to be a problem.

11 MR. FELDMAN: I actually was interpreting this
12 to mean that you were giving us the sides.

13 JUDGE MCGUIRE: Yes. And that's how this order
14 is intended.

15 So would you -- I could -- would you have any
16 opposition if that's what we intend and what we're going
17 to be -- he's asking for 75 per side.

18 Do you have any problem with that, Ms. Kapin?

19 MS. KAPIN: I still think, in light of the very
20 broad document requests that have been made and also the
21 fact that counsel would like to extend these discovery
22 deadlines, frankly, Your Honor, I'm just concerned about
23 being so mowed under by a lot of discovery that we're
24 not able to turn our attention to the nuts and bolts of
25 this case.

1 JUDGE McGUIRE: I believe as well that the rules
2 have been interpreted in the past to confine it to that
3 number per side, so I think that's where we're going to
4 keep it at, Mr. Feldman.

5 MR. FELDMAN: Judge, may I just say -- and I
6 think Mr. Friedlander may have a different feeling on
7 this issue than I do -- but the commission brought in
8 the respondents that they wanted to bring in. The rules
9 do give each respondent certain rights as it relates to
10 discovery.

11 The only rule that -- I believe I'm correct on
12 this -- that has limitation is the rule dealing with
13 interrogatories. I think it's 25 per side. There is no
14 limit on requests for admissions and no limits on
15 requests for production. And it should not -- you know,
16 a party should not be at a disadvantage in what it can
17 propound.

18 JUDGE McGUIRE: No. I agree. And each party
19 should have some limit.

20 This paragraph was taken from a prior order,
21 which typically contemplates a respondent.

22 What do you -- or do you propose something on
23 that, Mr. Friedlander?

24 MR. FRIEDLANDER: Well, as Mr. Feldman just
25 explained, on interrogatories I think the limit for me

1 is 25 and no limit on other forms of written discovery.

2 And I'd like to reserve all my rights --

3 JUDGE McGUIRE: Well, you're -- that's not a
4 problem.

5 All right. We'll take a look at that one as
6 well and we'll determine how to account for the several
7 respondents in this proceeding.

8 MR. FELDMAN: And then I had one other issue,
9 Judge, and I think this is more logistical.

10 In item 17, you anticipate that the respondent
11 will mark the exhibits "R-", but we have multiple
12 respondents in the case, so we'd just need to come up
13 with a different protocol for that.

14 JUDGE McGUIRE: Yeah. I'm perfectly open on
15 that. We could mark it RXA, RXB, like RXA 1, RXB 1,
16 whatever is easiest for the parties.

17 MR. FELDMAN: We'll take that up as part of
18 our --

19 JUDGE McGUIRE: You can take that up, and at the
20 time we start trial, you can advise the court how you
21 wish to proceed on that. I just think we should --

22 MR. FELDMAN: That's it.

23 JUDGE McGUIRE: -- we should have the clear RX
24 for the respondents, and then how you further subset it
25 is fine with me.

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

In the Matter of

BASIC RESEARCH, L.L.C.,
A.G. WATERHOUSE, L.L.C.,
KLEIN-BECKER USA, L.L.C.,
NUTRASPORT, L.L.C.,
SOVAGE DERMALOGIC LABORATORIES, L.L.C.,
 d/b/a BASIC RESEARCH, L.L.C.,
 OLD BASIC RESEARCH, L.L.C.,
 BASIC RESEARCH, A.G. WATERHOUSE,
BAN, L.L.C.,
 d/b/a 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

RESPONSE TO COMPLAINT COUNSEL'S SECOND SET OF INTERROGATORIES

Pursuant to Rule 3.35 of the Federal Trade Commission's Rules of Practice, Respondents Klein-Becker, USA, LLC, Basic Research, LLC, A.G. Waterhouse, LLC, NutraSport, LLC, Sövage Dermalogic Laboratories, LLC, Ban, LLC, Dennis Gay, Daniel B. Mowrey, Ph.D., and Mitchell K. Freidlander ("Respondents") object and respond to Complaint Counsel's Second Set of Interrogatories ("Interrogatories") as follows:

General Objections

A. Prior to this Set of Interrogatories, Complaint Counsel propounded at least fifty-eight (58) interrogatories, including all subparts. According to the Scheduling Order in this case, Complaint Counsel is only permitted to propound a total of sixty (60) interrogatories.

Respondents have not stipulated to respond to any interrogatories propounded in excess of this limit. Respondents therefore object to this Set of Interrogatories to the extent that the number of individual interrogatories, including subparts, exceeds the allotted number of interrogatories.

B. Respondents' objections and responses to Complaint Counsel's Interrogatories are made on the basis of facts and circumstances as they are presently known. Respondents have not completed their investigation of all the facts relating to this case, their discovery in or analysis of this action, and have not completed preparation for trial. Accordingly, all of the following responses are provided without prejudice to Respondents' right to introduce at trial any evidence subsequently discovered. Respondents further reserve the right to supplement their responses to Complaint Counsel's Interrogatories based upon new discovery of evidence or information of which Respondents are not presently aware, or otherwise as necessary.

C. Respondents' objections and responses are based on their understanding and interpretation of Complaint Counsel's Interrogatories. If Respondents understand or interpret any of Complaint Counsel's Interrogatories differently, Respondents reserve the right to supplement any of these objections or responses.

D. Respondents object to Complaint Counsel's Interrogatories to the extent they seek information that is subject to the attorney/client or work/product privileges or to any other applicable privilege or immunity and refuses to produce to any such information. Respondents do not intend by these responses and/or objections to waive any claim of privilege or immunity. Respondents' objections and/or responses are conditioned specifically on the understanding that the provision of information to which any claim of privilege is applicable shall be deemed inadvertent and does not constitute a waiver of any such claim or privilege.

E. Respondents object to the Interrogatories to the extent that they are duplicative, vague, ambiguous, overbroad, unduly burdensome, or not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

F. Respondents object to the Interrogatories to the extent that they purport to impose burdens or duties upon Respondents that exceed the scope of permissible discovery under the Commission's Rules of Practice and the provisions of the Pretrial Scheduling Order.

G. Respondents reserve their right to rely at any time on information that is subsequently discovered or was omitted from response as a result of mistake, error, oversight, or inadvertence.

H. Respondents objects to the definition of the terms "Corporate Respondent," "Individual Respondent," and "Respondent(s)" to the extent that Complaint Counsel seeks to impose discovery obligations on Respondents related to information not within Respondents' possession, custody, or control.

Specific Objections and Responses

Based on, subject to, and without waiving its General Objections, Respondents specifically and additionally responds to each of the Specifications contained in Complaint Counsel's Interrogatories as follows:

Interrogatory No. 59: (Complaint Counsel's No. 1)

Identify and describe all persons and/or entities that possess, or have under their actual or constructive custody or control, any documents or communications referring or relating to the acts and practices alleged in the Complaint. (Your response shall identify and describe all such persons or entities regardless of: (i) whether they have conducted business under assumed names; (ii) whether such documents or communications were received from or disseminated to any other person or entity including attorneys, accountants, directors, officers and employees;

and (iii) whether you would raise objections to the introduction of those documents or communications at trial.)

Response:

Respondents incorporate by reference each General Objection as if set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; and (b) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy.

Interrogatory No. 60: (Complaint Counsel's No. 2)

Describe in detail the actions taken by each person who search for, retrieved, reviewed, moved, stored, destroyed, and/or produced promotional materials, documents, communications, tangible things, and any other materials in response to, or as a result of, Complaint Counsel's discovery requests.

Response:

Respondents incorporate by reference each General Objection as if set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; (b) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent; and (c) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege and/or work product doctrine.

