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

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| **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.,** | ) | **Docket No. 9318** |
| **BAN, L.L.C.,** | ) | **PUBLIC DOCUMENT** |
| **DENNIS GAY,** | ) | |
| **DANIEL B. MOWREY, and** | ) | |
| **MITCHELL K. FRIEDLANDER,** | ) | |
| **Respondents.** | ) | |

**COMPLAINT COUNSEL'S OPPOSITION TO**
**RESPONDENTS' MOTIONS FOR INTERLOCUTORY APPEAL AND**
**PRO SE RESPONDENT FRIEDLANDER'S MOTION FOR CERTIFICATION**

Complaint Counsel oppose Respondents' Motion For Interlocutory Appeal and Respondent Friedlander's related Motion Re Certification Or Alternatively, for an Interlocutory Appeal. Both motions present Respondents' third reprise of arguments objecting to the definiteness of the Complaint that Respondents' have already answered. Respondents fail to show that the issue of whether the Complaint is sufficiently definite to enable Respondents to answer involves a controlling question that would determine this case, much less a wide range of cases. Moreover, Judge Chapell's Order denying Respondents' motions for more definite statement raises no substantial ground for difference of opinion and further rulings on the definiteness of the Complaint will not materially advance the termination of the litigation. Respondents may seek review of this issue after issuance of an initial decision, and have failed to demonstrate that such review would be an inadequate remedy. Finally, Respondent Friedlander

has failed to demonstrate that the Order ruled on issues outside this Court's authority. As a result, the Court should reject Respondents' Motions.

## I. BACKGROUND

### A. The Commission's Complaint

On June 15, 2004, the Commission filed a Complaint alleging, *inter alia*, that Basic Research L.L.C. and other related individuals and companies (collectively "Respondents") marketed certain dietary supplements with unsubstantiated claims for fat loss and/or weight loss, and falsely represented that some of these products were clinically proven to be effective, in violation of Sections 5(a) and 12 of the Federal Trade Commission Act ("FTC Act").

The Complaint focuses on six products—three topically-applied gels, "Dermalin-APg," "Cutting Gel," and "Tummy Flattening Gel"; two dietary supplements marketed to significantly overweight adults, "Leptoprin" and "Anorex"; and a dietary supplement marketed for overweight children, "PediaLean." The Complaint quotes extensively from Respondents' own marketing materials and identified the individuals, entities, representations, and practices alleged to violate the FTC Act. Regarding the gels, the Complaint challenges, as unsubstantiated, representations that the gel products cause "rapid and visibly obvious fat loss in areas of the body to which it is applied." Compl. ¶¶ 14-22. As to the adult weight loss supplements, the Complaint challenges, as unsubstantiated, that Leptoprin and Anorex causes "weight loss of more than 20 pounds, including as much as 50, 60, or 147 pounds." Compl. ¶¶ 28-30; 33-35. The Complaint further challenges, as false, claims regarding the clinical testing for certain topical gels and the adult weight loss supplements. Compl. ¶¶ 23-26; ¶¶ 31-32. As to the children's weight loss supplement, the Complaint challenges, as unsubstantiated, the claim that

"PediaLean causes substantial weight loss in overweight children," and as false, the claim that "clinical testing proves that PediaLean causes substantial weight loss in overweight or obese children."

Compl. ¶¶ 37-41. Finally, the Complaint charges, as false, representations that Respondent Daniel Mowrey is a medical doctor. Compl. ¶¶ 42-44.

**B. Respondents' Duplicative Motions for a More Definite Statement**

Instead of answering, Respondents filed a Motion for a More Definite Statement on June 28, 2004, asserting that they were unable to frame an appropriate response to the Commission's Complaint because they did not understand some of the words used therein: "reasonable basis"; "rapid"; "substantial"; "clinical testing"; "visibly obvious"; "causes"; and "unfair." *Pro se* Respondent Mitchell K. Friedlander ("Friedlander") filed a virtually identical Motion on July 6th, 2004. On July 13th, 2004, Respondents and Respondent Friedlander separately moved to file reply briefs that essentially repeated their prior arguments and submitted those briefs. We opposed the filing of these duplicative briefs on July 8, 2004. On July 20, 2004, Judge Chappell rejected Respondents' reply briefs, entered an Order denying Respondents' motions for a more definite statement, and directed Respondents to file their answers to the Complaint by July 30, 2004.[1] Respondents filed their answers on July 30, 2004, denying most of the facts alleged, challenging the definitiveness of certain terms (including "reasonable basis" and "disseminated") and asserting numerous affirmative defenses not relevant to whether the alleged violations occurred.

