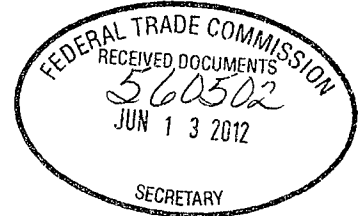


UNITED STATES OF AMERICA  
THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Jon Leibowitz, Chairman  
J. Thomas Rosch  
Edith Ramirez  
Julie Brill  
Maureen Ohlhausen



In the Matter of )  
)  
)

POM WONDERFUL LLC and )  
ROLL GLOBAL LLC, )  
as successor in interest to )  
Roll International Corporation, )  
companies, and )

Docket No. 9344

STEWART A. RESNICK, )  
LYNDA RAE RESNICK, and )  
MATTHEW TUPPER, individually and )  
as officers of the companies. )

Public Document

**COMPLAINT COUNSEL'S MOTION TO REOPEN THE RECORD AND**  
**ADMIT RESPONDENTS' POST-INITIAL DECISION ADVERTISEMENTS AND**  
**COMPLAINT COUNSEL'S AUTHENTICATING DECLARATION**

Pursuant to 16 C.F.R. §§ 3.54(a) and 3.51(e), Complaint Counsel respectfully moves for an order from the Commission reopening the record in this matter and admitting into the record:

(1) certain POM product advertisements that Respondents created after the issuance of the Initial Decision; and (2) the Declaration of William Ducklow authenticating these advertisements.

These materials are appended hereto as Attachments A and B. A proposed order accompanies this motion.

Dated: June 13, 2012

Respectfully submitted,

/s/ Tawana E. Davis

Tawana E. Davis

Heather Hipsley

Complaint Counsel

Federal Trade Commission

600 New Jersey Avenue, NW, NJ-3212

Washington, DC 20580

Phone: 202-326-2755, -3285

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

COMMISSIONERS: Jon Leibowitz, Chairman  
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In the Matter of	)	
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companies, and	)	Docket No. 9344
	)	
STEWART A. RESNICK,	)	Public Document
LYNDA RAE RESNICK, and	)	
MATTHEW TUPPER, individually and	)	
as officers of the companies.	)	

**[Proposed] ORDER GRANTING COMPLAINT COUNSEL'S  
MOTION TO REOPEN THE RECORD AND ADMIT  
RESPONDENTS' POST-INITIAL DECISION ADVERTISEMENTS  
AND COMPLAINT COUNSEL'S AUTHENTICATING DECLARATION**

On June 13, 2012, Complaint Counsel filed a Motion to Reopen the Record and Admit Respondents' Post-Initial Decision Advertisements and Authenticating Declaration.

It is ORDERED that Complaint Counsel's Motion to Reopen the Record and Admit Respondents' Post-Initial Decision Advertisements for their POM products and Complaint Counsel's Authenticating Declaration is GRANTED; and

It is FURTHER ORDERED that Attachments A (CX1438) and B (CX1439) to Complaint Counsel's motion shall be admitted into evidence.

By the Commission.

Issued:

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

COMMISSIONERS: Jon Leibowitz, Chairman  
J. Thomas Rosch  
Edith Ramirez  
Julie Brill  
Maureen Ohlhausen

In the Matter of	)	
POM WONDERFUL LLC and	)	
ROLL GLOBAL LLC,	)	
as successor in interest to	)	
Roll International Corporation,	)	
companies, and	)	Docket No. 9344
STEWART A. RESNICK,	)	
LYNDA RAE RESNICK, and	)	Public Document
MATTHEW TUPPER, individually and	)	
as officers of the companies.	)	

**COMPLAINT COUNSEL'S BRIEF IN SUPPORT OF ITS  
MOTION TO REOPEN THE RECORD AND ADMIT RESPONDENTS'  
POST-INITIAL DECISION ADVERTISEMENTS AND COMPLAINT COUNSEL'S  
AUTHENTICATING DECLARATION**

Pursuant to Commission Rules of Practice 3.54(a) and 3.51(e), Complaint Counsel respectfully submits this brief in support of its motion to reopen the record for the limited purpose of: 1) admitting certain POM product advertisements Respondents disseminated after issuance of the Initial Decision of Chief Administrative Law Judge ("ALJ") D. Michael Chappell; and 2) the Declaration of William Ducklow authenticating these advertisements. These materials are appended to the motion as Attachments A (CX1438) and B (CX1439).