Interrogatory No. 61: (Complaint Counsel's No. 3)

If you contend that the promotional materials for the challenged products do not make the claims alleged in the Complaint, for each piece of promotional material, describe the basis for your contention, specifically identifying all extrinsic evidence, including but not limited to communications, documents, and market research, that supports your contention.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and

ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege and/or work product doctrine; (d) it seeks irrelevant information and it is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 62: (Complaint Counsel's No. 4)

If you contend that the promotional materials for the challenged products make claims other than those alleged in the Complaint, for each piece of promotional material, identify all claims that you contend are made and describe the basis for your contention, specifically identifying all extrinsic evidence, including but not limited to communications, documents, and market research, that supports your contention.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 63: (Complaint Counsel's No. 5)

Describe all changes to draft and final promotional materials for the challenged products made by Basic Research, LLC (including, where applicable, their attorneys, accountants, directors, officers and employees).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege and/or work product doctrine; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 64: (Complaint Counsel's No. 5)

Describe all changes to draft and final promotional materials for the challenged products made by A.G. Waterhouse, LLC (including, where applicable, their attorneys, accountants, directors, officers and employees).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege and/or work product doctrine; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 65: (Complaint Counsel's No. 5)

Describe all changes to draft and final promotional materials for the challenged products made by Klein-Becker USA, LLC (including, where applicable, their attorneys, accountants, directors, officers and employees).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege and/or work product doctrine; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 66: (Complaint Counsel's No. 5)

Describe all changes to draft and final promotional materials for the challenged products made by Nutrasport, LLC (including, where applicable, their attorneys, accountants, directors, officers and employees).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege and/or work product doctrine; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 67: (Complaint Counsel's No. 5)

Describe all changes to draft and final promotional materials for the challenged products made by Sovage Dermalogic Laboratories, LLC (including, where applicable, their attorneys, accountants, directors, officers and employees).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege and/or work product doctrine; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 68: (Complaint Counsel's No. 5)

Describe all changes to draft and final promotional materials for the challenged products made by Ban, LLC (including, where applicable, their attorneys, accountants, directors, officers and employees).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege and/or work product doctrine; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 69: (Complaint Counsel's No. 5)

Describe all changes to draft and final promotional materials for the challenged products made by Dennis Gay (including, where applicable, their attorneys, accountants, directors, officers and employees).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege and/or work product doctrine; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 70: (Complaint Counsel's No. 5)

Describe all changes to draft and final promotional materials for the challenged products made by Daniel B. Mowrey (including, where applicable, their attorneys, accountants, directors, officers and employees).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege and/or work product doctrine; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 71: (Complaint Counsel's No. 5)

Describe all changes to draft and final promotional materials for the challenged products made by Mitchell K. Friedlander (including, where applicable, their attorneys, accountants, directors, officers and employees).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege and/or work product doctrine; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 72: (Complaint Counsel's No. 6)

Describe all facts relating to the choice of the trade name for Dermalin-APg. (This request includes, but is not limited to, an identification of all other names considered for each challenged product and the reason(s) why those other names were not used in advertising, marketing, promoting, or selling the product.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy, including financial privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 73: (Complaint Counsel's No. 6)

Describe all facts relating to the choice of the trade name for Cutting Gel. (This request includes, but is not limited to, an identification of all other names considered for each challenged product and the reason(s) why those other names were not used in advertising, marketing, promoting, or selling the product.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; (b) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (c) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy, including financial privacy; and (d) it exceeds the allotted number of interrogatories.

Interrogatory No. 74: (Complaint Counsel's No. 6)

Describe all facts relating to the choice of the trade name for Tummy Flattening Gel. (This request includes, but is not limited to, an identification of all other names considered for each challenged product and the reason(s) why those other names were not used in advertising, marketing, promoting, or selling the product.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; (b) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (c) it seeks, or the

extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy, including financial privacy; and (d) it exceeds the allotted number of interrogatories.

Interrogatory No. 75: (Complaint Counsel's No. 6)

Describe all facts relating to the choice of the trade name for Leptoprin. (This request includes, but is not limited to, an identification of all other names considered for each challenged product and the reason(s) why those other names were not used in advertising, marketing, promoting, or selling the product.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; (b) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (c) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy, including financial privacy; and (d) it exceeds the allotted number of interrogatories.

Interrogatory No. 76: (Complaint Counsel's No. 6)

Describe all facts relating to the choice of the trade name for Anorex. (This request includes, but is not limited to, an identification of all other names considered for each challenged product and the reason(s) why those other names were not used in advertising, marketing, promoting, or selling the product.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; (b) it seeks irrelevant information and is not reasonably expected to

yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (c) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy, including financial privacy; and (d) it exceeds the allotted number of interrogatories.

Interrogatory No. 77: (Complaint Counsel's No. 6)

Describe all facts relating to the choice of the trade name for PediaLean. (This request includes, but is not limited to, an identification of all other names considered for each challenged product and the reason(s) why those other names were not used in advertising, marketing, promoting, or selling the product.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; (b) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (c) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right of privacy, including financial privacy; and (d) it exceeds the allotted number of interrogatories.

Interrogatory No. 78: (Complaint Counsel's No. 7)

Describe all facts that support or call into question your denial of the allegation that Dennis Gay has formulated, directed, controlled, or participated in the acts or practices of Basic Research, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent; and (d) it exceeds the allotted number of interrogatories.

Interrogatory No. 79: (Complaint Counsel's No. 7)

Describe all facts that support or call into question your denial of the allegation that Dennis Gay has formulated, directed, controlled, or participated in the acts or practices of A.G. Waterhouse, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent; and (d) it exceeds the allotted number of interrogatories.

Interrogatory No. 80: (Complaint Counsel's No. 7)

Describe all facts that support or call into question your denial of the allegation that Dennis Gay has formulated, directed, controlled, or participated in the acts or practices of Klein-Becker USA, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to

the proposed relief, or to the defenses of any Respondent; and (d) it exceeds the allotted number of interrogatories.

Interrogatory No. 81: (Complaint Counsel's No. 7)

Describe all facts that support or call into question your denial of the allegation that Dennis Gay has formulated, directed, controlled, or participated in the acts or practices of Nutrasport, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent; and (d) it exceeds the allotted number of interrogatories.

Interrogatory No. 82: (Complaint Counsel's No. 7)

Describe all facts that support or call into question your denial of the allegation that Dennis Gay has formulated, directed, controlled, or participated in the acts or practices of Sovage Dermalogic Laboratories, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent; and (d) it exceeds the allotted number of interrogatories.

Interrogatory No. 83: (Complaint Counsel's No. 7)

Describe all facts that support or call into question your denial of the allegation that Dennis Gay has formulated, directed, controlled, or participated in the acts or practices of Ban, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent; and (d) it exceeds the allotted number of interrogatories.

Interrogatory No. 84: (Complaint Counsel's No. 8)

Describe all facts that support or call into question your denial of the allegation that Respondents have operated a common business enterprise while engaging in the acts and practices alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege and/or work product doctrine, including a compilation of documents requested and/or produced; and (d) it exceeds the allotted number of interrogatories.

Interrogatory No. 85: (Complaint Counsel's No. 9)

Describe all facts that support or call into question your denial of the allegation that certain Corporate Respondents are successors in interest to BAN, LLC with respect to acts or practices that preceded the incorporation of those Corporate Respondents.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 86: (Complaint Counsel's No. 10)

Describe all facts that support or call into question your denial of the allegation that Daniel Mowrey, doing business as American Phytotherapy Research Laboratory, has developed and endorsed products for Basic Research, LLC.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 87: (Complaint Counsel's No. 10)

Describe all facts that support or call into question your denial of the allegation that Daniel Mowrey, doing business as American Phytotherapy Research Laboratory, has participated in the acts or practices Basic Research, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 88: (Complaint Counsel's No. 10)

Describe all facts that support or call into question your denial of the allegation that Daniel Mowrey, doing business as American Phytotherapy Research Laboratory, has developed and endorsed products for A.G. Waterhouse, LLC.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by

the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 89: (Complaint Counsel's No. 10)

Describe all facts that support or call into question your denial of the allegation that Daniel Mowrey, doing business as American Phytotherapy Research Laboratory, has participated in the acts or practices of A.G. Waterhouse, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 90: (Complaint Counsel's No. 10)

Describe all facts that support or call into question your denial of the allegation that Daniel Mowrey, doing business as American Phytotherapy Research Laboratory, has developed and endorsed products for Klein-Becker USA, LLC.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues

in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 91: (Complaint Counsel's No. 10)

Describe all facts that support or call into question your denial of the allegation that Daniel Mowrey, doing business as American Phytotherapy Research Laboratory, has participated in the acts or practices of Klein-Becker USA, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 92: (Complaint Counsel's No. 10)

Describe all facts that support or call into question your denial of the allegation that Daniel Mowrey, doing business as American Phytotherapy Research Laboratory, has developed and endorsed products for Nutrasport, LLC.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no

relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 93: (Complaint Counsel's No. 10)