[1] A copy of Judge Chappell's July 20th Order is attached as Exhibit 1. Respondents did not attach the challenged ruling, or any other pertinent portions of the record, to their Motions for Interlocutory Appeal as required by RULE OF PRACTICE 3.23(b).

**C. Judge Chappell's Order and Respondents' Motions**

Judge Chappell held that the Complaint gave Respondents fair notice of the Commission's factual and legal allegations basing his determination on various factors. First, the Order recognized that RULE 3.11(b)(2) requires only that complaints contain allegations sufficiently clear and concise to "give a respondent 'fair notice of what . . . the claim is and the grounds upon which it rests.'" Order at 2 (citing *Schering-Plough Corp.*, 2001 FTC LEXIS 198, *11 (Oct. 31, 2001)).[2] Second, Judge Chapell found that the Complaint quoted extensively from Respondents' marketing materials and "identifie[d] the individuals, entities, representations, and practices alleged to violate the FTC Act." Order at 3. Third, recognizing Complaint Counsel's contention that the terms "rapid," "substantial," "clinical testing," and "visibly obvious" are "the same or similar to terms used in Respondents' advertising," Judge Chappell concluded that the Complaint was sufficiently detailed in nature to permit Respondents to answer the Complaint's allegations. *Id.* at 3-4. Lastly, Judge Chappell observed that the discovery process ordinarily offers Respondents the opportunity to seek more information about the Commission's allegations, if necessary. *Id.* at 4.

Respondents filed Motions for Interlocutory Appeal of Judge Chappell's Order. Respondent Friedlander also requests, in the alternative, that this Court certify his denied Motion to the Commission for decision.[3] We address these points *seriatim*.

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[2] A copy of cited unpublished decisions are attached in alphabetical order at Exhibit 2.

[3] The Court noted that Mr. Friedlander's motion, though "captioned" as a motion to dismiss complaint for lack of definiteness was, "in substance a motion for more definite statement" and treated it as such.

## II. ARGUMENT

### A. Respondents' Motions Fails To Meet the Standards Necessary to Certify this Matter for Interlocutory Appeal to the Commission

"Interlocutory appeals in general are disfavored, as intrusions on the orderly and expeditious conduct of our adjudicative process." *Bristol-Myers Co.*, 90 F.T.C. 273 (1977); *see, e.g., Gillette Co.*, 98 F.T.C. 875 (1981). Hence, the "overwhelming majority of decisions by Administrative Law Judges deny requests for certification." *Schering-Plough Corp.*, No. 9297, 2002 WL 31433937 (Feb. 12, 2002). The Commission particularly frowns upon requests to certify interlocutory appeals of rulings on motions for a more definite statement. *See, e.g., Alterman Foods, Inc.*, 79 F.T.C. 984 (1971) (The Commission "ordinarily will not disturb" a ruling that the complaint was sufficient for the purpose of filing an answer).

Applications for immediate review of an Administrative Law Judge's ruling may be made only if the applicant meets both prongs of a two-prong test. First, the applicant must demonstrate that the challenged ruling involves "a controlling question of law or policy as to which there is substantial ground for difference of opinion." RULE 3.23(b). Second, the applicant must show that "an immediate appeal . . . may materially advance the ultimate termination of the litigation or [that] subsequent review will be an inadequate remedy." *Id.* These are stringent requirements, and Respondents' Motions do not come close to satisfying them.

#### 1. Respondents' Professed Confusion Does Not Present a Controlling Question

The "controlling question" standard "forecloses interlocutory appeals in situations in which the law is well settled and the dispute arises in the application of the facts attached to that law." *Int'l Assoc. of Conf. Interp.*, No. 9270, 1995 F.T.C. LEXIS 452, at *4 (Feb. 15, 1995)

(citation omitted). Instead, a question is deemed controlling "only if it may contribute to the determination, at an early stage, of a wide spectrum of cases" and not merely "a question of law which is determinative of a case at hand." *Rambus Inc.*, No. 9302, 2003 F.T.C. LEXIS 49, at *9, (Mar. 26, 2003) citing *Automotive Breakthrough Sciences, Inc.*, 1996 F.T.C. LEXIS 478 at *1 (Nov. 5, 1996).

