

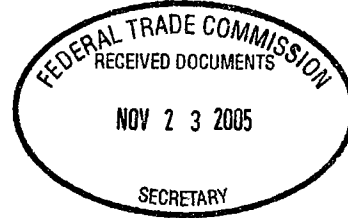
**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

**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  
LABORATORIES, L.L.C.,  
BAN, L.L.C.,  
DENNIS GAY,  
DANIEL B. MOWREY, and  
MITCHELL K. FRIEDLANDER,**

**Respondents.**

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**Docket No. 9318**

**PUBLIC**

**RESPONDENTS' OBJECTIONS TO COMPLAINT COUNSEL'S  
PROPOSED FINAL WITNESS LIST<sup>1</sup>**

Pursuant to the August 11, 2004 Scheduling Order, Basic Research, LLC; A.G. Waterhouse, LLC; Klein-Becker, LLC; Nutrasport, LLC; Sövage Dermalogic Laboratories, LLC; BAN, LLC; Dennis Gay; Daniel B. Mowrey, Ph.D.; and Mitchell K. Friedlander (collectively "Respondents") hereby respectfully submit their objections to Complaint Counsel's Proposed Witness List.

**RESPONDENTS' RESERVATION OF FUTURE OBJECTIONS AS TO EXPERT  
WITNESSES**

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<sup>1</sup> This Motion is being filed in conformity with the Scheduling Order issued by the Presiding Officer on August 11, 2004, and the Second Revised Scheduling Order issued on August 4, 2005, and extended by the Court's November 21, 2005 order, requiring that objections be filed on November 23, 2005.

Respondents hereby reserve the right to submit their objections to the expert witnesses Mazis, Heymsfield, and Nunberg separately in individual motions to exclude or limit testimony.

## **RESPONDENTS' RESERVATIONS AS TO INDIVIDUALLY NAMED WITNESSES**

### **1. Carla Fobbs**

- a. Respondents move to limit the scope of Carla Fobbs' testimony only to information and materials about which she has direct knowledge.
- b. Respondents object to Complaint Counsel's specification of Carla Fobbs' position title as Legal Administrator.
- c. Respondents object to Carla Fobbs' testimony concerning individual respondents' authority and their roles in the advertising/sale of the challenged products because it lacks a proper foundation and is hearsay beyond the scope of her direct knowledge and for which no known exception applies.
- d. Respondents object to Carla Fobbs' testimony concerning others' participation, roles, duties, responsibilities, and obligations in developing, reviewing, marketing, and promoting claims for the challenged products because it lacks a proper foundation and is hearsay beyond the scope of her direct knowledge and for which no known exception applies.
- e. Respondents object to any questioning of Carla Fobbs that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.

### **2. Mitchell Friedlander**

- a. Respondents move to limit the scope of Mitchell Friedlander's testimony only to information and materials about which he has direct knowledge.
- b. Respondents object to Mitchell Friedlander's testimony concerning business activities of other limited liability companies other than Respondents because it lacks a proper foundation and is hearsay beyond the scope of his direct knowledge and for which no known exception applies.
- c. Respondents object to Mitchell Friedlander's testimony concerning the "meaning" of representations and depictions about advertisements and promotional materials on the grounds of speculation, lack of proper foundation and hearsay because it is beyond the scope of his direct knowledge and no exception to the rule applies.
- d. Respondents object to all testimony that attempts to elicit speculative evidence concerning consumer perception or inferences drawn from advertisements because it lacks a proper foundation and is hearsay beyond the scope of his direct knowledge and for which no known exception applies.

- e. Respondents object to any questioning of Mitchell Friedlander that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.
- f. Respondents object to any questioning of Mitchell Friedlander that attempts to elicit testimony or evoke a response concerning prior civil, criminal, or administrative proceedings or actions.