Describe all facts that support or call into question your denial of the allegation that Daniel Mowrey, doing business as American Phytotherapy Research Laboratory, has participated in the acts or practices of Nutrasport, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 94: (Complaint Counsel's No. 10)

Describe all facts that support or call into question your denial of the allegation that Daniel Mowrey, doing business as American Phytotherapy Research Laboratory, has developed and endorsed products for Sovage Dermalogic Laboratories, LLC.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to

the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 95: (Complaint Counsel's No. 10)

Describe all facts that support or call into question your denial of the allegation that Daniel Mowrey, doing business as American Phytotherapy Research Laboratory, has participated in the acts or practices of Sovage Dermalogic Laboratories, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 96: (Complaint Counsel's No. 10)

Describe all facts that support or call into question your denial of the allegation that Daniel Mowrey, doing business as American Phytotherapy Research Laboratory, has developed and endorsed products for Ban, LLC.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and

is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 97: (Complaint Counsel's No. 10)

Describe all facts that support or call into question your denial of the allegation that Daniel Mowrey, doing business as American Phytotherapy Research Laboratory, has participated in the acts or practices of Ban, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 98: (Complaint Counsel's No. 11)

Describe all facts that support or call into question your denial of the allegation that Mitchell K. Friedlander has developed products marketed by Basic Research, LLC.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it exceeds the allotted number of

interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 99: (Complaint Counsel's No. 11)

Describe all facts that support or call into question your denial of the allegation that Mitchell K. Friedlander has participated in the acts or practices of Basic Research, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 100: (Complaint Counsel's No. 11)

Describe all facts that support or call into question your denial of the allegation that Mitchell K. Friedlander has developed products marketed by A.G. Waterhouse, LLC.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 101: (Complaint Counsel's No. 11)

Describe all facts that support or call into question your denial of the allegation that Mitchell K. Friedlander has participated in the acts or practices of A.G. Waterhouse, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 102: (Complaint Counsel's No. 11)

Describe all facts that support or call into question your denial of the allegation that Mitchell K. Friedlander has developed products marketed by Klein-Becker USA, LLC.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 103: (Complaint Counsel's No. 11)

Describe all facts that support or call into question your denial of the allegation that Mitchell K. Friedlander has participated in the acts or practices of Klein-Becker USA, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 104: (Complaint Counsel's No. 11)

Describe all facts that support or call into question your denial of the allegation that Mitchell K. Friedlander has developed products marketed by Nutrasport, LLC.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 105: (Complaint Counsel's No. 11)

Describe all facts that support or call into question your denial of the allegation that Mitchell K. Friedlander has participated in the acts or practices of Nutrasport, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 106: (Complaint Counsel's No. 11)

Describe all facts that support or call into question your denial of the allegation that Mitchell K. Friedlander has developed products marketed by Sovage Dermalogic Laboratories, LLC.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it exceeds the allotted number of

interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 107: (Complaint Counsel's No. 11)

Describe all facts that support or call into question your denial of the allegation that Mitchell K. Friedlander has participated in the acts or practices of Sovage Dermalogic Laboratories, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 108: (Complaint Counsel's No. 11)

Describe all facts that support or call into question your denial of the allegation that Mitchell K. Friedlander has developed products marketed by Ban, LLC.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 109: (Complaint Counsel's No. 11)

Describe all facts that support or call into question your denial of the allegation that Mitchell K. Friedlander has participated in the acts or practices of Ban, LLC alleged in the Complaint.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 110: (Complaint Counsel's No. 12)

Describe in detail the relationship between Basic Research and the other Respondents, including a complete description of the role that each person or entity has played in formulating, testing, labeling, advertising (including claims development, substantiation, and dissemination), and selling each of the challenged products.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 111: (Complaint Counsel's No. 12)

Describe in detail the relationship between A.G. Waterhouse, LLC and each of the other Respondents, including a complete description of the role that each person or entity has played in formulating, testing, labeling, advertising (including claims development, substantiation, and dissemination), and selling each of the challenged products.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 112: (Complaint Counsel's No. 12)

Describe in detail the relationship between Klein-Becker USA, LLC and each of the other Respondents, including a complete description of the role that each person or entity has played in formulating, testing, labeling, advertising (including claims development, substantiation, and dissemination), and selling each of the challenged products.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 113: (Complaint Counsel's No. 12)

Describe in detail the relationship between Nutrasport, LLC and each of the other Respondents, including a complete description of the role that each person or entity has played in formulating, testing, labeling, advertising (including claims development, substantiation, and dissemination), and selling each of the challenged products.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 114: (Complaint Counsel's No. 12)

Describe in detail the relationship between Sovage Dermalogic Laboratories, LLC and each of the other Respondents, including a complete description of the role that each person or entity has played in formulating, testing, labeling, advertising (including claims development, substantiation, and dissemination), and selling each of the challenged products.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues

in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 115: (Complaint Counsel's No. 12)

Describe in detail the relationship between Ban, LLC and each of the other Respondents, including a complete description of the role that each person or entity has played in formulating, testing, labeling, advertising (including claims development, substantiation, and dissemination), and selling each of the challenged products.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 116: (Complaint Counsel's No. 12)

Describe in detail the relationship between Dennis Gay and each of the other Respondents, including a complete description of the role that each person or entity has played in formulating, testing, labeling, advertising (including claims development, substantiation, and dissemination), and selling each of the challenged products.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and

is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 117: (Complaint Counsel's No. 12)

Describe in detail the relationship between Daniel Mowrey and each of the other Respondents, including a complete description of the role that each person or entity has played in formulating, testing, labeling, advertising (including claims development, substantiation, and dissemination), and selling each of the challenged products.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 118: (Complaint Counsel's No. 12)

Describe in detail the relationship between Mitchell Friedlander and each of the other Respondents, including a complete description of the role that each person or entity has played in formulating, testing, labeling, advertising (including claims development, substantiation, and dissemination), and selling each of the challenged products.

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 119: (Complaint Counsel's No. 13)

From 2000 to the present, identify all products that have been advertised, marketed, promoted, or sold by Basic Research, LLC using one or more of the types of media used to advertise, market, promote, or sell any of the challenged products (e.g., television, radio, Internet website, email, print, or telephone).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; (b) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 120: (Complaint Counsel's No. 13)

From 2000 to the present, identify all products that have been advertised, marketed, promoted, or sold by A.G. Waterhouse, LLC using one or more of the types of media used to advertise, market, promote, or sell any of the challenged products (e.g., television, radio, Internet website, email, print, or telephone).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; (b) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 121: (Complaint Counsel's No. 13)

From 2000 to the present, identify all products that have been advertised, marketed, promoted, or sold by Klein-Becker USA, LLC using one or more of the types of media used to advertise, market, promote, or sell any of the challenged products (e.g., television, radio, Internet website, email, print, or telephone).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; (b) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (c) it exceeds the

allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 122: (Complaint Counsel's No. 13)

From 2000 to the present, identify all products that have been advertised, marketed, promoted, or sold by Nutrasport, LLC using one or more of the types of media used to advertise, market, promote, or sell any of the challenged products (e.g., television, radio, Internet website, email, print, or telephone).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; (b) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 123: (Complaint Counsel's No. 13)

From 2000 to the present, identify all products that have been advertised, marketed, promoted, or sold by Sovage Dermalogic Laboratories, LLC using one or more of the types of media used to advertise, market, promote, or sell any of the challenged products (e.g., television, radio, Internet website, email, print, or telephone).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; (b) it seeks irrelevant information and is not reasonably expected to

yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 124: (Complaint Counsel's No. 13)

From 2000 to the present, identify all products that have been advertised, marketed, promoted, or sold by Ban, LLC using one or more of the types of media used to advertise, market, promote, or sell any of the challenged products (e.g., television, radio, Internet website, email, print, or telephone).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; (b) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 125: (Complaint Counsel's No. 13)

From 2000 to the present, identify all products that have been advertised, marketed, promoted, or sold by Dennis Gay using one or more of the types of media used to advertise, market, promote, or sell any of the challenged products (e.g., television, radio, Internet website, email, print, or telephone).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; (b) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 126: (Complaint Counsel's No. 13)

From 2000 to the present, identify all products that have been advertised, marketed, promoted, or sold by Daniel Mowrey using one or more of the types of media used to advertise, market, promote, or sell any of the challenged products (e.g., television, radio, Internet website, email, print, or telephone).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; (b) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 127: (Complaint Counsel's No. 13)

From 2000 to the present, identify all products that have been advertised, marketed, promoted, or sold by Mitchell Friedlander using one or more of the types of media used to advertise, market, promote, or sell any of the challenged products (e.g., television, radio, Internet website, email, print, or telephone).