## I. BACKGROUND

On May 17, 2012, the ALJ issued the Initial Decision.<sup>1</sup> A few days after publication of the Initial Decision, Respondents began a new advertising campaign for its POM products consisting of at least the following advertisements: 1) a newspaper print ad (Mot. Att. A, Ex. A-4); 2) a banner ad with a link to the website [pomtruth.com](http://pomtruth.com) (Mot. Att. A, Ex. A-1); 3) a homepage ad on [pomwonderful.com](http://pomwonderful.com) again linking to [pomtruth.com](http://pomtruth.com) (Mot. Att. A, A-2); and 4) a paid Google search ad, (Mot. Att. A, Ex. A-3). The advertisements Complaint Counsel seeks to have entered on the record in this matter are described in more detail below.

Respondents' full-page newspaper advertisement, such as the one placed in *The New York Times*, began with the following statement at the top of the page:

You may have heard that the Federal Trade Commission sued POM Wonderful for false and misleading advertising on grounds that science did not support POM's health claims. But what you as a consumer of POM need to know is that the FTC judge agreed that POM Wonderful 100% Pomegranate Juice and POMx do provide significant health benefits. Here is what the judge said in his own words.

The advertisement then selectively listed three quotes from the Initial Decision:

- "Competent and reliable scientific evidence supports the conclusion that the consumption of pomegranate juice and pomegranate extract supports prostate health, including by prolonging PSA doubling time in men with rising PSA after primary treatment for prostate cancer."<sup>2</sup>

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<sup>1</sup> On June 4, 2012, Complaint Counsel and Respondents filed a Notice of Appeal pursuant to Commission Rule of Practice 3.52(b).

<sup>2</sup> In the sentence immediately following this quote in the Initial Decision, the ALJ stated that, "the greater weight of the persuasive expert testimony shows that the evidence relied upon by Respondents is not adequate to substantiate claims that the POM Products treat, prevent, or reduce the risk of prostate cancer or that they are clinically proven to do so." Initial Decision at 283.

- “Pomegranate juice is a natural fruit product with health promoting characteristics. The safety of pomegranate juice is not in doubt.”
- “Competent and reliable scientific evidence shows that pomegranate juice provides a benefit to promoting erectile health and erectile function.”<sup>3</sup>

The bottom of the newspaper advertisement included in large print the website address “pomtruth.com/fitc.” See Mot. Att. A, Ex. A-4.

Respondents also placed a banner ad at the top of *The New York Times* website for at least one day, May 24, 2012. See Mot. Att. A, Ex. A-1; Mot. Att. B at 2. The banner ad invited readers to “be the judge” of the Initial Decision by clicking on a “Learn More” button that opened POM’s [pomtruth.com](http://pomtruth.com) website. The banner ad also included the following selective quote from the Initial Decision: “Natural Fruit Product with Health Promoting Characteristics.” In addition, the banner ad displayed the text “Cheat Death,” accompanied by an image of the POM bottle in a frayed noose, and the text “Heart therapy,” accompanied by an image of the POM bottle reclining on what appears to be a psychiatrist’s couch, which are text and images taken from advertisements challenged by Complaint Counsel in this matter. See CX0109, CX0036, CX0463, CX0188; see also Complaint Counsel’s Proposed Findings of Fact and Conclusions of Law ¶¶ 349, 356, 363, 367, 536-538.

The [pomtruth.com](http://pomtruth.com) website includes the same statements and selective quotations from *The New York Times* print ad identified as Mot. Att. A, Ex. A-4 described above, a link to the Initial Decision, a POM press release regarding the decision, and a slideshow of 14

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<sup>3</sup> In the Initial Decision, this finding of fact was immediately followed by findings by the ALJ that there is “insufficient competent and reliable scientific evidence to show that pomegranate juice prevents or reduces the risk of erectile dysfunction or has been clinically proven to do so” and “insufficient competent and reliable scientific evidence to show that pomegranate juice treats erectile dysfunction in a clinical sense or has been clinically proven to do so.” Initial Decision at 188.

advertisements that Complaint Counsel challenged as misleading and deceptive in this case.<sup>4</sup> *See* Mot. Att. A, Exs. A-1 – A-3. Respondents allow viewers to send the [pomtruth.com](http://pomtruth.com) website address to others through “share” buttons at the bottom of the website for social networking sites such as Google+, Twitter, and Facebook. *Id.*

As part of its on-going advertising campaign, Respondents’ [pomwonderful.com](http://pomwonderful.com) home page includes a half-page rotating slideshow image of the POM Juice bottle and large text stating “FTC v. POM” and “You be the judge,” and a “Learn More” button that links to the [pomtruth.com](http://pomtruth.com) website. *See* Mot. Att. A, Ex. A-2; Mot. Att. B at 3-4. Respondents also promote the [pomtruth.com](http://pomtruth.com) website through a paid advertisement on Google’s search engine that appears above results from search engine queries of the phrase “FTC v. POM” and reads:

**POM Truth: FTC v. POM - Read the ruling. See the ads.**  
[www.pomtruth.com/](http://www.pomtruth.com/)  
Judge for yourself.

