

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

_____ )	
<b>In re Great American Outdoor Group's</b> )	
<b>Proposed Acquisition of Sportsman's</b> )	
<b>Warehouse</b> )	<b>File No. 211 0059</b>
)	<b>Public</b>
)	
_____ )	

**DUNHAM'S PETITION TO QUASH CIVIL INVESTIGATIVE DEMAND**

Pursuant to 16 CFR Section 2.10(a) of the Commission's Rules, CID recipient Dunham's Athleisure Corporation (Dunham's), by counsel, hereby files this Motion to Quash Specification 2(a), (b), (e), and (i) in the Civil Investigative Demand issued by the Bureau of Competition on March 8, 2021. Exhibit A. Dunham's is not a target of this investigation but a non-party subpoena recipient. Dunham's supplied responses to all Specifications save one, Specification 2. The Staff has agreed to limit its remaining demand for documents to the foregoing Specification 2(a),(b),(e), and (i). This motion is being filed within the time limit for response to the Bureau (under authority given by Bureau approved extensions).

Dunham's owns 260 stores that operate in local retail markets in a standard brick and mortar format. None of Dunham's sales are online. Its markets are peculiarly local in that its customer base comes from the communities where each store is located. Dunham's management do not believe any of their stores experience competition for consumers who are from outside those communities and who order online, as they are beyond its target market and service potential.

Specifications 2(a), (b), (e), and (i) seek information that, if disclosed, would likely cause Dunham's to experience competitive injury, as the information reveals the proprietary nature of Dunham's business model, a model that has preserved its ability to market exclusively via the local

retail model while most other businesses depend, at least in part, on online sales.

The four subparts of Specification 2 seek information with little probative value as to the impact on the competitive market effected by the proposed merger, because Dunham's does not compete in the same market as Great American Outdoors Group or Sportsman's Warehouse. The burden of production is extreme because it seeks information which must be derived from each of the 260 stores and seeks information not kept in the same format requested by FTC, thus requiring a labor intensive review, extraction of information, and creation of new documentary responses. Dunham's has only three individuals capable of gathering, reviewing, and extracting the requested data. Moreover, because its 260 stores operate at retail and in the present COVID-19 environment, they are suffering from both a lack of full labor and a consequential need to work longer hours to accommodate store demand. The effect is to make it extremely difficult for Dunham's to obtain and supply the demanded documents and the effect is to impose a significant cost in labor and loss of opportunity cost in sales needed for survival of the stores. Dunham's incorporates here the additional points of objection contained in its response to the Bureau. Exhibit B.

Specification 2(b), (e), and (i) require Dunham's to obtain from 260 stores their individual gross sales revenue, net sales revenue, and gross margins by each store department for each quarter from January 1, 2015 to the present. The amount of time required to adduce that information from each of 260 stores for each quarter over the past six years will compel the three individuals in Dunham's capable of performing the task to discontinue their management of the 260 stores on a daily basis for months on end to obtain the relevant documents, sift through them for the requested data, and supply the requested data. The burden is vastly in excess of the hypothesized benefit. The benefit is fictive because there is no proof that any SKUs in the 260 stores overlaps with any SKUs being sold by the proposed merger parties. There is no effort to limit the demand to overlapping SKUs. Even were that overlap established, there is no proof of competition at the relevant time and place and, indeed, there is

no general competition among the consumers served and no demonstrable impact of any of the proposed merger parties' sales of SKUs on the demand for any SKUs sold by any single Dunham's store.

Accordingly, because the information requested is not likely to provide the FTC any benefit in its competition analysis, let alone any demonstrably material benefit, Dunham's requests that the Commission issue an order to quash the remaining Specification (2) and terminate this aspect of the proceeding.

Date: May 17, 2021

s/ Jonathan Emord  
Jonathan Emord (jemord@emord.com)  
Eric Awerbuch (eawerbuch@emord.com)  
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11808 Wolf Run Lane  
Clifton, VA 20124  
Phone: 602-388-8899

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<b>Warehouse</b>	)	<b>File No. 211 0059</b>
	)	<b>Public</b>
	)	
	)	

**DUNHAM’S MEET AND CONFER STATEMENT**

In accordance with 16 C.F.R. § 2.10(b), Dunham’s Athleisure Corporation (“Dunham’s”) files this meet-and-confer statement:

1. I, Jonathan Emord, am counsel for Dunham’s in the above-captioned matter.
2. I have met and conferred with the Federal Trade Commission in an effort in good faith

to resolve by agreement the issues raised by Dunham’s Petition to Quash the Civil Investigative Demand (“CID”). Specifically, Dunham’s and the FTC met and conferred on May 11, 2021 at 3:30 PM EST via conference call. Attorneys Jonathan Emord and Peter Arhangelsky appeared on behalf of Dunham’s. Dominique Connell, Ryan Andres, Gustav Chiarello, and Burke Kappler appeared on behalf of the Federal Trade Commission. Charles Dickinson is the primary staff attorney assigned to this matter.