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; (b) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (c) it exceeds the allotted number of interrogatories; and (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy.

Interrogatory No. 128: (Complaint Counsel's No. 14)

From 2000 to the present, describe the marketing capabilities of Basic Research, LLC. (This request specifically include each Respondents' capacities with respect to the development and production of products, the development and review of advertisements, the dissemination of advertisements, the financing of product production and promotion, and the provision of the following services: telemarketing, credit card processing, shipment, customer service or relations, and customs clearance.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to

the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 129: (Complaint Counsel's No. 14)

From 2000 to the present, describe the marketing capabilities of A.G. Waterhouse, LLC. (This request specifically includes each Respondents' capacities with respect to the development and production of products, the development and review of advertisements, the dissemination of advertisements, the financing of product production and promotion, and the provision of the following services: telemarketing, credit card processing, shipment, customer service or relations, and customs clearance.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 130: (Complaint Counsel's No. 14)

From 2000 to the present, describe the marketing capabilities of Klein-Becker USA, LLC. (This request specifically includes each Respondents' capacities with respect to the development and production of products, the development and review of advertisements, the dissemination of advertisements, the financing of product production and promotion, and the

provision of the following services: telemarketing, credit card processing, shipment, customer service or relations, and customs clearance.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 131: (Complaint Counsel's No. 14)

From 2000 to the present, describe the marketing capabilities of Nutrasport, LLC. (This request specifically includes each Respondents' capacities with respect to the development and production of products, the development and review of advertisements, the dissemination of advertisements, the financing of product production and promotion, and the provision of the following services: telemarketing, credit card processing, shipment, customer service or relations, and customs clearance.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues

in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 132: (Complaint Counsel's No. 14)

From 2000 to the present, describe the marketing capabilities of Sovage Dermalogic Laboratories, LLC. (This request specifically includes each Respondents' capacities with respect to the development and production of products, the development and review of advertisements, the dissemination of advertisements, the financing of product production and promotion, and the provision of the following services: telemarketing, credit card processing, shipment, customer service or relations, and customs clearance.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 133: (Complaint Counsel's No. 14)

From 2000 to the present, describe the marketing capabilities of Ban, LLC. (This request specifically includes each Respondents' capacities with respect to the development and production of products, the development and review of advertisements, the dissemination of advertisements, the financing of product production and promotion, and the provision of the following services: telemarketing, credit card processing, shipment, customer service or relations, and customs clearance.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 134: (Complaint Counsel's No. 14)

From 2000 to the present, describe the marketing capabilities of Dennis Gay. (This request specifically includes each Respondents' capacities with respect to the development and production of products, the development and review of advertisements, the dissemination of advertisements, the financing of product production and promotion, and the provision of the following services: telemarketing, credit card processing, shipment, customer service or relations, and customs clearance.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by

the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Interrogatory No. 135: (Complaint Counsel's No. 14)

From 2000 to the present, describe the marketing capabilities of Daniel Mowrey. (This request specifically includes each Respondents' capacities with respect to the development and production of products, the development and review of advertisements, the dissemination of advertisements, the financing of product production and promotion, and the provision of the following services: telemarketing, credit card processing, shipment, customer service or relations, and customs clearance.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is overly broad and unduly burdensome; and (b) it exceeds the allotted number of interrogatories.

Interrogatory No. 136: (Complaint Counsel's No. 14)

From 2000 to the present, describe the marketing capabilities of Mitchell Friedlander. (This request specifically includes each Respondents' capacities with respect to the development and production of products, the development and review of advertisements, the dissemination of advertisements, the financing of product production and promotion, and the provision of the following services: telemarketing, credit card processing, shipment, customer service or relations, and customs clearance.)

Response:

Respondents incorporate by reference each General Objection as set forth here in full. Respondents further object to this interrogatory on the following grounds: (a) it is vague and ambiguous; (b) it is overly broad and unduly burdensome; (c) it seeks irrelevant information and is not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent (the requested information has no relationship to the alleged false or misleading advertising claims that Complaint Counsel pursues

in this matter); (d) it seeks, or the extent that it seeks, information protected from disclosure by the attorney-client privilege, work product doctrine, and/or right to privacy; and (e) it exceeds the allotted number of interrogatories.

Respectfully submitted this 4th day of November, 2004

Respectfully submitted,



Jeffrey D. Feldman

Todd M. Malynn

Gregory L. Hillyer

Christopher P. Demetriades

FeldmanGale, P.A.

Miami Center, 19th Floor

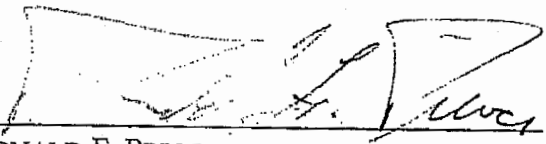
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Attorneys for Respondents Basic Research,
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USA, LLC, Nutrasport, LLC, Söavage
Dermalogic Laboratories, LLC and Ban,
LLC



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Attorneys for Respondent Daniel B. Mowrey

DATED this ____ day of _____, 2004.

BURBIDGE & MITCHELL

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom, positioned above a horizontal line.

Richard D. Burbidge
Attorneys for Respondent Dennis Gay

M

Mitchell K. Friedlander
c/o Compliance Department
5742 West Harold Getty Drive
Salt Lake City, Utah 84116
Telephone: (801) 414-1800
Facsimile: (801) 517-7108

Pro Se Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Response to Complaint Counsel's Second Set of Interrogatories was provided to the following parties this 4th day of November, 2004 as follows:

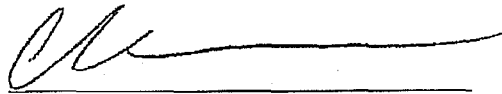
(1) One (1) copy via e-mail attachment in Adobe® ".pdf" format to Commission Complaint Counsel, Lauren Kapin, Joshua S. Millard, and Laura Schneider, all care of lkapin@ftc.gov, jmillard@ftc.gov; richardson@ftc.gov; lschneider@ftc.gov with one (1) paper courtesy copy via U. S. Postal Service to Lauren Kapin, Bureau of Consumer Protection, Federal Trade Commission, Suite NJ-2122, 600 Pennsylvania Avenue, N.W., Washington, D.C., 20580;

(2) One (1) copy via United States Postal Service to Stephen Nagin, Esq., Nagin Gallop & Figueredo, 3225 Aviation Avenue, Suite 301, Miami, Florida 33131.

(3) One (1) copy via United States Postal Service to Richard Burbidge, Esq., Jefferson W. Gross, Esq. and Andrew J. Dymek, Esq., Burbidge & Mitchell, 215 South State Street, Suite 920, Salt Lake City, Utah 84111, Counsel for Dennis Gay.

(4) One (1) copy via United States Postal Service to Ronald F. Price, Esq., Peters Scofield Price, A Professional Corporation, 340 Broadway Centre, 111 East Broadway, Salt Lake City, Utah 84111, Counsel for Daniel B. Mowrey.

(5) One (1) copy via United States Postal Service to Mitchell K. Friedlander, 5742 West Harold Gatty Drive, Salt Lake City, Utah 84111, Pro Se.

A handwritten signature in black ink, consisting of a stylized initial 'M' followed by a long horizontal line, positioned above a solid horizontal line.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

002-3300

In the Matter of)
)
BASIC RESEARCH, LLC,)
a limited liability company;)
)
A.G. WATERHOUSE, L.L.C.)
a limited liability corporation,)
)
KLEIN-BECKER USA, LLC,)
a limited liability company;)
)
NUTRASPORT, LLC,)
a limited liability company;)
)
SÖVAGE DERMALOGIC LABORATORIES, LLC,)
a limited liability company;)
)
BAN, LLC,)
a limited liability corporation, also doing)
business as BASIC RESEARCH, L.L.C.,)
OLD BASIC RESEARCH, L.L.C.,)
BASIC RESEARCH, A.G. WATERHOUSE,)
KLEIN-BECKER USA, NUTRA SPORT, and)
SOVAGE DERMALOGIC LABORATORIES,)
)
DENNIS GAY,)
individually and as an officer of the)
limited liability corporations,)
)
DANIEL B. MOWREY, Ph.D.,)
Also doing business as AMERICAN)
PHYTOTHERAPY RESEARCH)
LABORATORY, and)
)
MITCHELL K. FREIDLANDER,)
Defendants.)