*See* Mot. Att. A, Ex. A-3; Mot. Att. B at 4.

## **II. LEGAL ARGUMENT**

Pursuant to the Commission’s Rules of Practice for adjudicative proceedings, the Commission on appeal has the authority, “to the extent necessary or desirable, [to] exercise all the powers which it could have exercised if it had made the initial decision.” 16 C.F.R. § 3.54(a). Accordingly, the Commission may exercise during the pendency of this appeal those powers in Rule 3.51(e)(1) that would have allowed the ALJ to “reopen the proceeding for the reception of further evidence for good cause shown” prior to issuance of the Initial Decision.

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<sup>4</sup> For example, the slideshow includes POM Juice ads with the headlines “Drink to Prostate Health” (CX0260), “I’m Off to Save Prostates!” (CX0274), and POMx dietary supplement ads quoting medical studies on prostate cancer and



§ 3.51(e); see *Chrysler Corp. v. FTC*, 561 F.2d 357, 362 (D.C. Cir. 1977) (“It is clear . . . that under both the Administrative Procedure Act and [the Commission’s] regulations, the Commission may exercise, on appeal from an initial decision by an administrative law judge, all powers which it would possess if it made the initial decision itself . . . . These powers obviously include some authority to receive supplemental evidence.”).

The Commission’s standard for assessing whether to reopen the record was set forth in *In re Brake Guard Products, Inc.*, 125 F.T.C. 138 (1998). Under that standard, “the Commission considers: (1) whether the moving party can demonstrate due diligence (that is, whether there is a bona fide explanation for the failure to introduce the evidence at trial); (2) the extent to which the proffered evidence is probative; (3) whether the proffered evidence is cumulative; and (4) whether reopening the record would prejudice the non-moving party.” *Id.* at 248 n.38. As set forth below, Complaint Counsel’s request satisfies each of these elements.

**A. Complaint Counsel Can Demonstrate Due Diligence In Introducing Newly Acquired Evidence**

Complaint Counsel could not have introduced at trial the advertisements that it now seeks to place on the record because Respondents began to disseminate the advertisements described above after the ALJ closed the record and after he issued the Initial Decision. See *In re Chrysler Corp.*, 87 F.T.C. 719, 1976 FTC LEXIS 397, at \*57 n.38 (1976) (“Since the advertisement was aired on December 20, 1975, it was not available at the trial and we believe [complaint] counsel have acted with due diligence, under the circumstances, in offering these documents into evidence.”). Thus, Complaint

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arterial plaque (CX0169, CX0180).

Counsel has demonstrated due diligence in requesting the record be reopened now to allow these advertisements to be admitted as evidence in this case.

**B. The New Advertisements Are Highly Probative of the Type Of Order Needed to Fence In Respondents' Future Acts and Practices**

Respondents' new POM product advertisements are highly probative of whether the provisions of the Order issued by the ALJ are adequate to address Respondents' conduct in the future. Complaint Counsel's Post-Trial Brief cited several examples in the record of Respondents' willingness to flout the law, which illustrated the need for a strong remedy. *See* Complaint Counsel's Post-Trial Brief at 65-67. Now, Respondents' latest advertising campaign displays how they are willing to push the envelope in the face of the ALJ's Order.

Before the Commission has even had an opportunity to evaluate the ALJ's Initial Decision and issue its own final decision and order, Respondents have launched an aggressive advertising campaign which includes several of the advertisements challenged in this matter. Although the ALJ ruled that based on a facial analysis he could not determine whether the advertisements now being reused as part of Respondents' new campaign made false and deceptive claims, he specifically cautioned that he did not find that "the advertisements *do not* convey the alleged claims." Initial Decision at 224 (emphasis in original). In fact, Complaint Counsel intends to appeal the ALJ's determination that there is insufficient evidence to conclude that these ads as well as others made the claims alleged in the Complaint.

