

**ORIGINAL**



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

\_\_\_\_\_  
)  
**In the Matter of** )  
)  
**POM WONDERFUL LLC and,** )  
**ROLL INTERNATIONAL CORP.,** )  
**companies, and** )  
)  
**STEWART A. RESNICK,** )  
**LYNDA RAE RESNICK, and** )  
**MATTHEW TUPPER, individually and** )  
**as officers of the companies.** )  
\_\_\_\_\_ )

**Docket No. 9344**

**PUBLIC DOCUMENT**

**COMPLAINT COUNSEL’S MOTION TO AMEND  
SCHEDULING ORDER AND MEMORANDUM IN SUPPORT THEREOF**

Complaint Counsel respectfully moves the Court for an order amending the October 26, 2010 Scheduling Order to permit it to conduct the deposition of Michael Aviram, M.D., no later than March 25, 2011.<sup>1</sup>

Dr. Aviram, a physician and researcher living in Haifa, Israel, has been named as a fact witness by Respondents in their initial witness list. *Respondents’ Preliminary Witness List* at 4 (Dec. 15, 2010). According to that list, “Respondents anticipate that Dr. Aviram will testify *regarding Respondents’ defenses*, his research regarding pomegranates and POM products, and his interactions with Respondents.” *Id.* (emphasis added). Indeed, Dr. Aviram and his research, performed at the Technion Institute in Israel, have been repeatedly cited in Respondents’ advertising. *E.g.*, Compl. Exhibits E, I at 5, J, K, L, and M at 3.

<sup>1</sup> Commission Rule of Practice 3.21(c)(2) provides that “[t]he Administrative Law Judge may, upon a showing of good cause, grant a motion to extend any deadline or time specified in this scheduling order other than the date of the evidentiary hearing.”

Accordingly, beginning in early January 2011, Complaint Counsel engaged in repeated communications with Respondents' Counsel, asking that they either make Dr. Aviram available for deposition, or advise it that he will, in fact, not appear to testify at the hearing. *See* Exhibit A at 1-3 (communications dated Jan. 14-20, 2011). Complaint Counsel made clear that it was willing to travel to Israel for that purpose, *id.* at 4-6 (communications dated Jan. 20-Feb. 7, 2011) and gave notice that if Dr. Aviram was not made available for deposition, Complaint Counsel would object to any proposal that he be called as a witness at the hearing, *id.* at 6 (communication dated Feb. 7, 2011).

Despite Complaint Counsel's repeated requests, Respondents did not identify a date on which Dr. Aviram would be available. Nonetheless, on February 8, 2011, Respondents' Counsel sent the following communication:

Janet [Evans]: I cannot see what objection complaint counsel could validly assert if Dr. Aviram appeared at trial, as he has been on our initial disclosure and witness lists and you have known for several years about him. The Rules of Practice provide you with a means of taking his deposition and we have done nothing to oppose any such efforts. As I have told staff many times, we do not represent Dr. Aviram or control his schedule. Nevertheless, we have been willing to consider whether there is a mutually acceptable way to address your issue and we have in fact been working on that since Heather [Hippesley] made her request a few weeks ago. I hope to have something to report to you in the next week or so. As we did with the Resnicks, if you want to take a deposition of Dr. Aviram outside the fact discovery period *we will agree to file a stipulated motion* with the court to allow that.

*Id.* at 7 (emphasis added).

Also over the past several weeks, Complaint Counsel consulted repeatedly with the Commission's Office of International Affairs, which in turn consulted with Israeli officials, to determine what options were available to obtain testimony from Dr. Aviram. As Complaint Counsel advised Respondents' Counsel, the process of proceeding by subpoena was "very detailed." *See id.* at 3, 4. Specifically, Complaint Counsel was informed that even after this Court

issued a subpoena to Dr. Aviram pursuant to Commission Rule 3.36(a)(4), *and* after the subpoena was effectively delivered to the Israeli Court Administration, the process of serving that subpoena on Dr. Aviram could take three months.<sup>2</sup> Of course, one must assume that there would need to be additional discussions thereafter, to settle on a date that was acceptable to Dr. Aviram. As this would likely not result in a deposition of Dr. Aviram prior to the hearing in this matter, compulsory process did not appear to be a feasible approach. Complaint Counsel was further advised, however, that the Israeli authorities would not object if Dr. Aviram consented to a deposition there, and that the Office of International Affairs considered this to be an appropriate approach.