Date: May 17, 2021

s/ Jonathan Emord  
Jonathan Emord (jemord@emord.com)  
Eric Awerbuch (eawerbuch@emord.com)  
Emord & Associates, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Phone: 602-388-8899

# EXHIBIT A



### CIVIL INVESTIGATIVE DEMAND

<p>1. TO</p> <p>Dunham's Athleisure Corporation c/o The Corporation Trust Center 1209 Orange Street Wilmington, DE 19801</p>	<p>1a. MATTER NUMBER</p> <p>211-0059</p>
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This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

You are required to appear and testify.

<p>LOCATION OF HEARING</p>	<p>YOUR APPEARANCE WILL BE BEFORE</p>
<p>DATE AND TIME OF HEARING OR DEPOSITION</p>	

- You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.
- You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.
- You are required to produce the tangible things described on the attached schedule. Produce such things to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS, ANSWERS TO INTERROGATORIES, REPORTS, AND/OR TANGIBLE THINGS MUST BE AVAILABLE  
April 7, 2021 at 5:00pm EDT

3. SUBJECT OF INVESTIGATION

Great American Outdoors Group's Proposed Acquisition of Sportsman's Warehouse, FTC File No. 211-0059. See attached Resolution Authorizing Use of Compulsory Process. In lieu of personal appearance, please submit the requested materials along with a certification attesting to the completeness and accuracy of the return by April 7, 2021.

<p>4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN</p> <p>Mark Seidman, Esq., Records Custodian Ryan Andrews, Esq., Deputy Records Custodian</p>	<p>5. COMMISSION COUNSEL</p> <p>Charles Dickinson, Esq. Federal Trade Commission 400 7th Street SW Washington, DC 20024 (202) 326-2617</p>
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<p>DATE ISSUED</p> <p>3/8/2021</p>	<p>COMMISSIONER'S SIGNATURE</p> <p><i>Burca Kelly Sangster</i></p>
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**INSTRUCTIONS AND NOTICES**

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

**PETITION TO LIMIT OR QUASH**

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

**YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS**

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

**TRAVEL EXPENSES**

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

A copy of the Commission's Rules of Practice is available online at <http://bit.ly/FTCSRulesofPractice>. Paper copies are available upon request.

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## Form of Certificate of Compliance\*

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I/We do certify that all of the documents, information and tangible things required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document or tangible thing responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to its submission and the reasons for the objections have been stated.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Sworn to before me this day .

\_\_\_\_\_

\_\_\_\_\_  
Notary Public

\_\_\_\_\_

\*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

**CIVIL INVESTIGATIVE DEMAND  
ISSUED TO DUNHAM'S ATHLEISURE CORPORATION  
FTC File No. 211-0059**

Unless modified by agreement with the staff of the Federal Trade Commission, each specification of this Civil Investigative Demand ("CID") requires a complete search of "the Company" as defined in Paragraph D1 of the Definitions and Instructions that appear after the following specifications. If the Company believes that the required search or any other part of the CID can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss such questions and possible modifications with the Commission representative identified on the last page of this CID. All modifications to this CID must be agreed to in writing pursuant to the Commission's Rules of Practice, 16 C.F.R. § 2.7(l).

**SPECIFICATIONS**

1. Submit an electronic spreadsheet listing each store that the Company has owned or operated in the Relevant Area with sales of any Relevant Product since January 1, 2008, along with the following information about the store:
  - (a) store number;
  - (b) banner;
  - (c) street address, city, state, county, and zip code;
  - (d) original opening date; and
  - (e) closing date (if applicable).
  