Docket No. 9318

**RESPONSE TO COMPLAINT COUNSEL'S SECOND REQUEST FOR PRODUCTION
OF DOCUMENTARY MATERIALS AND TANGIBLE THINGS**

Pursuant to Rule 3.37 of the Federal Trade Commission's Rules of Practice, Respondents Klein-Becker, USA, LLC, Basic Research, LLC, A.G. Waterhouse, LLC, NutraSport, LLC, Söavage Dermalogic Laboratories, LLC, Ban, LLC, Dennis Gay, Daniel B. Mowrey, Ph.D., and Mitchell K Freidlander ("Respondents") object and respond to Complaint Counsel's Second Request for Production of Documentary Materials and Tangible Things ("Request for Production") as follows:

General Objections

A. Prior to this Request for Production, Complaint Counsel propounded thirty-eight (38) requests for production of documents, including all subparts. According to the Scheduling Order in this case, Complaint Counsel is only permitted to propound a total of sixty (60) requests for production of documents. Respondents therefore object to this Request for Production to the extent that the number of individual requests, including subparts, exceeds the allotted number of requests for production.

B. Respondents' objections and responses to Complaint Counsel's Request for Production are made on the basis of facts and circumstances as they are presently known. Respondents have not completed their investigation of all the facts relating to this case, their discovery in or analysis of this action, and have not completed preparation for trial. Accordingly, all of the following responses are provided without prejudice to Respondents' right to introduce at trial any evidence subsequently discovered. Respondents further reserve the right to supplement their responses to Complaint Counsel's Request for Production based upon newly

discovery evidence or information of which Respondents are not presently aware, or otherwise as necessary.

C. Respondents' objections and responses are based on their understanding and interpretation of Complaint Counsel's Request for Production. If Respondents understand or interpret any of Complaint Counsel's Requests for Production differently, Respondents reserve the right to supplement any of these objections or responses.

D. Respondents object to Complaint Counsel's Requests for Production to the extent they seek information that is subject to the attorney/client or work/product privileges or to any other applicable privilege or immunity and refuses to produce to any such information. Respondents do not intend by these responses and/or objections to waive any claim of privilege or immunity. Respondents objections and/or responses are conditioned specifically on the understanding that the provision of information to which any claim of privilege is applicable shall be deemed inadvertent and does not constitute a waiver of any such claim or privilege.

E. Respondents object to Complaint Counsel's Requests for Production relating to the expert witnesses that Respondents intend to use at the hearing on the ground that the time for discovery relating to experts' opinion and testimony is established in the Scheduling Order dated August 11, 2004.

F. Respondents object to Complaint Counsel's Requests for Production to the extent that they seek documents relating to non-testifying expert witnesses because Complaint Counsel have not made the proper showing that they are entitled to such information pursuant to Rule 3.31(c)(4)(ii).

G. Respondents object to the definition of the terms "Corporate Respondent," "Individual Respondent," and "Respondent(s)" to the extent that Complaint Counsel seeks to

impose discovery obligations on Respondents related to documents not within Respondents' possession, custody, or control.

H. Respondents object to Complaint Counsel's Requests for Production to the extent that they seek documents already in Complaint Counsel's possession, custody, or control, or to the extent that they seek documents that are publicly available or equally accessible to Complaint Counsel as to Respondents, on the ground that such requests are unduly burdensome.

I. Respondents object to the Requests for Production to the extent that they are duplicative, vague, ambiguous, overbroad, unduly burdensome, or not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

J. Respondents object to the Requests for Production to the extent that they purport to impose burdens or duties upon Respondents that exceed the scope of permissible discovery under the Commission's Rules of Practice and the provisions of the Pretrial Scheduling Order.

K. Respondents reserve their right to rely at any time on documents that are subsequently discovered or were omitted from response as a result of mistake, error, oversight, or inadvertence.

L. The statement in any given response that documents will be produced means that documents will be produced, as limited by the stated objections, provided that such documents exist and are in the possession, custody, or control of Respondents. Respondents' stated willingness to produce certain documents should in no way be construed as an affirmative acknowledgement that such documents exist or are in the possession, custody, or control of Respondents.

M. Respondents' production of documents in response to any request does not mean and shall not evidence that Respondents possessed or reviewed such documents at or prior to any specific point in time.

Specific Objections and Responses

Based on, subject to, and without waiving its General Objections, Respondent specifically and additionally responds to each of the Specifications contained in Complaint Counsel's Interrogatories as follows:

Request for Production No. 39: (Complaint Counsel's No. 1)

All documents and communications that support or refute, or refer or relate to, your interpretation(s) of the claims made in promotional materials for the challenged products. (This request includes all claims regardless of whether the claims are express or implied, and regardless of whether the claims are based on a selected portion of the promotional material or are based the [sic] overall net impression created by the interaction of different elements in the promotional material.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, and unlimited in scope and time. Respondents further object to this request as premature to the extent that this request seeks information relating to expert witnesses that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses.

Request for Production No. 40: (Complaint Counsel's No. 2)

All documents and communications referring or relating to the depictions, images, photographs, graphs, or other visuals employed or displayed in any draft or final promotional material for any of the challenged products.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 41: (Complaint Counsel's No. 3)

All draft and final promotional materials that contain one or more of the following words or phrases appearing in the claims alleged in the Complaint: "rapid."

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 42: (Complaint Counsel's No. 3)

All draft and final promotional materials that contain one or more of the following words or phrases appearing in the claims alleged in the Complaint: "visibly obvious."

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 43: (Complaint Counsel's No. 3)

All draft and final promotional materials that contain one or more of the following words or phrases appearing in the claims alleged in the Complaint: "fat loss."

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 44: (Complaint Counsel's No. 3)

All draft and final promotional materials that contain one or more of the following words or phrases appearing in the claims alleged in the Complaint: "clinical testing."

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 45: (Complaint Counsel's No. 3)

All draft and final promotional materials that contain one or more of the following words or phrases appearing in the claims alleged in the Complaint: "cause."

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 46: (Complaint Counsel's No. 3)

All draft and final promotional materials that contain one or more of the following words or phrases appearing in the claims alleged in the Complaint: "weight loss."

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time,

and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 47: (Complaint Counsel's No. 3)

All draft and final promotional materials that contain one or more of the following words or phrases appearing in the claims alleged in the Complaint: "more than 20 pounds."

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 48: (Complaint Counsel's No. 3)

All draft and final promotional materials that contain one or more of the following words or phrases appearing in the claims alleged in the Complaint: "significantly overweight."

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 49: (Complaint Counsel's No. 3)

All draft and final promotional materials that contain one or more of the following words or phrases appearing in the claims alleged in the Complaint: "substantial."

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 50: (Complaint Counsel's No. 3)

All draft and final promotional materials that contain one or more of the following words or phrases appearing in the claims alleged in the Complaint: "excess fat."

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 51: (Complaint Counsel's No. 3)

All draft and final promotional materials that contain one or more of the following words or phrases appearing in the claims alleged in the Complaint: "obese."

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time,

and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 52: (Complaint Counsel's No. 3)

All draft and final promotional materials that contain one or more of the following words or phrases appearing in the claims alleged in the Complaint: "unfair."

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 53: (Complaint Counsel's No. 4)

As to BASIC RESEARCH, LLC., all documents and communications referring or relating to the contents of draft or final promotional material described in Specification 3, above. (This request includes, but is not limited to, all documents and communications referring or relating to the intended meaning of such promotional material.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object to this request as premature to the extent that this request seeks information relating to expert witnesses

that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses.

Request for Production No. 54: (Complaint Counsel's No. 4)

As to A.G. WATERHOUSE, L.L.C., all documents and communications referring or relating to the contents of draft or final promotional material described in Specification 3, above. (This request includes, but is not limited to, all documents and communications referring or relating to the claims or messages in such promotional material.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object to this request as premature to the extent that this request seeks information relating to expert witnesses that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses.

Request for Production No. 55: (Complaint Counsel's No. 4)

As to KLEIN-BECKER USA, LLC, All documents and communications referring or relating to the contents of draft or final promotional material described in Specification 3, above. (This request includes, but is not limited to, all documents and communications referring or relating to the consumer perception of such promotional material.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object to this request as premature to the extent that this request seeks information relating to expert witnesses that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses.