Despite Respondents' Counsel's February 8, 2011 assurance that they were "working" on a solution for Dr. Aviram's availability and that they "hoped to have something to report . . . in the next week or so," *id.* at 7, Complaint Counsel was concerned about the passage of time. Accordingly, on February 8, 2011, Complaint Counsel contacted Dr. Aviram and inquired whether he could make himself available to being deposed, under oath, in Haifa, Israel. *Id.* at 8 (letter to Dr. Aviram). On Friday, February 11, 2011, Dr. Aviram responded that he would be available on March 7, 2011, in his office in Haifa. *Id.* at 9. Accordingly, on Monday, February 14, 2011, Complaint Counsel alerted Respondents' Counsel regarding this scheduling. *Id.* at 11.<sup>3</sup>

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<sup>2</sup> Rule 3.36(a)(4) addresses the procedures that must be followed if a subpoena is issued to an individual located abroad. It anticipates a motion by Complaint Counsel, a response by the Respondent, and an Order by the Court. It does not, however, address situations where no subpoena is issued.

<sup>3</sup> After receiving Dr. Aviram's email agreeing to the March 7 date, Complaint Counsel learned that there is a real concern that the U.S. federal government may face a shut-down upon the March 4, 2011 expiration of the current continuing resolution. If that is the case, Complaint Counsel will be prohibited from traveling for the government. Complaint Counsel has advised Dr. Aviram of this possibility, and asked him whether he would prefer to stick to the

In sum, Complaint Counsel engaged in substantial reasonable efforts to consult with Respondents regarding Dr. Aviram's deposition. It arrived at a solution – a consensual deposition – that complies with applicable law and is calculated to permit Complaint Counsel to obtain discovery before, rather than after, the hearing. Further, Respondents' Counsel assured Complaint Counsel that they did not oppose our efforts to depose Dr. Aviram, and that they would stipulate to taking his deposition out of time. *Id.* at 7.

Respondents' Counsel have now reneged on their commitment to stipulate to take Dr. Aviram's deposition out of time. On February 14, 2011, Respondents' Counsel wrote to advise Complaint Counsel that they "cannot agree to proceeding in this way." *Id.* at 12. Asserting once again that they do not represent Dr. Aviram, and on the other hand that they were continuing to work on identifying an accommodation, they now argue that they *only* planned to stipulate to a deposition out of time *if* Dr. Aviram was planning on being in the United States at some point soon. "It was in that context that I also made clear that if that could be done, we would not raise an objection that the deposition was being taken beyond the discovery cut-off."<sup>4</sup> *Id.*

Complaint Counsel acted in reasonable reliance upon Respondents' assurances that they

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March 7 plan or to reschedule for the following week. Exhibit A at 10. For the time being, he has stated that he prefers to move forward on March 7. *Id.* at 13.

<sup>4</sup> This is a curious interpretation of the communications among the parties. In essence, Respondents seem to argue that they did not actually intend to stipulate to an out of time deposition unless it was conducted at their convenience. Complaint Counsel, by contrast, believed that Respondents were acting in good faith.

Further, during one conversation in February 2011, Respondents' Counsel said that they were looking into whether Dr. Aviram might be available for deposition at a location in Europe, such as Paris. Complaint Counsel was concerned about the additional delay that would be involved under any proposal that would require it to engage in inquiries with officials from yet another country about what procedures would or would not be acceptable under local law.

would stipulate to conducting this deposition out of time. It also acted prudently in arranging a consensual deposition of Dr. Aviram. Respondents' fundamental objection – that it should not be required to travel to depose a witness on their own list – is both unreasonable and inconsistent with the entire concept of discovery. If Dr. Aviram is to appear as a witness for Respondents, to testify “regarding Respondents’ defenses, his research regarding pomegranates and POM products, and his interactions with Respondents,” *see Respondents’ Preliminary Witness List* at 4, Complaint Counsel has a right to depose him prior to the trial.