2. Submit an electronic spreadsheet containing, separately for each Company store listed in response to Specification 1, by department or category and quarter from January 1, 2015, to the present:
  - (a) store number;
  - (b) gross sales revenue;
  - (c) any adjustments (e.g., slotting allowances, merchandising allowances, marketing development funds, volume discounts) to gross sales revenue (specified and listed separately);
  - (d) total dollar amount of competitive markdowns and unit sales of items sold with a competitive markdown;



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Issued to Dunham's Athleisure Corporation**

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- (e) Net Sales;
  - (f) COGs;
  - (g) any adjustments (e.g., slotting allowances, merchandising allowances, marketing development funds, volume discounts) to COGs (specified and listed separately);
  - (h) freight and distribution costs (if applicable, and specified and listed separately);
  - (i) gross margin;
  - (j) all operating costs used to compute operating margin, including, but not limited to, full and part-time hourly compensation and benefits, salaried compensation and benefits, utilities, rent, local taxes, depreciation, and advertising and promotion, listed separately;
  - (k) operating income and operating margin;
  - (l) EBITDA (earnings before interest, taxes, depreciation, and amortization);
  - (m) direct assets and liabilities by type (specified and listed separately); and
  - (n) all other costs (specified and listed separately).
3. For online, catalog, and other non-brick-and-mortar sales in the Relevant Area of any Relevant Product, for each five-digit ZIP code of the shipping address, on a quarterly basis from January 1, 2015, forward, and for each department or category, provide:
- (a) Net Sales;
  - (b) total promotional discount;
  - (c) unit sales;
  - (d) total COGs; and
  - (e) any costs of shipping paid to or by the Company (and state whether such shipping costs are included in either Net Sales or COGs).
4. Submit a list of all stock keeping units ("SKUs") or Universal Product Codes ("UPCs") for each Relevant Product currently sold by the Company in the Relevant Area. For each item, provide:
- (a) SKU/UPC/item number;
  - (b) department or category;

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- (c) product description;
- (d) brand, if any;
- (e) private label indicator; and
- (f) package type (e.g., single, multi-pack, etc.).

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**DEFINITIONS**

For the purposes of this CID, the following definitions apply:

- D1. The term "the Company" means Dunham's Athleisure Corporation, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships, and joint ventures; and all directors, officers, employees, agents, and representatives of the foregoing. The terms "subsidiary," "affiliate," and "joint venture" refer to any Person in which there is partial (25% or more) or total ownership or control between the Company and any other Person.
- D2. The term "COGs" means cost of goods sold.
- D3. The term "documents" means any information, on paper or in electronic format, including written, recorded, and graphic materials of every kind, in the possession, custody, or control of the Company. The term "documents" includes, without limitation: computer files; email messages; text messages; audio files; instant messages; drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed electronically; copies of documents that are not identical duplicates of the originals in that Person's files; and copies of documents the originals of which are not in the possession, custody, or control of the Company.
- (a) Unless otherwise specified, the term "documents" excludes:
- (i) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature;
  - (ii) architectural plans and engineering blueprints;
  - (iii) documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues; and
  - (iv) relational and enterprise databases, except as required to comply with an individual Specification.
- (b) The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mobile devices, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off Company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss a possible modification to this Definition with the Commission representatives identified on the last page of this Request. The Commission representative will consider modifying this Definition to:

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- (i) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;
  - (ii) limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain Specifications identified by Commission representatives; or
  - (iii) include other proposals consistent with Commission policy and the facts of the case.
- D4. The term "Person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- D5. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- D6. The terms "and" and "or" have both conjunctive and disjunctive meanings.
- D7. The term "Relevant Product" refers to any merchandise relating to outdoor recreation, including, but not limited to, equipment, apparel, footwear, accessories, and home goods, relating to, hunting, shooting, fishing, camping, and boating, sold through retail stores or through other channels.
- D8. The term "Relevant Area" means the United States.
- D9. The term "Net Sales" means total sales after deducting discounts, returns, allowances and excise taxes. This definition includes sales of the Relevant Product whether manufactured by the Company itself or purchased from sources outside the Company and resold by the Company in the same or substantially the same manufactured form as purchased.
- D10. The term "SKU" means stock keeping unit.
- D11. The term "UPC" means universal product code.
- D12. Any word or term that the Company considers vague or insufficiently defined has the meaning most frequently assigned to it by the Company in the ordinary course of business.

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Issued to Dunham's Athleisure Corporation**

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**INSTRUCTIONS**

For purposes of this CID, the following instructions apply:

- I.1. All references to year refer to calendar year. Unless otherwise specified, each of the Specifications calls for: (1) documents for each of the years from January 1, 2019 to the present; and (2) information for each of the years from January 1, 2018 to the present. Where information, rather than documents, is requested, provide it separately for each year; where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the Company's fiscal year data indicating the 12-month period covered, and provide the Company's best estimate of calendar year data.
- I.2. All documentary materials used in the preparation of responses to this CID shall be retained by the Company. The Commission may require the submission of additional documents at a later time. Accordingly, the Company should suspend any routine procedures for document destruction and take other measures to prevent the destruction of documents that are in any way relevant to this investigation during its pendency, irrespective of whether the Company believes such documents are protected from discovery by privilege or otherwise.
- I.3. The Company or its attorney must contact the Commission staff representatives identified in Instruction I12 as soon as possible to schedule a telephonic meeting to be held within fourteen (14) days after receipt of this CID to discuss compliance and to address and attempt to resolve all issues, including issues relating to protected status and the form and manner in which claims of protected status will be asserted. Pursuant to 16 C.F.R. § 2.7(k), the Company must make available personnel with the knowledge necessary for resolution of the issues relevant to compliance with this CID, including but not limited to personnel with knowledge about its information or records management systems, relevant materials such as organizational charts, and samples of material required to be produced. If any issues relate to electronically-stored information, the Company must make available a person familiar with its electronically-stored information systems and methods of retrieval.
- I.4. This CID shall be deemed continuing in nature so as to require production of all information responsive to any specification included in this CID produced or obtained by the Company up to forty-five calendar days prior to the date of the Company's full compliance with this CID.
- I.5. Do not produce any Sensitive Personally Identifiable Information ("Sensitive PII") or Sensitive Health Information ("SHI") prior to discussing the information with a Commission representative. If any document responsive to a particular specification contains unresponsive Sensitive PII or SHI, redact the unresponsive Sensitive PII or SHI prior to producing the document.

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The term "Sensitive Personally Identifiable Information" means an individual's Social Security Number; or an individual's name, address or phone number in combination with one or more of the following:

- (a) Date of Birth;
- (b) Passport number;
- (c) Financial account number; or
- (d) Credit or debit card number.

The term "Sensitive Health Information" includes medical records and other individually identifiable health information, whether on paper, in electronic form or communicated orally. Sensitive Health Information relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.

I.6. Form of Production: The Company shall submit all documents as instructed below absent written consent signed by a Bureau of Competition Assistant Director.

- (a) Documents stored in electronic or hard copy formats in the ordinary course of business shall be submitted in electronic format provided that such copies are true, correct, and complete copies of the original documents:
  - (i) Submit Microsoft Excel, Access, and PowerPoint files in native format with extracted text and metadata;
  - (ii) Submit emails in TIFF format with extracted text and the following metadata and information:

<b>Metadata/Document Information</b>	<b>Description</b>
Alternate Custodian	List of custodians where the document has been removed as a duplicate
Bates Begin	Beginning Bates number of the email
Bates End	Bates number of the last page of the email
Custodian	Name of the person from whom the email was obtained
Email BCC	Names of person(s) blind copied on the email
Email CC	Names of person(s) copied on the email

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Email Date Received	Date the email was received [MM/DD/YYYY]
Email Date Sent	Date the email was sent [MM/DD/YYYY]
Email From	Names of the person who authored the email
Email Message ID	Microsoft Outlook Message ID or similar value in other message systems
Email Subject	Subject line of the email
Email Time Received	Time email was received [HH:MM:SS AM/PM]
Email To	Recipient(s) of the email
Email Time Sent	Time email was sent [HH:MM:SS AM/PM]
Folder	File path/folder location of email
Hash	Identifying value used for deduplication – typically SHA1 or MD5
Text link	Relative path to submitted text file Example: \TEXT\001\FTC0003090.txt

- (iii) Submit email attachments other than those described in subpart (a)(i) in TIFF format. For all email attachments, provide extracted text and the following metadata and information as applicable:

<b>Metadata/Document Information</b>	<b>Description</b>
Alternate Custodian	List of custodians where the document has been removed as a duplicate
Bates Begin	Beginning Bates number of the Document
Bates End	Bates number of the last page of the document
Custodian	Name of person from whom the file was obtained
Date Created	Date the file was created [MM/DD/YYYY]
Date Modified	Date the file was last changed and saved [MM/DD/YYYY]
Filename with extension	Name of the original native file with file extension
Hash	Identifying value used for deduplication – typically SHA1 or MD5

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Native Link	Relative file path to submitted native or near native files Example: \NATIVES\001\FTC0003090.xls
Parent ID	Document ID or beginning Bates number of the parent email
Text link	Relative path to submitted text file. Example: \TEXT\001\FTC0003090.txt
Time Created	Time file was created [HH:MM:SS AM/PM]
Time Modified	Time file was last changed and saved [HH:MM:SS AM/PM]

- (iv) Submit all other electronic documents in file types other than those described in subpart (a)(i), in TIFF format accompanied by extracted text and the following metadata and information:

<b>Metadata/Document Information</b>	<b>Description</b>
Alternate Custodian	List of custodians where the document has been removed as a duplicate
Bates Begin	Beginning Bates number of the document
Bates End	Last Bates number of the document
Custodian	Name of the original custodian of the file
Date Created	Date the file was created [MM/DD/YYYY]
Date Modified	Date the file was last changed and saved [MM/DD/YYYY]
Filename with extension	Name of the original native file with file extension
Hash	Identifying value used for deduplication – typically SHA1 or MD5
Originating Path	File path of the file as it resided in its original environment
Production Link	Relative path to submitted native or near native files Example: \NATIVES\001\FTC0003090.xls
Text link	Relative path to submitted text file. Example: \TEXT\001\FTC-0003090.txt
Time Created	Time file was created [HH:MM:SS AM/PM]



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Time Modified	Time the file was last changed and saved [HH:MM:SS AM/PM]
Native Link	Relative path to current location of native or near-native document
Custodian	Name of person from whom the file was obtained
Text link	Relative path to submitted text file. Example: TEXT\001\FTC-0003090.txt

- (v) Submit documents stored in hard copy in image format accompanied by OCR with the following information:

<b>Metadata/Document Information</b>	<b>Description</b>
Bates Begin	Beginning bates number of the document
Bates End	Bates number of the last page of the document
Custodian	Name of person from whom the file was obtained

- (vi) Submit redacted documents in TIFF format accompanied by OCR with the metadata and information required by relevant document type in subparts (a)(i) through (a)(v) above. For example, if the redacted file was originally an attachment to an email, provide the metadata and information specified in subpart (a)(iii) above. Additionally, please provide a basis for each privilege claim as detailed in Instruction I8.
- (b) Submit data compilations in electronic format, specifically Microsoft Excel spreadsheets or delimited text formats, with all underlying data unredacted and all underlying formulas and algorithms intact. Submit data separately from document productions.
- (c) Produce electronic file and TIFF submissions as follows
  - (i) For productions over 10 gigabytes, use hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 or 3.0 external enclosure;
  - (ii) For productions under 10 gigabytes, CD-ROM (CD-R, CD-RW), optical disks and DVD-ROM (DVD+R, DVD+RW) optical disks for Windows-compatible personal computers, and USB 2.0 Flash are acceptable storage formats; and

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- (iii) All documents produced in electronic format shall be scanned for and free of viruses prior to submission. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this CID;
- (vi) Encryption of productions using NIST FIPS-Compliant cryptographic hardware or software modules, with passwords sent under separate cover, is strongly encouraged.
- (d) Each production shall be submitted with a transmittal letter that includes the FTC matter number; production volume name; encryption method/software used; passwords for any password protected files; list of custodians and document identification number range for each; total number of documents; and a list of load-file fields in the order in which they are organized in the load file; and
- (e) If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer system or electronic storage media, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this CID.

I.7. The Company may choose to submit previously existing documents that contain the information requested in any specification or sub-specification as an answer to any specification or sub-specification. All submitted documents:

- (a) Shall be produced in a complete format, un-redacted unless privileged, and in the order in which each document appears in the Company's files;
- (b) Shall be marked on each page with a corporate identification and a consecutive document control number when produced in TIFF format (e.g., ABC-00000001);
- (c) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;
- (d) Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black and white photocopying or conversion to TIFF format of any document (e.g., a chart or graph) makes any substantive information contained in the document unintelligible); for such documents, the Company must submit the original document, a like-color photocopy, or a JPEG format TIFF; and

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- (e) Shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct, and complete copies of the original documents.

I.8. If any documents responsive to this CID are withheld from production based on a claim of protected status, such as attorney-client privilege, provide a statement of the claim of protected status and all facts relied upon in support thereof, in the form of a log, submitted in searchable, electronic format, that includes the following information for each document withheld: (i) Document control number(s); (ii) The full title (if the withheld material is a document) and the full file name (if the withheld material is in electronic form); (iii) A description of the material withheld (for example, a letter, memorandum, or email), including any attachments; (iv) The date the material was created; (v) The date the material was sent to each recipient (if different from the date the material was created); (vi) The email addresses, if any, or other electronic contact information to the extent used in the document, from which and to which each document was sent; (vii) The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all authors; (viii) The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all recipients of the material; (ix) The names, titles, business addresses, email addresses or other electronic contact information, and relevant affiliations of all persons copied on the material; (x) The factual basis supporting the claim that the material is protected (for example, that it was prepared by an attorney rendering legal advice to a client in a confidential communication, or prepared by an attorney in anticipation of litigation regarding a specifically identified claim); and (xi) Any other pertinent information necessary to support the assertion of protected status by operation of law. Attachments to a document should be identified as such and entered separately on the log. Each attorney who is an author, recipient, or person copied on the material shall be identified in the log by an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself protected, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the claim of protected status. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-protected portions of any responsive document (including non-privileged or redactable attachments) for which a claim of protected status is asserted (except where the only non-protected information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.

