

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

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

Respondents.

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Docket No. 9318

PUBLIC

**RESPONDENTS' MOTION TO QUASH IN PART  
AND TO LIMIT SUBPOENAS ON NON-PARTIES**

Respondents Basic Research, L.L.C., et al., ("Respondents") move to quash in part and to limit subpoenas duces tecum served on eight non-parties by Complaint Counsel of the Federal Trade Commission ("FTC") in this proceeding.<sup>1</sup> In particular, Respondents seek to quash the subpoenas insofar as they call for the production of financial information of the Respondents, as that information is irrelevant to this proceeding and introduces issues that Respondents should not be burdened with addressing.<sup>2</sup>

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<sup>1</sup> The subpoenas, served on or about July 8, 2004, were directed to George Evan Bybee, Majestic Enterprises, Inc., Dr. Nathalie Chevreau, Michael Meade, D.G. Enterprises, Inc., Western Holdings, LLC, Winterhawk Enterprises, LLC, and Winterfox, LLC.

<sup>2</sup> The FTC has recognized the right of respondents to move to quash or limit subpoenas to non-parties. See *In re Horizon Corp.*, 88 F.T.C. 208, n.5 (1976); see also *American Motors Corp. v. Federal Trade Commission*, 601 F.2d 1329, 1338-39 (6th Cir. 1979).

Counsel for Respondents have conferred with Complaint Counsel in accordance with Rule 3.22(f) of the Rules of Practice, 16 C.F.R. § 3.22(f). In doing so, the parties were able to resolve two issues that Respondents were going to raise in this motion. The parties have been unable to resolve the final issue raised in this motion. *See* Declaration of Jay T. Smith (July 19, 2004) (Exhibit 1).

### **BACKGROUND**

On June 15, 2004, the FTC issued an administrative complaint alleging that Respondents engaged in unfair or deceptive acts or practices and made advertisements for certain products that were false or misleading in violation of Sections 5(a) and 12 of the Federal Trade Commission Act. To date, no protective order or scheduling order has been filed.

On or about July 8, 2004, Complaint Counsel served subpoenas for production of documentary materials to eight non-parties seeking from each identical categories of information relating to the Respondents. Exhibit 2, attached hereto, is one of the subpoenas. Among other things, each subpoena seeks documents relating to financial information regarding the

Respondents:

- Specification No. 9: “Documents sufficient to show all compensation, distributions, payments, royalties, and all other benefits in any form that each of the Respondents has made to you, or to others on your behalf. (This request includes, but is not limited to, all compensation, distributions, payments, royalties, and all other benefits made to you, or to others on your behalf, in connection with the formulation, development, manufacture, testing, advertising, marketing, promotion, or sale of each of the challenged products.)”
- Specification No. 10: “Documents sufficient to show the total amount, in dollars, of all revenues that you have received, and all expenditures that you have made, in connection with the formulation, development, manufacture, testing, advertising, marketing, promotion, or sale of each of the challenged products.”

Such financial information might arguably also be encompassed by other, broader specifications set forth in the subpoenas, including but not limited to Specification No. 1 (all documents that “refer or relate” to the “challenged products”).

Under the terms of the subpoenas, the non-parties must provide these documents to Complaint Counsel by August 2, 2004.

### ARGUMENT

The subpoenas should be quashed insofar as they seek confidential financial information of the Respondents that is irrelevant in the instant proceeding. Discovery in an FTC proceeding is allowed “to the extent it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent.” 16 C.F.R. § 3.31(c)(1). Specifications 9 and 10 of the subpoenas at issue here seek financial information relating to compensation received and expenditures made by the non-parties in relation to the Respondents. Other specifications might also arguably call for such information as well.