With some legal legerdemain, Respondents have transformed their purported confusion regarding seven words or phrases, listed above,[4] into two "issues" for immediate Commission review.[5] These issues are not controlling questions for multiple reasons.

First, Respondents' suggested issues for appeal are settled questions regarding the pleading requirements for Commission complaints. These rudimentary questions were settled by RULE 3.11(b)(2), and they were settled once again, in the specific context of this case, by Judge Chappell's Order. The pleading requirements applicable to the Commission's Complaint is hardly a "difficult central question of law which is not settled by controlling authority." *Heddendorf*, 263 F.2d 887, 889 (1st Cir. 1959); *see Rambus Inc.*, No. 9302, 2003 WL 1866415

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[4] As discussed in our Opposition to Respondents' initial Motions, these phrases have meanings in case law or common parlance, and some of them (or variants thereof) have appeared in Respondents' own promotional materials. *See* FTC Opp'n. at 6-11.

[5] Respondents' proffered "issues" are as follows:

> (1) whether the Commission should be required when drafting a complaint to adequately define subjective terms it uses in setting forth its interpretation of an advertisement in a false advertising case; and (2) whether the Commission in bringing an inadequate substantiation case must allege at the commencement of the case the specific type and amount of information a Respondent needs in order to have a "reasonable basis" for the challenged advertisements.

Resp'ts' Mot. at 5; *Pro Se* Resp't's Mot. at 8.

(Mar.17, 2003) (denying motion for interlocutory appeal because the question involved "well-settled doctrines of law"). No disagreements between legal authorities on the suggested questions are cited. For example, Respondents fail to cite a split between circuit courts or a split in Commission decisions. Instead, Respondents seem to cite only their own disagreement with Judge Chappell's *Order*.

Second, Respondents' suggested issues for appeal do not materially affect this litigation. Assuming *arguendo* that RULE 3.11(b)(2) does not exist, and that the Commission decides that it must define the challenged words or phrases, Respondents would still have to defend the case on its merits. Hence, defining these terms would not resolve this case, let alone other cases involving different allegations and different challenged claims.

Third, Respondents have not demonstrated, as RULE 3.23(b) requires, that there is "substantial ground for difference of opinion" regarding the pleading requirements for Commission complaints or the meaning of the challenged words or phrases. Commission precedent holds that "a party seeking certification must make a showing of *a likelihood of success on the merits*." *Int'l Ass'n of Conf. Interp.*, No. 9270, 1995 F.T.C. LEXIS 452, at *4-5 (Feb. 15, 1995) (emphasis added); *see BASF Wyandotte Corp.*, No. 9125, 1979 F.T.C. LEXIS 77, at *3 (Nov. 20, 1979). Respondents have utterly failed to adduce facts or legal argument to make this showing. The instant motions simply echo their previous papers, bemoaning the content of a Complaint that is clear and specific in its allegations. They profess ignorance of plain words used in common parlance, and pointedly overlook the fact that some of these words, or variants thereof, appear in their own promotional materials. They also appear mystified by certain legal terms such as "unfair" and "reasonable basis," seeming to ignore the Commission

jurisprudence and other materials on these issues. *See, e.g.*, FTC Opp'n at 7-8.

Respondents' current motions focus on their dissatisfaction with legal precedents discussing "reasonable basis" but **their** difference of opinion as to what the well-established law should be does not constitute a substantial ground for difference of opinion. In essence, Respondents seek a one-size fits all declaration of what constitutes a "reasonable basis." Such an approach ignores the realities of both the litigation process and the Commission's precedents. The Commission has held that each case involves unique advertisements and claims and the Commission's precedents recognize that what constitutes a reasonable basis depends upon what claims are being made and how they are presented in the context of the entire ad. The level of substantiation required necessarily relates to the level of substantiation expressly or impliedly claimed in the ad. *See, e.g.*, *Brake Guard*, 125 F.T.C. 138, 231-232 (1998); *Removatron Int'l Corp.*, 111 F.T.C. 206 (1988), *aff'd*, 884 F.2d 1489 (1st Cir. 1989); *Thompson Medical Co.*, 104 F.T.C. 648 (1984), *aff'd* 791 F.2d 189 (D.C. Cir. 1986), and its appended *Advertising Substantiation Policy Statement*, 104 F.T.C. at 839; *Firestone Tire & Rubber Co.*, 81 F.T.C. 398, 463 (1972), *aff'd*, 481 F.2d 246 (6th Cir.); *Pfizer, Inc.*, 81 F.T.C. 23, 62-64 (1972).