Request for Production No. 56: (Complaint Counsel's No. 4)

As to NUTRASPORT, LLC, all documents and communications referring or relating to the contents of draft or final promotional material described in Specification 3, above. (This request includes, but is not limited to, all documents and communications referring or relating to the consumer perception of such promotional material.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object to this request as premature to the extent that this request seeks information relating to expert witnesses that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses.

Request for Production No. 57: (Complaint Counsel's No. 4)

As to SÖVAGE DERMALOGIC LABORATORIES, LLC, all documents and communications referring or relating to the contents of draft or final promotional material described in Specification 3, above. (This request includes, but is not limited to, all documents and communications referring or relating to, the consumer perception of such promotional material.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object to this request as premature to the extent that this request seeks information relating to expert witnesses that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses.

Request for Production No. 58: (Complaint Counsel's No. 4)

As to BAN, LLC, all documents and communications referring or relating to the contents of draft or final promotional material described in Specification 3, above. (This request includes, but is not limited to, all documents and communications referring or relating to the consumer perception of such promotional material.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the

attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object to this request as premature to the extent that this request seeks information relating to expert witnesses that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses.

Request for Production No. 59: (Complaint Counsel's No. 4)

As to DENNIS GAY, all documents and communications referring or relating to the contents of draft or final promotional material described in Specification 3, above. (This request includes, but is not limited to, all documents and communications referring or relating to the consumer perception of such promotional material.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object to this request as premature to the extent that this request seeks information relating to expert witnesses that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses.

Request for Production No. 60: (Complaint Counsel's No. 4)

As to DANIEL B. MOWREY, all documents and communications referring or relating to the contents of draft or final promotional material described in Specification 3, above. (This

request includes, but is not limited to, all documents and communications referring or relating to the consumer perception of such promotional material.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object to this request as premature to the extent that this request seeks information relating to expert witnesses that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses.

Request for Production No. 61: (Complaint Counsel's No. 4)

As to MITCHELL K. FREIDLANDER, All documents and communications referring or relating to the contents of draft or final promotional material described in Specification 3, above. (This request includes, but is not limited to, all documents and communications referring or relating to the consumer perception of such promotional material.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, is vague, ambiguous, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object to this request as premature to the extent that this request seeks information relating to expert witnesses

that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses.

Request for Production No. 62: (Complaint Counsel's No. 5)

Documents and communications sufficient to show the marketing capabilities of BASIC RESEARCH, LLC, specifically including documents and communications sufficient to show each Respondent's capabilities with respect to the creation and development of products, the creation, development, and review of promotional materials, the shipment of products, the dissemination of promotional materials, media management services, financing and accounting services, telemarketing services, credit card processing, the provision of customer service, and customs clearance.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 63: (Complaint Counsel's No. 5)

Documents and communications sufficient to show the marketing capabilities of A.G. WATERHOUSE, L.L.C., specifically including documents and communications sufficient to show each Respondent's capabilities with respect to the creation and development of products, the creation, development, and review of promotional materials, the shipment of products, the dissemination of promotional materials, media management services, financing and accounting

services, telemarketing services, credit card processing, the provision of customer service, and customs clearance.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 64: (Complaint Counsel's No. 5)

Documents and communications sufficient to show the marketing capabilities of KLEIN-BECKER USA, LLC specifically including documents and communications sufficient to show each Respondent's capabilities with respect to the creation and development of products, the creation, development, and review of promotional materials, the shipment of products, the dissemination of promotional materials, media management services, financing and accounting services, telemarketing services, credit card processing, the provision of customer service, and customs clearance.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 65: (Complaint Counsel's No. 5)

Documents and communications sufficient to show the marketing capabilities of NUTRASPORT, LLC, specifically including documents and communications sufficient to show each Respondent's capabilities with respect to the creation and development of products, the creation, development, and review of promotional materials, the shipment of products, the dissemination of promotional materials, media management services, financing and accounting services, telemarketing services, credit card processing, the provision of customer service, and customs clearance.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 66: (Complaint Counsel's No. 5)

Documents and communications sufficient to show the marketing capabilities of SÖVAGE DERMALOGIC LABORATORIES, LLC, specifically including documents and communications sufficient to show each Respondent's capabilities with respect to the creation and development of products, the creation, development, and review of promotional materials, the shipment of products, the dissemination of promotional materials, media management services, financing and accounting services, telemarketing services, credit card processing, the provision of customer service, and customs clearance.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 67: (Complaint Counsel's No. 5)

Documents and communications sufficient to show the marketing capabilities of BAN, LLC, specifically including documents and communications sufficient to show each Respondent's capabilities with respect to the creation and development of products, the creation, development, and review of promotional materials, the shipment of products, the dissemination of promotional materials, media management services, financing and accounting services, telemarketing services, credit card processing, the provision of customer service, and customs clearance.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 68: (Complaint Counsel's No. 5)

Documents and communications sufficient to show the marketing capabilities of DENNIS GAY specifically including documents and communications sufficient to show each

Respondent's capabilities with respect to the creation and development of products, the creation, development, and review of promotional materials, the shipment of products, the dissemination of promotional materials, media management services, financing and accounting services, telemarketing services, credit card processing, the provision of customer service, and customs clearance.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 69: (Complaint Counsel's No. 5)

Documents and communications sufficient to show the marketing capabilities of DANIEL B. MOWREY, Ph.D, specifically including documents and communications sufficient to show each Respondent's capabilities with respect to the creation and development of products, the creation, development, and review of promotional materials, the shipment of products, the dissemination of promotional materials, media management services, financing and accounting services, telemarketing services, credit card processing, the provision of customer service, and customs clearance.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, unduly burdensome, unlimited in scope and time, and not reasonably

expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 70: (Complaint Counsel's No. 5)

Documents and communications sufficient to show the marketing capabilities of MITCHELL K. FREIDLANDER, specifically including documents and communications sufficient to show each Respondent's capabilities with respect to the creation and development of products, the creation, development, and review of promotional materials, the shipment of products, the dissemination of promotional materials, media management services, financing and accounting services, telemarketing services, credit card processing, the provision of customer service, and customs clearance.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and documents protected by the attorney-client privilege, unduly burdensome, unlimited in scope and time, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 71: (Complaint Counsel's No. 6)

All documents and communications that support or refute your interpretation(s) of the documents submitted as product substantiation by Respondents.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad and seeks attorney work product. Respondents further object to this request as premature to the extent that this request seeks information relating to expert

witnesses that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses.

Request for Production No. 72: (Complaint Counsel's No. 6)

All documents and communications that refer or relate to, your interpretation(s) of the documents submitted as product substantiation by Respondents.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad and seeks attorney work product. Respondents further object to this request as premature to the extent that this request seeks information relating to expert witnesses that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses.

Request for Production No. 73: (Complaint Counsel's No. 7)

All documents and communications referring or relating to the Commission's advertising substantiation standard, specifically including all previously-undisclosed documents and communications referring or relating to your contentions regarding that standard and your interpretation of that standard.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad and seeks attorney work product. Respondents further object to this request as premature to the extent that this request seeks information relating to expert witnesses that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses.

Request for Production No. 74: (Complaint Counsel's No. 8)

All documents and communications made or adopted by any Respondent that analyze, discuss, or criticize any other documents (including but not limited to clinical studies, test reports, articles, and expert opinions) submitted as substantiation for dietary supplement advertising or promotional materials.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object to this request as premature to the extent that this request seeks information relating to expert witnesses that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses. Respondents further object to this request to the extent that responsive documents are public record and are equally available to Complaint Counsel. Respondents are not obliged to conduct Complaint Counsel's legal research.

Request for Production No. 75: (Complaint Counsel's No. 8)

All federal and state court filings and trial or deposition testimony made or adopted by any Respondent that analyze, discuss, or criticize any other documents (including but not limited to clinical studies, test reports, articles, and expert opinions) submitted as substantiation for dietary supplement advertising or promotional materials. (This request specifically includes, but is not limited to, responsive.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object to this request as premature to the extent that this request seeks information relating to expert witnesses that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses. Respondents further object to this request to the extent that responsive documents are public record and are equally available to Complaint Counsel. Respondents are not obliged to conduct Complaint Counsel's legal research.