**Civil Investigative Demand  
Issued to Dunham's Athleisure Corporation**

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- I.9. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.
- I.10. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy, but the Company has reason to believe such documents have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.
- I.11. In order for the Company's response to this CID to be complete, the attached certification form must be executed by the official supervising compliance with this CID, notarized, and submitted along with the responsive materials.
- I.12. Any questions you have relating to the scope or meaning of anything in this CID or suggestions for possible modifications thereto should be directed to Charles Dickinson at (202) 326-2617. Please provide responses to the above Specifications in electronic format via e-mail or FTP wherever possible. Please send your responses to Mr. Dickinson ([cdickinson@ftc.gov](mailto:cdickinson@ftc.gov)) if you provide responses via email. For electronic transmission of materials, please request an Accellion link from Mr. Dickinson to transmit the materials. If you wish to submit your response by United States mail, please call Mr. Dickinson for mailing instructions.

**CIVIL INVESTIGATIVE DEMAND**  
**Issued to Dunham's Athleisure Corporation**  
**FTC File No. 211-0059**

**CERTIFICATION**

This response to the Civil Investigative Demand issued by the Federal Trade Commission, together with any and all appendices and attachments thereto, was prepared and assembled under my supervision in accordance with instructions issued by the Federal Trade Commission. The information is, to the best of my knowledge, true, correct, and complete, subject to the recognition that where books and records do not provide the required data, reasonable estimates have been made. Where responses contain estimates, this is so stated in the response.

Where copies rather than original documents have been submitted, the copies are true, correct and complete. If the Commission uses such copies in any court or administrative proceeding, the Company will not object based on the Commission not offering the original document.

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

\_\_\_\_\_  
TYPE OR PRINT NAME AND TITLE

\_\_\_\_\_  
(Signature)

Subscribed and sworn to before me at the City of \_\_\_\_\_,

State of \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Notary Public)

My Commission expires:

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

**COMMISSIONERS:**        **Rebecca Kelly Slaughter, Acting Chair**  
                                 **Noah Joshua Phillips**  
                                 **Rohit Chopra**  
                                 **Christine S. Wilson**

**RESOLUTION AUTHORIZING USE OF COMPULSORY  
PROCESS IN NONPUBLIC INVESTIGATION**

**File No. 211 0059**

**Nature and Scope of Investigation:**

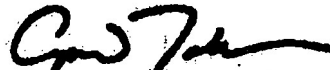
To determine whether the proposed acquisition of Sportsman's Warehouse Holdings, Inc., by Great Outdoors Group, LLC, violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the aforesaid transaction, if consummated, would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

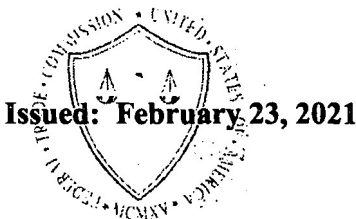
The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

**Authority to Conduct Investigation:**

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1, et seq. and supplements thereto.

By direction of the Commission.

  
April J. Tabor  
Secretary



# EXHIBIT B

**Re: The Great American Outdoors Group/Sportsman's Warehouse (Matter No. 211-0059) | Civil Investigative Demand, Dunham's Athleisure Corporation**

Mr. Dickinson:

We hereby provide Dunham's Athleisure Corporation's additional responses to the Federal Trade Commission's March 8, 2021 Civil Investigative Demand, Specifications No. 2-4. Dunham's responses are timely and made pursuant to the March 31, 2021 written extension granted by the Bureau. As previously stated, Dunham's responses and data include highly confidential information of a commercially sensitive nature, disclosure of which will result in a competitive disadvantage in the market. Dunham's is not a party to this FTC action or enforcement. It provides responsive information under the condition that such content be maintained strictly confidential pursuant to 15 U.S.C. §§ 46(f), 57b-2(f) and 16 C.F.R. §§ 4.10-4.11.