In addition to the misuse of these challenged advertisements, the new elements of the post-Initial Decision advertising campaign are also deceiving. For example, the Initial Decision excerpt regarding "prostate health" cited in Respondents' new advertisements includes the

language “prolonging PSA doubling time in men with rising PSA after primary treatment for prostate cancer,” which is a dominant theme in the ads the ALJ found to contain false and misleading prostate cancer treatment claims. *See* Appendix to Initial Decision at 4-6, 8-10, 12-14, 16-18, 20-22, 29-33, 37-39, 41-42, 57, 86. By selectively quoting the Initial Decision in a misleading fashion, Respondents continue to engage in the deceptive conduct that Complaint Counsel challenged at trial, namely, citing positive information while ignoring qualifying or contrary information. *See id*; *see also supra* at 2-3 and notes 2-3.

Accordingly, Respondents’ latest advertisements are highly relevant to Complaint Counsel’s appeal of the ALJ’s failure to impose Part I of the notice order as part of appropriate fencing-in relief in this matter. Part I of the proposed notice order would have established a clear and precise substantiation standard for disease claims. These latest advertisements which make misleading claims that the POM Products treat and prevent cancer and heart disease and give the false impression that the ALJ blessed these claims demonstrates Respondents’ unwillingness to respect the ALJ’s Order issued against them. Thus, Respondents’ new advertisements are highly relevant to the issue of whether the Order entered by the ALJ is adequate to address the violations alleged in this matter. *See FTC v. Nat’l Comm’n on Egg Nutrition*, 517 F.2d 485, 490 (7th Cir. 1975) (deciding to consider advertisements made during the appellate process that were not part of district court record because such advertisements “bear[] on the nature of the provisions that should be included” in the temporary injunction).

**C. The New Advertisements Are Not Cumulative**

The new advertisements are not cumulative because they uniquely display how Respondents plan to operate under the Order crafted by the ALJ, thus showing the need

for more clear and precise injunctive requirements. Indeed, there is no other existing record evidence that directly shows the type of advertising that could be expected from Respondents with the more limited and amorphous restrictions imposed by the ALJ's Order in effect. Thus, these new advertisements would not be cumulative evidence because they directly illustrate the inadequacies of the ALJ's Order, and should be admitted for this uniquely probative value.

**D. Reopening the Record Would Not Prejudice Respondents**

Respondents would not be prejudiced by reopening the record to admit the new advertisements. The advertisements were produced by Respondents for public consumption and therefore do not contain any confidential or privileged information. In addition, Respondents would have an opportunity to respond to Complaint Counsel's arguments regarding the weight the new advertisements should be given in determining an appropriate remedy through the appeal process. As noted above, these new advertisements provide concrete evidence of how Respondents would operate in the face of the ALJ's order, and Respondents are not prejudiced by the admission of their own advertising campaign launched specifically to tout the disease benefit claims of their products post-Initial Decision.

**III. Conclusion**

Based upon the foregoing, Complaint Counsel respectfully requests that the Commission grant this motion and enter the proposed order reopening the record in this matter and admitting into the record: (1) the advertisements Respondents disseminated after the issuance of the Initial Decision contained in Attachment A to this motion; and (2) the Declaration of William Ducklow authenticating these advertisements, identified as Attachment B to this motion.

Dated: June 13, 2012

Respectfully submitted,

/s/ Tawana E. Davis

Tawana E. Davis

Heather Hipsley

Complaint Counsel

Federal Trade Commission

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**STATEMENT OF COMPLAINT COUNSEL  
REGARDING MEET AND CONFER**

The undersigned counsel certifies that Complaint Counsel conferred with Respondents in an effort in good faith to resolve by agreement the issues raised by Complaint Counsel's Motion to Reopen the Record and Admit Respondents' Post-Initial Decision Advertisements and Authenticating Declaration, dated June 13, 2012. On June 12 and 13, 2012, Complaint Counsel (Mary L. Johnson and Tawana E. Davis) and Respondents' counsel (Skye Perryman) communicated by telephone and email about this motion. The parties have been unable to reach an agreement on the issue raised in the attached motion.