Request for Production No. 76: (Complaint Counsel's No. 9)

All documents, communications, and tangible things considered, and/or relied upon by any expert witness in connection with his services in this action, including but not limited to any notes on documents and notes of conversations with the parties or their counsel.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad. Respondents further object to this request as premature to the extent that this request seeks information relating to expert witnesses that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses.

Request for Production No. 77: (Complaint Counsel's No. 10)

All documents, communications, and tangible things given to, or generated by, any expert witness in connection with his services in this action, including but not limited to any documents, communications, and videos, photographs, test, test results, notes, or memoranda.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad. Respondents further object to this request as premature to the extent that this request seeks information relating to expert witnesses that Respondents intend to use at the hearing and information relating to non-testifying or consulting expert witnesses.

Request for Production No. 78: (Complaint Counsel's No. 11)

All documents, communications, tangible things, and evidence listed in your Initial Disclosures and any supplemental Disclosure that you may file.

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that Respondents have already produced responsive documents and/or responsive documents are otherwise already in Complaint Counsel's possession, custody, or control. Additionally, Respondents are uncertain as to what is meant by supplemental Disclosure. Subject to these objections and the general objections stated above, and to the extent not already produced, Respondents will produce any responsive documents that have not been previously produced.

Request for Production No. 79: (Complaint Counsel's No. 12)

All communications made to persons and entities other than the Federal Trade Commission or Respondents that refer or relate to the Federal Trade Commission's law enforcement investigation and action against BASIC RESEARCH, LLC. (This request specifically includes, but is not limited to, all communications made to all third parties, including subpoena recipients, since the filing of the administrative Complaint.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 80: (Complaint Counsel's No. 12)

All communications made to persons and entities other than the Federal Trade Commission or Respondents that refer or relate to the Federal Trade Commission's law enforcement investigation and action against A.G. WATERHOUSE, L.L.C.. (This request specifically includes, but is not limited to, all communications made to all third parties, including subpoena recipients, since the filing of the administrative Complaint.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 81: (Complaint Counsel's No. 12)

All communications made to persons and entities other than the Federal Trade Commission or Respondents that refer or relate to the Federal Trade Commission's law enforcement investigation and action against KLEIN-BECKER, LLC. (This request specifically includes, but is not limited to, all communications made to all third parties, including subpoena recipients, since the filing of the administrative Complaint.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 82: (Complaint Counsel's No. 12)

All communications made to persons and entities other than the Federal Trade Commission or Respondents that refer or relate to the Federal Trade Commission's law enforcement investigation and action against NUTRASPORT, LLC. (This request specifically includes, but is not limited to, all communications made to all third parties, including subpoena recipients, since the filing of the administrative Complaint.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 83: (Complaint Counsel's No. 12)

All communications made to persons and entities other than the Federal Trade Commission or Respondents that refer or relate to the Federal Trade Commission's law enforcement investigation and action against SÖVAGE DERMALOGIC LABORATORIES, LLC. (This request specifically includes, but is not limited to, all communications made to all third parties, including subpoena recipients, since the filing of the administrative Complaint.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 84: (Complaint Counsel's No. 12)

All communications made to persons and entities other than the Federal Trade Commission or Respondents that refer or relate to the Federal Trade Commission's law enforcement investigation and action against BAN, LLC. (This request specifically includes, but is not limited to, all communications made to all third parties, including subpoena recipients, since the filing of the administrative Complaint.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 85: (Complaint Counsel's No. 12)

All communications made to persons and entities other than the Federal Trade Commission or Respondents that refer or relate to the Federal Trade Commission's law enforcement investigation and action against DENNIS GAY. (This request specifically includes, but is not limited to, all communications made to all third parties, including subpoena recipients, since the filing of the administrative Complaint.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 86: (Complaint Counsel's No. 12)

All communications made to persons and entities other than the Federal Trade Commission or Respondents that refer or relate to the Federal Trade Commission's law enforcement investigation and action against DANIEL B. MOWREY, Ph.D. (This request specifically includes, but is not limited to, all communications made to all third parties, including subpoena recipients, since the filing of the administrative Complaint.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 87: (Complaint Counsel's No. 12)

All communications made to persons and entities other than the Federal Trade Commission or Respondents that refer or relate to the Federal Trade Commission's law enforcement investigation and action against MITCHELL K. FREIDLANDER. (This request specifically includes, but is not limited to, all communications made to all third parties, including subpoena recipients, since the filing of the administrative Complaint.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 88: (Complaint Counsel's No. 12)

All communications made to persons and entities other than the Federal Trade Commission or Respondents that refer or relate to the Federal Trade Commission's law enforcement investigation and action against MITCHELL K. FREIDLANDER. (This request specifically includes, but is not limited to, all communications made to all third parties, including subpoena recipients, since the filing of the administrative Complaint.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overbroad, seeks attorney work product and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent.

Request for Production No. 89: (Complaint Counsel's No. 13)

From January 1, 2000 to the present, all documents and communications referring or relating to BASIC RESEARCH, LLC's respective practices and/or policies with respect to the retention, storage, movement (both within the Respondents' business premises and from those premises), destruction, or production of documents and communications, whether in written or electronic or other form, specifically including the documents and communications described in Complaint Counsel's current or previous Requests for Production.

(This request specifically includes, but is not limited to, any written retention policies, confidentiality agreements, or destruction protocols, and any documents or communications referring or relating to any action taken to retain, store, move, destroy, or produce documents or communications described in Complaint Counsel's current or previous Requests for Productions. For Corporate Respondents, this request includes the document practices and/or policies of their owners, directors, officers, managers, and/or employees, as well as any consultants with offices at Respondents' business premises.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overly broad, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object on the basis that the request seeks attorney work product, and materials protected by the attorney client privilege.

Request for Production No. 90: (Complaint Counsel's No. 13)

From January 1, 2000 to the present, all documents and communications referring or relating to A.G. WATERHOUSE, L.L.C.'s respective practices and/or policies with respect to the retention, storage, movement (both within the Respondents' business premises and from those premises), destruction, or production of documents and communications, whether in written or electronic or other form, specifically including the documents and communications described in Complaint Counsel's current or previous Requests for Production.

(This request specifically includes, but is not limited to, any written retention policies, confidentiality agreements, or destruction protocols, and any documents or communications referring or relating to any action taken to retain, store, move, destroy, or produce documents or communications described in Complaint Counsel's current or previous Requests for Productions. For Corporate Respondents, this request includes the document practices and/or policies of their owners, directors, officers, managers, and/or employees, as well as any consultants with offices at Respondents' business premises.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overly broad, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object on the basis that the request seeks attorney work product, and materials protected by the attorney client privilege.

Request for Production No. 91: (Complaint Counsel's No. 13)

From January 1, 2000 to the present, all documents and communications referring or relating to KLEIN-BECKER USA, LLC's respective practices and/or policies with respect to the

retention, storage, movement (both within the Respondents' business premises and from those premises), destruction, or production of documents and communications, whether in written or electronic or other form, specifically including the documents and communications described in Complaint Counsel's current or previous Requests for Production.

(This request specifically includes, but is not limited to, any written retention policies, confidentiality agreements, or destruction protocols, and any documents or communications referring or relating to any action taken to retain, store, move, destroy, or produce documents or communications described in Complaint Counsel's current or previous Requests for Productions. For Corporate Respondents, this request includes the document practices and/or policies of their owners, directors, officers, managers, and/or employees, as well as any consultants with offices at Respondents' business premises.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overly broad, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object on the basis that the request seeks attorney work product, and materials protected by the attorney client privilege.

Request for Production No. 92: (Complaint Counsel's No. 13)

From January 1, 2000 to the present, all documents and communications referring or relating to NUTRASPORT, LLC's respective practices and/or policies with respect to the retention, storage, movement (both within the Respondents' business premises and from those premises), destruction, or production of documents and communications, whether in written or

electronic or other form, specifically including the documents and communications described in Complaint Counsel's current or previous Requests for Production.

(This request specifically includes, but is not limited to, any written retention policies, confidentiality agreements, or destruction protocols, and any documents or communications referring or relating to any action taken to retain, store, move, destroy, or produce documents or communications described in Complaint Counsel's current or previous Requests for Productions. For Corporate Respondents, this request includes the document practices and/or policies of their owners, directors, officers, managers, and/or employees, as well as any consultants with offices at Respondents' business premises.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overly broad, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object on the basis that the request seeks attorney work product, and materials protected by the attorney client privilege.