In the present proceeding, however, financial information concerning the Respondents is irrelevant to the question raised by the Complaint: whether Respondents have engaged in unfair or deceptive acts or practices or have made false or misleading advertisements. The compensation received or expenditures made by the subpoenaed non-parties has no bearing on that question, nor will such information lead to any relevant evidence. Introducing this issue into the proceedings now would unduly burden Respondents with the task of addressing unnecessary and irrelevant issues. Although financial information is typically sought in a federal court action seeking damages for violation of a cease and desist order, it is not appropriate discovery in the present proceeding.

Complaint Counsel has brought an administrative action against Respondents under Section 5 of the Federal Trade Commission Act ("FTC Act"), seeking a cease-and-desist order as provided for under the statute. *See* 15 U.S.C. § 45(b). In this type of proceeding, financial information is irrelevant either to the finding of a violation or to the proposed relief. Only if a determination has been made that an entity has engaged in an unfair or deceptive practice, and a cease-and-desist order has been imposed, and the FTC decides to bring an action in federal court for redress under Section 19 of the FTC Act, would company financial information be potentially relevant. As the Commission has held, Complaint Counsel should not be permitted to pursue Section 19 discovery when such information is irrelevant in a Section 5 administrative proceeding. *See In re Electronic Computer Programming Inst., Inc.*, 86 F.T.C. 1093 (1975) ("[T]he law judges should not permit discovery or introduction of evidence relevant only to Section 19" during an administrative Section 5 proceeding); *see also FTC v. Turner*, 609 F.2d 743, 745 (5th Cir. 1980) (noting that "[t]he amount of [respondent's] assets is not relevant to an inquiry into whether a violation of the law exists").

Nor is this *financial* information needed to identify which respondents, or non-parties for that matter, created the advertisements alleged in the complaint to be false or misleading. The other Specifications in the subpoenas request the documents that will reveal who made the representations at issue, as well as who formulated the products, studied their efficacy, etc. The financial overlay is irrelevant at this stage, and is simply an inappropriate attempt to pursue Section 19 discovery.

Accordingly, the subpoenas should be quashed as to Specifications 9 and 10 and to the extent that other specifications might be interpreted to call for the same information.

**CONCLUSION**

Respondents respectfully request that the foregoing motion be granted and that the subpoenas be quashed insofar as they call for the production of Respondents' financial information.

DATED: July 19, 2004

Respectfully Submitted,



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Jay T. Smith  
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Washington, D.C. 20004  
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L.L.C., Klein-Becker USA, L.L.C.,  
Nutrasport, L.L.C., Sovage Dermalogic  
Laboratories, L.L.C., and Ban, L.L.C**



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**Richard D. Burbidge**

**Jefferson W. Gross**

**Andrew J. Dymek**

**BURBIDGE & MITCHELL**

**215 South State Street, Suite 920**

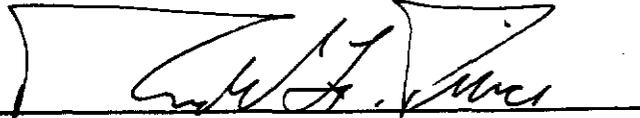
**Salt Lake City, Utah 84111**

**Telephone: (801) 355-6677**

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**E-mail: [rburbidge@burbidgeandmitchell.com](mailto:rburbidge@burbidgeandmitchell.com)**

**Attorneys for Respondent Dennis Gay**

A handwritten signature in black ink, appearing to read "Ronald F. Price", is written over a horizontal line.

**RONALD F. PRICE**

**PETERS SCOFIELD PRICE**

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Facsimile: (801) 322-2003

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**Attorneys for Respondent Daniel B. Mowrey**



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**5742 West Harold Getty Drive**  
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**Telephone: (801) 414-1800**  
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**Pro Se Respondent**

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

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

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Docket No. 9318

**ORDER ON RESPONDENTS' MOTION TO QUASH IN PART  
AND TO LIMIT SUBPOENAS ON NON-PARTIES**

Having read the motion of Respondents to quash in part and to limit the subpoenas duces tecum served by Complaint Counsel on eight non-parties on or about July 8, 2004, and having duly considered the same, I hereby rule that the Motion is GRANTED.