Respectfully Submitted

s/ Tawana E. Davis  
Tawana E. Davis  
Complaint Counsel

## CERTIFICATE OF SERVICE

I certify that on June 13, 2012, I filed and served *Complaint Counsel's Motion to Reopen the Record and Admit Respondents' Post-Initial Decision Advertisements and Complaint Counsel's Authenticating Declaration* and supporting brief upon the following as set forth below:

One electronic copy via the FTC E-Filing System and twelve paper copies to:

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W., Room H-159  
Washington, DC 20580

One paper copy and one electronic copy via email to:

The Honorable D. Michael Chappell  
Administrative Law Judge  
600 Pennsylvania Ave, N.W. Room H-110  
Washington, D.C. 20580  
Email: oalj@ftc.gov

One electronic copy via email to:

John D. Graubert, Esq.  
Covington & Burling LLP  
1201 Pennsylvania Ave., N.W.  
Washington, D.C. 20004-2401  
Email: Jgraubert@cov.com; sperryman@cov.com

Kristina Diaz, Esq.  
Roll Law Group  
Email: kdiaz@roll.com

Edward P. Lazarus, Esq.  
c/o Michael Small  
Akin Gump Strauss Hauer & Feld LLP  
2029 Century Park East, Suite 2400  
Los Angeles, CA 90067  
Email: lazarus.eddie@gmail.com

Bertram Fields, Esq.  
Greenberg Glusker  
Email: bfields@greenbergglusker.com

Attorneys for Respondents

Date: June 13, 2012


/s/ Tawana E. Davis  
Tawana E. Davis  
Complaint Counsel



ATTACHMENT A (CX 1438)

(See Enclosed CD)

The attached CD is in movie format. Please check with Records Disposition.



*In the Matter of POM Wonderful LLC, et al.*  
Docket No. 9344

Attachment A  
(CX1438)

ATTACHMENT B (CX1439)

**DECLARATION OF WILLIAM DUCKLOW**  
PURSUANT TO 28 U.S.C. § 1746

I, William Ducklow, hereby state that I have personal knowledge of the facts set forth below. If called as a witness, I could and would competently testify to the matters stated herein.

1. I am an Investigative Assistant with the Federal Trade Commission (“FTC” or “Commission”) in the Division of Advertising Practices, Bureau of Consumer Protection. My office address is 601 Pennsylvania Avenue NW, Washington, D.C. 20580. I am a U.S. citizen and am over 18 years of age.

2. Since at least 2009, I have been assigned to work on the POM Wonderful matter. As part of this investigation, I use computers in the FTC’s Internet Lab (“Internet Lab”) to visit and navigate through [www.pomwonderful.com](http://www.pomwonderful.com) and other websites associated with POM Wonderful. To accurately capture and record the images of a website, I use a software tool called “Camtasia.” Camtasia is a video capture program designed to record images displayed on a computer monitor while the machine is operating. This declaration provides details relating to the dates and methods of recording three video files and one PDF file, which can be found on the CD that accompanies Complaint Counsel’s June 13, 2012 motion to reopen the record identified as **Attachment A (CX1438)**.

3. Attachment A contains three video files entitled “Ex. A-1 2012.05.24 POM NYT ad and site link.wmv”; “Ex. A-2 2012.06.06 PomWonderful.com site capture.wmv”; and “Ex. A-3 2012.06.07 FTC v. POM Google search.wmv.” Attachment A also contains a scanned PDF file of a print advertisement appearing on page A11 of the May 24, 2012 issue of *The New York Times*, saved as “Ex. A-4 2012.05.24 NYT POM ad.pdf.”

4. On or about May 24, 2012, Mary Johnson, a staff attorney in the Division of Advertising Practices (“DAP”) requested that I perform a video capture of a POM banner advertisement (“banner ad”) appearing at the top of The *New York Times* website, [www.nytimes.com](http://www.nytimes.com), as well as the resulting website that a user would be directed to upon clicking the banner ad. I performed the requested website capture on May 24, 2012. In order to prepare for the capture, I opened an Internet browser and navigated to [www.google.com](http://www.google.com), a website unaffiliated with the target URL. By starting the recording on an unaffiliated website, my objective was to have the resulting video show the target website loading “live” and be presented exactly as it would be to anyone else accessing the same URL at the same time.