The trial process anticipates that the parties will dispute certain key facts and that these will be resolved through discovery and trial. For example, the Complaint identifies certain claims in Respondents' advertising that convey a level of performance and Respondents' answers dispute that their ads made such claims. See, e.g. Complaint at ¶¶ 14, 17, 20, 23, 25 and corresponding paragraphs in Answer of Basic Research. These disputed issues may not be resolved at this early stage because the parties are still gathering facts, consulting experts, etc. As we discussed in our Opposition (pp. 7-8), however, the Commission has issued numerous

opinions discussing what constitutes a "reasonable basis" and what facts are relevant to this issue, and the staff has issued a plain language guide, *Dietary Supplements: An Advertising Guide For Industry*, that contains an in-depth discussion of substantiating claims. *See* pp. 8-18. Respondents' generalized complaints of unfairness ring hollow as a result.

**2. Respondents' Proposed Appeal Will Not Hasten the Conclusion of this Matter**

Although Respondents' Motions do not stay these proceedings absent an order of the Court under RULE 3.23(c), Respondents' proposed appeal would consume the parties' time and financial resources without materially advancing the litigation. As previously observed, an Amended Complaint, by itself, cannot clarify whether Respondents actually violated the FTC Act in marketing dietary supplements with strong claims unsubstantiated by competent and reliable scientific evidence. Only discovery and a hearing by this Administrative Law Judge can determine whether such allegations are true.

**3. Subsequent Review Affords Respondents an Adequate Remedy**

Respondents do not explain why subsequent review cannot provide an adequate remedy—they merely insist that they "cannot commence a defense" without the requested relief. At bottom, Respondents are concerned about how the Commission or its staff will apply the "reasonable basis" substantiation standard to the powerful claims they made for their dietary supplements. As Commission precedent explains though, the Commission will consider the "interplay of overlapping considerations" identified in *Pfizer* and the "amount of substantiation experts in the field believe is reasonable." *See Pfizer*, 81 F.T.C. at 64; *Advertising Substantiation Statement*, 104 F.T.C. at 840. After the hearing in this matter, if Respondents believe the standard has been applied improperly, they will have adequate remedies available as

they may seek review at both the Commission and the appellate courts, if necessary. This Court should deny Respondents' Motions for Interlocutory Appeal.

**B. The Court Should Reject *Pro Se* Respondent Friedlander's Motion for Certification Because the Court Had Authority to Rule on the Lack of Definiteness Issues**

Complaint Counsel urge this Court to deny Respondent Friedlander's motion to certify his recently denied Motion to Dismiss Complaint for Lack of Definiteness. Having submitted both his initial motion and leave to reply to the Administrative Law Judge, Respondent Friedlander now asserts that this Court lacked authority to consider his motions. This Court should reject Respondent Friedlander's variation on the same theme sounded by the other Respondents because issues regarding the definiteness of the Complaint do not justify interlocutory review by the Commission either as an appeal or certification.

RULE 3.22(a) requires the Administrative Law Judge to certify to the Commission any motion upon which he has no authority to rule, accompanied by any recommendation that he may deem appropriate. 16 C.F.R. § 3.22(a). The Administrative Law Judge has broad authority, however, to determine the factual and legal issues raised in the course of administrative proceedings. As the Commission has recognized, the "role of an administrative law judge is 'functionally comparable' to a trial judge employed in the judicial branch." *Coca-Cola Co.*, No. 9215, 1988 F.T.C. LEXIS 164, at *4 (Oct. 25, 1988) (citation omitted). Given these standards, the Court had ample authority to address Respondent Friedlander's motion and this Court should deny certification.