IT IS THEREFORE ORDERED, that the eight subpoenas are quashed with respect to Specifications 9 and 10 and to the extent that other specifications might be interpreted to call for the same information.

ORDERED:

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D. Michael Chappell  
Administrative Law Judge

# EXHIBIT 1

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

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

Respondents.

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Docket No. 9318

**DECLARATION OF JAY T. SMITH**

I, Jay T. Smith, declare as follows:

1. My name is Jay T. Smith. I am a partner at the law firm of Covington & Burling, and I represent Basic Research, LLC, one of the Respondents in this Federal Trade Commission ("FTC") proceeding.

2. I make this declaration pursuant to Rule 3.22(f) in connection with Respondents' Motion to Quash In Part and to Limit Subpoenas on Non-Parties, which concerns eight subpoenas served on non-parties on or about July 8, 2004.

3. Following my receipt and review of the subpoenas, I contacted and conferred with Complaint Counsel in a good faith effort to resolve the issue raised by the Respondents' Motion to Limit or Quash, but we have been unable to reach an agreement.

4. Specifically, on July 19, 2004, at noon, in Washington, DC, along with Robert J. Lundman (an associate at my firm), I contacted Laureen Kapin, Complaint Counsel at the FTC and her colleague Laura Schneider, also in Washington, DC, to discuss the motion by telephone. With us on the call was Jeffrey D. Feldman, Counsel for the LLC respondents other than Basic Research LLC, who joined us from Miami, Florida. I described to Ms. Kapin the relief sought by Respondents in the order accompanying their motion and the reasons supporting that relief. Mr. Lundman and I also consulted with Ms. Kapin later that same day.

5. During these consultations, the parties were able to reach agreements that obviated the need for a motion on certain issues.

6. The parties were unable, however, after good faith efforts, to reach agreement on Respondents' request that Complaint Counsel not pursue the demand in the subpoenas for confidential financial information of the Respondents.

7. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on July 19, 2004.

  
\_\_\_\_\_  
Jay T. Smith

# EXHIBIT 2

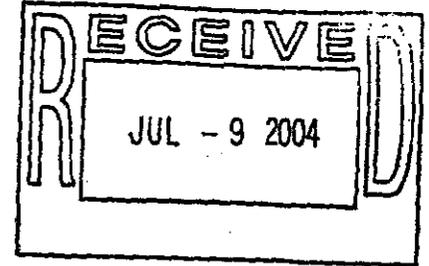


UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

Bureau of Consumer Protection  
Division of Enforcement

Joshua S. Millard  
Attorney

Direct Dial:  
(202) 326-2454



July 8, 2004

Majestic Enterprises  
5742 W. Harold Gatty Dr.  
Salt Lake City, UT 84116

**VIA FEDERAL EXPRESS**

**Re: *Basic Research LLC, et al.*, Docket No. 9318**

Dear Sir or Madam:

Please find enclosed a subpoena for production of documentary materials and tangible things in connection with the above-referenced matter. The subpoena contains instructions for compliance.

Please feel free to call me at the above telephone number if you have any questions regarding these subpoenas.

Thank you for your cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Joshua S. Millard".

Joshua S. Millard  
Attorney, Division of Enforcement



# SUBPOENA DUCES TECUM

Issued Pursuant to Rule 3.34(b), 16 C.F.R. § 3.34(b)(1997)

<p>1. TO</p> <p>Majestic Enterprises, Inc. 5742 West Harold Gatty Dr. Salt Lake City, UT 84116</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
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This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things - or to permit inspection of premises - at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<p>3. PLACE OF PRODUCTION OR INSPECTION</p> <p>Federal Trade Commission 600 Pennsylvania Ave., N.W. Suite NJ-2122 Washington, D.C. 20580</p>	<p>4. MATERIAL WILL BE PRODUCED TO</p> <p>An authorized Federal Trade Commission representative</p> <p>5. DATE AND TIME OF PRODUCTION OR INSPECTION</p> <p>August 2, 2004</p>
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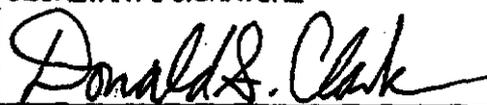
6. SUBJECT OF PROCEEDING