5. After starting the recording, I entered the URL “[nytimes.com](http://nytimes.com)” into the address bar and allowed The *New York Times* homepage to load. The banner ad at the top of the webpage was animated, displaying a number of headlines in rotating slideshow fashion. In the order as presented in the video, these headlines were “FTC v. POM You be the judge. Read the Truth behind the FTC Ruling”; “Cheat Death. POM Wonderful. The Antioxidant Superpower”; and “Heart Therapy. POM Wonderful. The Antioxidant Superpower.” After the animation looped back to the first headline, I clicked inside the banner ad on a button that read “Learn More.” This action caused a new tab to open in my browser, which displayed the website [www.pomtruth.com](http://www.pomtruth.com). On this page, I clicked a link that read “Read Our Press Release.” This opened in a new tab a [www.pomwonderful.com](http://www.pomwonderful.com) webpage, which displayed a press release dated May 21, 2012, entitled “Court Affirms POM’s Right to Inform Their Consumers of Products’ Health Benefits.” After scrolling through the press release, I closed the tab to return to [www.pomtruth.com](http://www.pomtruth.com). On [www.pomtruth.com](http://www.pomtruth.com), I clicked a link entitled “Download the Initial Decision.” This link opened in a new tab a PDF of Judge Chappell’s Initial Decision in *In re*

*POM Wonderful LLC, et al.*, dated May 17, 2012. I closed the tab displaying the PDF to return to the pomtruth.com tab, and clicked the link labeled "See the ads for Yourself." The resulting webpage displayed a series of fourteen static advertisements that could be viewed using left and right arrows appearing on the sides of the page. In the order as presented in the video, the headlines of these ads were: "Cheat death," "Heart therapy," "The Antioxidant Superpower," "Extreme makeover," "What gets your heart pumping?" "Forever young," "Life preserver," "Health's Angel," "Death defying," "Drink to prostate health," "I'm off to save PROSTATES!" "HOLY HEALTH!" "The power of POM, in one little pill," and "The antioxidant superpill." After returning to the pomtruth.com homepage, I clicked the "Visit POM Wonderful" link. Once the pomwonderful.com site loaded, I clicked inside a box labeled "POM VINDICATED. FTC rules in favor of pomegranate health." This loaded the same press release webpage as documented above. I saved the resulting video as a \*.camrec file, which I then converted to "Ex. A-1 2012.05.24 POM NYT ad and site link.wmv."<sup>1</sup>

6. On June 6, 2012, I performed another video capture from the Internet Lab using Camtasia. After opening a browser and navigating to [www.google.com](http://www.google.com), I began the recording, and typed "pomwonderful.com" into the address bar. After the page loaded, I clicked through the three rotating banner headlines. I then clicked the button labeled "Learn More," appearing beneath the text "FTC v. POM You be the judge. Read the Truth behind the FTC Ruling." This action caused the website [www.pomtruth.com](http://www.pomtruth.com) to load in a new tab. From that page, I then navigated through the following links, described above: "Read Our Press Release"; "Download the Initial Decision"; "Visit POM Wonderful"; and "See the Ads for Yourself." I saved the

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<sup>1</sup> By default, Camtasia saves recorded videos in a \*.camrec format. Because this format results in large file sizes and does not operate universally on all computers, it is standard FTC practice to use Camtasia to convert videos from the \*.camrec format into the standard \*.wmv video format. Aside from having a smaller file size and being viewable on more computers, pre- and post-conversion videos are identical.

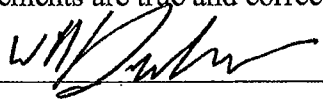
resulting video as a \*.camrec file, which I then converted to "Ex. A-2 2012.06.06 PomWonderful.com site capture.wmv."

7. On June 7, 2012, I performed another video capture from the Internet Lab using Camtasia. After opening a browser and navigating to [www.google.com](http://www.google.com), I began the recording, and typed "FTC v. POM" into the search bar. On the resulting search results page, above the first search result there was a box with a yellow background labeled "Ad related to **FTC v. POM.**" Below, there was a link that read "POM Truth: FTC v. POM – Read the Ruling. See the ads," with another link to [www.pomtruth.com](http://www.pomtruth.com) and the subtext, "Judge for yourself." After clicking the "POM Truth" link, I was brought to [pomtruth.com](http://pomtruth.com). I saved the resulting video as a \*.camrec file, which I then converted to "Ex. A-3 2012.06.07 FTC v. POM Google search.wmv."

8. In my possession, I have a copy of page A11 of The *New York Times* print edition from May 24, 2012. Page A11 is a full-page print advertisement with the headline "FTC v. POM You be the judge." Due to the size of the page, I scanned page A11 onto two pages, and saved the file as "Ex. A-4 2012.05.24 NYT POM ad.pdf."

I declare under penalty of perjury that the foregoing statements are true and correct.

DATED: JUNE 13, 2012

  
\_\_\_\_\_  
William Ducklow