### **3. Dennis Gay**

- a. Respondents move to limit the scope of Dennis Gay's testimony only to information and materials about which he has direct knowledge.
- b. Respondents object to Dennis Gay's testimony concerning the individual respondents' authority and their roles in the advertising/sale of the challenged products because it lacks a proper foundation and is hearsay beyond the scope of his direct knowledge and for which no known exception applies..
- c. Respondents object to Dennis Gay's testimony concerning the range of other dietary supplements sold by Respondents on the basis of the August 2004 order entered by the Presiding Officer limiting the scope of discovery to the six challenged products at issue in this proceeding.
- d. Respondents object to any questioning of Dennis Gay that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.

### **4. Gina Jo Gay**

- a. Respondents move to limit the scope of Gina Jo Gay's testimony only to information and materials about which she has direct knowledge.
- b. Respondents object to Gina Jo Gay's testimony concerning limited liability entities other than Respondents because it lacks a proper foundation and is hearsay beyond the scope of her direct knowledge and for which no known exception applies.
- c. Respondents move to limit the scope of Gina Jo Gay's appearance as a representative of the Corporate Respondents only, and only to matters relating to her direct knowledge.
- d. Respondents object to any questioning of Gina Jo Gay that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.

### **5. Michael Meade**

- a. Respondents move to limit the scope of Michael Meade's testimony only to information and materials about which he has direct knowledge.
- b. Respondents move to limit the scope of Michael Meade's testimony only to his own actions, and not that of unrelated and independent limited liability entities other than Respondents because it lacks a proper foundation and is hearsay

beyond the scope of his direct knowledge and for which no known exception applies.

- c. Respondents object to any questioning of Michael Meade that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.
- d. Respondents object to any questioning of Michael Meade that attempts to elicit testimony or evoke a response concerning prior civil, criminal, or administrative proceedings or actions.

#### **6. Daniel Mowrey**

- a. Respondents move to limit the scope of Daniel Mowrey's testimony only to information and materials about which he has direct knowledge.
- b. Respondents object to Daniel Mowrey's testimony to the extent that it concerns or implicates limited liability entities other than Respondents because it lacks a proper foundation and is hearsay beyond the scope of his direct knowledge and for which no known exception applies.
- c. Respondents object to any questioning of Daniel Mowrey that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.

#### **7. Denise Owens**

- a. Respondents move to limit the scope of Denise Owens' testimony only to information and materials about which she has direct knowledge.
- b. Respondents object to testimony that attempts to elicit information concerning authenticity and veracity of documents not within Denise Owens' possession because it lacks a proper foundation and is hearsay beyond the scope of her direct knowledge and for which no known exception applies.
- c. Respondents object to any questioning of Denise Owens that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.

#### **8. Gary Sandberg**

- a. Respondents move to limit the scope of Gary Sandberg's testimony only to information and materials about which he has direct knowledge.
- b. Respondents object to Gary Sandberg's testimony to the extent that it concerns third party advertising agencies and the actions of individual respondents because it lacks a proper foundation and is hearsay beyond the scope of his direct knowledge and for which no known exception applies.
- c. Respondents object to any questioning of Gary Sandberg that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.

#### **9. Kevin Towers**

- a. Respondents move to limit the scope of Kevin Towers' testimony only to information and materials about which he has direct knowledge.
- b. Respondents object to Kevin Towers' testimony to the extent that it attempts to elicit information concerning authenticity and veracity of documents not within his possession because it lacks a proper foundation and is hearsay beyond the scope of his direct knowledge and for which no known exception applies.
- c. Respondents object to any questioning of Kevin Towers that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.

#### **10. Val Weight**

- a. Respondents move to limit the scope of Val Weight's testimony only to information and materials about which he has direct knowledge.
- b. Respondents object to Val Weight's testimony to the extent that it concerns individual respondents' authority and roles in advertising, promotion, and sale of the challenged products, because it lacks a proper foundation and is hearsay beyond the scope of his direct knowledge and for which no known exception applies.
- c. Respondents object to Val Weight's testimony to the extent that it concerns or implicates accounting practices or records with regard to products that are not at issue in the proceeding, because it is irrelevant, and lacks a proper foundation.
- d. Respondents object to any questioning of Val Weight that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.