*In the Matter of Basic Research, L.L.C., et al., Docket No. 9318*

7. MATERIAL TO BE PRODUCED

See the attached specifications. In lieu of production at the above place, documents may be returned by mail on or before August 2, 2004 to Joshua S. Millard, Federal Trade Commission, Suite NJ-2122, Washington D.C. 20580, provided that an affidavit is submitted simultaneously that meets the requirements set forth in Exhibit A hereto.

<p>8. ADMINISTRATIVE LAW JUDGE</p> <p>D. Michael Chappell Administrative Law Judge</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>9. COUNSEL REQUESTING SUBPOENA</p> <p>Joshua S. Millard Complaint Counsel Federal Trade Commission Suite NJ-2122 Washington, D.C. 20580</p>
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<p>DATE ISSUED</p> <p>JUN 30 2004</p>	<p>SECRETARY'S SIGNATURE</p> 
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### GENERAL INSTRUCTIONS

#### APPEARANCE

The delivery of this subpoena 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.

#### MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

#### TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1990

**“ATTACHMENT A” TO SUBPOENA DUCES TECUM  
DIRECTED TO MAJESTIC ENTERPRISES**

**DEFINITIONS**

- 1) **“All documents”** means each document, as defined below, which can be located, discovered or obtained by reasonable, diligent efforts, **including** without limitation all documents possessed by: (a) you or your counsel; or (b) any other person or entity from whom you can obtain such documents by request or which you have a legal right to bring within your possession by demand.
- 2) **“Challenged products”** means the products identified as Dermalin-APg, Cutting Gel, Tummy Flattening Gel, Leptoprin, Anorex, and PediaLean in the administrative **Complaint** issued by the Federal Trade Commission in the above-captioned matter, both individually and collectively. (This definition **includes** all current and previous versions of these products as well as any other products made of the same formulation(s) used in the products identified above.)
- 3) **“Communication(s)”** includes, but is not limited to, any and all conversations, meetings, discussions and any other occasion for verbal exchange, whether in person, by telephone, or electronically, as well as all letters, memoranda, telegrams, cables, and other writings or **documents**.
- 4) **“Dissemination schedule”** includes, but is not limited to, the following: (a) for radio, audio, television, and video **promotional materials**, the date, time of day, location and station name; (b) for product packaging, the names of distributors and retailers to whom the packaging or other **promotional material** was transmitted, the date of transmittal, and the number of pieces transmitted; (c) for printed **promotional materials**, the name and date of the publication or place in which the **promotional material** appeared; and (d) for Internet materials, the date that the **promotional material** was first placed on the Internet, the date (if any) that it was removed from the Internet, and the number of “hits” that the advertisement registered.
- 5) **“Document”** means the complete original and any non-identical copy (whether different from the original because of notations on the copy or otherwise), regardless of origin or location, of any written, typed, printed, transcribed, taped, recorded, filmed, punched, computer-stored, or graphic matter of every type and description, however and by whomever prepared, produced, disseminated or made, **including** but not limited to any advertisement, book, pamphlet, periodical, contract, file, invoice, memorandum, note, telegram, report, record, handwritten note, working paper, routing slip, package insert, sticker, web page, chart, graph, paper, index, map, tabulation, manual, guide, outline, script, abstract, history, calendar, diary, agenda, minute, code book, data compilation, tests, reports, clinical studies, test reports, scientific literature, articles, expert opinions, handwritten notes, correspondence, **communications**, electronic mail, electronically stored data, computer (**including** handheld computer) material (**including** print-outs, cards, magnetic or electronic tapes, discs and such codes or instructions as will transform such computer materials into easily understandable form), and video and audio recordings.