Request for Production No. 93: (Complaint Counsel's No. 13)

From January 1, 2000 to the present, all documents and communications referring or relating to SOVAGE DERMALOGIC LABORATORIES, LLC's respective practices and/or policies with respect to the retention, storage, movement (both within the Respondents' business premises and from those premises), destruction, or production of documents and communications, whether in written or electronic or other form, specifically including the documents and communications described in Complaint Counsel's current or previous Requests for Production.

(This request specifically includes, but is not limited to, any written retention policies, confidentiality agreements, or destruction protocols, and any documents or communications referring or relating to any action taken to retain, store, move, destroy, or produce documents or communications described in Complaint Counsel's current or previous Requests for Productions. For Corporate Respondents, this request includes the document practices and/or policies of their owners, directors, officers, managers, and/or employees, as well as any consultants with offices at Respondents' business premises.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overly broad, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object on the basis that the request seeks attorney work product, and materials protected by the attorney client privilege.

Request for Production No. 94: (Complaint Counsel's No. 13)

From January 1, 2000 to the present, all documents and communications referring or relating to BAN, LLC's respective practices and/or policies with respect to the retention, storage, movement (both within the Respondents' business premises and from those premises), destruction, or production of documents and communications, whether in written or electronic or other form, specifically including the documents and communications described in Complaint Counsel's current or previous Requests for Production.

(This request specifically includes, but is not limited to, any written retention policies, confidentiality agreements, or destruction protocols, and any documents or communications referring or relating to any action taken to retain, store, move, destroy, or produce documents or

communications described in Complaint Counsel's current or previous Requests for Productions. For Corporate Respondents, this request includes the document practices and/or policies of their owners, directors, officers, managers, and/or employees, as well as any consultants with offices at Respondents' business premises.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overly broad, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object on the basis that the request seeks attorney work product, and materials protected by the attorney client privilege.

Request for Production No. 95: (Complaint Counsel's No. 13)

From January 1, 2000 to the present, all documents and communications referring or relating to DENNIS GAY's respective practices and/or policies with respect to the retention, storage, movement (both within the Respondents' business premises and from those premises), destruction, or production of documents and communications, whether in written or electronic or other form, specifically including the documents and communications described in Complaint Counsel's current or previous Requests for Production.

(This request specifically includes, but is not limited to, any written retention policies, confidentiality agreements, or destruction protocols, and any documents or communications referring or relating to any action taken to retain, store, move, destroy, or produce documents or communications described in Complaint Counsel's current or previous Requests for Productions. For Corporate Respondents, this request includes the document practices and/or policies of their

owners, directors, officers, managers, and/or employees, as well as any consultants with offices at Respondents' business premises.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overly broad, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object on the basis that the request seeks attorney work product, and materials protected by the attorney client privilege.

Request for Production No. 96: (Complaint Counsel's No. 13)

From January 1, 2000 to the present, all documents and communications referring or relating to DANIEL B. MOWREY, Ph.D's respective practices and/or policies with respect to the retention, storage, movement (both within the Respondents' business premises and from those premises), destruction, or production of documents and communications, whether in written or electronic or other form, specifically including the documents and communications described in Complaint Counsel's current or previous Requests for Production.

(This request specifically includes, but is not limited to, any written retention policies, confidentiality agreements, or destruction protocols, and any documents or communications referring or relating to any action taken to retain, store, move, destroy, or produce documents or communications described in Complaint Counsel's current or previous Requests for Productions. For Corporate Respondents, this request includes the document practices and/or policies of their owners, directors, officers, managers, and/or employees, as well as any consultants with offices at Respondents' business premises.)

Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overly broad, and not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object on the basis that the request seeks attorney work product, and materials protected by the attorney client privilege.

Request for Production No. 97: (Complaint Counsel's No. 13)

From January 1, 2000 to the present, all documents and communications referring or relating to MITCHELL K. FREIDLANDER's respective practices and/or policies with respect to the retention, storage, movement (both within the Respondents' business premises and from those premises), destruction, or production of documents and communications, whether in written or electronic or other form, specifically including the documents and communications described in Complaint Counsel's current or previous Requests for Production.

(This request specifically includes, but is not limited to, any written retention policies, confidentiality agreements, or destruction protocols, and any documents or communications referring or relating to any action taken to retain, store, move, destroy, or produce documents or communications described in Complaint Counsel's current or previous Requests for Productions. For Corporate Respondents, this request includes the document practices and/or policies of their owners, directors, officers, managers, and/or employees, as well as any consultants with offices at Respondents' business premises.)


Response:

In addition to the general objections set forth above, Respondents object to this request to the extent that it is overly broad, and not reasonably expected to yield information relevant to the

allegations of the Complaint, to the proposed relief, or to the defenses of any Respondent. Respondents further object on the basis that the request seeks attorney work product, and materials protected by the attorney client privilege.

Respectfully submitted this 4th day of November, 2004

Respectfully submitted,



Jeffrey D. Feldman

Todd M. Malynn

Gregory L. Hillyer

Christopher P. Demetriades

FeldmanGale, P.A.

Miami Center, 19th Floor

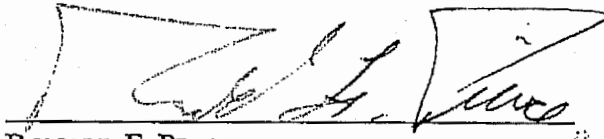
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Miami, Florida 33131

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Attorneys for Respondents Basic Research,
LLC, A.G. Waterhouse, LLC, Klein-Becker
USA, LLC, Nutrasport, LLC, Söavage
Dermalogic Laboratories, LLC and Ban,
LLC



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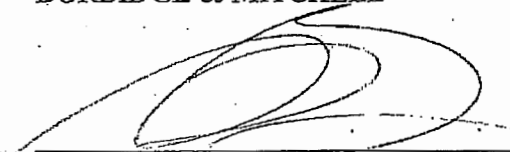
Facsimile: (801) 322-2003

E-mail: rpf@psplawyers.com

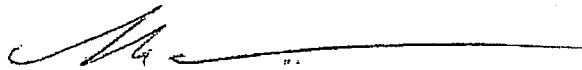
Attorneys for Respondent Daniel B. Mowrey

DATED this 4th day of November, 2004.

BURBIDGE & MITCHELL

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Richard D. Burbidge
Attorneys for Respondent Dennis Gay



Mitchell K. Friedlander
c/o Compliance Department
5742 West Harold Getty Drive
Salt Lake City, Utah 84116
Telephone: (801) 414-1800
Facsimile: (801) 517-7108

Pro Se Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Respondents' Expert Witness List was provided to the following parties this 4th day of November, 2004 as follows:

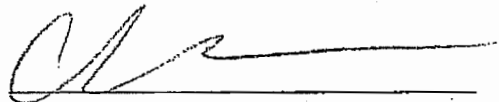
(1) One (1) copy via e-mail attachment in Adobe® “.pdf” format to Commission Complaint Counsel, Laureen Kapin, Joshua S. Millard, and Laura Schneider, all care of lkapin@ftc.gov, jmillard@ftc.gov, r-richardson@ftc.gov, lschneider@ftc.gov with one (1) paper courtesy copy via U. S. Postal Service to Laureen Kapin, Bureau of Consumer Protection, Federal Trade Commission, Suite NJ-2122, 600 Pennsylvania Avenue, N.W., Washington, D.C., 20580;

(2) One (1) copy via United States Postal Service to Stephen Nagin, Esq., Nagin Gallop & Figueredo, 3225 Aviation Avenue, Suite 301, Miami, Florida 33131.

(3) One (1) copy via United States Postal Service to Richard Burbidge, Esq., Jefferson W. Gross, Esq. and Andrew J. Dymek, Esq., Burbidge & Mitchell, 215 South State Street, Suite 920, Salt Lake City, Utah 84111, Counsel for Dennis Gay.

(4) One (1) copy via United States Postal Service to Ronald F. Price, Esq., Peters Scofield Price, A Professional Corporation, 340 Broadway Centre, 111 East Broadway, Salt Lake City, Utah 84111, Counsel for Daniel B. Mowrey.

(5) One (1) copy via United States Postal Service to Mitchell K. Friedlander, 5742 West Harold Gatty Drive, Salt Lake City, Utah 84111, Pro Se.

A handwritten signature in black ink, appearing to be 'M. Friedlander', written over a horizontal line.