#### **11. Jeffrey Lang**

- a. Respondents move to limit the scope of Jeffrey Lang's testimony only to information and materials about which he has direct knowledge.
- b. Respondents object to any questioning of Jeffrey Lang that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.

#### **12. Lori Jacobus**

- a. Respondents move to limit the scope of Lori Jacobus' testimony only to information and materials about which she has direct knowledge.
- b. Respondents object to any questioning of Lori Jacobus that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.

#### **13. Ynicsha Carter**

- a. Respondents move to limit the scope of Ynicsha Carter's testimony only to information and materials about which she has direct knowledge.
- b. Respondents object to any questioning of Ynicsha Carter that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.

#### **14. Don Atkinson**

- a. Respondents move to limit the scope of Don Atkinson's testimony only to information and materials about which he has direct knowledge.
- b. Respondents object to any questioning of Don Atkinson that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.

#### **15. Nathalie Chevreau**

- a. Respondents move to limit the scope of Nathalie Chevreau's testimony only to information and materials about which she has direct knowledge.
- b. Respondents object to Nathalie Chevreau's testimony to the extent that it concerns other limited liability companies, on the grounds that she is a scientist and an employee, not a corporate officer or a valuation specialist, the testimony lacks proper foundation, and the testimony is hearsay beyond the scope of her direct knowledge and for which no known exception applies.
- c. Respondents object to Nathalie Chevreau's testimony regarding the roles of individual respondents in advertising and promotional practices because it lacks a proper foundation and is hearsay beyond the scope of her direct knowledge and for which no known exception applies.
- d. Respondents object to any questioning of Nathalie Chevreau that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.

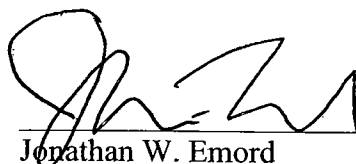
#### **16. Jeff Davis**

- a. Respondents move to limit the scope of Jeff Davis' testimony only to information and materials about which he has direct knowledge.
- b. Respondents object to Jeff Davis' testimony to the extent that it concerns or implicates other limited liability companies or the roles of the individual respondents within those entities because it lacks a proper foundation and is hearsay beyond the scope of his direct knowledge and for which no known exception applies.
- c. Respondents object to any questioning that attempts to elicit testimony about other products marketed by Respondents on the basis that the August 2004 order limits scope of discovery to the six challenged products.
- d. Respondents object to any questioning of Jeff Davis that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.

**17. Robert H. Eckel**

- a. Respondents object to any questioning of Robert H. Eckel that attempts to elicit testimony that invades a privilege or evokes a response concerning trade secret or other confidential corporate communications.
- b. Respondents object to any questioning of Robert H. Eckel that attempts to elicit hearsay for which no known exception applies or testimony that lacks a proper foundation.

Respectfully submitted,



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*Pro se.*

Date submitted: November 23, 2005



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

**In the Matter of**

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

**Docket No. 9318**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of November, 2005, I caused Respondents' Objections to Complaint Counsel's Proposed Final Witness List to be filed and served as follows:

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

Donald S. Clark  
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600 Pennsylvania Avenue, N.W.  
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2) two paper copies delivered by hand delivery to:

The Hon. Stephen J. McGuire  
Chief Administrative Law Judge  
U.S. Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
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Washington, D.C. 20580

3) one paper copy by first class U.S. Mail to:

James Kohm  
Associate Director, Enforcement  
U.S. Federal Trade Commission  
601 New Jersey Avenue, N.W.  
Washington, D.C. 20001

4) one paper copy by first class U.S. mail and one electronic copy in PDF format by electronic mail to:

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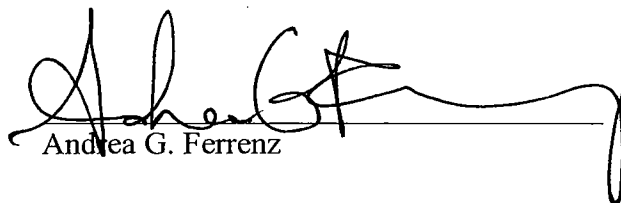
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