6) **"Each"** and **"any"** include **"all,"** so as to have the broadest meaning whenever necessary to bring within the scope of any Specification all information and/or documents that might otherwise be construed to be outside its scope.

7) **"Includes"** or **"including"** means **"including but not limited to,"** so as to avoid excluding any information that might otherwise be construed to be within the scope of any Specification.

8) **"Market research"** means all information referring or relating to testing, measuring or assessing consumers' or individuals' interpretation of, understanding of or reaction to a draft, proposed, or final **promotional material,** proposed advertising text, copy or creative strategy or platform, product category, product, entity or information conveyed in an advertisement, **including** consumer perception tests, comprehension tests, recall tests, marketing or consumer surveys or reports, penetration tests, audience reaction tests, focus groups and media research.

9) **"Or"** includes **"and,"** and **"and"** includes **"or,"** so as to have the broadest meaning whenever necessary to bring within the scope of any Specification all information or documents that might otherwise be construed to be outside its scope.

10) **"Person"** or **"Persons"** means all natural persons, corporations, partnerships or other business associations, and all other legal entities, **including** all members, officers, predecessors, assigns, divisions, affiliates and subsidiaries.

11) **"Promotional material"** shall mean any written or oral statement, advertisement, illustration, or depiction that is designed to effect a sale or create interest in the purchasing of goods or services, whether the same appears in a press release, video news release, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, sticker, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, instructional or education materials, packaging, package insert, package label, film, slide, radio or television broadcast or transmission, Internet or World Wide Web site, streaming video, electronic mail, audio program transmitted over a telephone system, script used to make oral solicitations to consumers, or publication or broadcast in any other medium.

12) **"Referring to"** or **"relating to"** means discussing, describing, reflecting, containing, analyzing, studying, reporting, commenting, evidencing, constituting, setting forth, considering, recommending, concerning, or pertaining to, in whole or in part.

13) **"Respondent(s)"** means any one or more of the following: Basic Research, L.L.C., A.G. Waterhouse, L.L.C., Klein-Becker USA, L.L.C., Nutrasport, L.L.C., Sovage Dermalogic Laboratories, L.L.C., BAN, L.L.C., Dennis Gay, Daniel B. Mowrey, American Phytotherapy Research Laboratory, or Mitchell K. Friedlander, **including** all of their operations under assumed names.

14) **"You"** or **"Your"** means the **person** or entity to whom this subpoena duces tecum is directed.

- 15) The use of the singular includes the plural, and the plural includes the singular.
- 16) The use of a verb in any tense shall be construed as the use of the verb in all other tenses.
- 17) The spelling of a name shall be construed to include all similar variants thereof.

## INSTRUCTIONS

- 1) Unless otherwise specified, the time period covered by a Document Specification shall not be limited and all documents responsive to the Specification, regardless of dates or time periods involved, should be provided.
- 2) A complete copy of each document should be submitted even if only a portion of the document is within the terms of the Specification. The document shall not be edited, cut, or expunged and shall include all covering letters and memoranda, transmittal slips, appendices, tables or other attachments.
- 3) All information submitted shall be clearly and precisely identified as to the Specification(s) or sub-Specification(s) to which it is responsive. You should consecutively number each page in your submission; each page submitted should be marked with a unique "Bates" document tracking number.
- 4) Documents covered by these Specifications are those which are in your possession or under your actual or constructive custody or control, whether or not such documents were received from or disseminated to any other person or entity including attorneys, accountants, directors, officers, and employees.
- 5) Documents that may be responsive to more than one Specification need not be submitted more than once; however, your response should indicate, for each document submitted, each Specification to which the document is responsive. If any documents responsive to a Specification have been previously supplied to the Commission, you may comply with the Specification by identifying the document(s) previously provided and the date of submission; identification shall be by Bates number if the document(s) were so numbered when submitted, or by author and subject matter if not so numbered.
- 6) If any of the documentary materials requested in these Specifications are available in machine-readable form (such as floppy or hard disks, drums, core storage, magnetic tapes or punch cards), state the form in which it is available and describe the type of computer or other machinery required to read the record(s) involved. If the information requested is stored in a computer or a file or record generated by a computer, indicate whether you have an existing program that will print out the record in readable form and state the name, title, business address and telephone number of each person who is familiar with the program.
- 7) Promotional materials submitted in response to these Specifications shall be submitted in the following form(s) as follows: For documents, provide the original promotional materials