### 1. Respondent Friedlander Has Failed to Establish That the Court Lacked Authority to Consider the Issues Raised in His Motion for More Definite Statement

Despite its caption, the Court properly treated the filing as a motion for more definite statement. Order at 2. As numerous orders demonstrate, rulings on motions for more definite statements are made by Administrative Law Judges or hearing examiners, with the Commission never asserting that the Administrative Law Judges exceeded their authority. *See, e.g., Schering Plough Corp.,* No. 9297, 2001 F.T.C. LEXIS 198 (Oct. 31, 2001); *New Balance Athletic Shoe Corp.*, No. 9268, 1994 F.T.C. LEXIS 213 (Oct. 20, 1994); *Diran M. Seropian, M.D.*, No. 9248, 1991 F.T.C. LEXIS 306 (July 3, 1991); *College Football Ass'n*, No. 9242, 1990 F.T.C. LEXIS 350 (Oct. 9, 1990). The Administrative Law Judge certainly had the authority to rule on Respondent's motion which did not raise issues that should have been addressed to the Commission in its administrative capacity.

This Court is empowered to adjudicate questions going to the merits of the violations of law alleged in the complaint. *See Drug Research Corp.*, 63 F.T.C. 998, 1014 (1963). Indeed, the administrative law judge has the authority to rule on a variety of matters of law, including dismissal motions challenging the Commission's jurisdiction, constitutional issues, matters of statutory construction, and procedural issues. *Coca-Cola Co.*, 1988 F.T.C. LEXIS 164, at *2-3. Clearly the Court's Order denying Respondent's motions for more definite statement are the epitome of the type of ordinary pre-trial rulings that this Court is authorized rule upon.

### 2. Respondent Has Failed to Establish That His Motion for More Definite Statement Raised Issues Involving the Commission's Administrative Discretion

Not all motions fall within this Court's authority. Issues of administrative discretion must be certified to the Commission for determination. As the Supreme Court has held, "the Commission alone is empowered to develop that enforcement policy best calculated to achieve the ends contemplated by Congress and to allocate its available funds and personnel in such a way as to execute its policy efficiently and economically." *Moog Industries v. Federal Trade Commission*, 355 U.S. 411, 413 (1958). Accordingly, motions involving determinations as to whether continued litigation would be in the public interest are necessarily addressed to the administrative discretion of the Commission because they involve "reference to policy considerations" outside the authority of administrative law judges performing adjudicative functions. *See First Buckingham Cmty.*, 73 F.T.C. 938 (1968). *See also H.J. Heinz* Co., No. 9295, 2001 F.T.C. LEXIS 96 (June 6, 2001); *R.J. Reynolds Tobacco Co.*, No. 9285, 1999 F.T.C. LEXIS 14 (Jan. 26, 1999); *Dillard Dep't Stores, Inc.*, No. 9269, 1996 F.T.C. LEXIS 18 (Feb. 13, 1996); *Columbia Hosp. Corp.*, No. 9256, 1993 F.T.C. LEXIS 180 (July 28, 1993). Matters involving administrative judgment and discretion should be determined by the Commission which is required to take into account a broad range of considerations bearing upon the public interest. *Drug Research Corp.*, 63 F.T.C. at 1014-15.

Applying these standards, Respondent has not demonstrated that his motion concerning the legal question of whether the Complaint complied with RULE 3.11(b)(2) raised issues within the Commission's administrative discretion. The original motion did not involve any public interest determinations, nor did it require administrative judgement or discretion on the part of

the Commission. Consequently, the Court properly reviewed and adjudicated the motion.

Respondent Friedlander argues that the issue of whether the Commission's Complaint adequately specifies the standard of conduct respondents are alleged to have violated is an issue of administrative discretion. Respondent Friedlander's reliance on prior Commission case law is misplaced. For example, Respondent quotes *Herbert R. Gibson, Sr.*, 90 F.T.C. 275 (1977) for the proposition that an administrative law judge "lacks authority to rule on and must certify motions to dismiss. . . and other motions containing questions pertaining to the Commission's exercise of administrative discretion" Mot. at 4. Respondent's motion, however, intentionally omits "for public interest" after "motions to dismiss" suggesting therefore that **all** motions to dismiss exceed this Court's authority.[6] As discussed above, that assertion is incorrect and not supported by pertinent precedent. *See, e.g., Coca-Cola Co.*, 1988 F.T.C. LEXIS 164, at *2-3.