Respondents’ Counsel complain that the deposition is taking place “in an entirely different country, in a region that is currently in some turmoil.”<sup>5</sup> Complaint Counsel is not eager to travel halfway around the world to conduct discovery of Dr. Aviram. It imposes substantial costs on the Commission at a time when budgets are tight. Nonetheless, lacking another alternative, we have made appropriate plans. Respondents are welcome to attend the deposition via telephone if they prefer not to travel.

As noted above, at footnote 3, Complaint Counsel is concerned about the possibility of a government shutdown beginning on March 5. If this occurs, we will seek Dr. Aviram’s consent to a deposition shortly thereafter. Accordingly, Complaint Counsel hereby requests that this Court amend the scheduling order to permit the deposition of Dr. Aviram to take place on or before March 25, 2011.

Date: February 16, 2011

/s/ Janet M. Evans  
Janet M. Evans (202) 326-2125  
Mary L. Johnson (202) 326-3115  
Federal Trade Commission

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<sup>5</sup> Complaint Counsel assumes Respondents refer to the situation in Cairo, Egypt. It should be noted that Haifa, the second largest city in Israel, is located approximately 290 miles from Cairo.

Bureau of Consumer Protection  
601 New Jersey Avenue, NW  
Washington, DC 20580

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

\_\_\_\_\_  
In the Matter of )  
)  
)

POM WONDERFUL LLC and )  
ROLL INTERNATIONAL CORP., )  
companies, and )

DOCKET NO. 9344

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

**[Proposed] ORDER GRANTING COMPLAINT COUNSEL'S MOTION  
TO AMEND SCHEDULING ORDER**

On February 16, 2011, Complaint Counsel filed a motion to amend the Scheduling Order dated October 26, 2010. Complaint Counsel proposed moving the deadline for the deposition of Dr. Michael Aviram to on or before March 25, 2011.

Complaint Counsel's motion is GRANTED. It is hereby ORDERED that the Scheduling Order dated October 26, 2010 is amended to allow for the deposition of Dr. Michael Aviram on or before March 25, 2011. The remaining dates and all additional provisions in the October 26, 2010 Scheduling Order remain in effect.

ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

**STATEMENT REGARDING MEET AND CONFER**

In accordance with Paragraph 4 of the Court's Scheduling Order, the undersigned counsel certify that Complaint Counsel conferred in good faith with Respondents' Counsel regarding *Complaint Counsel's Motion to Amend Scheduling Order and Memorandum in Support Thereof*.

On February 8, 2011, Respondents' Counsel John Graubert emailed Complaint Counsel, Janet Evans, and stated that it would agree to file a stipulated motion with the court to allow Dr. Aviram outside the fact discovery period. Exhibit A at 7. On February 12, 2011, Complaint Counsel Janet Evans emailed Respondents' Counsel John Graubert, alerting him that we proposed to send a such a proposed stipulated motion. *Id.* at 11. On February 14, 2011, at 8:33 PM (Eastern), Respondents' Counsel emailed Complaint Counsel and advised that it now objected to the proposal to depose Dr. Aviram out of time and that "this email constitutes our effort to meet and confer with you." *Id.* at 12.

Dated: February 16, 2011

/s/ Janet M. Evans  
Janet M. Evans (202) 326-2125  
Mary L. Johnson (202) 326-3115  
Federal Trade Commission  
Bureau of Consumer Protection  
601 New Jersey Avenue, NW  
Washington, DC 20580 2010



**CERTIFICATE OF SERVICE**

I certify that on February 16, 2011, I filed and served *Complaint Counsel's Motion to Amend Scheduling Order and Memorandum in Support Thereof* upon the following as set forth below:

One electronic copy via the FTC E-Filing System to:

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

One paper copy via hand delivery and one electronic copy via email to:

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

One electronic copy via email to:

John D. Graubert, Esq.  
Covington & Burling LLP  
1201 Pennsylvania Ave., NW  
Washington DC 20004-2401  
Email: Jgraubert@cov.com