if available, or, if not available, color copies thereof. For audio-only (or radio) materials, provide a tape cassette (or digitized recording, if in machine-readable form) and a script, as well as any audio out-takes. For video recordings, provide a DVD or VHS cassette and script or storyboard, as well as any video out-takes. For Internet or other online materials, provide a CD (if in machine-readable form) or a clear color printout of all screens displayed in the promotional materials and identify the site, forum, or address.

8) All objections to these Document Specifications, or to any individual Specification, must be raised in the initial response or are otherwise waived.

9) If any requested material is withheld based on a claim of privilege, submit together with such claim a schedule of the items withheld which states individually for each item withheld: (a) the type, title, specific subject matter, and date of the item; (b) the names, addresses, positions, and organizations of all authors and recipients of the item; and (c) the specific grounds for claiming that the item is privileged. If only part of a responsive document is privileged, all non-privileged portions of the document must be submitted. (Further instructions pertinent to a particular Document Specification appear in parentheses within or following that Specification.)

## **SPECIFICATIONS**

Demand is hereby made for the following documentary materials and tangible things:

1) **All documents and communications referring or relating to the challenged products.** (This request includes, but is not limited to, all documents and communications that show the duties, responsibilities, and work that you have performed, or have agreed to perform, in connection with the formulation, development, manufacture, testing, advertising, marketing, promotion, or sale of each of the **challenged products**. You need not produce routine invoices, shipping documents, or payment records in response to this Specification.)

2) **All documents and communications referring or relating to the formulation, development, manufacture, ingredients, physical properties, or effects (whether beneficial or harmful) of each of the challenged products.**

3) **All documents and communications referring or relating to testing (including any proposed, incomplete, or aborted tests) of each of the challenged products or their ingredients, including but not limited to all procedures and protocols, documents evidencing the identity, ingredients, and physical properties of the materials tested, notes or notebooks and records, data, statistical and technical analyses, and draft and final test reports.**

4) **All documents and communications referring or relating to proof or substantiation of claims in any promotional material for any of the challenged products, including but not limited to any clinical studies, test reports, articles, expert opinions, and all documents referring or relating to the amount, type, or quality of such proof or substantiation.**

- 5) **All promotional materials for each of the challenged products, whether in draft or final form.**
- 6) **All documents and communications referring or relating to draft or final promotional materials for each of the challenged products. (This request includes but is not limited to contracts, documents, and communications evidencing the creation, modification, approval, execution, evaluation, dissemination, clearance, or placement of promotional materials, and documents referring or relating to the contents of draft or final promotional materials, including but not limited to any claims, messages, or communication contained in any draft or final promotional material.)**
- 7) **All documents and communications referring or relating to the marketing of each of the challenged products. (This request includes but is not limited to market research, marketing plans or strategies, and all other document(s) and communications referring or relating to consumer perception of any promotional materials for each of the challenged products.)**
- 8) **All documents and communications prepared by, received from, or provided to one or more of the Respondents, or any of their employees, agents, or affiliates, in connection with the formulation, development, manufacture, testing, advertising, marketing, promotion, or sale of each of the challenged products. (You need not produce routine invoices, shipping documents, or payment records in response to this Specification.)**
- 9) **Documents sufficient to show all compensation, distributions, payments, royalties, and all other benefits in any form that each of the Respondents has made to you, or to others on your behalf. (This request includes, but is not limited to, all compensation, distributions, payments, royalties, and all other benefits made to you, or to others on your behalf, in connection with the formulation, development, manufacture, testing, advertising, marketing, promotion, or sale of each of the challenged products.)**
- 10) **Documents sufficient to show the total amount, in dollars, of all revenues that you have received, and all expenditures that you have made, in connection with the formulation, development, manufacture, testing, advertising, marketing, promotion, or sale of each of the challenged products.**