Furthermore, Respondent Friedlander's view that *Boise Cascade Corp.*, 97 F.T.C. 246 (1981) is "analogous" to the instant situation is incorrect. Mot. at 5. In *Boise*, the Administrative Law Judge certified to the Commission several issues raised in a motion to dismiss that concerned, *inter alia,* whether the Commission had reason to believe that issuance

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[6] Complaint Counsel also suggests that the Commission's body of law has evolved beyond the *Gibson* decision. The Commission has repeatedly denied motions to dismiss containing questions pertaining to its exercise of administrative discretion stating that the issue to be litigated once a complaint has been issued is whether the violation has occurred and not what led to the issuance of the Complaint. *See, e.g., Exxon Corp.*, 83 F.T.C. 1759, 1760 (1974) (denying interlocutory appeal). *See also Brake Guard*, 125 F.T.C. 138, 247 (1998) (rejecting Respondents' request to revisit the determination that the proceeding was in the public interest, stating that the Commission will do so only in the "most extraordinary circumstances"); *General Motors Corp.*, 99 F.T.C. 464, 550-51(1982) (citing to *Exxon Corp.* while noting the *Gibson* decision); *Boise Cascade Corp.*, 97 F.T.C. 246 (1981) (denying motion to dismiss certified for Commission review by Administrative Law Judge). Accordingly, this Court already has clear guidance from the Commission to deny such motions, without the need to delay the proceedings for Commission review.

of the Complaint was in the public interest and whether certain other parties should have been joined in the Complaint. *Id.*[7] Here Respondent's initial motion raised legal matters relating to the sufficiency of the pleading. More analogous is *Coca Cola*, where the Court rejected a challenge to its authority to rule on a motion to dismiss for failure to state a claim as a "startling misconception." *Coca Cola*, 1988 F.T.C. LEXIS 164, at *1.

In contrast, the Commission utilized its prosecutorial discretion when it issued the Complaint.[8] The Administrative Law Judge has ruled that the Complaint's allegations are sufficiently clear "to inform Respondents of the types of acts or practices alleged . . ." Order at 3. Respondent's current motion is a third attempt to argue the merits of his original motion. As discussed above and in Complaint Counsel's prior responses to Respondents' original motions, the RULES make clear that all that is necessary at this stage of pleading is a "clear and concise factual statement sufficient to inform each respondent with reasonable definiteness of the types of acts or practices alleged to be in violation of the law." RULE 3.11(b)(2). The Complaint in this case more than satisfies that standard and more than fully gives Respondents notice of the charges against them. This Court should not entertain Respondents' last ditch efforts to rehash the same arguments and to further delay the proceedings in this case. Therefore, this Court should deny Respondent Friedlander's Motion for Certification.

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[7] Although the Commission accepted the certification, it summarily rejected the respondents' claims stating that "once the Commission has resolved these questions and issued the complaint, the issue to be litigated is not the adequacy of the Commission's pre-complaint information or the diligence of its study of the materials in question but whether the violation has in fact occurred." *Boise Cascade*, 97 F.T.C. at 247 (quoting *Exxon*, 83 F.T.C. at 1760). Because the Commission has summarily rejected a similar argument on legal rather than factual grounds, this issue does not need to be certified to the Commission.

[8] *See, e.g., Brake Guard,* 125 F.T.C. at 247 n.35.

## III. CONCLUSION

Respondents have not established that Judge Chappell's Order involves a controlling question of law or policy. They have also not demonstrated that an immediate appeal would advance this litigation or that subsequent review would be inadequate. Certification of this issue to the Commission is unnecessary and would serve no purpose other than to delay this proceeding. We respectfully request that this Court rebuff Respondents' efforts to mount an unnecessary interlocutory appeal that would interfere with the orderly and expeditious hearing of this matter.

Respectfully submitted,


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Dated: August 3, 2004

## CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of August, 2004, I caused *Complaint Counsel's Opposition to Respondents' Motions for Interlocutory Appeal and Pro Se Respondent Friedlander's Motion for Certification* to be served and filed as follows:

**(1)** the original, one (1) paper copy 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**
Administrative Law Judge
600 Penn. Ave., N.W., Room H-104
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**(3)** one (1) electronic copy via email and one (1) paper copy by first class mail to the following persons:

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# EXHIBIT A

# EXHIBIT B