**Specification No. 2: Submit an electronic spreadsheet containing, separately for each Company store listed in response to Specification 1, by department or category and quarter from January 1, 2015, to the present: (a) store number, (b) gross sales revenue, (c) any adjustments (e.g., slotting allowances, merchandising allowances, marketing development funds, volume discounts) to gross sales revenue (specified and listed separately); (d) total dollar amount of competitive markdowns and unit sales of items sold with a competitive markdown; (e) Net Sales; (f) COGs; (g) any adjustments (e.g., slotting allowances, merchandising allowances, marketing development funds, volume discounts) to COGs (specified and listed separately); (h) freight and distribution costs (if applicable, and specified and listed separately); (i) gross margin; (j) all operating costs used to compute operating margin, including, but not limited to, full and part-time hourly compensation and benefits, salaried compensation and benefits, utilities, rent, local taxes, depreciation, and advertising and promotion, listed separately; (k) operating income and operating margin; (l) EBITDA (earnings before interest, taxes, depreciation, and amortization); (m) direct assets and liabilities by type (specified and listed separately); (n) all other costs (specified and listed separately).**

**Response:** Dunham's objects to this request because it requires compilation and production of data in a format that Dunham's does not maintain or has not compiled in its ordinary course of business. *See* 15 U.S.C. §57b-1(c)(1); 16 C.F.R. § 2.7(b). Such request imposes a substantial and unreasonable burden on a non-party, because, in part, the data is not reasonably accessible. *See, e.g.,* 16 C.F.R. § 3.31(c)(3). Dunham's does not collect or maintain data in the form or manner requested. Dunham's does not maintain store-specific instructions for the collection and/or maintenance of such data either, and instead utilizes a more generic allocation of



various costs and expenses to each store, for its own business purposes.<sup>1</sup> To attempt to create this data now could jeopardize the credibility of Dunham's response and in turn jeopardize the integrity of any conclusions drawn therefrom by the FTC.

Dunham's further objects to this request because it is overly broad. It is unclear how the data sought from Dunham's would be relevant at all or why data from as long ago as 2015 may be relevant. No showing has been made that the merger in question between Great American Outdoors Group and Sportsman's Warehouse (FTC File No. 211-0059) involves competition to each store (or even one store) which Dunham's operates, and it is questionable whether such a showing can be made altogether considering the material differences in products carried and in target consumers.

Dunham's actively operates over 250 locations across almost two dozen states. At this time, there is no reason to believe any one has or all of those stores have any relevant information or would be wrongfully affected by the proposed merger. There is no showing that the contemplated entity has stores or plans to have stores in any location near Dunham's. Dunham's operates primarily in secondary and tertiary markets different from those in which the parties operate.

Finally, there is no showing that the contemplated entity and Dunham's even compete for the same consumers. Although they may sell products in similar categories, so do countless other retailers from small "mom and pop" hardware stores (which sell hunting, fishing and camping equipment) to large "super stores" such as Walmart, which sell not only hunting and fishing equipment, but also fitness equipment and clothing and accessories. In fact, there are countless companies that sell "sporting goods" products, but that does not mean in and of itself, there is a material level of competition necessitating forcing a non-party to incur such a burden. And even to the extent Dunham's may sell some (if any) of the same SKUs, it is anticipated that the overlap is so limited (in market location, targeted customer, and SKUs) that any analysis about the overlap would prove of likely no and, at best, of little value in the FTC's consideration of the market impact (negative or positive) of the proposed entity, making the integrity of any resulting analysis questionable. Where the burden or expense of the proposed discovery outweighs its likely benefit, such discovery is not appropriate, as is the case here.

Dunham's also objects to this request given material privacy concerns over the production and potential release of such data, which includes trade secrets, authorized or not, given heightened cyber-security threats. Dunham's invaluable bargaining position and business operations as a whole within the market would be irreparably harmed if the information produced were released to a third party and/or subsequently disclosed in a public manner. As should be expected, private, sensitive, and confidential information shared and exchanged between Dunham's and the parties with whom it conducts business as well as its own trade secrets absolutely cannot risk disclosure. Although there are certain legal protections that render a production to the FTC confidential, such

<sup>1</sup> Dunham's – a privately-held corporation – does not maintain an active obligation to prepare and present information concerning the categories of information requested in Specification No. 2, unlike publically-traded corporations which have active and passive investors who rely on such information in connection with their investment decision making.

is not necessarily absolute. There are instances in which such information could arguably be disclosed to third-parties, which could jeopardize Dunham's ability to remain in business or at the very least remain competitive should its trade secrets be released. That does not even take into account the inherent risk of cyber-attack causing disclosure, which can undeniably occur. Again, when assessing the risk to Dunham's business while granting no true benefit, the information sought should not be disclosed.

Lastly, relevant financial information about the market is accessible through means already publically available to the FTC, such as consumer reports, surveys, and other market information from public entities and/or reasonably available sources. Therefore, the burden imposed on Dunham's in responding to this request is wholly disproportionate with the potential benefit, *if any*, the FTC might obtain through its CID request.