## **EXHIBIT A**

### **INSTRUCTIONS FOR COMPLIANCE BY MAIL**

If responsive documents are returned by mail, they must be accompanied by an affidavit, executed by you, that provides:

1. The names, addresses, positions, and organizations of all persons whose files were searched and all persons who participated in or supervised the collection of the documents, and a brief description of the nature of the work that each person performed in connection with collecting the documents;

2. A statement that the search was complete and that all responsive documents are being produced;

3. A statement as to whether the documents were made and kept in the course of your regularly conducted business, and whether it was your regular practice to make and keep such documents; and

4. A statement as to whether any document called for by the subpoena has been misplaced, lost, or destroyed. If any document has been misplaced, lost, or destroyed, identify: the type of document; the date (or approximate date) of the document; subject matter of the document; all persons to whom it was addressed, circulated, or shown; its date of destruction, or when it was lost or misplaced; the reason it was destroyed, lost, or misplaced; and the custodian of the document on the date of its destruction, loss or misplacement.

If the affidavit is incomplete, or additional information is necessary, you may be compelled to appear and testify.

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 8<sup>th</sup> day of July, 2004, I caused a copy of Complaint Counsel's *Subpoena Duces Tecum to Majestic Enterprises* to be served upon the following persons via Federal Express:

**Majestic Enterprises**  
5742 W. Harold Gatty Dr.  
Salt Lake City, UT 84116

**Stephen E. Nagin, Esq.**  
Nagin Gallop Figuerdo P.A.  
3225 Aviation Ave.  
Miami, FL 33133

**Mitchell K. Friedlander**  
Pro Se Respondent  
5742 W. Harold Gatty Dr.  
Salt Lake City, UT 84116

  
\_\_\_\_\_  
J. S. MILLARD

**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of July, 2004, I caused to be filed and served

- 1) Respondents' Motion to Quash in Part and to Limit Subpoenas, including proposed order, and
- 2) a Notice of Appearance for Lanny A. Breuer and Jay T. Smith, as follows:

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

Donald S. Clark, Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Room H-159  
Washington, DC 20580  
Email: secretary@ftc.gov

- (2) one paper copy served by hand delivery to:

The Honorable D. Michael Chappell  
Administrative Law Judge  
600 Pennsylvania Avenue, NW, Room H-106  
Washington, DC 20580

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

Laureen Kapin  
Walter C. Gross  
Joshua S. Millard  
Robin F. Richardson  
Laura Schneider  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Suite NJ-2122  
Washington, DC 20580  
email: lkapin@ftc.gov

- (4) one paper copy by first class U.S. mail to:

Elaine D. Kolish  
Associate Director, Enforcement  
Federal Trade Commission  
601 New Jersey Avenue, NW  
Washington, DC 20001

Ronald F. Price  
PETERS SCOFIELD PRICE  
310 Broadway Centre  
Salt Lake City, UT 84111  
*Counsel for Respondent Daniel B. Mowrey*

Richard D. Burbidge  
Jefferson W. Gross  
Andrew J. Dymek  
BURBIDGE & MITCHELL  
215 South State Street, Suite 920  
Salt Lake City, UT 84111  
*Counsel for Respondent Dennis Gay*

Mitchell K. Friedlander  
c/o Compliance Department  
5742 West Harold Gatty Drive  
Salt Lake City, UT 84116

I further certify that the electronic copies sent to the Secretary of the Commission are true and correct copies of the paper originals, and that paper copies with original signatures are being filed with the Secretary of the Commission on the same day by other means.

  
\_\_\_\_\_  
Jay T. Smith