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

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

Attorneys for Respondents

Date: February 16, 2011

/s/ Janet M. Evans  
Janet M. Evans  
Complaint Counsel

**EXHIBIT A**

EMAIL CORRESPONDENCE BETWEEN COMPLAINT COUNSEL AND  
RESPONDENTS' COUNSEL DATED JAN. 14 - FEB. 15, 2011

**Hipsley, Heather**

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**From:** Graubert, John [jgraubert@cov.com]  
**Sent:** Friday, January 14, 2011 5:18 PM  
**To:** Johnson, Mary  
**Cc:** Hipsley, Heather; Perryman, Skye; 'kdiaz@roll.com'  
**Subject:** witnesses

My apologies for taking a while to respond on a few points, but we have been trying to chase various things down and I have had some other issues arise that complicated the schedule.

With respect to Professor Aviram, we do not control his availability and we are not aware of any planned visits by Professor Aviram to the US in the next month or so, so we suggest you pursue the avenues available to you under the Commission's rules should you want to depose him.

On the NIH witnesses, I have been unable to get a specific name for you but will pursue this and if we can get it clarified in the next week or so I will talk with you and see what can be worked out, given the parameters of the scheduling order.

thanks.

John

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**Hippasley, Heather**

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**From:** Hippasley, Heather  
**Sent:** Friday, January 14, 2011 5:44 PM  
**To:** 'Graubert, John'; Johnson, Mary  
**Cc:** 'Perryman, Skye'; 'kdiaz@roll.com'  
**Subject:** RE: witnesses

Hi John, obviously it is a big expense for all of us to head to Israel for a deposition in the next few weeks. Please let us know if you plan to call Professor Aviram at the hearing. We do not need to depose him, if you will not be calling him. Given the burden a deposition imposes on both him and all of us, we ask that you let us know if he indeed will testify. As for an NIH witness, the sooner we know who this is the better, given we have just a few weeks to schedule a deposition with this person. Thank you, Heather

---

**From:** Graubert, John [mailto:jgraubert@cov.com]  
**Sent:** Friday, January 14, 2011 5:18 PM  
**To:** Johnson, Mary  
**Cc:** Hippasley, Heather; Perryman, Skye; 'kdiaz@roll.com'  
**Subject:** witnesses

My apologies for taking a while to respond on a few points, but we have been trying to chase various things down and I have had some other issues arise that complicated the schedule.

With respect to Professor Aviram, we do not control his availability and we are not aware of any planned visits by Professor Aviram to the US in the next month or so, so we suggest you pursue the avenues available to you under the Commission's rules should you want to depose him.

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thanks.

John

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**Hippsey, Heather**

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**From:** Graubert, John [jgraubert@cov.com]  
**Sent:** Thursday, January 20, 2011 4:16 PM  
**To:** Hippsey, Heather  
**Subject:** RE: 30(b)(6) witness and Aviram

Heather: I'm afraid I will have to call you back on these items tomorrow - it has been hard locating people today.

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**From:** Hippsey, Heather [mailto:HHIPPSLEY@ftc.gov]  
**Sent:** Thursday, January 20, 2011 11:14 AM  
**To:** Graubert, John  
**Subject:** 30(b)(6) witness and Aviram

John, when you have a moment, can you call so we can confirm a date for the 30(b)(6) depositions for Roll and Pom – at their offices; half day at most each; we were looking at Thurs. 2/3. Also, we are starting the process to ask J. Chappell for a subpoena to take Dr. Aviram's deposition in Israel. It is a very detailed process so I'd like to discuss what I've learned thus far and some possible short cuts. Again, if you don't plan to call him, we can drop it, but otherwise we need to get the ball rolling on this. Also, we haven't gotten the name of an NIH factual witness. I'd like to get that done too. Thanks, Heather

**Hipsley, Heather**

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**From:** Hipsley, Heather  
**Sent:** Thursday, January 20, 2011 4:24 PM  
**To:** 'Graubert, John'  
**Subject:** RE: 30(b)(6) witness and Aviram