**Specification No. 3: For online, catalog, and other non-brick-and-mortar sales in the Relevant Area of any Relevant Product, for each five-digit ZIP code of the shipping address, on a quarterly basis from January 1, 2015, forward, and for each department or category, provide: (a) Net Sales; (b) total promotional discount; (c) unit sales; (d) total COGs; and (e) any costs of shipping paid to or by the Company (and state whether such shipping costs are included in either Net Sales or COGs).**

**Response:** As of the present date, Dunham's has no relevant, responsive information to produce in connection with Specification No. 3 because Dunham's does not engage in "online, catalog, and/or any other non-brick-and-mortar sales in the Relevant Area."

**Specification No. 4: Submit a list of all stock keeping units ("SKUs") or Universal Product Codes ("UPCs") for each Relevant Product currently sold by the Company in the Relevant Area. For each item, provide: (a) SKU/UPC/item number; (b) department or category; (c) product description; (d) brand, if any; (e) private label indicator; (f) package type (e.g., single, multi-pack, etc.).**

**Response:** Dunham's objects to this request because it is overly broad, unduly burdensome and it is unclear, what, if any of the responsive information would be relevant to the contemplated transaction. It is unclear which products, if any, are sold, or will be sold, by Great American Outdoors Group and/or Sportsman's Warehouse that are also sold by Dunham's and therefore uncertain what, if any, of the responsive information is actually needed. Moreover, the terms "Relevant Product" and "Relevant Area," as so defined, are overly broad for similar reasons. It is possible very few items of the hundreds of thousands of SKUs Dunham's sells are also sold by Great American Outdoors Group and/or Sportsman's Warehouse, or are otherwise competitive with those sold by Great American Outdoors Group and/or Sportsman's Warehouse. If that is the case, then the burden or expense of the proposed discovery outweighs its likely benefit.

Again, it is important to note, the fact that Dunham's may sell items in the same category ("sporting goods") as the contemplated entity is not enough to necessitate the burdensome discovery sought. Retail stores from small "mom and pop" hardware stores to "super stores" sell

“sporting goods” and they all sell other items not classified as “sporting goods”. Dunham’s is the same. It sells sporting goods, but it also sells thousands of products not classified as sporting goods. Indeed, it is quite possible (and even probable) the contemplated entity has thousands (if not hundreds of thousands) of items that are not “sporting goods” and/or are otherwise materially dissimilar to those sold by Dunham’s. To that extent, not all of the SKUs are relevant or necessary for production.

Notwithstanding these objections, Dunham’s is willing to produce a confidential spreadsheet listing data containing SKUs for its products, product descriptions, brands, and other related information to the extent such items are also sold by Great American Outdoors Group and/or Sportsman’s Warehouse.

This production is to serve also to illustrate how the financial information sought in Specification Number 2 is not relevant or helpful. Assuming for a moment Dunham’s could easily produce the information sought, which it cannot, it is possible the vast majority of the information would be irrelevant, depending on how many SKUs are sold by the contemplated entity and Dunham’s in materially close geographic proximity and marketed to the same consumers. If the two have very little material overlap in products sold, geographic locations, and targeted consumers, than any financial information will likewise have very little overlap/relevance for the FTC to evaluate the contemplated transaction. Therefore, these SKUs are also being produced/proffered in confidence as further support for Dunham’s objection to Specification Number 2: that the burden or expense of the proposed discovery, resulting in little if any relevant information, greatly outweighs potential benefit.

Given the foregoing, it is Dunham’s position it has met and satisfied in full its obligations in responding to the CID request. If you have questions or concerns, please do not hesitate to contact the undersigned.

Sincerely,

Jonathan W. Emord

Attachments/Enclosures: (1)

Excel Spreadsheet re Dunham’s Product SKUs

**CERTIFICATE OF SERVICE**

I hereby certify that on May 17, 2021, I caused a true and correct copy of the foregoing to be served as follows:

One electronic copy to the **Office of the Secretary**:

April Tabor, Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580  
Email: [electronicfiling@ftc.gov](mailto:electronicfiling@ftc.gov); [atabor@ftc.gov](mailto:atabor@ftc.gov)

One electronic copy to **Counsel for the Commission**:

Charles Dickinson (attorney)  
Federal Trade Commission  
600 Pennsylvania Ave.  
Washington, DC 20580  
Email: [cdickinson@ftc.gov](mailto:cdickinson@ftc.gov)

Date: May 17, 2021

s/ Jonathan Emord  
Jonathan Emord ([jemord@emord.com](mailto:jemord@emord.com))  
Eric Awerbuch([eawerbuch@emord.com](mailto:eawerbuch@emord.com))  
Emord & Associates, P.C.  
11808 Wolf Run Lane  
Clifton, VA 20124  
Phone: 602-388-8899