Ok, I just need to nail down the 30(b)(6) date and location to order court reporter and travel plans. Also, the Aviram deposition is a bit complicated (we need clearance from Embassy even if voluntary without subpoena) so I'd like to get that figured out as well. Thanks for staying in touch, Heather

---

**From:** Graubert, John [mailto:jgraubert@cov.com]  
**Sent:** Thursday, January 20, 2011 4:16 PM  
**To:** Hipsley, Heather  
**Subject:** RE: 30(b)(6) witness and Aviram

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**From:** Hipsley, Heather [mailto:HHIPPSLEY@ftc.gov]  
**Sent:** Thursday, January 20, 2011 11:14 AM  
**To:** Graubert, John  
**Subject:** 30(b)(6) witness and Aviram

John, when you have a moment, can you call so we can confirm a date for the 30(b)(6) depositions for Roll and Pom – at their offices; half day at most each; we were looking at Thurs. 2/3. Also, we are starting the process to ask J. Chappell for a subpoena to take Dr. Aviram's deposition in Israel. It is a very detailed process so I'd like to discuss what I've learned thus far and some possible short cuts. Again, if you don't plan to call him, we can drop it, but otherwise we need to get the ball rolling on this. Also, we haven't gotten the name of an NIH factual witness. I'd like to get that done too. Thanks, Heather

**Evans, Janet M.**

---

**From:** Evans, Janet M.  
**Sent:** Wednesday, February 02, 2011 5:57 PM  
**To:** 'Graubert, John'  
**Cc:** Hipsley, Heather; Perryman, Skye  
**Subject:** RE: Dr. Aviram

John and Skye,

I don't believe that we've heard back from you with regard to deposing Dr. Aviram. As Heather has previously advised, if Dr. Aviram is to appear as a witness for Respondents (as indicated on Respondents' Preliminary Witness List) we will need to depose him. We are willing to travel to Israel for this purpose. So, I would like to talk to you, no later than Friday, about when Dr. Aviram can be made available for deposition in Israel, and where, in order that we can arrange this.

Thanks,  
Janet Evans  
202.326.2125

---

**From:** Hipsley, Heather  
**Sent:** Thursday, January 20, 2011 4:24 PM  
**To:** 'Graubert, John'  
**Subject:** RE: 30(b)(6) witness and Aviram

Ok, I just need to nail down the 30(b)(6) date and location to order court reporter and travel plans. Also, the Aviram deposition is a bit complicated (we need clearance from Embassy even if voluntary without subpoena) so I'd like to get that figured out as well. Thanks for staying in touch, Heather

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**Sent:** Thursday, January 20, 2011 4:16 PM  
**To:** Hipsley, Heather  
**Subject:** RE: 30(b)(6) witness and Aviram

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**From:** Hipsley, Heather [mailto:HHIPPSLEY@ftc.gov]  
**Sent:** Thursday, January 20, 2011 11:14 AM  
**To:** Graubert, John  
**Subject:** 30(b)(6) witness and Aviram

**Exhibit A - p. 5**

2/15/2011

**Evans, Janet M.**

---

**From:** Evans, Janet M.  
**Sent:** Monday, February 07, 2011 3:36 PM  
**To:** 'Graubert, John'; Perryman, Skye; Diaz, Kristina  
**Cc:** Hipsley, Heather  
**Subject:** Dr. Aviram

Dear John, Skye, and Kris,

Just a note to remind you of complaint counsel's request that Dr. Aviram be made available for deposition in Israel. Over the past several weeks, we have reiterated this request on several occasions, and made clear that complaint counsel is willing to travel to Israel to depose Dr. Aviram. Unfortunately, we have heard no response to our request. If Dr. Aviram is not made available for deposition, we would anticipate objecting to any proposal that he be called as a witness at the hearing.

Janet

Janet M. Evans  
Attorney  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
NJ3213  
Washington, D.C. 20580  
202.326.2125



**Evans, Janet M.**

---

**From:** Graubert, John [jgraubert@cov.com]  
**Sent:** Tuesday, February 08, 2011 1:22 PM  
**To:** Evans, Janet M.  
**Cc:** Hipsley, Heather; Perryman, Skye; Diaz, Kristina  
**Subject:** RE: Dr. Aviram

Janet: I cannot see what objection complaint counsel could validly assert if Dr. Aviram appeared at trial, as he has been on our initial disclosure and witness lists and you have known for several years about him. The Rules of Practice provide you with a means of taking his deposition and we have done nothing to oppose any such efforts. As I have told staff many times, we do not represent Dr. Aviram or control his schedule. Nevertheless, we have been willing to consider whether there is a mutually acceptable way to address your issue and we have in fact been working on that since Heather made her request a few weeks ago. I hope to have something to report to you in the next week or so. As we did with the Resnicks, if you want to take a deposition of Dr. Aviram outside the fact discovery period we will agree to file a stipulated motion with the court to allow that.

John

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---

**From:** Evans, Janet M. [mailto:JEVANS@ftc.gov]  
**Sent:** Monday, February 07, 2011 3:36 PM  
**To:** Graubert, John; Perryman, Skye; Diaz, Kristina  
**Cc:** Hipsley, Heather  
**Subject:** Dr. Aviram

Dear John, Skye, and Kris,

Just a note to remind you of complaint counsel's request that Dr. Aviram be made available for deposition in Israel. Over the past several weeks, we have reiterated this request on several occasions, and made clear that complaint counsel is willing to travel to Israel to depose Dr. Aviram. Unfortunately, we have heard no response to our request. If Dr. Aviram is not made available for deposition, we would anticipate objecting to any proposal that he be called as a witness at the hearing.

Janet

Janet M. Evans  
Attorney  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
NJ3213  
Washington, D.C. 20580  
202.326.2125

**Evans, Janet M.**

---

**From:** Evans, Janet M.  
**Sent:** Tuesday, February 08, 2011 1:50 PM  
**To:** 'aviram@tx.technion.ac.il'  
**Subject:** Request to Conduct Deposition

Dr. Aviram,

Hello! I am an attorney with the U.S. Federal Trade Commission.

As you are probably aware, the Federal Trade Commission has a law enforcement action against POM Wonderful and related entities. This is a civil action (not a criminal action), which allows the parties to conduct interviews under oath of potential witnesses regarding their testimony. The official term for an interview under oath is a deposition; it calls for the interview to be recorded by an independent third party and reduced to a written transcript.

You have been named as a potential witness by POM Wonderful. Accordingly, I plan to come to Israel to depose you. I would like to arrange a mutually acceptable date for this deposition. The week of March 6 would appear to be a good one for me. Could you make yourself available one day that week, and will you consent to being deposed?

Please let me know as soon as possible. Additionally, is your office still in Haifa, and if so, what is the street address?

Janet M. Evans  
Attorney  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
NJ3213  
Washington, D.C. 20580  
202.326.2125

**Evans, Janet M.**

---

**From:** Prof. Aviram Michael [aviram@tx.technion.ac.il]  
**Sent:** Friday, February 11, 2011 10:45 AM  
**To:** Evans, Janet M.  
**Cc:** Michael Aviram  
**Subject:** RE: Request to Conduct Deposition

Attorney Janet M. Evans  
Federal Trade Commission,

I can be available on Monday morning, March 7.2011 in my office at the Technion Faculty of Medicine, 14<sup>th</sup> floor.  
The Faculty building is located in Haifa, Bat – Galim quarter , Efron Street (close to Rambam Hospital).

**Michael Aviram, DSc, Professor of Biochemistry**  
**Rambam Medical Center, Bat - Galim, Haifa, 31096 Israel**  
Head, Lipid Research Laboratory  
Bernice R. and Joseph Tanenbaum Chair in Preventive Medicine  
Senior Vice Dean, Technion Rappaport Faculty of Medicine  
Director, Legacy Heritage Clinical Research Institute at Rambam (LHCRIR)  
Fax:972-4-8542130 Tel: 972-4-8542970 Cellular: 972-50-206-2056  
E Mail: [aviram@tx.technion.ac.il](mailto:aviram@tx.technion.ac.il)  
Web site :[www.aviramlipids.com](http://www.aviramlipids.com)

**From:** Evans, Janet M. [mailto:JEVANS@ftc.gov]  
**Sent:** Tuesday, February 08, 2011 8:50 PM  
**To:** 'aviram@tx.technion.ac.il'  
**Subject:** Request to Conduct Deposition

Dr. Aviram,

Hello! I am an attorney with the U.S. Federal Trade Commission.  
As you are probably aware, the Federal Trade Commission has a law enforcement action against POM Wonderful and related entities. This is a civil action (not a criminal action), which allows the parties to conduct interviews under oath of potential witnesses regarding their testimony. The official term for an interview under oath is a deposition; it calls for the interview to be recorded by an independent third party and reduced to a written transcript.  
You have been named as a potential witness by POM Wonderful. Accordingly, I plan to come to Israel to depose you. I would like to arrange a mutually acceptable date for this deposition. The week of March 6 would appear to be a good one for me. Could you make yourself available one day that week, and will you consent to being deposed?  
Please let me know as soon as possible. Additionally, is your office still in Haifa, and if so, what is the street address?

Janet M. Evans  
Attorney

**Exhibit A - p. 9**

2/15/2011

**Evans, Janet M.**

---

**From:** Evans, Janet M.  
**Sent:** Monday, February 14, 2011 12:39 PM  
**To:** 'aviram@tx.technion.ac.il'  
**Subject:** Deposition Date

Dr. Aviram,

I have made flight arrangements for March 5, so I am planning currently to do your deposition on March 7 as previously discussed.

There is a slight possibility, however, that our government will experience a brief shut down beginning on March 4 due to a budgetary squabble at the highest levels. I would not be permitted to travel during any period when the government is shut down.

So I was wondering if you would be available another day the following week, such as March 14, 15, or 16? If so, could you hold it available? Or would you prefer to just move the depo to that second week, to avoid uncertainty? Please advise....

Janet

Janet M. Evans  
Attorney  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
NJ3213  
Washington, D.C. 20580  
202.326.2125

**Evans, Janet M.**

---

**From:** Evans, Janet M.  
**Sent:** Monday, February 14, 2011 5:17 PM  
**To:** 'Graubert, John'  
**Cc:** Hipsley, Heather; 'Perryman, Skye'; 'Diaz, Kristina'  
**Subject:** RE: Dr. Aviram

Dear John, Skye, and Kris,

I want to update you on the planned deposition of Dr. Aviram.

Currently, Dr. Aviram has agreed to be deposed on March 7, 2011 in Haifa. I have made travel plans consistent with that date.

At the same time, I have also asked Dr. Aviram if he would be available for deposition one day the following week, such as March 14, 15, 16, 17, or 18. This is because there is increasing chatter suggesting a possible government shut down on March 4 – and I'm advised that if the government is closed, travel by government employees is forbidden, due to liability issues.

Anyway, once I hear back from Dr. A regarding a potential back up date, I'll send you a proposed stipulated motion to allow the deposition out of time.

Janet

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**From:** Graubert, John [mailto:jgraubert@cov.com]  
**Sent:** Tuesday, February 08, 2011 1:22 PM  
**To:** Evans, Janet M.  
**Cc:** Hipsley, Heather; Perryman, Skye; Diaz, Kristina  
**Subject:** RE: Dr. Aviram

Janet: I cannot see what objection complaint counsel could validly assert if Dr. Aviram appeared at trial, as he has been on our initial disclosure and witness lists and you have known for several years about him. The Rules of Practice provide you with a means of taking his deposition and we have done nothing to oppose any such efforts. As I have told staff many times, we do not represent Dr. Aviram or control his schedule. Nevertheless, we have been willing to consider whether there is a mutually acceptable way to address your issue and we have in fact been working on that since Heather made her request a few weeks ago. I hope to have something to report to you in the next week or so. As we did with the Resnicks, if you want to take a deposition of Dr. Aviram outside the fact discovery period we will agree to file a stipulated motion with the court to allow that.

John

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**Evans, Janet M.**

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**From:** Graubert, John [jgraubert@cov.com]  
**Sent:** Monday, February 14, 2011 8:33 PM  
**To:** Evans, Janet M.  
**Cc:** Hipsley, Heather; Perryman, Skye; 'Diaz, Kristina'; bfields@greenbergglusker.com  
**Subject:** RE: Dr. Aviram

Janet: We cannot agree to proceeding in this way. I have been discussing this issue with you and Heather for some time. I have noted that there was nothing preventing you from pursuing the appropriate procedures for obtaining this deposition in conformance with applicable rules, especially as you have known of this witness for at least two years and he has appeared on our initial disclosures and preliminary witness list, but you had not done so. I nevertheless offered to see if an accommodation was possible. (Keep in mind that we do not currently represent Dr. Aviram or have any obligation to produce him for deposition ourselves). What I was proposing, and I believe I clearly conveyed this several times, was to see whether Dr. Aviram was planning on being in the United States at some point soon and whether we could schedule a deposition then. It was in that context that I also made clear that if that could be done, we would not raise an objection that the deposition was being taken beyond the discovery cut-off.

We object, however, to this deposition taking place outside the discovery cut-off in an entirely different country, in a region that is currently in some turmoil. By circumventing the Commission's rules and proceeding unilaterally, you have not made sure, and provided assurances, that this procedure is in full compliance with Israeli, US and international law. Going to Israel at this time would be quite burdensome for Respondents and the Commission has identified no justification for not following the rules in this matter.

This email constitutes our effort to meet and confer with you. If you insist on proceeding we reserve our rights to seek appropriate relief.

John

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**From:** Evans, Janet M. [mailto:JEVANS@ftc.gov]  
**Sent:** Monday, February 14, 2011 5:17 PM  
**To:** Graubert, John  
**Cc:** Hipsley, Heather; Perryman, Skye; 'Diaz, Kristina'  
**Subject:** RE: Dr. Aviram

Dear John, Skye, and Kris,

I want to update you on the planned deposition of Dr. Aviram.

Currently, Dr. Aviram has agreed to be deposed on March 7, 2011 in Haifa. I have made travel plans consistent with that date.

At the same time, I have also asked Dr. Aviram if he would be available for deposition one day the following week, such as March 14, 15, 16, 17, or 18. This is because there is increasing chatter

**Exhibit A - p. 12**

2/15/2011

**Evans, Janet M.**

**From:** Prof. Mickey Aviram [aviram@tx.technion.ac.il]  
**Sent:** Tuesday, February 15, 2011 3:16 AM  
**To:** Evans, Janet M.  
**Cc:** AAA Aviram Mickey  
**Subject:** RE: Deposition Date

Lets stay with March 7 2011 , Monday morning (I am available from 08:30 – 11:30) in my office at the Faculty of Medicine (14 floor).

Michael Aviram, DSc , Professor of Biochemistry  
Rambam Medical Center, Bat - Galim, Haifa, 31096 Israel  
Head, Lipid Research Laboratory  
Bernice R. and Joseph Tanenbaum Chair in Preventive Medicine  
Senior Vice Dean, Technion Rappaport Faculty of Medicine  
Director, Legacy Heritage Clinical Research Institute at Rambam  
Fax:972-4-8542130 Tel: 972-4-8542970 Cellular: 972-50-206-2056  
E Mail: aviram@tx.technion.ac.il  
Web site :www.aviramlipids.com

**From:** Evans, Janet M. [mailto:JEVANS@ftc.gov]  
**Sent:** Monday, February 14, 2011 7:39 PM  
**To:** 'aviram@tx.technion.ac.il'  
**Subject:** Deposition Date

Dr. Aviram,

I have made flight arrangements for March 5, so I am planning currently to do your deposition on March 7 as previously discussed.

There is a slight possibility, however, that our government will experience a brief shut down beginning on March 4 due to a budgetary squabble at the highest levels. I would not be permitted to travel during any period when the government is shut down.

So I was wondering if you would be available another day the following week, such as March 14, 15, or 16? If so, could you hold it available? Or would you prefer to just move the depo to that second week, to avoid uncertainty? Please advise....

Janet

Janet M. Evans  
Attorney  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
NJ3213  
Washington, D.C. 20580  
202.326.2125

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